

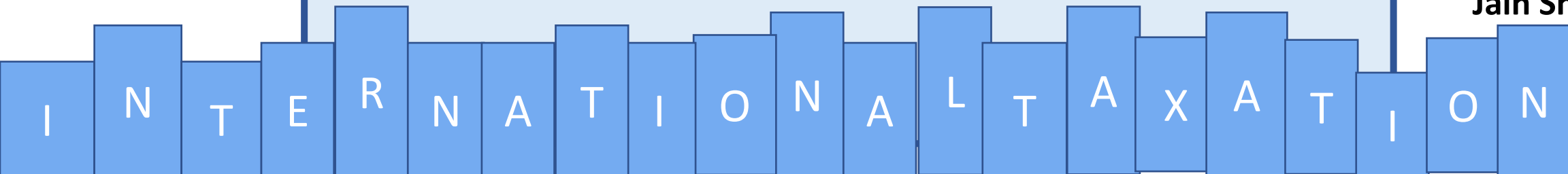
Series on Article 8 – Profit arise from shipping and Air Transport

PART-IV

Limitation of Relief (LOR) in DTAA and various countries' DTAA related to Article 8.

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Overview

In the previous two parts of series on Article 8, we have discussed about basic overview of Article 8 in which we explained the basic terminologies used in the Article 8 such as meaning of term 'Ship', 'Aircraft', 'Operation of ship', 'International Traffic' related to the income derived from shipping and Transport.

Further, we have discussed about the provisions of the income Tax Act i.e. 44B, 44BBA, 44BBC and 172 related to the profit arise from shipping and Air Transport and we have explained the Article 8 of OECD and UN Based Model convention and case studies which relates to the taxability of income derived from shipping and Air Transport.

In the last part of this series, we are going to discussed about the Limitation of Relief (LOR) article of DTAA and various countries DTAA related to Article 8.



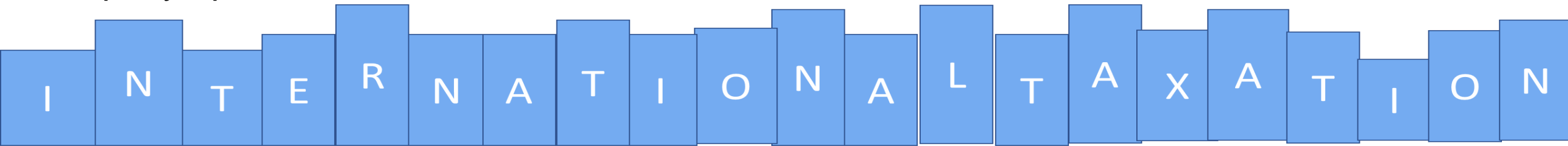
LIMITATION OF RELIEF (LoR) - INDIA SINGAPORE TREATY

- The **India-Singapore Double Taxation Avoidance Agreement (DTAA)** provides specific rules on how income from the operation of ships and aircraft in international traffic is taxed. However, there is a **limitation of relief** clause under this treaty, which restricts the application of benefits in certain circumstances.

Article 8 of the India-Singapore DTAA:

- Under **Article 8** of the India-Singapore DTAA, **profits from the operation of ships or aircraft in international traffic** are **taxable only in the country of residence** of the enterprise operating the ships or aircraft. This means:

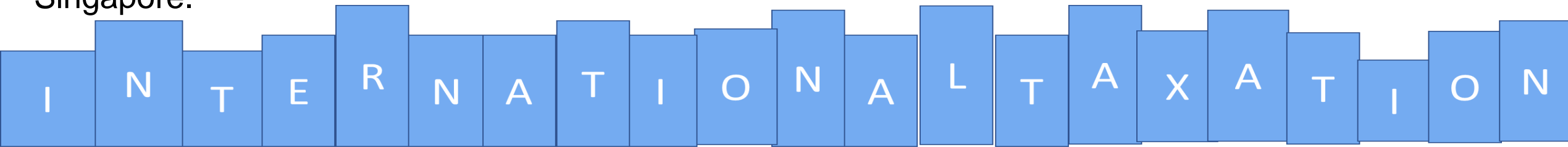
- If a Singaporean company operates ships or aircraft in international traffic, the profits are taxed only in Singapore, and India does not have the right to tax these profits, even if the company operates in India.



LIMITATION OF RELIEF (LoR) - INDIA SINGAPORE TREATY

Limitation of Relief under the India-Singapore Treaty (Article 24):

- The **Limitation of Relief (LoR)** clause ensures that **treaty benefits (like the tax exemption under Article 8)** are available only if certain conditions are met. In the India-Singapore DTAA, the limitation of relief applies to shipping and air transport income to prevent **treaty shopping** and ensure that benefits are only available to companies that have sufficient economic substance in Singapore.
- The **Limitation of Relief** clause ensures that the benefits under the treaty are available only if:
 - Place of Effective Management (PoEM)**: The enterprise's **place of effective management (PoEM)** must be in Singapore. If the PoEM is in a third country (i.e., a country other than India or Singapore), then the benefits under the DTAA may not be granted.
 - Ownership or Control Test**: The treaty may deny benefits if the Singaporean enterprise is **controlled or owned by non-residents** of Singapore and does not have genuine commercial operations in Singapore.

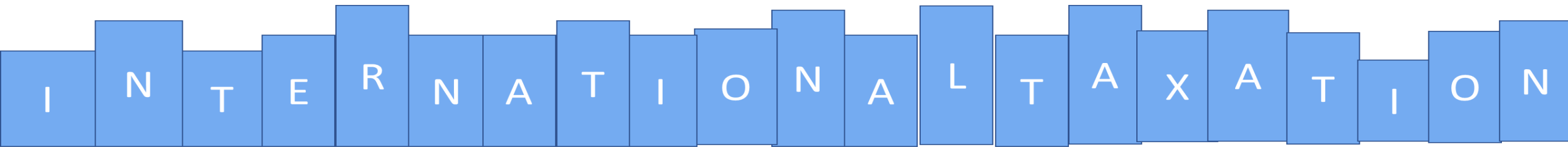


LIMITATION OF RELIEF (LoR) - INDIA SINGAPORE TREATY

Example to Illustrate Limitation of Relief:

Scenario:

- A shipping company, "**Seafarer Pte Ltd**", is incorporated in Singapore and operates ships in international waters, including routes to Indian ports. The company seeks to benefit from Article 8 of the India-Singapore DTAA, which would exempt its profits from taxation in India.
- However, upon examination, it is discovered that Seafarer Pte Ltd is **owned and controlled by residents of a third country, say Country X**, and its **place of effective management (PoEM)** is also in Country X. In Singapore, it maintains only a shell office with no substantial operations.



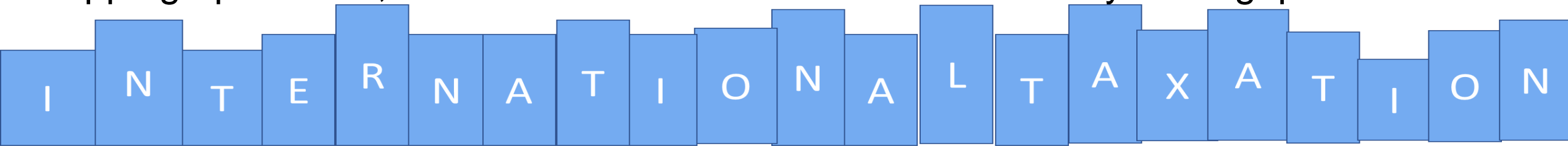
LIMITATION OF RELIEF (LoR) - INDIA SINGAPORE TREATY

Outcome:

- Under the **Limitation of Relief (LoR)** clause, Seafarer Pte Ltd will **not be eligible for the benefits of Article 8** of the India-Singapore DTAA because its PoEM is not in Singapore and it lacks substantial economic activities there.
- As a result, India may **deny the exemption** under Article 8 and choose to tax the profits earned by Seafarer Pte Ltd from its operations in Indian waters.

In contrast:

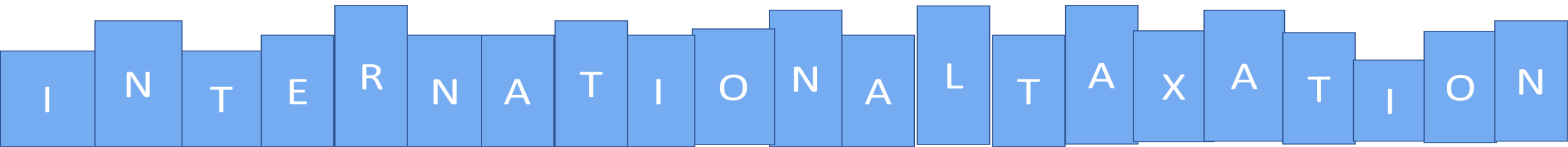
If Seafarer Pte Ltd has its **PoEM in Singapore**, conducts significant commercial operations there, and is genuinely managed from Singapore, then it would be entitled to the benefits under Article 8. Consequently, India would not tax the income from shipping operations, and Seafarer Pte Ltd would be taxed only in Singapore.



LIMITATION OF RELIEF (LoR) - INDIA SINGAPORE TREATY

Conclusion:

The **Limitation of Relief** clause in the India-Singapore DTAA ensures that only entities with genuine economic ties to Singapore benefit from the treaty's provisions, such as the tax exemption on shipping and air transport income. This prevents entities with merely nominal operations or effective management elsewhere from abusing the treaty.

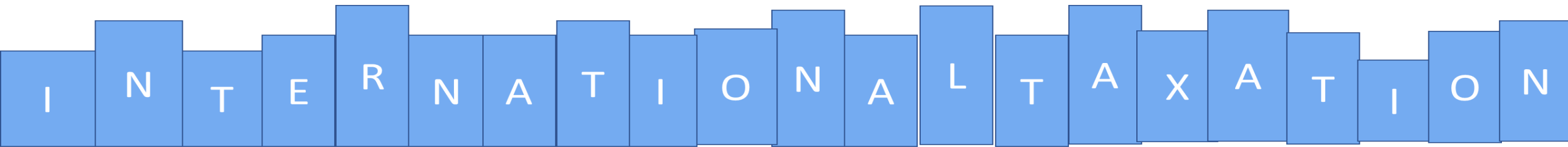


ARTICLE 8 – INDIA-USA TREATY

8(1) Profits derived by an **enterprise of a Contracting State** from the operation by that enterprise of ships or aircraft in international traffic shall be **taxable only in that State**.

8(3) Profits of an enterprise of a Contracting State described in paragraph 1 from the **use, maintenance, or rental of containers** (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

8(6) Gains derived by an enterprise of a Contracting State described in paragraph 1 from the **alienation of ships, aircraft or containers** owned and operated by the enterprise, the income from which is taxable only in that State, shall be **taxed only in that State**.



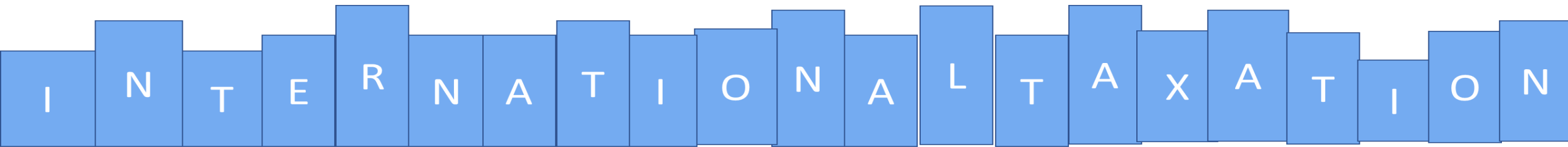
ARTICLE 9 – INDIA-DENMARK TREATY

Article 9:- SHIPPING

9(1) Profits derived from the operation of ships in international traffic shall be taxable only in the Contracting State in which the **place of effective management of the enterprise is situated**.

9(2) Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived provided that the tax so charged shall not exceed :-

- a) during the first **five fiscal years** after the entry into force of this Convention, **50 per cent**,
and
- b) during the **subsequent five fiscal years, 25 per cent**,
of the **tax otherwise imposed by the internal law of that State. Subsequently, only the provisions of paragraph 1 shall be applicable.**

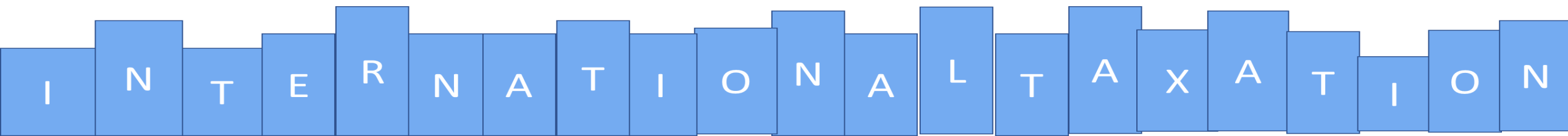


ARTICLE 9 – INDIA-IRELAND TREATY

8(1) Profits derived by an enterprise of a Contracting State from the operation or rental of ships or aircraft in international traffic and the **rental of containers and related equipment which is incidental** to the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

8(4) Notwithstanding the preceding provisions of this Article, profits derived by an enterprise of a Contracting State from the operation of ships **between the ports of the other Contracting State and the ports of third countries** may be taxed in that other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to two-thirds thereof.

12(3)(a) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph film or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process or for the use of or the right to use industrial, commercial or scientific **equipment, other than an aircraft**, or for information concerning industrial, commercial or scientific experience;



ARTICLE 8 – INDIA-KENYA TREATY

8(1) Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the **place of effective management** of the enterprise is situated.

8(2) Notwithstanding the provisions of paragraph 1, profits derived from the operation of ships in international traffic **may be taxed in the Contracting State** in which such operation is carried on; but the **tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.**

8(3) If the place of **effective management of a shipping enterprise is aboard a ship**, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

8(4) Profits derived by a transportation enterprise which is a resident of a Contracting State from the **use, maintenance, or rental of containers** (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to its international operation of ships or aircrafts **shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.**





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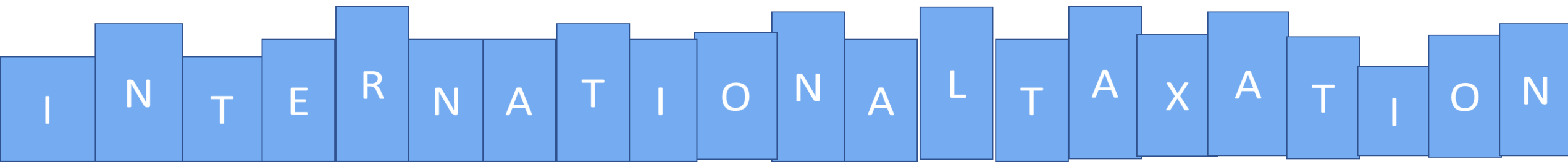


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