International Chamber of Shipping
Shaping the Future of Shipping

ECSA
European Community Shipowners' Associations

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Tax Policy and Statistics Division
Centre for Tax Policy and Administration
Organization for Economic Co-operation and Development (OECD)
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OECD SECRETARIAT PUBLIC CONSULTATION
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PILLAR TWO: GLOBAL ANTI-BASE EROSION PROPOSAL (GLOBE)

Joint Submission by
The International Chamber of Shipping (ICS) and the European Community Shipowners' Associations (ECSA)

On behalf of the 'offshore' segment of the global shipping industry

ICS and ECSA are, respectively, the principal global and regional (Europe) trade associations for shipowners and operators, representing all sectors and trades. The membership of ICS and ECSA combined represents well over 80% of the world's merchant tonnage, including the following industry segments:

- *International maritime cargo transport, e.g.:* containership operators, tanker operators and dry bulk carriers, as well as specialised trades such as LPG/LNG carriers, chemical carriers and vehicle carriers;

- *Offshore vessels, e.g.:* Operators of offshore support vessels (OSVs), including Anchor Handling Tug Vessels (AHTV), Seismic Vessels, Platform Supply Vessels (PSVs) and Well Intervention Vessels; and

- *International maritime passenger transport, e.g.:* Cruise lines and ferries.

Background

Specifically on behalf of the **'offshore' segment** of the global shipping industry, ICS and ECSA hereby formally submit comments to the Tax Policy and Statistics Division of the

OECD Centre for Tax Policy and Administration, in response to the OECD Secretariat Public Consultation under Pillar Two: Global Anti-Base Erosion (GloBE) proposal.

These comments by ICS and ECSA are intended to be complementary to the joint submission made to the same consultation – by the World Shipping Council (WSC), ICS, ECSA, and the Cruise Lines International Association (CLIA) under Pillar Two – on behalf of the global shipping industry, and in particular ships operating in international transport.

For the reasons provided below, ICS and ECSA respectfully suggest that the 'offshore' segment of the global shipping industry, including offshore shipping companies, should be carved out from the GloBE proposal under Pillar Two.

Offshore shipping companies – (Carve-out/Exemption)

Offshore shipping companies are engaged in oil, gas and renewable energy industries all over the world, and their vessels operate worldwide.

An important characteristic of the offshore segment of the global shipping industry is that a large part of its income is derived from activities conducted on foreign continental shelves. For instance, important markets for the offshore shipping fleet include the North Sea, Australia, West Africa, Brazil, Indonesia, Malaysia, the Gulf of Mexico and Canada.

In these jurisdictions, the fleet is often required to meet and adapt to local requirements, such as legislation or contractual practice, which necessitates the use of various charter agreements and local subsidiaries. In some cases, the vessels also need to be registered in local ship registers. Sometimes the local requirements can be complex and difficult to meet without assistance from local companies.

Consequently, offshore shipping companies will often separate the vessel ownership and operational activities. This is often a prerequisite when bidding for contracts on foreign continental shelves, due to regulatory requirements with respect to crewing, management, etc. set by the host State. For example, local companies (subsidiaries) are often required to hire local crew to fulfil the local content requirements. Hence, the requirements can promote the creation of local management companies and local crewing companies, for vessels to operate offshore in a State.

It is also important to note that the 'offshore' segment of the global shipping industry is composed of many small and medium sized shipping companies, which sometimes need to charter vessels from other vessel owning companies, and they may opt not to provide crewing and other technical ship management services themselves, but rather to contract these services from a supplier who can provide such services on more competitive terms.

The supplier can be an independent, third-party supplier, or a related entity, in which the shipping company is a stakeholder (e.g. holds 30 per cent of shares). Some shipping companies also own vessels jointly with investors (in single purpose companies), and

the ship-owning entity charters the vessels out to the shipping company. Chartering in vessels is also essential for a newly established shipping company with a narrow capital basis and in need of extra tonnage to achieve its objectives.

As a result, a split of ownership and operational activities, and an extensive use of subsidiaries (in various countries), including management companies, are for non-tax reasons both common and necessary arrangements in the ‘offshore’ segment of the global shipping industry. The various forms of chartering and service agreements provide operating flexibility for offshore shipping companies, enabling them to meet the regulatory and commercial needs and requirements of diverse international markets worldwide.

While offshore vessels operate on foreign continental shelves, they also add to maritime value creation and employment through the commodity and service flows within the maritime sector in the country of residence, e.g. the vessel can be managed, designed, built, financed, classified and insured in that country. The offshore fleet is also highly specialised and technologically advanced, making it a driving force in the development of new environmental technology.

Residence based taxation and special shipping tax regimes

In order to avoid multiple and duplicative taxation, as well as the prospect of extreme administrative complexity, profits derived from offshore vessel activities are usually taxed only in the country of residence, cf., as an example, the Nordic Tax Treaty art. 21, regarding activities related to the preliminary investigation, exploration and exploitation of deposits of hydrocarbons on the continental shelf. According to paragraph 5, profits of an enterprise of a Contracting State from the alienation of transport of personnel or material by a ship, or because of the operation of tugs, supply vessels and other support vessels in connection with oil and gas activities shall be taxable only in the country of residence.

In the country of residence, shipping companies are usually subject to a special shipping tax regime, such as a tonnage tax or a similar regime, where shipping income is exempt from tax. From the perspective of offshore vessels, in the EU context for instance, the European Commission applied by analogy the State Aid Guidelines on Aid to Maritime Transport on offshore vessels, even when their activities do not constitute maritime transport in the strict sense, cf. Commission decision of 11 October 2018, in case SA.45300 (2016/N) concerning amendments to the Danish tonnage tax scheme.

Special shipping tax regimes that also cover the activities of offshore vessels have been enacted by many OECD and non-OECD countries for ‘significant non-tax’ policy reasons, with the intention of bolstering their respective maritime sectors and clusters. These regimes are not considered to be harmful tax practices and are aligned with the standards set by BEPS Action 5 (Harmful Tax Practices: Transparency Framework). In addition, investors can be made liable for income generated from special shipping tax regimes under the Controlled foreign corporation (CFC) rules, if the regime is deemed to

be more favorable than the rules that apply to shipping in the State where the investor is resident.

Proposed carve-out for ‘offshore’ segment of the global shipping industry

The ongoing OECD Public Consultation Document under Pillar Two (November 2019) contemplates the possibility of carve-outs from the GloBE proposals, including for regimes operating in line with the standards set by BEPS Action 5. In this respect and for the reasons further outlined above, ICS and ECSA respectfully suggest that – as proposed by the WSC-ICS-ECSA-CLIA submission on behalf of the global shipping industry – the ‘offshore’ segment of the industry should also be carved-out from the scope of the Pillar Two framework.

Few incentives to engage in profit shifting

Pillar Two is intended to provide a minimum tax rate to reduce the incentive for taxpayers to engage in profit shifting and to establish a floor for tax competition among jurisdictions. In shipping (including the offshore segment), there are no compelling incentives to engage in profit shifting, since shipping income is exempt from tax in most countries. Therefore, the industry already has a system in place to avoid profit shifting and that ensures a global level playing field. Shipping is therefore unlike almost any other industry.

Special shipping tax regimes have several ring-fencing mechanisms, to avoid spill-over into other industries. There are also strict rules that define what types of income might qualify for a tax exemption. Accordingly, there should be no practical difficulties in operating a carve-out for the global shipping industry, including the offshore segment.

GloBE proposal would distort competition and create uneven playing field

Different shipping companies have different organisational structures. Some companies own vessels and provide services (commercial management, technical management, crewing etc.) from one or a few companies – while others have a holding structure, with several subsidiaries and single-purpose companies, which is usually the case for offshore shipping companies.

Most offshore shipping companies operate in multiple jurisdictions outside the country where the group and/or vessel owner is resident, and they provide specialist services to the oil, gas and renewable energy industries. To obtain an efficient structure it is in many cases necessary to use/set up group companies / subsidiaries, functioning as operating companies in other parts of the world – usually the operating State – to hire the vessel out with crew to the end customer.

This is usually due to commercial and liability reasons, as well as potential local content requirements. Therefore, for all companies engaged in offshore shipping activities the flexibility to provide vessels, services, etc. directly to customers or subsidiaries under different charter agreements, without this increasing the operating costs (tax, etc.), is a

necessity. This allows those companies to operate in a fully efficient manner from a commercial perspective.

If a shipping company (including an offshore shipping company) has a holding-structure, it will often consist of several intra-group cross-border transactions. The payer and payee will usually be within a special tax regime for shipping, and the payment will be subject to low taxation – and it may therefore be within the scope of Pillar Two, and especially the undertaxed payment rule (subject to tax rule). However, if tax (e.g. withholding tax) is imposed on intra-group cross-border payments, where both the payer and payee are subject to low/zero tax, this would likely distort competition between shipping companies with different organisational structures, i.e. unlevel the playing field, and undermine the objectives of Pillar Two.

The GloBE proposal may also lead to a competitive disadvantage for companies operating on a foreign continental shelf (subject to GloBE tax), compared to companies operating domestically, which would not be affected by the GloBE proposal, but can be within a special tax regime with low/zero tax.

Moreover, global shipping (including the offshore segment) is a very capital intensive industry, with large expenses for capital, interest and operating expenses. Consequently, even a small withholding tax could exceed the company's (payee's) entire net profits, since the withholding tax will be on the company's turn over.

We also note that the GloBE proposal anticipates that the income would have been subject to tax above the minimum rate in the shareholder's jurisdiction. However, this will rarely be the case for income earned from international shipping activities (including the offshore segment), as the shareholder's jurisdiction may also have a special tax regime for shipping.

In this respect, an unintended effect of the proposal will be that foreign income is taxed at the minimum rate, even though the income would have been subject to low/zero tax if earned by and allocated to a company in the shareholder's jurisdiction.

Consequently, the adoption of the GloBE proposal – without a carve-out for the offshore segment of the global shipping industry – would severely constrain the possibility to enter into commercially viable agreements and create an unlevel playing field.

Shipping income as a permanent difference

As further support for a carve-out, the consultation document contemplates reductions in the top-up tax for certain permanent differences between income computed under financial accounting standards and under income tax rules. Since income from international shipping is tax exempt in most countries, it is a permanent difference – and shipping income should therefore be removed from the tax base.
However, this is a very complicated approach – and since most shipping income is exempt from tax (i.e. permanent difference), it is easier to operate a carve-out for the entire shipping industry (including the offshore segment).

Carve-out for a return on tangible assets

The consultation document also contemplates the possibility of a carve-out for a return on tangible assets, in a manner apparently similar to that in the so-called “Global Intangible Low-taxed Income (GILTI)” regime in the United States.

The global shipping industry (including the offshore segment) annually invests billions of dollars in ships and related equipment. A return on tangible assets carve-out should be investigated further, but not as a substitute for a shipping industry carve-out. However, ICS and ECSA are of the view that a possible carve-out for a return on tangible assets is also a strong argument for a carve-out for the entire shipping industry.

ICS and ECSA also note that if a GILTI carve- out is introduced, and is applicable to shipping, it is vital that owned and leased vessels are treated equally, since it is not uncommon for shipping companies to charter in vessels from both related and unrelated parties.

ICS and ECSA request

ICS and ECSA respectfully request that the global shipping industry (including the offshore segment), be carved out from application of Pillar Two.

As pointed out above, there are many non-tax reasons why most countries have special shipping tax regimes, and a carve-out for the shipping industry (including the offshore segment) would be compatible with the policy intent of the GloBE proposal.

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ICS and ECSA sincerely hope the above comments are constrictive. The two associations are at the disposal of the OECD should any further comments or additional information on the above be necessary.