

30 July 2021

Ms. Olivia Long  
Advisor  
Mr. Eric Robert  
Senior Advisor  
Centre for Tax Policy and Administration  
Organization for Economic Co-operation and Development (OECD)  
2 Rue André Pascal  
75016  
Paris, France

Copied to: Mr. Pascal Saint-Amans ([pascal.saint-amans@oecd.org](mailto:pascal.saint-amans@oecd.org)) and Mr. David Howell ([David.HOWELL@oecd.org](mailto:David.HOWELL@oecd.org))

**Global Shipping Sector Response to Statement by the OECD/G20 Inclusive Framework on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy (1 July 2021)**

Dear Ms. Long and Mr. Robert:

The International Chamber of Shipping (ICS), the European Community Shipowners' Associations (ECSA), the World Shipping Council (WSC), and the Cruise Lines International Association (CLIA)<sup>1</sup> have been communicating for some months now with your colleague, David Howell, in respect of Pillar Two. In response to our question, Mr. Howell suggested that we communicate with you in respect of Pillar One. We hereby submit to the OECD Centre for Tax Policy and Administration comments on the formal OECD/G20 Inclusive Framework (IF) statement on a two-pillar solution, dated 1 July 2021. These comments focus specifically on Pillar One because we have previously provided comments on the proposed Pillar Two international shipping carve-out to Mr. Howell.

**Introduction**

For essentially the same reasons outlined in our previous submissions to the OECD, and reiterated in this paper, ICS, ECSA, WSC, and CLIA continue to respectfully request that international shipping income be explicitly carved out from the proposed Pillar One framework.

---

<sup>1</sup> ICS and ECSA are, respectively, the global and European trade associations for shipowners and operators (representing all shipping sectors and trades). WSC is the global trade association for the international liner shipping industry. CLIA is the global trade association of the cruise passenger transport industry.

The global shipping sector continues to believe that it should be carved out from Pillar One because the allocation of taxing rights in the manner proposed by the OECD would:

- Reverse the over 100-year international norm of residence based taxation only of international shipping, as reflected in the OECD Model Tax Convention and the vast majority of 3,500+ tax treaties (and statutory reciprocal exemption regimes); and
- Undermine the purpose and policy of special shipping tax regimes (such as tonnage taxes) adopted for nontax policy reasons (e.g., national security, economic, and employment) by numerous countries to encourage their maritime sectors, which regimes have been approved by the OECD and the EU.

We are therefore seeking clarity from the OECD regarding the status of the international shipping income carve-out from Pillar One, as had been previously agreed to by the IF, but which was omitted from the latest IF [statement](#), without a clear explanation for this apparent reversal.

### **Rationale for reinstatement of previously agreed shipping exemption under Pillar One**

The OECD/G20 IF in its 31 January 2020 [official statement](#) agreed that it would be inappropriate to include shipping and aviation businesses in Pillar One due to the long-standing practice of taxing these industries exclusively in the countries in which they reside. This was reaffirmed in the OECD [Pillar One Blueprint](#) (12 October 2020), which was intended to “provide certainty” that this framework would not be applied to the following types of activities: “(i) natural resources; (ii) financial services (iii) construction, sale and leasing of residential property; and (iv) international airline and shipping businesses.” In addition, the Pillar One Blueprint states that it would be inconsistent with the “longstanding international consensus that the profits of enterprises operating ships ... in international traffic should be taxable only in the jurisdiction in which the enterprise has its residence.”<sup>2</sup>

The above notwithstanding, the most recent OECD/G20 IF statement on 1 July did not include the Pillar One carve-out for international shipping income and therefore removes the certainty which the Pillar One Blueprint had intended to provide, while retaining carve-outs for the extractive and regulated financial service industries.

The OECD said earlier this month that the Pillar One and Two carve-outs “kick out profits and activities that are not part of ... [the] problem either [rationale1] because the profit is already tied to the place where it is earned (for example, regulated financial services and mining companies will have to have their operations in the place where they earn their income) or [rationale 2] the activity benefits from different taxation regimes due to their specific nature (such as shipping companies and pension funds).”<sup>3</sup> We believe rationale 1 also applies to international shipping because a shipping company has no choice but to operate on the high seas (primarily) and in ports in hundreds of countries. International shipping is not part of the “problem,” but

---

<sup>2</sup> Pillar One Blueprint at ¶ 158.

<sup>3</sup> **Highlights brochure: Addressing the tax challenges arising from the digitalisation of the economy, July 2021 (oecd.org)** at 16. The document goes on to say that “[these types of businesses are still subject to all of the other international tax standards on transparency and BEPS.” *Id.*

applying Pillar One to international shipping could be very problematic, as would have been the case for Pillar Two (but for the carve-out<sup>4</sup>), as discussed below.

### **Considerable challenges if Pillar One is applied to shipping**

The OECD Pillar One proposal would assign taxing rights to every country in the world in which a company has customers, subject to limitations based on size and profitability; i.e. multinational enterprises (MNEs) (1) with global turnover above 20 billion (and, subsequently, 10 billion) euros and (2) profitability above 10%. One might think that these thresholds might effectively carve out international shipping, but that is by no means necessarily the case. In liner shipping, for example, there are a few companies with 20 billion euro revenues and many with 10 billion in revenues. Further, the shipping industry is very cyclical, based on the law of supply and demand. In a decade, there may be one or two years when profitability reaches 10%. In almost all years, profitability is far lower than that, with losses often generated in half the years of a decade. If Pillar One became effective in one of the best years of the cycle, Pillar One would apply. Because it is contemplated that operating losses can be carried forward only, there could be applicability of Pillar One even though over the entire shipping cycle profitability will not (historically) come close to 10%.<sup>5</sup> As a result, any shipping company with 20 billion (or 10 billion in later years) euro revenues will need to apply burdensome sourcing rules every year, even though shipping companies derive very few, if any, profits attributable to customer or market based intangibles.

Under “Revenue Sourcing,” the statement provides that “[r]evenue will be sourced to the end market jurisdictions where goods or services are used or consumed, ... with detailed source rules for specific categories of transactions ... [to] be developed.” It is further stated that “[i]n applying the sourcing rules, an MNE must use a reliable method based on the MNE’s specific facts and circumstances.”

How would this apply to shipping? Shipping companies primarily provide physical transport services on the high seas, where most income is derived, and in ports where cargo is loaded or unloaded. Shipping companies derive income from many dozens or even over 100 countries each year. The income does not relate to where customers are, it relates to where cargo has to be moved, mainly on the high seas. From the standpoint of the global shipping sector, it would be extremely complicated and probably practically impossible to determine accurately where revenues are sourced from; i.e. whether it is from the headquarters jurisdiction, where customers are located, the port of arrival or departure, the high seas, or wherever. And how would sourcing rules apply where a shipping company has a global contract covering multiple entities, multiple origins, and multiple destinations? Why should large shipping companies (and tax authorities) be burdened with making such calculations when it is highly

---

<sup>4</sup> However, we have some concerns with the scope of the proposed Pillar Two carve-out, as communicated to Mr. Howell.

<sup>5</sup> While the Statement contemplates elimination of double taxation by credit or exemption, neither would be available in respect of a tonnage tax liability. In some countries, primarily in Asia and Latin America, residence based taxation only is not followed; rather, gross basis freight taxes are imposed, with a resulting very high effective rate of tax on net income. Allocation of profits to such jurisdictions under Pillar One would only increase the ETR and it seems unlikely that a credit against the freight tax would be allowed. Similar issues would arise in jurisdictions where a related party shipping agent is mandated by law to derive an amount of remuneration that is not commercial.

likely that there will be very few years when a Pillar One tax will be imposed because, over the shipping cycle, the 10% profitability threshold will very infrequently be met?

And in those very few years when a very few number of shipping companies might meet both thresholds, in addition to the revenue sourcing burden, there will be multiple taxation in more than one hundred countries (in the case of most of the large shipping companies) which would be inconsistent with the more than 100-year norm of country of residence only taxation, which was developed to prevent such multiple taxation and administrative difficulties. Further, the important nontax maritime sector enhancement policies (e.g., national security, economic, and employment reasons) underlying the adoption of OECD and EU approved tonnage tax and other special tax regimes would be undermined.

For all the reasons stated above, we respectfully request a sector-wide carve-out for shipping under Pillar One, in addition to Pillar Two.

### **Request for meeting with OECD Secretariat to further discuss Pillars One and Two**

With this in mind regarding Pillar One, and noting that work is also ongoing within the OECD regarding the scope and design of the Pillar Two carve-out for international shipping, ICS, ECSA, WSC, and CLIA wish to take this opportunity to request a meeting with the OECD Secretariat, during which both pillars could hopefully be discussed.

We look forward to receiving your response and thank you in advance for considering the comments and requests we have outlined in this letter.

Yours sincerely,

Simon Bennett  
Deputy Secretary General  
ICS

Lars Kjaer  
Senior Vice President  
WSC

Katalin Dobranszky-Bartus  
Director – Finance and Fiscal Affairs  
ECSA

Nikos Mertzanidis  
Director, European Government  
Affairs  
CLIA