

Addition to OECD GloBE Shipping Carve-Out Comments: offshore service vessels

On Friday July 9, 2021 the International Chamber of Shipping and the European Community Shipowners' Associations, together with the World Shipping Council and the Cruise Lines International Association provided preliminary comments to the draft write-up of the international shipping income exclusion from the OECD Pillar Two GloBE proposal forwarded by David Howell of the OECD Secretariat to Kenneth Klein of Mayer Brown LLP on July 5, 2021.

In this submission the four organizations reiterated their earlier submissions that the scope of shipping income initially excluded under a GloBE shipping carve-out should be as broad as possible and cover items of shipping income that shipping companies already have to determine in applying article 8, statutory reciprocal shipping income exemptions, and tonnage tax and other statutory shipping tax incentives. It was further stated that the GloBE Carve-backs, if it is determined that they are needed at all, should be as narrow as possible because (1) the GloBE Carve-backs are inconsistent with the longstanding principle of residence country only taxation of shipping companies and with the substance of the special shipping tax regimes, (2) the various OECD statements on a shipping carve-out have referred to article 8 as the basis of the carve-out, and (3) the GloBE Carve-backs would require shipping companies to maintain a third set of books; i.e., (a) for article 8 and/or statutory reciprocal shipping income tax exemptions; (b) tonnage tax or other specific shipping tax regimes; and (c) GloBE Carve-backs. In this respect the four organizations restated their broad definition of shipping income to be carved-out and suggested to use this definition as a starting point.

The issue, that the definition of article 8 of international shipping income is too narrow to solely base the shipping income carve-out on, is illustrated in earlier submissions with several examples. The exclusion of offshore service vessels is an illustrative example for this viewpoint. In our view, there are several, urgent reasons to include the income/activities of offshore service vessels in the shipping income definition for the GloBE-shipping carve-out:

- Based on the OECD Commentary Tugs and Dredgers (as an example for a broader range of offshore service vessels) are excluded from the application of Article 8 of the OECD Model Tax Convention, which means that the division of taxation rights is not regulated by Article 8 (taxation right lies solely by the residence country of the shipping company) but by Article 7 (division of taxation rights between residence country and source country in case of a permanent establishment). However, in a number of cases also Tugs and Dredgers (and other types of offshore service vessels) do perform services that qualify as the transportation of goods and persons in international traffic (in the meaning of Article 8). For example, the cross-border transportation of dredged materials by Dredgers or the transportation by sea of Drilling Rigs by Tugs to another offshore location. In our view, there is no reason to follow the strict (100 percent exclusion) approach of Article 8 in defining the GloBE-shipping carve-out;
- Also, in case Article 7 would be solely applicable to offshore service vessels, in practice this normally leads to the situation that the taxation rights – comparable to the situation of Article 8 – lie exclusively with the state of residence, because the mobile activity of vessels is only in seldom cases considered as constituting a permanent establishment (Article 5 OECD

MTC). This brings offshore service shipping companies at the same footing (taxation right exclusively with the state of residence) as other shipping companies¹;

- In the majority of special shipping tax regimes, offshore service vessels are brought under the application of those regimes for the same reasons as other (transportation) vessels, because their activities, working environment and applicable regulatory framework are very similar to or even in accordance with other vessel types. With respect to European tonnage tax regimes the European Commission has set strict guidelines under which offshore service vessels can be brought under the national tonnage tax regimes. For some vessel types (Tugs and Dredgers) only the transportation part of the activity may be included in the national tonnage tax regimes. For other vessel types (e.g. Cable Layers, Fire Fighting Vessels and Research Vessels) the national tonnage tax regime may be applied “by analogy”, in case the following three conditions are proven to be fulfilled: (i) the maritime activities performed are subject to the same legal environment in the labour, technical and safety field as EU maritime transport; (ii) the same qualified and trained seafarers are necessary, and (iii) the activities face the same challenges in terms of global competition and relocation of onshore activities. Excluding the income/activities of offshore service vessels from the GloBE-shipping carve-out would seriously endanger the proper functioning of special shipping tax regimes and would be in contrast with the rationale of the shipping carve-out². Furthermore, it will also lead to very complex, difficult to handle ring-fencing rules that are not in conformity with the ring-fencing rules that shipowners already have to handle under their existing shipping tax regimes. Therefore, such exclusion would be at odds with the goal and purpose of the GloBE-shipping carve-out.

For the above reasons the International Chamber of Shipping and the European Community Shipowners’ Associations urgently request to broaden the proposed definition of the GloBE-shipping carve-out and include the income/activities by offshore service vessels. In the earlier proposed definition³ by the four organizations the income/activities by offshore service vessels are included in the shipping carve-out to the extent that they are covered by the national shipping tax regimes⁴. The International Chamber of Shipping and the European Community Shipowners’ Associations for that reason once again request to use this broader definition as the basis for drafting the GloBE-shipping carve-out.

¹ The same applies with respect to the position of offshore service vessels under the special offshore p.e.-clauses (so-called 30-days rule) that are sometimes contained in tax treaties between states with extensive offshore/oil & gas industry.

² As stated by the OECD earlier this month, the shipping exclusion is provided because shipping “activity benefits from [a] different taxation regime... due to ... [its] specific nature...[Shipping is] still subject to all the other international tax standards on transparency and BEPS to ensure that tax authorities can tax ... [shipping] effectively.” page 16 of publication [Highlights brochure: Addressing the tax challenges arising from the digitalisation of the economy, July 2021 \(oecd.org\)](#)

³ See the text as restated in the Introduction of the 9 July 2021 submission.

⁴ Both the EU Code of Conduct Group and the OECD Forum on Harmful Tax Practices have issued guidelines with extensive “substance” conditions to analyze and approve existing and future special shipping tax regimes.