

11 November 2019

Tax Policy and Statistics Division
Centre for Tax Policy and Administration
Organization for Economic Co-operation and Development (OECD)
1 Rue André Pascal
75016
Paris France

**OECD SECRETARIAT PUBLIC CONSULTATION
(9 OCTOBER 2019 – 12 NOVEMBER 2019)**

“SECRETARIAT PROPOSAL FOR A ‘UNIFIED APPROACH’ UNDER PILLAR ONE”

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

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.

On behalf of the global shipping industry, and in particular ships operating in international transport, 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 Proposal for a ‘Unified Approach’ under Pillar One”.

For the reasons provided below, ICS and ECSA respectfully suggest that a number of shipping industry segments – namely *‘international maritime cargo transport’* and

'offshore vessels' – should be deemed to be outside the scope of the proposed 'Unified Approach' under Pillar One. ICS and ECSA also recommend that *'international maritime passenger transport'* should be carved-out (exempted) from the proposed approach.

International maritime cargo transport – (Out of scope)

The OECD Secretariat consultation document, released in October 2019, explains – under paragraphs 15, 19 and 20, as well as page 17 – that the scope of the proposed 'Unified Approach' under Pillar One should be consumer-facing businesses; i.e. businesses generating revenue from supplying consumer products or providing digital services that have a consumer-facing element.

In this respect, ICS and ECSA wish to emphasise that the customers of the international maritime cargo transport segment of the industry are not individual consumers, but large businesses or freight forwarders that arrange transportation for smaller businesses. All of the services provided are cargo transportation services.

For this reason, ICS and ECSA recommend that the international maritime cargo transport segment of the industry, like extractive industries and commodities¹, should be considered to be beyond the scope of the proposed 'Unified Approach'. A more in-depth analysis in support of a 'scope out' for the international liner segment of the industry has been submitted to the OECD by the World Shipping Council (WSC). ICS and ECSA fully support this complementary submission and the need for the 'international maritime cargo transport' segment as a whole to be scoped out.

Offshore vessel operators – (Out of scope)

For reasons similar to those provided for the 'international maritime cargo transport' segment, ICS and ECSA recommend that offshore vessel operators should be considered to be beyond the scope of the proposed 'Unified Approach' under Pillar One. The customers of offshore vessel operators are not individual consumers, but large businesses. Their services are provided for specific operational purposes, e.g. to support oil, gas and renewable energy exploration operations or construction work by other large companies, which takes place on the high seas.

Therefore, on the basis of the proposed 'Unified Approach', as contained in the OECD Secretariat consultation document (October 2019), offshore vessel operators – which are not consumer-facing businesses – like extractive industries and commodities², should be considered to be beyond the scope of the proposed approach.

International maritime passenger transport – (Carve-out/Exemption)

ICS and ECSA also note that the international maritime passenger transport segment of the industry has both consumer and business facing aspects. This, together with the

¹ October 2019 OECD Public Consultation Document (Paragraph 20).

² October 2019 OECD Public Consultation Document (Paragraph 20).

long and successful history of taxing shipping in the country of residence, based on treaty and statutes, supports the need for a carve-out for this particular segment of the industry.

A more in-depth analysis in support of a 'carve-out' for 'international maritime passenger transport' will be submitted to the OECD by the Cruise Lines International Association (CLIA), on behalf of cruise lines and ferries. ICS and ECSA fully support this complementary submission.

Industry support for residence based taxation

As far as the international maritime cargo and passenger transport segments of the industry are concerned, ICS and ECSA are of the view that application of the proposed 'Unified Approach' under Pillar One, to those industry segments, would subject shipping companies to multiple and duplicative taxation, and extreme administrative complexity, in a manner inconsistent with the 100 years of development of residence based taxation only for international transportation.³

Consequently, application of such a rule to ships that can derive income from hundreds of customers in dozens of countries, inevitably would be arbitrary. Taxation only by the country of residence has become an international norm, with very few exceptions in the customary practice of states. This norm is implemented by the widespread use of reciprocal income tax exemptions for shipping companies and airlines in comprehensive income tax treaties (e.g. Article 8 of the OECD, United Nations, and US Model Income Tax conventions), domestic law (e.g. Section 883 of the U.S. Internal Revenue Code and Article 49, Paragraph 4 of the German Income Tax Act), or limited income tax treaties, or diplomatic exchanges of notes addressing the taxation of shipping and airlines only.

Summary of global shipping industry recommendations

For the reasons outlined above, ICS and ECSA respectfully recommend as follows:

- The *International maritime cargo transport* segment of the industry should not be included in the scope of the proposed 'Unified Approach', as it is not comprised of consumer-facing businesses.
- *Offshore vessel* operators should also not be included in the scope of the proposed 'Unified Approach', as they are not consumer-facing businesses.
- The *International maritime passenger transport* segment of the industry should be carved-out from the scope of the proposed Unified Approach. Although this segment operates in both B2B and B2C environments, dividing those operations

³ The shipping and airline residence based only tax regimes are addressed comprehensively in prior OECD submissions by ICS and ECSA, the International Air Transport Association (IATA), and the Norwegian Shipowners' Association (NSA).

would generate administrative complexity, which the OECD seeks to avoid. As with all international maritime transport (and aviation), residence based taxation is the established and viable international norm which should be retained.

Conclusion

The existing taxation framework applied to international transport is the workable solution. Even if certain segments (or parts of segments) are deemed to be out of scope due to their customer base, a carve-out for the industry is the most efficient manner of preserving the integrity of the system on which both shipping companies and tax authorities worldwide rely.