【資料1-3-1-3】

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Global Shipping Industry Recommendations on OECD Draft Rules for Pillar One Nexus and Revenue Sourcing

This document provides recommendations of the World Shipping Council, the International Chamber of Shipping, the European Community Shipowners' Associations, and the Cruise Line International Association in respect of the OECD Public Consultation Document, *Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing (4 February 2022 – 18 February 2022)* ("Draft Sourcing Rules").

The global shipping industry continues to believe, as the OECD Secretariat said in the October 12, 2020, *Pillar One Blueprint*, that application of Pillar One to international shipping is inappropriate because it is 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." This is a 100-year consensus embodied in the vast majority of 3,500+ tax treaties and article 8 of the OECD Model Tax Convention. It reflects the fact the most shipping income is earned on the high seas and not in any jurisdiction. The global shipping industry further believes that application of Pillar One to international shipping is inappropriate because it undermines the purpose and policy of OECD and EU approved 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. The Inclusive Framework understood this rationale in generally carving international shipping out of Pillar Two.

Notwithstanding that application of Pillar One is inconsistent with these important policies, the Inclusive Framework also decided, after initially (in January 2020) carving shipping out of Pillar One, to apply Pillar One to virtually all business, including international shipping. Given that decision, the global shipping industry believes that the Pillar One sourcing rules nevertheless should reflect the fact that most international shipping income is earned on the high seas (and not in any jurisdiction). We recommend that, of the residual profits allocated under Pillar One and derived from international shipping income, 75% should be sourced to the country of residence of the shipping company[1] and the remaining 25% should be sourced to port jurisdictions. This would be consistent with numerous OECD statements that income from services be sourced to where they services are performed (e.g., in the *Pillar One Blueprint*, the July 1, 2021, *OECD/G20 Statement on a Two-Pillar Solution*, and a summer 2021 OECD Podcast). In addition, it would be consistent with what the OECD July 2021 *Highlights Brochure* said of extractives and regulated financial institutions, the only two industries carved out of Pillar One, that the industries' profits "are tied to where … [they] are earned."

[1] 75% is an estimate of the percentage of shipping income that would be earned outside of the territorial waters of any jurisdiction if such income were instead measured based upon miles or time spent on the high seas.

The Draft Rules (part 5, D, paragraphs 5-8) would source residual profits, allocated under Pillar One, from cargo shipping transportation services 50/50 to the place of origin and the place of destination and would source residual profits from passenger shipping transportation services 100% to the place of destination, both using allocation keys (part 10, paragraphs 28 ("Cargo Non-air Transport Allocation Key") & 41 ("Passenger Non-air Transport Allocation Key")). The global shipping industry can confirm the feasibility of the allocation keys[2] (and related definitions) provided in the Draft Rules,[3] except that (1) most importantly, for the reasons described above, if implemented, they should apply to only 25% of the residual profits from international shipping income (with the remaining 75% being sourced to the country of residence) and (2) such 25% should be allocated entirely to the place of destination for both cargo and passenger transportation. Eliminating the 50/50 split for cargo transportation would make the Pillar One computations much less complicated and would, in the case of cargo shipping, be more consistent with sourcing income to market jurisdictions.

If you have any questions, would like to discuss, or would like additional information, please contact Kenneth Klein of Mayer Brown LLP at kklein@mayerbrown.com or 312-493-242.

[2] The allocation keys do not use revenues derived from a jurisdiction, but rather volume, weight, number of passengers, or similar metrics. While these are preferable allocation keys for the vast majority of companies, if a company had the ability and desire to trace revenues to jurisdictions, we would recommend that they be given the option to do so.

[3] For liner shipping, in part 10, paragraph 28 and footnote 44, there is a 50/50 split between the Place of Origin and the Place of Destination, based on the volume of containers discharged (excluding empty containers). We interpret this to mean that the volume of containers discharged (exclusive of empties) is split 50/50 between origin and destination and, as such, there is no need to count containers at origin (whether or not empty), as they are not part of the sourcing calculation. If this interpretation is not correct, and it is also necessary to calculate containers at origin, then empty containers also should be excluded at origin.