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by Karl Berlin

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In this article, Berlin explains the potential difficulties in taxing shipping income and vessel sales under the OECD's pillar 2.

Introduction

The international shipping industry plays a pivotal role in global trade. Although vessels are held or controlled in different ways, it is primarily through ownership or leasing arrangements. Among the options, bareboat charter agreements are notable for granting operational control to the charterer (lessee) while the lessor retains legal ownership. Under international financial reporting standards, vessels leased for extended periods are classified as assets in the lessee's accounts, reflecting the entity's control of the economic resource.[1]

Charter agreements frequently include purchase options, allowing the charterer to acquire legal ownership of the vessel during or after the hire period. This influences the shipping industry, in which the sale and purchase of vessels is integral to maintaining modern and efficient fleets. Shipping companies often divest older vessels to invest in newer, more efficient models, to adapt to market demands, and to manage capital effectively.

Proceeds from the sale and purchase of vessels are typically included in shipping tax regimes, treated as an integral part of the business. However, the introduction of the OECD pillar 2 global anti-base-erosion (GLOBE) model rules[2] has imposed restrictions on when proceeds fall in scope of the international shipping income exclusion. This regulatory shift could create mismatches with European tonnage tax regimes, presenting a challenge for the industry and tax administrations.

Scope of Shipping Income Exclusion

Under pillar 2's article 3.3.1, a constituent entity's international shipping income is excluded from computation of its GLOBE income or loss for the jurisdiction in which it is located. Article 3.3.2 defines international shipping income as net income obtained by the constituent entity from certain activities including "the sale of a ship used for the transportation of passengers or cargo in international traffic, provided that the ship has been held for use by the constituent entity for a minimum of one year."

According to OECD pillar 2 commentaries,[3] this exclusion for international shipping also applies to capital gains or losses on the sale of qualifying ships used for the transportation of passengers or cargo in international traffic. However, there is a minimum holding period of one year "to prevent ship trading activities from qualifying for the exclusion."[4]

According to the commentaries, ships purchased with a view to reselling are usually

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[1] IFRS 16; *see also* IFRS Conceptual Framework for Financial Reporting, paragraph 4.3.

[2] OECD, "*Tax Challenges Arising From the Digitalisation of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two)*" (2021).

[3] OECD, "*Tax Challenges Arising From the Digitalisation of the Economy — Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)*" (2024).

[4] *Id.* at 159.