



## Proposed changes to the Norwegian tonnage tax regime

### Overview

On 22 June 2018, the Ministry of Finance presented a bill to the Norwegian Parliament proposing amendments to the Norwegian tonnage tax regime. The proposal is in line with previous correspondence between the Ministry of Finance and the EFTA Surveillance Authority (ESA). The proposed rules will be implemented in the Norwegian Tax Act once they are approved by the Norwegian Parliament. We do not expect any material changes to be made to the rules by the Norwegian Parliament due to the pre-approval of the rules by

the ESA. The proposal contains some clarifications which will be discussed below along with the key points from the proposal.

### 1. The proposal's key points

- The most important changes compared to the previous rules, are that chartering out on bareboat terms may not exceed 40 percent/50 percent of the group's fleet.
- Pursuant to transitional provisions, a significant part of existing bareboat charter agreements will not be affected

by the new proposed restrictions on bareboat chartering out.

- Flag state requirements are introduced for chartering in on time charter and voyage charter terms.
- The threshold and tax rate of the fixed tonnage tax will be slightly changed.
- Barges and other non-self-propelled vessels must fulfil stricter conditions to qualify as eligible assets under the tonnage tax regime.

## 2. Limitations on chartering out on bareboat terms

Norway has had one of the most favourable tonnage tax regimes within the EEA when it comes to bareboat chartering out of vessels, and the proposal restricts the eligibility to some extent. The first new restriction is that bareboat chartering agreements deemed to be financial leases will no longer be permitted under the tonnage tax regime. However, agreements comprised by the transitional provisions described below should not be affected by this change. The proposed definition of financial lease under the tonnage tax regime diverges slightly from the traditional definition used for accounting and tax purposes. As a consequence, the following arrangements will not be permitted:

- The ownership of the vessel will be assigned to the charterer or a third party at the end of the lease term, except when the purchase price is equal to the fair market value evaluated at the end of the lease term.
- The charterer or a third party has an option to acquire the vessel at the end of the lease term, except when the purchase price is equal to the fair market value evaluated at the end of the lease term.
- Any other arrangements that entails it likely that the charterer or a third party will become the owner of the vessel during or at the end of the lease term, except when the purchase price is equal to the fair market value evaluated at the time when the transfer takes place.
- The value of the agreed lease payments is greater than 90 percent of the vessel's market value evaluated at the time of signing of the contract.
- The risk for all or part of any gains and losses attributable to the vessel due to market fluctuations are assumed by the charterer, and not solely to the lessor, or
- The charterer has an option to renew the agreement at the expiration date, and the hire is below market rate for a similar type of vessel.
- The lease term exceeds 50 percent of the vessel's expected economic life span, as estimated at the start of the lease term.

The expressed objective is to make the rules as clear and easily available as possible. Going forward, one should take these changes into account when negotiating contracts to avoid exclusion from the tonnage tax regime. Contractual terms which entail a decreasing hire under a lease agreement or reduced hire upon exercise of a call option should not be entered into or revised as such terms could be captured by the above-mentioned restrictions. In particular, the last bullet point above may be challenging, unless the economic life expectancy of the vessel at the time of entering the agreement is documented, something which could prove challenging for older vessels.

Another question is which agreements are subject to the new 40 percent or 50 percent bareboat fleet limitation rule. It seems clear that an ordinary bareboat charter agreement with an external party will be subject to the limitation rule. On the other hand, bareboat charter agreements between companies groups taxed under the tonnage tax regime are as a starting point, not subject to the limitation rule. The same applies to bareboat charter agreements where the responsibility to staff the vessel is with an affiliated entity (i.e. at least 25 percent ownership, voting rights or right to profits) or a group entity according to the Norwegian Accounting Act section 1-3. The economic reality is decisive; the bareboat charter agreement will be seen in conjunction with the agreement to provide crew. In which case, the arrangement will be deemed to be a time charter agreement. Consequently, the bareboat agreement will not be comprised by the said limitation rule. It should be noted that the rule only requires that an affiliated entity is responsible for operating the vessel or at least providing the crew needed to operate the vessel. Hence, the crew can be employed or hired in from related or unrelated parties.

The 40 percent-limitation rule applies in general to all vessels comprised by the tonnage tax regime. The rule requires a daily measurement of tonnage chartered out on bareboat terms which is compared to the total tonnage per day, to determine if the 40 percent limit for bareboat

chartering out is complied with or not. The company can opt for a measurement based on the relevant fiscal year, or the fiscal year and the previous three years. The measurement is carried out on the group level, i.e. companies under the same controlling interest pursuant to the Accounting Act section 1-3, and the measurement is only done of companies taxed under the tonnage tax regime. There are specific rules regulating when and how interests in partnerships and NOKUS-companies (Norwegian controlled foreign companies resident in low-tax jurisdictions) are included in the assessment.

If a company or the company group exclusively have vessels that qualify as support vessels or similar within the offshore sector and the strategic management of that company (group) is within the EEA, then up to 50 percent of the fleet can be chartered out on bareboat terms. The vessels which are comprised by this rule must be used in maritime operations on the Norwegian or a foreign continental shelf, within the Norwegian or a foreign economic zone or inside Norwegian or foreign territorial waters, and fall within the petroleum sector, renewable energy sector, aquaculture or seabed sector. This will typically include:

- a. Support vessels for petroleum activities (i.e. supply vessels, anchor handling tug supply vessels, pipe-laying vessels and other subsea vessels)
- b. Shuttle tankers, including buoy loading vessels operating from petroleum installations on the continental shelf
- c. Well boats for transporting fish
- d. Cable laying vessels (also outside petroleum activities)
- e. Tugboats not used for traditional cargo operations (also outside petroleum activities)
- f. Seismic vessels
- g. Windmill farm vessels

The Ministry of Finance proposes that the scope of the term 'offshore and similar support vessels' shall be more precisely

defined in regulation to the law. Windmill vessels can however not operate inside Norwegian territorial waters.

It should be noted that the existing rule that in some cases gives the taxpayer the possibility to correct certain breaches with the law will not apply to any breaches of proposed rules. Consequently, a company will be excluded from the tonnage tax regime upon a breach of i.e. 40 percent/50 percent limitation rule. Companies that may be affected by the new rules should undertake necessary checks to ensure that they are in compliance with the proposed rules.

### **3. Transitional provisions – extended deadline for rectification and prevention of forced exit for companies with existing bareboat charter agreements**

The new proposed rules will limit the chartering out on bareboat terms and the ownership of certain barges. If the transitional provisions mentioned in the below paragraph is not applicable, companies captured by the limitations may be subject to forced exit from the tonnage tax regime. The transitional provisions provide an extended deadline of ten months to ensure compliance with the new rules. If violations are not rectified within the period up to 1 November 2018, the company will be excluded from the tonnage tax regime which is effective from 1 November 2018, and will be subject to ordinary corporate taxation for the rest of the fiscal year.

The transitional provisions will ensure that the existing bareboat charter agreements will not be subject to the new limitations for bareboat charter agreements. The grandfather rule is applicable if the bareboat charter agreement does not constitute a long-term contract. For support vessels and similar vessels used in the offshore sector in Norway or abroad, it is crucial that the remaining leasing period as per 1 January 2018 does not exceed 5 years, although an option for extending the agreement for an additional three years is permitted. For other vessels ("transport ships"), the decisive is whether the remaining term of the lease as of 1

January 2018 exceeds 8 years or not. It will be grandfathered if it does not exceed 8 years. Existing bareboat agreements not constituting long-term contracts are disregarded when calculating the 40 percent or 50 percent limit. For long-term contracts, the company has to make necessary adjustments and modifications before 1 November 2018 in order to remain within the tonnage tax regime.

It should be noted that any adjustments made in the period from 15 November to 31 December 2017, in the form of a reduction of the remaining term of the lease to fall within the scope of the transitional rule will be disregarded. The Ministry of Finance also made an important clarification as to the transitional rule and the 50 percent limitation on bareboat chartering out. The conditions for application of the 50 percent limitation rules apply irrespective of whether the transitional rules apply, i.e. if a company owns a vessel that qualifies as "transport ships" (which would disqualify the company from opting for the 50 percent offshore rule). The 40 percent-rule will apply for the remaining vessels of the fleet.

### **4. Flag state requirements for chartering in on time charter/voyage charter terms**

A new flag state requirement is proposed for companies chartering in vessels on time or voyage charter, but not for chartering in on bareboat terms. The Ministry of Finance has emphasised that a vessel is considered chartered in on time charter/voyage charter if neither the charterer nor a company of the group is responsible for operating the vessel. In line with the notified changes, time charter and voyage charters of non-EEA flagged vessels is limited to 90 percent of the total fleet. Furthermore, the Ministry of Finance has clarified that tonnage shall be measured based on net tonnage.

It is also worth noting that a company can still enter into the tonnage tax regime with 0 percent EEA-registered tonnage. The proposed limitation will only apply to contracts entered into after 31 December 2017. The same applies to options to extend such contracts. The rule that

enables the taxpayer to correct certain breaches of the law will not apply in the event of breach of the proposed flag state requirement. In which case, the company will be excluded from the tonnage tax regime from 1 January of the fiscal year the breach occurred.

### **5. Changes to the fixed tonnage tax**

Companies within the tonnage tax regime are subject to a fixed tonnage tax irrespective of whether the business generates a profit or loss. The Ministry of Finance proposed two changes to the tonnage tax. Both changes are applicable to smaller vessels.

Firstly, it has been proposed to change the method of calculating the basis for the tonnage tax. Vessels with a net tonnage that is less than 1,000 net tonnage, to be round up/down to the nearest 100 tonne. For vessels with tonnage that is below 50 net tonnage, the tonnage is rounded up to 100 net tonnage. Net tonnage exceeding 1,000 shall still be rounded up/down to the nearest 1,000.

Secondly, the proposal also includes a change of the threshold for being subject to tonnage tax and should therefore only affect smaller vessels: Up until 2017, tonnage tax was not levied on the first 1,000 net tonnage (effectively up to 1,499 net tonnage because of the rounding-principle). The proposal is that tonnage tax will be levied on vessels below 1,000 net tonnage, with a rate of 0.90 NOK per day per 100 net tonnage.

### **6. Barges and other non-self-propelled vessels**

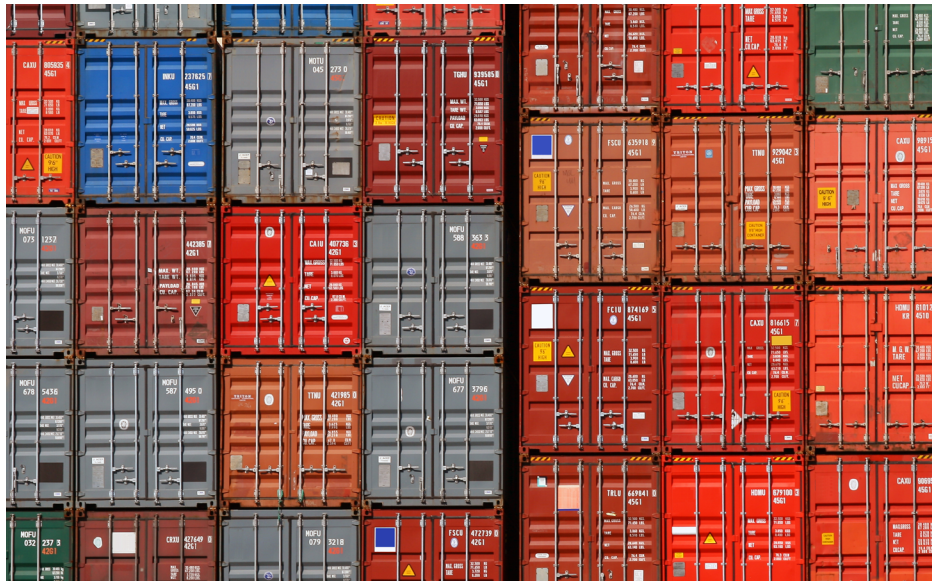
The Ministry of Finance proposes some adjustments (limitations) for barges and other non-self-propelled vessels. The changes concern the trade area, registration and size. Firstly, the vessel must be seagoing, which means that it cannot be mainly used for traffic on lakes and rivers (in Norway or abroad). Secondly, the vessel must be at least 1,000 gross tonnes, which means that certain barges will no longer qualify for the tonnage tax regime. Thirdly, all such vessels without



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propulsion machinery must be registered in an EEA-ship register. In addition, the Ministry of Finance proposes that all vessels must fulfil the requirements for “transport ships”.

The aforementioned requirements imply that barges used for storage or similar purposes will fall outside the tonnage tax regime. The key condition going forward is that such vessels must be used for transportation assignments. The requirement of the size of the vessel (minimum 1,000 gross tonnes) imply that the tax regime will no longer be eligible for barges that in reality functions as a supplement to the loading capacity of other vessels. The EEA-registration requirement means that barges will be subject to European standards with respect to safety, environmental regulations etc. According to the proposed transitional provisions, companies will have to comply with the new rules by 1 November 2018.



### For more information, please contact:



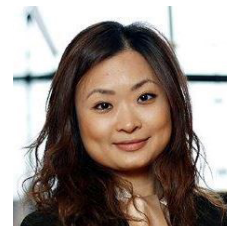
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