

# Deloitte.

## Shipping Tax Guide

Greece

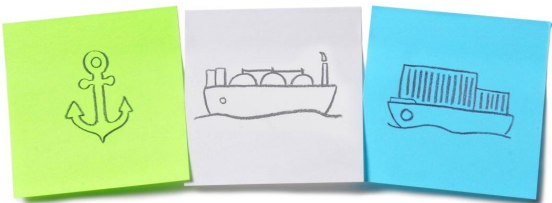
Cyprus

Luxembourg

Malta

Singapore

UK





**Shipping & Ports Group**



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# 1. Greece

## Individual Taxation

### Income Tax

The Greek Income Tax Code (Law 2238/1994) and in particular article 2 par. 1, as amended by Law 3943/2011, provides that individuals having their residence or their habitual abode in Greece (i.e. Greek tax residents) are subject to tax on their worldwide income, whereas non-Greek tax residents are subject to tax only on their Greek-sourced income. Individuals are considered as having their habitual abode in Greece, when their stay in Greece exceeds in aggregate a period of 183 days (183 days rule) within a calendar year. Unless an individual is able to prove that he abides in Greece for less than 183 days within a calendar year, his presence will automatically be regarded as habitual. A "residence" is deemed to be the establishment of an individual's family residence and domestic life, as well as the concentration thereto of his vital personal professional activity. Tax exemptions are available for non-residents from countries that have concluded a tax treaty with Greece. Tax residency rules will change by virtue of law 4172/2013 (the "New Income Tax Code") which will come into force as from 1.1.2014. The New Income Tax Code provides that an individual is tax resident in Greece if his presence in Greece exceeds 183 days in any 12 month period not necessarily coinciding with a calendar year. Such individual will be subject to tax in Greece for income earned world-wide during the calendar year within which the twelve months period is completed.

Taxable income is classified under certain categories as follows: employment income, income from real estate, investment income, business income, agricultural income and professional income from the exercise of a profession. Every category is taxed separately with different tax rates and scales. The New Income Tax Code will classify income into 4 separately taxable categories, namely income from employment and pensions, income from business activities, income from capital and capital gains.

Individuals are taxed on total net employment income in Greece up to 42%.

A tax credit of €2,100 is available for employment income up to €21.000 (however, if the tax due is lower, the credit will be correspondingly decreased). For income exceeding €21.000, the €2.100 credit is decreased by €100 for every



€1.000 of income and for any income above €41.000 no credit is available.

Employment income also includes income derived by entrepreneurs or free-lancers if (1) a contract has been concluded in writing between the individual and the entity for whom the individual provides services; and (2) there are no more than three recipients of the services, or if there are more than three, at least 75% of the individual's gross income derives only from one entity. An additional criterion is added pursuant to the New Income Tax Code, namely that the business expenses of the freelancer that would be deductible from the freelancer's gross income do not exceed EUR 9,250. If they do, then such income is not re-characterized as income from employment.

Individuals with free-lance income are taxed with a marginal tax rate of 33%. The same marginal tax rate applies for rental income above €12k. Pursuant to the New Income Tax Code, free-lance income will be taxed as income from business activities at 26% for the first € 50,000 and 33% for the excess.

Further to the above, a special solidarity tax is imposed on individual income of at least €12,000 for fiscal years 2010-2014. This contribution is calculated on a taxpayer's total net income, whether real or deemed, taxable or exempt (although exemptions apply for certain taxpayers, such as the unemployed). The special tax is levied at the following rates:

€12.001 – €20.000	1%
€20.001 – €50.000	2%
€50.001 – €100.000	3%
Over €100.000	4%

Greek tax residents and EU residents who earn in Greece more than 90% of their annual income, are entitled to income tax deductions, when calculating their net income, following certain limitations. The allowable deductions are the following:

- Medical and hospital expenses
- Donations to approved charities and cultural institutions
- Alimony paid to estranged spouse

Residents deriving income from abroad are entitled to a

limited foreign tax credit when the foreign tax has been suffered in a country with which Greece has concluded a double tax treaty.

### **Special Tax Regime**

There is a special provision regarding individuals that are taxed on their worldwide income in a country with which Greece has not signed a DTT. Those individuals are taxed in Greece only on their Greek sourced income, even if they have their habitual abode in Greece. This regime is applicable for the first three consecutive years from their arrival in Greece and the exemption is granted only once in a lifetime for each individual. The country where they are taxed on their worldwide income should also not be listed as non-tax cooperative country for Greece.

There is no application required. Further to an audit, it may be requested to present the necessary supporting documentation.

The New Law does not include similar provisions.

### **Tax Administration**

Tax returns must be filed until the end of June, covering the fiscal year ending the previous December 31st. Any tax due is payable in up to three by-monthly instalments.

For employment income, employers must withhold the income tax attributable to income from salaries, wages and other forms of remuneration (overtime, bonuses, allowances and redundancy payments) for full- and part-time employees. If the taxpayer derives income from other sources he may be obliged to pay a 55% prepayment of the current year's tax liability.

Under the Greek tax system, income tax is assessed on the higher of (i) the income declared by the taxpayer and (ii) the imputed income, i.e. the minimum income that would justify the taxpayer's living standard. Imputed income as a measure of the living standard is calculated as the sum of certain actual or notional annual expenses and of the cash paid for the acquisition of high value assets, such as, indicatively, real property, cars, art etc. Imputed income is calculated at family level. Thus, a husband's income can justify the acquisition of an asset by his wife and vice versa.

As from 1.1.2014 and thereafter Imputed income will

be treated as employment income and taxed as such, provided that the taxpayer is an employee. On the other hand if the individual is taxed for income from business activities or for other sources, the imputed income will be treated and taxed as income from business activities.



## Shipping Taxation

### Legislation

Tonnage tax in Greece exempts the individual and corporate ship owners from income tax liabilities on the profits derived from operating Greek and foreign flagged registered vessels. Shareholders of Greek or foreign ship-owning companies are not subject to Greek tax on the dividends/capital gains earned from their participation in these companies.

Greek offices or branches of foreign legal entities (irrespective of their type) that are exclusively engaged in the management, exploitation, chartering, insurance, and brokerage of Greek or foreign vessels above 500 GRT (which are not routed in domestic routes) or in the representation of foreign ship-owning companies, (the so-called 'Law 89/67 Offices') are exempt from all taxes, duties, contributions or withholdings imposed either by the Greek State or a third party on the income thereby earned in the course of furtherance of their qualifying activities.

Income received by shareholders or partners from a holding company or intermediary holding companies which exclusively hold shares in companies owning vessels with the Greek flag (or with a foreign flag provided that they are registered with NAT for social security purposes) should be exempt from any tax, duty, contribution or withholding in Greece.

Foreign companies owning vessels not flying the Greek flag whose management is entrusted to a Greek company or a Greek Law 89/67 Office of a foreign company are subject to tonnage tax calculated in the same way, rates and scales as in the case of vessels flying the Greek flag. The tonnage tax exhausts the tax liability for any tax, duty, levy or withholding tax on foreign-source income of the foreign ship owner arising in connection with the management of the vessel flying the foreign flag.

Moreover, the dividends or profits distributed by such companies (either directly or through a mediating holding company) are exempt from income tax at the shareholder level.

Finally, domestic shipping companies under Law 959/1979, which have been subject to article 25 of Law 27/1975 and

which operate or manage vessels flying Greek or foreign flags enjoy an exemption from taxes, duties, levies and withholding tax on the distribution of profits or dividends.

An exemption from tax is granted for gains on the transfer of the shares of a domestic or foreign ship owning company, as well as to the transfer of the shares of any intermediary holding entity.

### Registration Requirements

The Greek tonnage tax regime is provided for under L. 27/1975 (the first section of which has been ratified by the Greek Constitution of 1975), and applies to vessels flying the Greek flag or a foreign flag irrespective of the tax residence of their individual or corporate owners.

#### A. Vessels flying the Greek flag

Namely, pursuant to article 4 par. 1 of L. 27/1975, the tonnage tax liability is imposed on the individual ship-owner or ship-owning company on the 1st of January of every calendar year. The individual or company that manages a vessel flying the Greek flag is jointly and severally liable for the payment of the tonnage tax due.

Vessels are divided into two categories according to their use and tonnage. Namely, Category A includes the following types of vessels:

- Bulk carriers, tankers and reefers of at least 3,000 GRT
- Steel dry or wet cargo ships, as well as reefers of between 500 and 3,000 GRT, which undertake voyages to foreign ports or navigate exclusively between foreign ports.
- Passenger ships that undertake voyages to foreign ports or navigate between foreign ports.
- Passenger ships of more than 500 GRT that have undertaken, following a public announcement, regular trips exclusively for leisure purposes for a period of at least six months during the previous year (cruise ships).
- Floating rigs of a displacement exceeding 5,000 GRT, as well as floating refineries and oil store of at least 15,000 GRT used for exploration, drilling, pumping, refining and storage of oil or natural gas.

Category B includes the remaining vessels, sailing vessels and small crafts in general.

It should be emphasized that the tonnage tax exhausts the individual and corporate ship-owner's as well as the shareholders' of the latter income tax liabilities on the profits derived from the exploitation of their Greek registered vessels. That is to say that ship-owners are not in any case subject to regular personal or corporate income tax on their profits derived from the vessels in question and that the shareholders of Greek or foreign ship-owning companies are not subject to Greek tax on the dividends earned from their participation in these companies (inasmuch as these dividends derive from the distribution of shipping profits of the company and no other business activities). Moreover, such resident and foreign ship-owners are exempt from Greek taxation on any capital gains realized from the disposal of their Greek registered vessels, or from the collection of an insurance indemnity in relation to such vessels or from any other comparable source.

In addition to the above, the gain from the transfer of the shares of a domestic or foreign ship owning company, as well as to the transfer of the shares of any intermediary holding company is exempt from tax in Greece, based on the new law 4110/2013 recently enacted.

### Taxation of Vessels flying the Greek flag

The principle of the gross tonnage tax lies in the taxation of shipping profits on the basis of the taxable gross tonnage of the vessels through the application of the following rates on the vessel's actual tonnage:

Actual GRT	Taxable GRT
100 – 10.000	1,2
10.001 – 20.000	1,1
20.001 – 40.000	1
40.001 – 80.000	0,9
80.001 and above	0,8

### *Tonnage tax on vessels registered before 22nd April 1975*

Vessels registered with a Greek vessel registry before the 22nd of April 1975 are subject to a contribution, which is calculated on the basis of the vessels age and taxable GRT (article 10 of L. 27/1975). The basic USD rates for the calculation of this contribution are as follows:

Vessel's Age	USD per Taxable GRT
0 – 4	0.53
5 – 9	0.95
10 - 19	0.80
20 - 29	0.75
30 and above	0.50

These rates are increased by 4% for every year from 1975 onwards, so their total increase for 2013 amounts to 152%. Again, the 4% increase will apply up to 2015. Reduced rates may apply pursuant to approval decisions issued pursuant to L.2687/1953 (regulation of foreign capital). The contribution for the accounting year 2013 is as follows:

Vessel's Age	USD per Taxable GRT
0 – 4	1,335
5 - 9	2,394
10 - 19	2,343
20 - 29	2,217
30 and above	1,7131,260

Moreover, apart from the contribution vessels registers with a Greek flag before the 22nd of April 1975 are subject to tonnage tax. More specifically, the tonnage tax for these vessels is calculated on the basis of the vessels age and taxable Net Tonnage using the following scale:

Vessel's Age	USD per Taxable Net Tonnage
10 – 20	0.20
20 - 25	0.30
25 and above	0.40

*These rates are set standard, without any increase. Certain exemptions are also available.*

*Tonnage tax on vessels flying the Greek flag after 22nd April 1975*

Pursuant to article 6 of L. 27/1975, the tonnage tax on vessels registered with a Greek vessel registry after the 22nd of April 1975 is calculated on the basis of the vessels age and taxable GRT using the following scale:

Vessel's Age	USD per Taxable GRT
0 – 4	0.53
5 – 9	0.95
10 - 19	0.93
20 - 29	0.88
30 and above	0.68

These rates are increased by 4% for every year from 1975 onwards. Based on the latest legislation, this scale continues to be increased by 4% up to 2015; thus, their total increase for 2013 is 152%.

However, in spite of the above provision of L. 27/1975, the vast majority of such Category A vessels are actually subject to a lower tonnage tax. Namely, the registration of vessels with the Greek vessel registry is effected under article 13 of the Legislative Decree 2687/1953 (relating to foreign capital investment incentives) through a Joint Ministerial Decision of the Greek Finance and Mercantile Marine Ministers. Each such Joint Ministerial Decision typically includes section 12A stipulating that tonnage tax would be calculated on the basis of the original L. 27/1975 scale reduced at 40%. This reduced taxation is commonly applicable up to 31st of December 2007.

From 1st January 2008 onwards, the increase by 4% in said cases is to be calculated on the reduced scale.

According to article 12A and 12B that are inserted in the Joint Ministerial Decisions for the registration of vessels with the Greek vessel registry (and are applicable for the vast majority of Greek vessels) the tonnage tax due for vessels with taxable GRT between 40.001 – 80.000 is reduced by 50% and for vessels above 80.001 taxable GRT it is reduced at 75%.

Following the above, the GRT for the accounting period 2013 is taxed as follows:

Vessel's Age	USD per Taxable GRT
0 – 4	0,382
5 - 9	0,684
10 - 19	0,670
20 - 29	0,634
30 and above	0,490



### **Tax Exemptions for Vessels flying the Greek flag**

Further to the above discussion with regard to the tonnage tax computation, it should be noted that L. 27/1975 provides for an array of tax exemptions relating to Greek vessels, the most important of which are the following:

- Ships that undertake regular voyages between Greek and foreign ports, or exclusively between foreign ports, as well as cruise vessels, are entitled to a 50% reduction on the tonnage tax payable.
- Ships built in Greece registering with a Greek vessel registry are exempted from tonnage tax until the age of 6 years.

## B. Vessels flying a foreign flag

As of 2013, a tonnage tax is imposed on owners of vessels flying foreign flags provided the vessels are operated/managed by offices established pursuant to article 25 of Law 27/1975.

- The tax is calculated and remitted based on the same criteria, rates and scales applicable to vessels registered in 2012 flying a Greek flag, without prejudice to the provisions of the Income Tax Code providing for income taxation on profits arising in Greece as a result of the management/operation of vessels flying foreign flags and relevant tax treaties.
- The management company is jointly liable with the foreign ship owner for the payment of the tonnage tax. If the vessel is managed by more than one company, all managing companies are jointly liable. The liability of the management company is in proportion to the time it managed the vessel.
- Any foreign tonnage tax or other similar charge that has been paid abroad may be credited against the Greek tonnage tax (limited foreign tax credit).
- The tonnage tax return and payment of the tax is paid by the management company. Responsibility for filing the tonnage tax return lies with the ship owner, the ship management office and their representatives or attorneys in fact (if any). The annual return must be filed by the end of February with respect to the tonnage tax of the same calendar year (i.e. there is no distinction between the fiscal year and the calendar year). Twenty-five percent (25%) of the tonnage tax assessed must be paid at the time the return is filed, with the remaining amount paid in three equal instalments in June, September and December.
- The tonnage tax exhausts the tax liability for any tax, duty, levy or withholding tax on foreign source income of the foreign ship owner arising in connection with the management of the vessel flying the foreign flag.
- The same exception applies to shareholders in respect of distributed profits or dividends (either directly or through a intermediary holding company).

- An exemption from tax is granted for gains on the transfer of the shares of a domestic or foreign ship owning company, as well as to the transfer of the shares of any intermediary holding entity.
- The above apply as of 23 January 2013.
- In the case of a disposal of an affected vessel, the new owner is liable to tonnage tax as from the date of the transfer. The former owner and the management office remain jointly liable for previous taxes. Where a management office is appointed during the calendar year, an amending list must be filed within one month from the new mandate. The newly appointed management office is liable to tax starting from the day after its appointment.

### **Tax rates for Vessels flying a foreign flag**

The tax rates for the calculation of the tonnage tax for vessels flying a foreign flag are the extra-reduced rates provided under ministerial approvals issued in accordance with article 13 of Law 2687/1953. Pursuant to the draft tonnage tax return form annexed to the guidance, such rates are as follows:

<b>Actual GRT</b>	<b>Taxable GRT</b>
100 – 10.000	1,2
10.001 – 20.000	1,1
20.001 – 40.000	1
40.001 – 80.000	0,45
80.001 and above	0,2

Then, the amount of the gross taxable tonnage is multiplied by the respective tax rate corresponding to the age of the vessel. Namely:

<b>Vessel's Age</b>	<b>USD per Taxable GRT</b>
0 – 4	0,382
5 - 9	0,684
10 - 19	0,670
20 - 29	0,634
30 and above	0,490

The calculation of the age of the vessel commences on 1 January of the year following the year the vessel is delivered for commercial use.

### **Exemptions for Vessels flying the foreign flag**

The amount of tonnage tax for vessels flying a foreign flag may be further reduced in case of:

- Vessel's lay-up due to repair works, lack of work or any other reason for a period of at least 2 consecutive months during the previous year or the current year, by an amount corresponding to the days that the vessel ceased flying, and/or
- Vessels of any age following regular routes by 50%.

In addition to the aforementioned deductions, the tonnage tax due may be further reduced with the tonnage tax or similar charge that has evidently been paid abroad for said vessel.

The tonnage tax return form and requires that the following documents be submitted with the return:

- Certification from the shipyard stating the delivery date of the vessel for commercial use (if this certification is unavailable, the age of the ship must be verified through the nationality document issued by the competent registry);
- Nationality document of the competent registry, including the name, port, registration number, international trademark, IMO numbers, gross tonnage and age of the vessel;
- Certification by the foreign ship owner regarding the appointment of the management office;
- Certification by the competent Greek or consular or other authority (duly translated) where the vessel is anchored concerning vessel lay-ups (if any); and
- Certification of the calculation made in respect of the vessel's gross tonnage.

### **Annual contribution of foreign shipping offices**

The new law 4111/2013 introduced a temporary annual contribution on offices and branches of foreign shipping enterprises established in Greece under article 25 of Law 27/1975 and that engage in the chartering, insurance and/or brokerage of vessels flying Greek or foreign flags, where the gross tonnage of the vessel exceeds 500 shipping tons. The contribution, which is imposed for calendar years

2012-2015, also applies to representation of foreign ship-owning companies. Domestic and foreign companies that have an operating license that encompasses the above activities together with the management of vessels flying a Greek or a foreign flag are exempt from the contribution.

The contribution is imposed on the aggregate amount of foreign currency imported and converted to euro per annum, the minimum deemed amount of which is set at USD 50,000. The contribution is calculated according to the following brackets:

Amount of annual imported exchange (USD)	Rate(%)	Amount of contribution	Aggregate amount of imported exchange (USD)	Aggregate amount of contribution(USD)
200,000	5	10,000	200,000	10,000
200,000	4	18,000	400,000	18,000
Excess	3			

#### **L. 89/67 Offices**

Apart from the tonnage tax regime set out in L. 27/1975 which provides for a favorable tax treatment of shipping profits earned by individual ship-owners and domestic and foreign ship-owning entities, Law 89/1967 (as amended through the provisions of article 25 of L.27/1975) affords to Greek offices of ship-management companies an essentially thorough income tax exemption.

Namely, the L.89 regime is applicable to offices or branches of foreign legal entities (irrespective of their type) that are exclusively engaged either in the management, exploitation, chartering, insurance, average adjustments, or in the sales, chartering, insurance or shipbuilding brokerage of Greek or foreign vessels over 500 GRT (which are not routed in domestic voyages), as well as in the representation of foreign ship-owing companies, subject to a Ministerial Decision of the Mercantile Marine Minister. The establishment process for offices of branches of the above legal entities has recently been simplified by virtue of l. 4150/2013. The issuance of relevant circulars providing further guidance is still pending.

Foreign companies wishing to establish a Greek L.89 Office are required, among others, to:

- import in Greece a minimum amount of 50,000 USD or equivalent amount in Euros per annum for the payment of their operational expenses as well as additional currency or Euros adequate for any local payments that will be effected by the office in the course of its activities;
- furnish the Greek State with an L/G issued by a domestic or foreign bank to the sum of 5,000 USD.

The tax exemptions that are afforded to such L.89 Offices may be summarized as follows:

- Exemption from all taxes, duties, contributions or withholding tax liabilities imposed either by the Greek State or a third party on the income earned by the office or branch in the course of its qualifying activities.
- Exemption from stamp duties.
- Exemption from duties and levies imposed by third parties with the exception of retributive levies.
- Ability to keep simplified (revenues/expenses) books and not double-entry accounting books.

### **Maritime Holding Companies**

#### **Foreign companies holding shares in entities owning Greek registered vessels (or foreign vessels registered with NAT)**

Pursuant to article 35 of L. 814/1978 as amended via article 39 of Law 3763/2009, income received by shareholders or partners from a Holding Company which exclusively holds directly or indirectly, shares in companies owning vessels with the Greek flag or with a foreign flag, provided that they are registered with NAT for social security purposes or even owning vessels companies whose exploitation or administration of their vessels is effected by a domestic or overseas company that has established under L. 27/75 in Greece should be exempt from any tax, duty, contribution or withholding tax liability in Greece. In order to evidence that the foreign Holding Company solely holds shares of ship-owning companies of Greek or foreign vessels, the Holding Company should acquire one of the following documents:

- Certificate issued by the competent Public Authority of its state of seat, which should state the corporate name of each ship-owning company in which the Holding Company has shareholding participation, as well as the details regarding the identity of the vessels that these ship-owning companies own. The

competence of the foreign Public Authority for the issuance of this Certificate is certified by the Greek Ministry of Foreign Affairs or the competent Greek Consular Authority, or

- Certificate of Good Standing, verifying that the Holding Company is in operation, as well as a copy of the Minutes of the Holding Company's Board of Directors in which the corporate title of the ship-owning companies in which the Holding Company participates is indicated. The latter document should also identify the name, the flag and the port of registration of the owned vessels. This last document should be also certified by the competent Consular Authority of the state where the said Holding Company has its registered seat.

Especially for the companies owning vessels with a foreign flag that are registered with NAT, a certificate issued by NAT should be obtained in order to verify that their vessels are actually registered with the said fund.

In view of the above statutory provisions it may be gathered that the income distributed by a maritime holding company to its Greek resident (individual or corporate) shareholders or partners should be exempt from tax at the shareholder / partner level provided that the following conditions are concurrently met:

- The distributing company should qualify as a Holding Company owning shares directly or indirectly solely in qualifying ship-owning companies.
- The distributing company should obtain either a Certificate from a Public Authority in its state of seat evidencing that it owns directly or indirectly shares solely in qualifying companies and stating the details of the vessels owned by the latter or a Certificate of Good Standing along with a copy of the Minutes of the Holding Company's Board of Directors following the requirements mentioned above.
- The distributing company should obtain a Certificate by the Greek Ministry of Foreign Affairs or a Greek Consular Authority certifying that the Public Authority of its state of seat has the legal competence to issue the above Certificate.
- All these Certificates should be forwarded to each of the Greek shareholders / partners that will receive dividends, so that they are able to evidence the

application of article 35 of L. 814/1978 to the Greek Tax Authorities when filing their corporate/personal income tax returns.







## 2. Cyprus

## Individual Taxation

### Income Tax

Where an individual is a resident in the Republic, tax is imposed on income accruing or arising from sources both within and outside the Republic. Where an individual is not a resident in the Republic, tax is imposed on income accruing or arising only from sources within the Republic.

The marginal tax rate for income equal and over €60.001 is 35%

### Special Tax Regime

Resident in the Republic is an individual who is present in the Republic for a period exceeding 183 days in a tax year.

For the purpose of calculating the days of residence in the Republic:

- the day of departure from the Republic is considered to be a day out of the Republic
- the day of arrival into the Republic is considered to be a day in the Republic
- the arrival into the Republic and departure from the Republic on the same day is considered to be a day in the Republic and
- the departure from the Republic and return to the Republic on the same day is considered to be a day out of the Republic.

### Tax Administration

The following are exempt from income tax:

Interest income

The whole

Interest income arising in the ordinary amount course of business, including interest closely connected with the carrying on of the business, is not considered as interest but trading profit and is not exempt

Dividend income

The whole amount

20% of or €8.550 (whichever is the lower) remuneration from any office or employment exercised in the Republic by an individual who was resident outside the Republic before commencement of the

employment

The exemption applies for a period of three years from 1st January following the year of commencement of the employment

50% of the remuneration from any office or employment exercised in the Republic by an individual who was resident outside

the Republic before the commencement of his employment in the Republic

The exemption applies for a period of 5 years starting from the first year of employment provided that the above income of the employee exceeds €100.000 per annum

Gains from disposal of securities including units in an open-ended or closed-ended collective investment scheme

The whole amount

Remuneration from the rendering

outside the Republic of salaried services to a non-resident employer or to a permanent establishment outside the Republic of a resident employer for a total aggregate period in the year of assessment of more than 90 days

The whole amount

Profits from a permanent establishment maintained outside the Republic

(subject to certain conditions)

The whole amount

Rent of preserved building

(subject to certain conditions)

The whole amount



## Shipping Taxation

One of the main factors expected to drive the shipping industry forward in Cyprus is the country's favourable tax regime which has been maintained even after the accession to the European Union.

Registration fees in Cyprus are low and compare favourably with those in other registries. The current tax regime for shipping companies was introduced in 1963 for the first time and will expire in the year 2020 (unless it is renewed).

The regime offers a ship owner (including a bareboat charterer) complete tax exemption on all profits and dividends arising from the operation of Cyprus flag ships. No corporation tax is payable on the income of a ship owner of a Cyprus flag ship from the operation of such ships in any shipping activity between Cyprus and ports abroad or between foreign ports.

Profits distributed by ship owning companies operating Cyprus flag ships are not considered as 'dividends' for special contribution for defence purposes and they are not subject to the 15% special contribution for defence which normally applies.

No stamp duty is payable on bills of sale and mortgages on ships and related documents. No capital gains tax is payable on the sale or transfer of a ship or shares in a shipping company.

Any income arising from the provision of ship-management services is subject to a special ship-management tax calculated at 25% of the tonnage tax rates. Ship managers, at their option, may elect to be taxed under corporation tax at 4.25%. Dividends distributed out of profits generated from ship-management activities are totally tax exempt and are not subject to the 15% special contribution for defence which normally applies.

## Legislation

On 29 April 2010 the Cyprus Parliament enacted **The Merchant Shipping (Fees and Taxing Provisions) Law of 2010**. The new Merchant Shipping Law, which applies retroactively from 1 January 2010, extends significantly the scope of the Tonnage Tax (TT) regime and enhances the position of Cyprus as a maritime centre. The Cypriot maritime industry is one of the largest in the EU and the 10th largest worldwide. Moreover, Cyprus is the biggest third party ship management centre in the EU.

The European Commission considers that the scheme is in line with the European Union's Guidelines on state aid to maritime transport and authorized the scheme until 31 December 2019. It is aimed at supporting the shipping sector in Cyprus and other EU countries with a strong maritime sector, providing incentives for the employment of EU seamen and registration of vessels in the EU and enhancing the competitiveness of shipowners, charterers and shipmanagers operating in the EU.

In a nutshell, the regime covers **qualifying persons** performing qualifying activities in relation to **qualifying vessels**.

**Qualifying persons** are shipowners, charterers (bareboat, demise, time and voyage) and shipmanagers providing technical and/or crewing services.

**Qualifying activity for shipowners and charterers** means maritime transport of goods or people between Cyprus ports and foreign ports / offshore installations, or between foreign ports or offshore installations and specifically includes towage, dredging and cable laying.

Qualifying activity when applied to **shipmanagers** means services provided to a shipowner or bareboat charterer on the basis of written agreement in relation to crew and/or technical management.

**Qualifying vessel** is a sea-going vessel that:

- a. has been certified in line with international principles and legislation of the flag country, and
- b. is registered in the register of a member country of the International Maritime Organisation (IMO) and International Labour Organisation (ILO)

The definition includes vessels that transport humanitarian aid but excludes the following vessels:

- boats that are primarily used for the athletic and entertaining purposes
- boats that have been constructed exclusively for domestic navigation
- ferry and trailer boats that are used in ports, mouth of rivers and / or rivers
- fixed offshore constructions that are not used for maritime transport
- non self-propelled floating cranes
- non sea-going trailers
- floating hotels and restaurants
- floating or movable casinos

A qualifying shipmanager is a legal person tax resident in Cyprus providing technical and/or crewing services in respect of qualifying vessels (Cyprus/EU/EEA/fleet). Commercial management is taxable under corporation tax.

The TT regime applies to any owner of qualifying vessels that carry out a qualifying activity:

- Cyprus flag vessels
- EU/European Economic Area (EEA) flag vessels that exercised the option to be taxed under tonnage
- Fleet of EU/EEA and non EU/EEA vessels that exercised the option to be taxed under tonnage

The new legislation introduces the definition of a **fleet**. A fleet consists of 2 or more vessels that belong directly or indirectly to the same person(s) or companies of the same group. A group is defined as at least 2 companies that are directly or indirectly in a parent/subsidiary relationship

or that are directly or indirectly subsidiaries of the same parent company.

The legislation allows non EU/EEA vessels to enter the TT regime provided the fleet is composed by at least **60% EU/EEA vessels**. If this requirement is not met, the non EU/EEA vessels may still qualify if certain criteria are met.

### Registration Requirements

Shipmanagers have to meet some additional requirements, namely:

- a. The shipmanager is obliged to maintain a fully fledged office in Cyprus with personnel sufficient in number and qualification
- b. At least 51% of all onshore personnel must be EU/EEA citizens.
- c. At least 2/3 of the total tonnage under management must be managed within the EU/EEA (any excess of 1/3 taxed under 12,5% corporation tax).

### Registration Procedure

The first step to be taken by all non-European shipowners who wish to register a vessel under the Cyprus flag is to form a Cyprus Shipping Company (hereinafter referred to as 'the company') which will acquire the vessel in its name. The company is registered as a private company with limited liability (limited by shares) under the provisions of the Cyprus Companies Law, Chapter 113 of the Statute Laws of Cyprus, as amended.

For the incorporation of the company, the filing of the memorandum and articles of association in Greek with the Registrar of Companies is required. The incorporation of the company is evidenced by the issue of a certificate of incorporation by the Registrar of Companies.

The time required for incorporation is about 3 - 5 days from the filing of the incorporation documents. The present legislation contains provisions which facilitate the acceleration of the various procedures in urgent cases.

## Taxation

Cyprus is the only country in the EU that has an EU approved shipping legislation that:

1. Provides for the payment of TT on the net tonnage of the vessels, rather than corporation tax on their actual profits, regulated completely by the Department of Merchant Shipping rather than the Tax Authorities
2. Grants total tax exemption of profits tax and distribution tax at all levels
3. Allows mixed activities (shipping subject to TT and other subject to corporation tax) within a company/group
4. Supports an open registry
5. Allows split shipmanagement activities (crewing or technical) The legislation introduces two new TT schemes applicable to shipowners of non-Cyprus flag vessels and charterers. It also extends the application of the TT regime (and exemption from profits tax) currently enjoyed by shipowners and shipmanagers.

Where an option is exercised to enter the TT system, the shipowner must be a Cyprus tax resident and the option must remain in force for at least 10 years.

As with shipowners, the TT regime applies to qualifying vessels that carry out a qualifying activity. An option exists for all vessels (Cyprus/EU/EEA/fleet) chartered under bareboat, demise, time, voyage charter, provided the charterer is a legal person tax resident in Cyprus. If the choice is not made, profits are taxable under 12,5% corporation tax.

The fleet qualifying criteria are the same as for shipowners and so is the minimum 10 year duration.

The law provides full exemption to shipowners, charterers and shipmanagers from all profit taxes and imposes tonnage tax on the net tonnage of the vessels. The conditions applicable to each of the three categories, as well as the taxation regime is analysed separately below.

Regarding shipowners, the tax exemption covers:

- Profits from the use of a qualifying vessel



- Profits from the disposal of a qualifying vessel and/or share and/or interest in it
- Profits from the disposal of shares in a shipowning company
- Dividends paid out of the above profits at all levels of distribution
- Interest income relating to the financing/maintenance/ use of a qualifying vessel and the working capital, excluding interest on capital used for investments.

Regarding charterers, the tax exemption covers:

- Profits from the use of a qualifying vessel
- Dividends paid out of such profits at all levels of distribution
- Interest income relating to the working capital / qualifying activity provided such interest is used to pay expenses arising from the charter, excluding interest on capital used for investments.

The law grants the exemption provided a composition requirement is met. That is, at least 25% of the net tonnage of vessels subject to tonnage tax are owned or are bare boat chartered. The percentage can be reduced but not for more than 3 consecutive years.

The percentage is reduced to 12,5% if all the vessels of the charterer:

- carry EU/EEA flags or
- are managed (crewing and technical) in the EU/EEA.

As for shipmanagers, an option exists to pay TT at 25% of the rates applicable to shipowners and charterers, for all vessels under management. If the choice is not made, profits are taxable under 12,5% corporation tax.

The tax exemption covers:

- Profits from technical and/or crew management,
- Dividends paid out of the above profits at all levels of distribution,
- Interest income relating to the working capital / qualifying activity provided such interest is used to

pay expenses relating to shipmanagement, excluding interest on capital used for investments.





### 3. Luxembourg

## Individual Taxation

### Income Tax

The extent of the taxation of an individual depends on his their residency status. Luxembourg residents are obliged to declare their worldwide income in Luxembourg (with available treaty reliefs) whilst Luxembourg non-residents are taxable only on their Luxembourg source income.

#### **Luxembourg residents**

An individual is considered a tax resident in Luxembourg provided that he maintains his domicile or normal abode there. A domicile is deemed to exist if an individual has a permanent home available to him that he actually uses and intends to maintain. A normal place of abode is deemed to exist if an individual's stay is for more than six consecutive months (short periods of absence are not taken into account). Tax residence applies as of the first day of the individual's presence in Luxembourg.

#### **Luxembourg Non-residents**

An individual is considered a non-resident in Luxembourg provided he neither maintains his domicile nor normal abode there.

#### **Taxable Income**

Taxable income can be divided into the following different categories:

- Entrepreneurial income (i.e. income from trade or business, agriculture and forestry, self-employment);
- Income from employment;
- Income from pensions and annuities;
- Investment income (i.e. income from dividends and interest);
- Rental income (i.e. rents and royalties);
- Miscellaneous income (including income from casual services and capital gains on private assets).

The above categories of income (after deduction of related expenses) are aggregated in order to determine the net total income.

Possible losses arising from one category of income are in principle compensated with positive income from other categories. Income falling under the miscellaneous category cannot be simply compensated with remaining categories, but can be compensated internally with some

limitations. Negative investment income can be offset under other types of income within certain conditions only.

This net income is then reduced by various applicable deductions. As a result, the taxable income is determined.

Progressive tax rates range from 0% to 39%. The Employment Fund surcharge increases the income tax of 4% for income not exceeding EUR 150,000 for single taxpayers and EUR 300,000 for couples taxed jointly, and of 6% for income above these amounts. Income tax is levied on the income of a household, i.e. a husband and wife may not file separately.

The exempt band covers the first €11,265 for single taxpayers and €22,530 for married taxpayers. The marginal rate applies above a threshold of €41,793 for single taxpayers and €83,586 for married taxpayers. The rate at which income tax is assessed depends not only on the application of the progressive rate scale, but also on marital status and age.

Children being part of the household give the right to a monthly allowance of €76.88 per child.

## Special Tax Regime

### Lump sum taxation regime

Remuneration earned by crew members employed by a Luxembourg shipping company who are not resident in Luxembourg may under certain conditions benefit from a lump-sum taxation regime. Gross remuneration reduced by 10% and a tax credit of €1,800 per month or €72 per day, is subject to a final tax at a rate of 10%.

### Favourable tax positions

Apart from salaries and pensions, Luxembourg source income derived by non-resident taxpayers is subject to progressive tax rates with a minimum rate of 15%. However, when progressive rates applied to the taxable income increased by the tax exempt band show an average rate of less than 15%, this alternative minimum rate applies.

Non-residents deriving at least 90% of their total income from Luxembourg (and Belgian residents deriving more than 50% of their professional income from Luxembourg) are, upon request, taxed as if they were residents. They are taxed at the rate which would have applied had they

been residents and were subject to tax on their entire Luxembourg and foreign income.

This regime can only apply if it provides a favorable result for the non-resident. It allows non-residents to benefit from deductions for special expenses (annuity payments and charges, debit interest, insurance premiums, donations, etc) as well as allowances for extraordinary charges. The income of both spouses is taken into account to calculate the rate of tax applicable (progression clause). The threshold is calculated considering the income of the spouses separately.

### **Highly skilled workers regime**

A special tax regime for highly skilled mobile employees came into effect on 1 January 2011. There are a number of conditions attached for both employer and employee.

The legislation applies to new expatriates coming to Luxembourg from 1 January 2011. The new rules do not apply to existing expatriates or contract workers, but do apply to individuals already working within a group or individuals directly recruited from abroad, although slightly different conditions are applied to each scenario.

#### **General conditions for all expatriates**

- Provide a significant economic contribution to Luxembourg;
  - Be tax resident in Luxembourg (based on domestic tax law);
  - Not have been Luxembourg tax resident / subject to Luxembourg income tax on professional income for the 5 years before arrival;
  - Have a degree of higher education / have acquired professional experience of at least 5 years in the sector concerned;
  - Undertake the local employment as their primary employment and pass on knowledge to local personnel;
- Meet minimum salary requirements and must not replace another non-expatriate employee.

#### **Additional conditions in case of intra-group secondment**

- Have at least 5 years of seniority in the international group / sector concerned;
- An employment relationship exists between the sending company and the employee;
- Have at least 5 years of seniority in the international

- group / sector concerned;
- An employment relationship exists between the sending company and the employee;
- The secondee must be granted a right to return to the home company;
- A contractual arrangement exists between the home and host companies with respect to the secondment.

Additional conditions in case of recruitment have acquired a depth specialisation in a sector or profession characterised by difficulties of recruitment in Luxembourg.

Conditions relating to the employer

- The Luxembourg entity must employ or commit to employ at least 20 full time employees in Luxembourg; If the entity has been established in Luxembourg for
- at least 10 years, they can only have a maximum of 10% expatriate employees who benefit from this regime.
- An application to benefit from the regime must be filed within 2 months of each starting assignment and an annual review must be submitted by the employer.

### **Directors' Fees**

Directors' remunerations for activities of appointed directors and similar supervisory positions in corporate entities qualify as self-employed income and are usually referred to as directors' fees.

The tax regime applicable to directors' fees provides that a withholding tax of 20% applies to the directors' remuneration gross amount and is creditable against the personal income tax due by the director.

The resident taxpayers must submit a tax return whenever their income includes directors' fees whose amount exceeds EUR 1,500.

For non-resident taxpayers, the 20% withholding tax is final provided the director has no other Luxembourg source professional income and the total directors fees earned do not exceed EUR 100,000 per annum.

However, a director may elect to file a tax return in order to profit from an average tax rate that may be less than the withholding tax rate (20%). In case of tax return filing, the taxpayer is entitled to the tax class that corresponds to his family status and to available tax deductions.

It is worth noting that whenever the directors' fees annual amount does not exceed certain thresholds (around EUR 56,000 for a single taxpayer), it is in the taxpayer's interest to submit a tax return. As a matter of fact, in these cases, the average tax rate does not reach 20%. Above these limits, it is not useful to elect for filing tax returns.

Finally, whenever directors' fees exceed EUR 100,000, it is compulsory for the non-resident taxpayer to file a tax declaration. This leads to the application of the income tax schedule. As a result, the average tax rate is increased by at least 10% comparing to the 20% withholding tax (for a single taxpayer).

Director's income related to day-to-day management duties is categorized as employment income.

Parallel board membership and employment activities are compatible, however, a director may be challenged on the basis of whether or not his daily management duties or other employment activities are not rather duties normally attached to the board function and which should be taxed accordingly.

The directors' fees are non-deductible in the hands of the paying company.

The paying company must file a withholding tax return whenever directors' fees are paid out. It must also keep a withholding tax register and deliver annual remuneration certificates to the directors.

### **Tax Administration**

The tax year ends on December 31 in Luxembourg. Legally, a taxpayer must file a tax return by March 31 of the year following the tax year if his taxable income exceeds certain thresholds. In practice, late filing not exceeding a couple of months is usually acceptable by tax authorities without penalties. Returns may not be required from employees who are taxed at source. Self-employed persons generally must pay income tax in advance in the same way that companies do.

The tax authorities may charge a penalty for late filing amounting up to 10% of the taxpayer's final tax and impose fines up to EUR 1,250.

Taxes are paid quarterly in advance during a tax year (on March 10, June 10, September 10 and December 10). These



payments are based on the tax due in the last assessed year after allowing a credit for taxes withheld at source. Any tax prepaid or withheld is credited against the final tax liability for that year.

A final assessment of tax is made on the basis of the return filed, and any tax payable is due within one month after that assessment. A taxpayer may appeal against this assessment within three months of its issue. Interest amounting to 0.6% per month of the final tax may be imposed on late payments.

Tax is withheld at source from employment income, pensions and dividends. Over-withholding on employment income may be refunded to taxpayers according to a special return called “décompte annuel” (year-end adjustment request). Décompte annuel request must be strictly filed by December 31 of the year following the tax year.



## Shipping Taxation

A Luxembourg-based shipping company is taxable as any other Luxembourg-based company along with a specific exemption from Municipal Business Tax. In addition, shipping companies can benefit from common Luxembourg tax rules and more specifically, roll-over provision and investment tax credit.

The combination of the exemption from municipal business tax, and the benefit from an investment tax credit puts Luxembourg maritime companies in a position where nil taxation can be achieved

### Registration Requirements

Further to the Maritime Act of 1990 as amended in 1994, vessels with a tonnage of at least 25 tons, used or intended for use in the transport by sea of persons or goods for any gainful seafaring activity shall be entered in the Luxembourg shipping register.

The Maritime Act provides for three types of registration: full registration, bareboat in registration and bareboat out registration. To be registered, ships must be majority-owned by European Union nationals or a corporation headquartered in an EU member state (full ownership registration). The vessels may be chartered on a bareboat basis, or operated by an authorised person, operating on behalf of the owner. Provided that all or a significant part of the management is carried out in Luxembourg, these vessels are eligible for entry into the Luxembourg vessels in Luxembourg directly from an office elsewhere in a member state, provided that an accredited marine manager is appointed in Luxembourg.

A registration certificate is valid for a maximum of two years (renewable). A provisional certificate may be issued for vessels still under construction or while in the process of supplying all necessary information required for the registration.

Vessels exceeding 15 years of age from the date when the keel was laid cannot be registered in Luxembourg. An exception applies where a waiver is specifically given by the Minister of Economy and Foreign Trade, for vessels that have been subject to a major overhaul and upgrade to compliance with the standards of the conventions ratified by Luxembourg.

In common with the majority of other maritime nations, the Grand Duchy of Luxembourg is a signatory to most of the international agreements governing seagoing vessel safety and environmental protection. The technical norms regarding safety and environmental protection stipulated in these various regimes, including SOLAS, MARPOL and COLREG, are therefore applicable to Luxembourg vessels in accordance with their size and type.

Additionally, Luxembourg's membership of the European Union means that the relevant EU laws and regulations regarding merchant marine safety and environmental protection apply to Luxembourg-registered vessels. Indeed, some of these European laws and regulations apply to all ships, regardless of nationality operating regularly or occasionally in EU waters.

The Grand Duchy of Luxembourg has delegated to Classification Societies the authority to survey and certify compliance with technical and environmental standards.

All the companies recognised by the Luxembourg maritime authorities are members of IACS (International Association of Classification Societies), and include: the American Bureau of Shipping (ABS), Bureau Veritas (BV), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Nippon Kaiji Kyokai (NKK), Lloyd's Register of Shipping (LR), and the Registro Italiano Navale (RINA).

### Registration Procedure

Prior to the registration procedure of a ship under the Luxembourg flag, the ship owner must select the structure to be used for the ship. Where possible, this decision must be made before the registration of the ship. The help of a local, specialised company could result in substantial savings.

The procedure for the registration of a ship under the Luxembourg flag does not differ greatly from that of other maritime administrations. The documents to submit to the Luxembourg maritime authorities are: the registration application forms and the relevant ship's certificates. This is a specific type of mutual insurance coverage, called "Protection and Indemnity", which ship-owners usually take out.

The technical certificates required, certify that the ship

complies with the maritime conventions ratified by Luxembourg. For certain types of ships or in certain cases, a preliminary inspection may be required. It will usually be done by a recognised Classification Society acting on behalf of the Luxembourg maritime authorities or the inspectors of a national inspectorate.

Luxembourg was one of the first countries to offer a legal framework adapted for commercial yachts.

The registration fees are paid to the Registration of Mortgages (see Annex 2). The actual registration procedure can be simple and quick if the file is carefully and scrupulously completed. For efficiency and speed, it is highly recommended that a local company specialised in the maritime sector be used to carry out this procedure.

A request to renew the registration certificate must be filed each year or every two years on the anniversary of the first registration. Specific documents certifying that the ship is compliant with the provisions enacted since its first registration must also be supplied.

## **Taxation**

In general, double tax treaties or specific maritime agreements between countries grant the right to tax a maritime company in the country where it has its fiscal residence.

Luxembourg has signed more than 60 double tax treaties which are currently in force. The treaties signed by Luxembourg contain the provisions for the taxation of maritime company profits. In general, the provisions are similar to Article 8 of the OECD Model, which grants the right to tax, exclusively to the country where the seat of management is located. Consequently the profits from the operation of ships international traffic shall be taxed only in the Contracting state in which the place of effective management of the enterprise is located.

These profits include those earned from participating in a pool, joint-venture or international entity.

The profits related to the lease of a ship, equipment and crew must be handled in the same manner as the profits from transporting passengers or merchandise.

The criterion of place of effective management' that determines the taxation right, on which the double tax treaties are based, is clearly essential. Such criteria refer to the place from which the company is actually managed, based on factual elements, not a legal situation.

The current tax rate in Luxembourg applicable to Luxembourg resident entities on worldwide income amounts to 28.80%. The rate consists of both Corporate Income Tax (CIT), including the contribution to the employment fund, of 22.05% as well as the Municipal Business Tax (MBT), which varies depending on the commune in which the company holds its registered address, currently 6.75% for Luxembourg City.

Luxembourg resident companies are also subject to Net Wealth Tax (NWT), applied at a rate of 0.5% of the net asset value of the company, determined according to specific valuation rules, at year end.

### **Exemption from municipal business tax for maritime companies**

Luxembourg MBT is levied based on the municipality where the company is located. Due to the fact that the business of a Luxembourg shipping company is carried out mainly outside the commune where it holds its registered address, shipping companies are exempt from MBT on income in relation to the use and lease of ships operating in international traffic.

The effective tax rate applied on shipping companies is therefore currently **22.05%**.

### **Determination of the taxable basis**

The taxable basis of a Luxembourg shipping company is computed in the same manner as for all Luxembourg-resident entities on the financial statements prepared under Lux GAAP but may be subject to tax adjustments such as the non-deductibility of expenses in relation to exempt income. In addition, depreciation expenses and provisions for large-scale repair and maintenance work are considered as deductible expenses for shipping companies.

#### Depreciation rules

Two types of depreciation are available under Luxembourg law, linear depreciation and accelerated depreciation.

*Linear depreciation: Vessels held by a Luxembourg shipping company, are depreciated over their useful life. For example, a vessel with a useful life of 12 years (minimum depreciation period for a vessel) will be depreciated at a rate of 8.33% of its purchase price, every year.*

*Accelerated depreciation: Shipping companies may accelerate the linear depreciation by up to three times the linear depreciation rate, however, without exceeding 30%. Applied to a vessel with a useful life of 12 years, the depreciation may be increased to 25% of the purchase price in a year.*

### **Provisions for large-scale repair and maintenance work**

Luxembourg companies may establish provisions based on charges in relation to the business performed. The general rules state that the company is required to determine the charge precisely, and that it must refer to the year in which the provision is booked. A more flexible approach is available for maritime companies where the company is allowed to book a more general provision based on reasonable charges that can be expected due to large-scale repair or maintenance work being undertaken. The Luxembourg tax authorities will then allow the company to deduct the provision in the year that it is booked.

### **Carried forward losses**

There is no specific tonnage tax regime applicable in Luxembourg (fixed allowance). In case of decrease of the activity, the company will incur losses. These losses, as determined tax-wise, may be carried forward indefinitely and offset future positive tax results.

### **Investment tax credit**

In addition to the beneficial rules regarding depreciation and provisions booked for large-scale repair work available for maritime companies, Luxembourg law offers the opportunity to resident companies to apply for two types of tax credits on investments made: the global investment tax credit and the complementary investment tax credit which applies generally for all Luxembourg companies, in the case of capital expenditure made for investments to be used on Luxembourg national territory or within the European Economic Area.

However, the application of this investment tax credit has been extended to include the Luxembourg shipping companies, as the investment tax credit applies also to vessels which are operating in international traffic and that form part of the net invested assets (Article 152bis Income Tax Law). The investment tax credit is granted for investments in both new and previously used ships, when demonstrated that an old vessel has not benefited from the investment tax credit in the past.

With the application of the Investment tax credit and the exemption of municipal business tax (as previously mentioned), Luxembourg shipping companies can benefit from a position where nil taxation can be achieved.

The investment tax credits apply in the following manner and are calculated on the following basis:

- **Credit for complementary investment:**

The rate applicable for the complementary investment is maximum 13% and applies by comparing the net book value of the qualifying assets for the current year with the average net book value of these assets over the last five years as a reference basis

- **Credit for global investment:**

The credit for global investment is applied with a rate of 7% for the first €150,000 of the investment and with another 3% on the part of the investment exceeding this amount. This credit only applies to new investments made during the financial year. Any part of the investment tax credit which cannot be used by the company during the financial year in which the acquisition took place, may be carried forward and used within the next ten years.

### **Net wealth tax reduction**

Under the Luxembourg net wealth tax law, Luxembourg companies may reduce the net wealth tax due in a year, through the booking of a special reserve. In order to benefit from a reduction of NWT due for a given tax year, the company must allocate part of the profits to a special reserve, referred to as the NWT reserve, and such reserve must be kept in place for five years. The actual reduction of the NWT obtained is equal to one fifth of the reserve created however capped to the amount of the CIT charge of the same year.

The net wealth tax reduction is applicable at any time . When the company shows profits accounting wise and is

not influenced by any possible reductions made through other tax credits. Through its application, companies may reduce the NWT liability to zero.

### **Roll-over provision**

Luxembourg shipping companies may, under certain conditions, transfer capital gains arising from the sale of a ship to fixed assets purchased or established by the company through a roll-over provision based on the sale price. This allows maritime companies to renew the fleet on a regular basis, and offers the opportunity to opt for an ecological and environmentally-friendly approach for the business.

This possibility allows maritime companies, apart from reinvesting in another ship used for international traffic, to diversify their assets so that the reinvestment does not necessarily involve an asset of the same kind as the one sold.

Fixed assets for which the capital gain can be notably used include real estate (located in Luxembourg), amortisable fixed assets and equity holdings in other companies.

The shares in which the sale proceeds are reinvested can be either in a resident or a non-resident company.

It must be noted that the capital gain transferred to the purchased or established fixed asset reduces the purchase price or income of this fixed asset.

### **Fiscal consolidation regime**

Under the rules of the Luxembourg Income Tax Law, Luxembourg resident entities have the possibility of entering into a fiscal consolidation, where the profits or losses of one company may be set off against the profits or losses of another company that is part of the tax entity. The regime has been developed over the years and is now applicable to Luxembourg resident companies and also to Luxembourg permanent establishments of non-resident entities.

The criteria for companies to enter into a tax consolidation are firstly the requirement of a holding of at least 95% in the subsidiary entity (75% in certain cases, with approval from the Luxembourg Ministry of Economy, but subject to more severe conditions). Secondly, the tax entity must be kept in place for at least five years, and is entered into



by application to the Luxembourg direct tax authorities before the end of the first year during which the tax entity is applied.

## Repatriation of company profits and the taxation of investors

### Dividend

The distribution of profits from a Luxembourg shipping company in the form of dividends is subject to withholding tax in Luxembourg of 15%.

However, the Luxembourg participation exemption regime allows the distribution of dividends to investors, free of Luxembourg withholding tax. The exemption applies in circumstances where the following criteria are fulfilled:

- The distributing company is a Luxembourg-resident, fully taxable entity with a collective character or a Luxembourg-resident fully taxable capital company\*
- The receiving company has one of the following characteristics:
  - A collective entity falling under the scope the Parent-Subsidiary Directive (90/435/EEC)
  - A capital company resident in Luxembourg and liable to tax not listed in the annex of Article 166, 10 of the Luxembourg Income Tax Law
  - The state, municipalities or other national public entities
  - A permanent establishment of any of the entities referred above
  - A collective entity liable to a tax corresponding to Luxembourg Corporate Income Tax and which is resident in a tax treaty country, as well as its Luxembourg permanent establishment
  - A capital company resident in Switzerland, subject to and not exempt from corporate income tax in Switzerland
  - A capital company or cooperative resident in a member state of the European Economic Area (EEA) other than an EU member state (i.e. Norway, Liechtenstein and Iceland) which is liable to a tax corresponding to Luxembourg Corporate Income Tax
  - A permanent establishment (either in Luxembourg or outside) of a capital company or of a cooperative resident in an EEA member state other than an EU member state
- The recipient entity must have a shareholding of at least 10% or an acquisition price of €1,200,000 for no less than 12 months, in the Luxembourg resident distributing entity

### Interest

Interest paid by a Luxembourg company to a foreign investor is not subject to withholding tax in Luxembourg.

Exceptions apply for certain profit participating instruments where withholding tax may be levied in specific cases. The same applies for the payment of interest to individuals not resident in an EU or EU-affiliated country. Interest paid to an individual resident for tax purposes in the European Union comes under the EU Savings Directive 2003/48/EEC and is thus subject to withholding tax.





## 4. Malta

## Individual Taxation

### Income Tax

Individuals may be liable to tax in Malta, depending on whether they are deemed to be ordinary resident, temporary resident, non-resident and/or domiciled in Malta.

Individuals are considered to be resident in Malta by the mere fact that they reside (physically) in Malta. An individual is considered to be a resident in Malta if such individual “resides in Malta except for such temporary absences as to the Director General (of Inland Revenue) may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta”, as defined by the Malta Income Tax Act, Chapter 123 of the Laws of Malta (hereinafter referred to as “ITA”).

Ordinary residence broadly refers to “resident in the ordinary or regular course of one’s life”, as for example when one resides in Malta due to reasons of employment, retirement or study in Malta.

Temporary residence refers to those individuals who are in Malta for a temporary purpose only, who derive some form of income in Malta and reside in Malta for a period not exceeding in the aggregate of 6 months in a year and who have no intention of establishing their residence in Malta.

Where, none of the above conditions of residence applies, an individual may generally be deemed to be non-resident for tax purposes in Malta.

The term domicile refers to a concept in Common law, interpreted to refer to “residence in a particular country with the intention of residing permanently in that country”. The term domicile is not defined in the ITA. The principle of domicile goes beyond residence and refers to an intention to reside in a particular country rather than merely a physical presence in a country. One’s domicile is acquired at birth and is generally referred to as domicile of origin. While it is relatively easy to shift one’s residence, this cannot be said to be applicable to domicile. Having said that, a person may shift his domicile during his lifetime by moving from a domicile of origin to a domicile of choice by opting to establish himself permanently in another country. Individuals who are not Maltese nationals but are resident in Malta and who do not intend to establish in Malta a

permanent home for themselves do not generally acquire a Maltese domicile for Malta income tax purposes.

The ITA allows limited deductions against taxable income in the case of resident individuals. Individuals who are non-resident in Malta benefit from no particular deductions. Contributions made by the employee to the Maltese social security (whether under a state or private insurance) are not deductible against one's employment income.

- Individuals who are both resident and domiciled in Malta are subject to tax in Malta on their worldwide income.
- Individuals who are either resident or domiciled in Malta are subject to tax in Malta on:
  - Any income arising in Malta;
  - Any foreign income remitted to Malta (ie.: remittance basis of taxation); and,
  - Any capital gains arising in Malta.

The marginal tax rate applicable to these individuals for basis year 2013 is at progressive rates from 0% to a maximum 35%.

## Special Residence Schemes

### High Net Worth Individual Scheme

A special residence scheme available in Malta is the High Net Worth Individual Scheme (hereinafter referred to as "the HNWI"). The scheme is only available to EU/EEA/Swiss nationals.

In terms of this scheme, the individual is subject to the following conditions:

- Is subject to tax on all foreign source income remitted to Malta at a special rate of tax of 15%, subject to a minimum of €20,000 per annum and an additional €2,500 per dependent;
- Is subject to tax on Malta source income including employment income at a flat rate of tax of 35%.

The basis of taxation (subject to the above rules) of the scheme are outlined in the section [Basis of Taxation](#), following this section.

An individual who is eligible to apply under the Scheme must prove to the satisfaction of the Director General (Inland Revenue) (hereinafter referred to as "Director

General”) that such individual satisfies all of the conditions set out below:

- The applicant holds a ‘Qualifying Property Holding’ which is defined as immovable property situated in Malta which was either (i) purchased after 1 January 2011 for a consideration of not less than €400,000; or, (ii) rented for not less than €20,000 per annum and in all cases, the applicant and his/her family members have their habitual residence in such property as their principal place of residence;
- The applicant is not a person who benefits under any other special residence schemes available in Malta;
- The applicant is not a Maltese national;
- The applicant is in receipt of stable and regular resources which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta;
- The applicant is in possession of a valid travel document;
- The applicant is in possession of sickness insurance which covers himself and his dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals;
- The applicant is not domiciled in Malta and does not intend to establish his domicile in Malta within 5 years from the date of the application;
- The applicant is a fit and proper person: The application by the individual is required to cover the dependents of the said individual; and,
- There is no minimum residence period in Malta. The individual should ensure that he is not resident in any other jurisdiction for more than 183 days in any calendar year.

An application for special tax status together with a ‘fit and proper person’ questionnaire, may only be submitted to the Director General through the services of a person that qualifies as an Authorised Registered Mandatory (hereinafter “the ARM”) and on the prescribed application form. A non-refundable fee of €6,000 is payable to the Director General on application.

Where the Director General is satisfied that the individual qualifies for special tax status in terms of the Scheme, the Director General will notify the ARM in writing. Where the applicant would not have, at the time of application, acquired a ‘Qualifying Property Holding’ as referred to

above, the Director General will provide the applicant with a letter of intent and will issue a certificate of special tax status upon receipt of evidence that the applicant holds a 'Qualifying Property Holding'.

It is important to note that under the Scheme, the individual and his spouse cannot opt for separate tax computation.

A new residence scheme to replace the above is expected to be announced late in 2013.

### **Retirement Scheme for Foreign Retirees**

Another special residence scheme available in Malta is the Retirement Scheme for foreign retirees (hereinafter referred to as "the Retirement Scheme"). The scheme is only available to EU/EEA/Swiss nationals.

In terms of this scheme, the individual is subject to the following conditions:

- Is subject to tax on all foreign source income remitted to Malta at a special rate of tax of 15%, subject to a minimum of €7,500 with a further €500 per dependent and special carer;
- Is subject to tax on Malta source income at a flat rate of tax of 35%.

The basis of taxation (subject to the above rules) of the scheme are outlined in the section [Basis of Taxation](#), following this section.

An individual who is eligible to apply under the Scheme must prove to the satisfaction of the Director General that such individual satisfies all of the conditions set out below:

- The applicant holds a 'Qualifying Property Holding' which is defined as immovable property situated in Malta which was either (i) purchased after 1 January 2011 for a consideration of not less than €275,000 or €250,000 if the property is in Gozo; or, (ii) rented for not less than €9,600 if the property is in Malta or €8,750 if the property is in Gozo; and in all cases, the applicant and his/her family members and special carer have their habitual residence in such property as their principal place of residence;
- The applicant is not a person who benefits under other special residence schemes available in Malta;
- The applicant is not a Maltese national;
- The applicant is in receipt of a pension (excluding lump-sum payments without periodic pension payment or commutation of pension) all of which is received in

Malta. The pension income should constitute at least 75% of the income brought to charge for tax purposes in Malta;

- The applicant is in possession of a valid travel document;
- The applicant is not in an employment relationship (excluding non-executive posts);
- The applicant is in possession of sickness insurance which covers himself and his dependents in respect of all risks across the whole of the EU;
- The applicant is not domiciled in Malta and does not intend to establish his domicile in Malta within 5 years from the date of the application;
- The applicant is a fit and proper person: The application by the individual is required to cover the dependents of the said individual; and,
- The applicant is required to reside in Malta for at least 90 days in any calendar year averaged over a five-year period, and to have not resided in any other jurisdiction for more than 183 days in any calendar year.

An application for special tax status together with a 'fit and proper person' questionnaire, may only be submitted to the Director General through the services of a person that qualifies as an ARM and on the prescribed application form. A non-refundable fee of €2,500 is payable to the Director General on application.

Where the Director General is satisfied that the individual qualifies for special tax status in terms of the Scheme, the Director General will notify the ARM in writing. Where the applicant would not have, at the time of application, acquired a 'Qualifying Property Holding' as referred to above, the Director General shall provide the applicant with a letter of intent and will issue a certificate of special tax status upon receipt of evidence that the applicant holds a 'Qualifying Property Holding'.

It is important to note that under the Scheme, the individual and his spouse cannot opt for separate tax computation.

### **Global Residence Programme**

A special residence scheme available in Malta and introduced in 2013 is the Global Residence Programme (hereinafter referred to as "the GRP"). The scheme is only available to non-EU/non-EEA/non-Swiss nationals.

In terms of this scheme, the individual is subject to the following conditions:



- Is subject to tax on all foreign source income remitted to Malta at a special rate of tax of 15%, subject to a minimum of €15,000 per annum. There is no minimum tax in respect of the dependents;
- Is subject to tax on Malta source income including employment income at a flat rate of tax of 35%.

The basis of taxation (subject to the above rules) of the scheme are outlined in the section [Basis of Taxation](#), following this section.

An individual who is eligible to apply under the Scheme must prove to the satisfaction of the Director General that such individual satisfies all of the conditions set out below:

- The applicant holds a 'Qualifying Property Holding' which is defined as immovable property situated in Malta which was either (i) acquired after 6 July 2013 for a consideration of not less than €275,000 if the property is in Malta or €220,000 if the property is in Gozo or in the South of Malta; or, (ii) rented for not less than €9,600 per annum if the property is in Malta or €8,750 if the property is in Gozo or in the South of Malta; and in all cases, the applicant and his/her family members have their habitual residence in such property as their principal place of residence; (A list of properties forming part of the South of Malta has been published in the guidelines issued by the Authorities);
- The applicant is not a person who benefits under other special residence schemes available in Malta;
- The applicant is not a Maltese national;
- The applicant is in receipt of stable and regular resources which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta;
- The applicant is in possession of a valid travel document;
- The applicant is in possession of sickness insurance which covers himself and his dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals;
- The applicant is not domiciled in Malta and does not intend to establish his domicile

in Malta within 5 years from the date of the application;

- The applicant must not be a “long-term resident” of Malta and consequently must not have long-term resident status under the status of Long-Term Residents (Third Country Nationals) Regulations, and must not have resided legally and continuously in Malta for five years;
- The applicant is a fit and proper person: The application by the individual is required to cover the dependents of the said individual;
- The applicant is fluent in English or Maltese; and,
- There is no minimum residence period in Malta. The individual should ensure that he is not resident in any other jurisdiction for more than 183 days in any calendar year.

An application for special tax status together with a ‘fit and proper person’ questionnaire, may only be submitted to the Director General through the services of a person that qualifies as an ARM and on the prescribed application form. A non-refundable fee of €6,000 (€5,500 if the individual has already acquired property in the South of Malta at the time of application) is payable to the Director General on application.

Where the Director General is satisfied that the individual qualifies for special tax status in terms of the Scheme, the Director General will notify the ARM in writing. Where the applicant would not have, at the time of application, acquired a ‘Qualifying Property Holding’ as referred to above, the Director General shall provide the applicant with a letter of intent and will issue a certificate of special tax status upon receipt of evidence that the applicant holds a ‘Qualifying Property Holding’.

It is important to note that under the Scheme, the individual and his spouse cannot opt for separate tax computation.

### **Basis of Taxation (applicable to all special schemes mentioned above)**

An individual in possession of a special tax status certificate in terms of any of the special schemes mentioned in the previous section is subject to the following tax treatment in Malta:

- Income remitted to Malta from foreign sources would be chargeable to Malta income tax at a flat rate of

- 15% but subject to the minimum tax in terms of each scheme. Relief for double taxation in terms of double tax treaty relief and unilateral relief is available. No Malta income tax liability arises to the extent that such foreign source income is not remitted to Malta in view of the non-Malta domicile status of the individual;
- Any other realised income that is not charged at the 15% income tax rate above and including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta) would be chargeable to Malta income tax at the rate of 35%;
  - Any realised capital gain arising in Malta on the transfer of immovable property situated in Malta would be subject to a final withholding tax of 12% of the transfer value (an exemption applies in special circumstances, including the disposal of immovable property occupied as an individual's "own residence" for a period of 3 years). An individual may opt for the 35% tax rate on the capital gain, subject to the Capital Gains Rules of the ITA, if the property being transferred was acquired less than 12 years prior to the sale;
  - Any realised capital gain arising outside of Malta would be exempt from Malta tax in view of the non-Malta domicile of the individual (a non-Malta domicile is, in fact, a condition for eligibility in terms of the above mentioned schemes).



## Shipping Taxation

### Legislation

The registration and the operation of vessels under the Malta flag is regulated by the Merchant Shipping Act of Chapter 234 of the laws of Malta, which is a law based mainly on the merchant shipping legislation of the United Kingdom but subsequently revised and amended over the years.

All types of vessels from pleasure yachts to oil rigs, may be registered under the Malta flag. It is in fact the policy of the Maltese authorities to encourage interest in shipping and to promote the whole range of maritime services Malta has to offer. The latest figures available indicate that the Malta ship register had over 5,956 vessels of 45million GT, including some 2,933 yachts. Through the on-going efforts of the Merchant Shipping Directorate, Malta has maintained its position as the largest register in Europe and one of the 10 largest registers in the world in terms of gross tonnage.

Registration of ships and all matters ancillary thereto is the responsibility of the Merchant Shipping Directorate of the Authority for Transport in Malta.

A Maltese flagged ship can be owned by:

- Citizens of Malta
  - Bodies corporate established under, and subject to the laws of, Malta;
  - Citizens of EU Member States residing in Malta;
  - Bodies corporate or entities established outside Malta and which enjoy, to the satisfaction of the Registrar-General of Shipping, legal personality in terms of the law under which they have been established or constituted, and satisfy the Registrar-General that they can and will ensure due observance of the laws of Malta relating to merchant shipping. For this purpose, a local registered agent must be appointed;
- Or
- Citizens of EU Member States not residing in Malta. For this purpose, a local registered agent must be appointed.

For the purposes of these provisions of law, residing in Malta means holding a valid registration certificate as issued under the provisions of the European Union Act (Chapter 460 Laws of Malta).

The registration of a body corporate in Malta to own or operate a ship is a relatively straightforward operation and Maltese ship-owning companies operate in a relatively restriction-free environment. For example:

- There are no restrictions on the sale of ships registered in Malta to foreign nationals, nor are there any restrictions on the mortgaging of ships registered in Malta in favour of foreign nationals.
- In addition there are no restrictions on the sale or transfer of shares, or stock of a company owning a Maltese ship.
- There are also no restrictions on the nationality of the master, officers and crew.

There are no trading restrictions and there is preferential treatment to Maltese Ships in certain ports.

There is a complete tax exemption to owners, charterers, and financiers of Maltese or Community (including EEA) ships of over 1,000 net tons (exempted ships). Furthermore, no tax is payable on dividends paid to the shareholders.

### Registration Requirements

A vessel is first registered provisionally under the Malta flag for a period of six months (extendible to one year) during which all documentation must be finalised. The requirements for provisional registration are simply:

- An application for registration by the owner or an authorised representative accompanied by an application for a change of name (where applicable).
- Proof of qualification to own a Maltese ship, in the case of a body corporate, its Memorandum and Articles of Association and in the case of non-Maltese owners, the appointment of resident agent.
- A Declaration of Ownership made before the Registrar by the owner or an authorised representative.  
Payment of initial and annual registration fees, for the assignment of the Official Identification number of the vessel.
- In the case of vessels of over 24 metres in length there is also the requirement of a copy of the International Tonnage Certificate or if unavailable, a simplified tonnage calculation issued by an approved classification society (hereinafter referred to as ACS).
- Application for a Provisional Ship Radio Station Licence document by which the vessel was

transferred to the applicant for registry.

- Evidence of seaworthiness of the vessel, i.e. confirmation that the vessel is classed with an approved classification society (not applicable to pleasure yachts). In the case of **product tankers and commercial vessels** with a high tonnage (usually over 500 Gross Tons), the following are also required:
  - Evidence that the vessel is classed and that the statutory certificates are valid. The Merchant Shipping Directorate (hereinafter referred to as MSD) require communication direct from an Approved Classification Society confirming that the vessel is classed together with the expiry dates of the following statutory certificates, namely:
    1. Load Line Certificate;
    2. Safety Construction Certificate;
    3. Safety Equipment Certificate;
    4. Safety Radio Certificate;
    5. International Oil Pollution Prevention Certificate (IOPP)
    6. International Air Pollution Prevention Certificate(IAPP)
    7. International Sewage Pollution Prevention Certificate(ISPP)
    8. Antifouling Declaration
  - A Minimum Safe Manning Certificate to be issued by MSD at a cost of €100. Guidelines to the Minimum Safe Manning can be found on the Transport Malta website under Ship Registration-STCW-MSM guidelines. Malta ratified the Maritime Labour Convention, 2006 (MLC) on 18 January 2013, and the convention came into force on 20 August 2013, same can be accessed through this link <http://www.transport.gov.mt/ship-registration/mlc-2006-stcw/mlc-2006>

### Registration Procedure

The following documents must be submitted during provisional registration in order to obtain permanent registration which is renewable annually:

- Where there was previous ownership, a bill of sale or any other document by which the vessel was transferred to the applicant for registry; otherwise a builder's certificate in the name of the applicant.
- Application for a Permanent Ship Radio Station Licence document by which the vessel was transferred to the applicant for registry.
- Where applicable, an original Cancellation of Registry Certificate from the last country of registry, showing the vessel as free from encumbrances upon deletion.

- An original Certificate of Survey and, in the case of vessels exceeding 24 metres in length, a copy of the Tonnage Certificate certifying that the vessel has been surveyed by an Approved Classification Society or Approved Surveyor on behalf of the Government of Malta.
- Signed and stamped Carving and Marking Note (provided at provisional registration) by an Approved Class or Surveyor proving that the vessel is marked with the official number, registered tonnage, name and home port in accordance with the law. .
- In the case of SOLAS Ships, a copy of the last updated Continuous Synopsis Record issued by the Administration where the ship was last documented.
- Before issuing the permanent registration certificate, the authorities require a “provisional undertaking” namely an undertaking by the directors/managers to return the provisional certificate of Malta registry within 30 days from the date of issue of the permanent certificate of Malta registry.

Ships of fifteen years and over but under twenty years are required to pass an inspection by an authorised flag state inspector at an agreed port acceptable to the MSD before or within one month of provisional registration. Expenses for the inspection are borne by the ship owner.

It is no longer possible to register vessels of more than twenty five years of age under the Malta Flag.

In addition to the above requirements for provisional and permanent registration a foreign corporate body or entity wishing to register a vessel under the Malta Flag as an international owner must produce the under-mentioned documentation in order to become eligible to register a ship.

- A declaration to appoint a local agent, duly notarised and apostilled. The duty of this resident agent is to act as a channel of communication between the international owner and the Maltese government departments and authorities, as well as to sign and file with the Maltese government department and authorities all the necessary forms and declarations, on behalf of the international owner. The local agent also acts as the judicial representative of the international owner for judicial proceedings in Malta. It is important to note that any official notices sent

to the resident agent at his last registered address shall be deemed to have been duly received by and notified to the international owner.

- A formal notification by the local representative agent to the Registrar General signifying his consent to act as a resident representative.
- An official copy of the Memorandum & Articles of the foreign corporate body or entity and good standing certificate, duly notarised and apostilled.
- A legal opinion, duly notarised and apostilled confirming that corporate records of foreign corporate body have been examined and, giving details of the directors and holders of office and confirming the persons authorised to represent it and bind it with their signature and to appoint agents and representatives.
- Payment of €250 would be charged by the MSD for the approval of the international owner. The sum of €125 would also be payable to the MSD on an annual basis by the international ship owner. Guidelines to the Minimum Safe Manning can be found on the Transport Malta website under Ship Registration-STCW-MSM guidelines.

### **Ships under Construction**

Maltese law provides for the registration of vessels that are being built or equipped. The requirements relating, inter alia, to survey and safety of ships already built and, to the declaration of ownership where the builders have not yet effected delivery to owners will be suspended until construction is completed or until delivery has been made. Vessels to be classed as trading ships are to be built under the supervision of a recognised organisation.

### **Commercial Yachts**

Yachts in commercial use which do not carry cargo and do not carry more than 12 passengers can be registered as commercial yachts. Maltese law is very advantageous for the operation of commercial yachts. A Commercial Yacht Code setting the required standards of safety and pollution prevention can be downloaded from <http://www.transport.gov.mt/superyacht-registration>

### **International Conventions**

Malta has adopted all the major international maritime conventions including: CLC 92, Tonnage 69, COLREG 72, Fund 92, INMARSAT, LLMC 1996 Protocol, Load Lines 66 (including



1988 Protocol), London Convention 72, MARPOL 73/78, SOLAS 74/78 (including 1988 Protocol), STCW 78 (including 95 amendments), Bunkers 01, AFS 01, SUA 88 (including SUA Protocol 1988), SAR 79, FAL 65, OPRC 90 and OPRC-HNS Protocol 00 and ILO Conventions Nos. 8, 16, 22, 53, 73, 74, 87, 98, 108, 138, 147 (including 1996 Protocol), 180 and MLC2006.

For a ship to operate under the Malta flag it must carry at all times valid

statutory certificates issued on behalf of the Malta government by a recognised organisation.

## Taxation

### Income Tax Exemptions

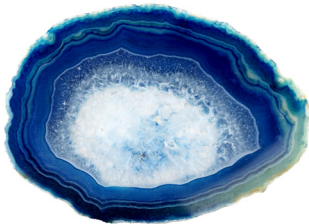
- A shipping organisation is exempt from tax on any income derived from shipping activities and any income or gains derived from the sale or other transfer of a tonnage tax ship or from the disposal of any rights to acquire a ship which when delivered or completed would qualify as a tonnage tax ship. "Shipping activities" comprises the international carriage of goods or passengers by sea or the provision of other services to or by a ship as may be ancillary thereto or associated therewith including the ownership, chartering or any other operation of a ship and includes also ship management activities of a ship manager.
- Any gains arising upon the liquidation, redemption, cancellation, or any other disposal of shares, securities or any other interest, including goodwill, held in any licensed shipping organisation owning, operating, administering or managing a tonnage tax ship while she was a tonnage tax ship are exempt from tax in Malta.
- No Malta tax is charged upon any payments of interest or other income in relation to the financing of the operations of shipping organisations or the financing of any tonnage tax ship.
- No tax is chargeable upon dividends distributed by a shipping organisation to its shareholders, out of profits derived from shipping activities.

### Duty Exemptions

- No duty is payable in respect of any instrument connected with or involving the registration of a tonnage tax ship, the sale or other transfer of a

tonnage tax ship or any share thereof, the assignment of any rights and interests or the assumption of obligations in respect of any ship or share thereof.

- No duty is payable in respect of any instrument connected with or involving the issue or allotment of any security or interest of a licensed shipping organisation or the purchase, transfer, assignment or negotiation of any security or interest of any licensed shipping organisation;
- No duty is payable in respect of any instrument connected with or involving the registration of any mortgage or other charge over or in relation to any ship or licensed shipping organisation, any transfer or discharge thereof, any receipt relative thereto, and any assignments granted in connection therewith.





## 5. Singapore

## Individual Taxation

### Income Tax

The taxable income of a Singapore tax resident (resident) individual includes all income accruing in or derived from Singapore, and foreign (non-Singapore) sourced income that is received in Singapore through a partnership in Singapore. "Received" includes remittance and deemed remittance into Singapore. The taxable income is net of any personal reliefs and allowances that are available to the resident individual.

From the Year of Assessment (YA) 2012 (2011 income year ended 31 December 2011) a resident individual's taxable income is taxed at progressive rates from 2% to 20%.

A non-resident individual's taxable income includes all income accruing in or derived from Singapore. A non-resident individual, other than a director, exercising a short term employment in Singapore for less than 60 days may be exempt from Singapore income tax under section 13(6) of the Singapore Income Tax Act (SITA).

A non-resident individual is exempt from Singapore income tax on remittances from sources outside Singapore.

A non-resident individual is not eligible for any personal reliefs or allowances.

A non-resident individual is taxed on employment income at the higher of a flat rate of 15% (without any deduction of personal reliefs and allowances) or at graduated resident tax rates as if a resident individual.

All other income with a Singapore source, including director's fees and consultant's fees, is taxed at a flat rate of 20%.

### Special Tax Regime

Singapore adopts a territorial basis of taxation with income sourced in Singapore is subject to Singapore income tax. Foreign sourced income is subject to Singapore income tax when it is remitted or deemed remitted into Singapore. From the YA 2005 (2004 income year), only foreign sourced income received or deemed received by a

resident individual through a partnership is taxable.

Income from employment is considered derived from Singapore if the employment is exercised in Singapore. Where the employment contract is signed or where the remuneration is paid is not relevant in determining the source of the employment income. Where the employment is exercised outside Singapore, the income from the employment should not be considered Singapore sourced and should not be taxable in Singapore. If an individual is based in Singapore and his/her duties require him/her to travel outside Singapore, the time spent outside Singapore would be considered incidental to his/her Singapore employment and the entire remuneration derived would be considered Singapore sourced and taxable in Singapore.

Employment income includes wages, salary, leave pay, fees, commissions, bonuses, gratuities, perquisites, and allowances, etc.

Certain items of compensation may be afforded concessionary treatment in Singapore, for eg. home leave, housing, provision of motor vehicle/leased car, relocation benefits, etc.

The start and end dates of an assignment will be an important factor in the computation of the total tax liability of an employee working in Singapore or leaving for overseas assignment.

Interest income derived by an individual from the deposit of money (regardless of the amount and currency) in a standard savings, current or fixed deposit account with an approved bank or finance company in Singapore is exempt from tax. Dividend income from a Singapore resident company paid under the one-tier corporate tax system will also be tax exempt.

Net rental income derived from real property situated in Singapore is taxable.

There is no income tax on capital gains in Singapore. Taxable income can be reduced by, inter-alia, losses incurred in a trade, unreimbursed business-related expenses, and approved donations.

The tax residency status of the employee in Singapore would not necessarily impact the taxability of the income. It will, however, determine the rate of tax applicable on the Singapore sourced income chargeable to tax.

A resident individual is one who normally resides in Singapore except for temporary absences that are consistent with a claim by such person to be a resident in Singapore. A Singapore citizen is generally considered a resident even for the duration of his/her overseas assignment. The absences from Singapore will be considered temporary as he/she will have the intention to return to Singapore after the assignment.

A foreigner (not a Singapore citizen) will be considered a resident if he/she is physically present, or exercises employment (other than as a director of a company) in Singapore for 183 days or more during the calendar year preceding the YA. Presence for a lesser period may cause the foreigner to be a resident if the intention is to establish permanent residence in Singapore or where the 2 year or 3 year administrative concession is applicable.

Where the individual has exercised an employment in Singapore for less than 183 days during the calendar year, the Inland Revenue Authority of Singapore (IRAS) may exercise one of two concessions to assess him/her to tax as a resident in that year. The first concession is, if his/her employment in Singapore is expected to cover a continuous period of at least 183 days straddling over 2 calendar years (2-year administrative concession). The second is if he/she is expected to exercise an employment in Singapore for 3 consecutive YAs (3-year administrative concession).

A non-resident is any individual who is not resident according to the preceding rules.

A Singapore citizen employee who is on an overseas assignment for more than 6 months within a calendar year can elect to be treated as a non-resident on an annual basis.

An individual can qualify for the Not Ordinarily Resident (NOR) status from any YA commencing from the YA 2003

(2002 calendar year) when he/she first meets the following qualifying criteria:- (i) the individual is a resident for the YA; and (ii) he/she is a non-resident for 3 consecutive YA immediately prior to that YA.

Once approved, the individual will be granted the NOR status for 5 years. There are 2 tax concessions for such individuals who qualify for the NOR scheme, namely:

- (a) time apportionment of income;
- (b) tax exemption (subject to NOR cap) of the employer's contribution to non-mandatory overseas pension fund or social security system (employer's pension exemption).

The conditions to qualify for the tax concessions annually are:

For time apportionment of income

- (a) the individual spends at least 90 business days outside Singapore pursuant to Singapore employment,
- (b) the individual's employment income is at least SGD160,000, and
- (c) the individual is employed by a Singapore entity. (Where tax on the apportioned income is lower than 10% of the individual's total employment income, the individual's tax liability will be 10% of his/her total employment income.)

For employer's pension exemption

- the individual is neither a Singapore citizen nor a Singapore Permanent Resident (SPR),
- the individual's employment income is at least SGD160,000, and
- the employer does not claim a corporate tax deduction for such contribution.

Employment income derived by crew who are employed on Singapore-registered ships which ply in international waters are exempted from Singapore income tax. This exemption applies to seafarers/crew, regardless of whether they are Singapore citizens, SPRs or foreigners. The exemption, however, does not apply to employees who are based onshore who may be periodically required to board/sail with the ships for inspection work or for other purposes. It may also not be applicable to crew members who are employed on foreign-registered ships that are owned by Singapore companies.

## Tax Administration

The assessment year or the YA in Singapore is based on the calendar year. An individual's assessable income for the YA is based on income from the preceding calendar year. That is, income earned in 2012 would be assessable to tax in the YA 2013. The individual is required to complete his/her tax return and file it to the IRAS by April 15 each year (15 April 2013 in this example). That is, unless an extension has been granted by the IRAS to the individual to file by a later date.

The tax assessed must be settled within one month from the date of issue of the Notice of Assessment (NOA). Penalties are imposed on late payment of the tax assessed. An individual may elect to pay his/her tax by interest free-installments (maximum of 12 installments) beginning from April to March: with the amount deducted from May to April of the following year. The installment plan will automatically cancel when a foreigner ceases employment in Singapore and a tax clearance return is filed with the IRAS.

There is no income tax withholding except with the filing of a tax clearance return or in respect of payments made to non-resident directors or non-resident professionals.

A tax clearance return (Form IR21) needs to be filed with the IRAS by the employer of any employee who is not a Singapore citizen whether or not he or she is an SPR - leaving Singapore permanently, on cessation of their employment in Singapore. It must be filed, at least one month prior to the date of cessation/departure from Singapore. The employer is also required to withhold all money due and payable to that employee until the tax clearance is obtained from the IRAS or after 30 days from the date of receipt by the IRAS of the Form IR21. The tax assessed is payable immediately upon the IRAS issuance of the NOA on the tax clearance return. The IRAS will corollary issue a directive to the employer to pay the tax on the NOA from money withheld by the employer from the employee.





## Shipping Taxation

Income derived by a company, subject to certain exceptions, is taxable in Singapore at the corporate income tax (CIT) rate of 17%. A company's assessable income includes all income accruing in or derived from Singapore, and foreign (non-Singapore) sourced income that is received (including remitted or deemed remitted) in Singapore from outside Singapore. The company's taxable or chargeable income is reduced by partial exemption equal to the sum of (a) 75% of the first SGD10,000 of chargeable income and (b) 50% of the next SGD290,000 of chargeable income – to arrive at the net chargeable income to calculate the CIT.

A qualifying newly incorporated company subject to meeting certain conditions may be exempted from CIT on the first SGD100,000 and on 50% of the next SGD200,000 of chargeable income for its first 3 consecutive YA.

### Maritime Sector Incentives

All tax incentives for the maritime sector are streamlined and consolidated into three categories under the Maritime Sector Incentive (MSI) scheme-award.

**1. International Shipping Operations** – Entities under this category will enjoy tax exemption on certain prescribed shipping income (see more details below), as well as automatic withholding tax exemption on qualifying payments made in respect of qualifying foreign loans taken to finance the purchase or construction of both Singapore-flagged and foreign-flagged ships.

Income of a shipping enterprise derived from the operation of a Singapore registered ship (other than within the limits of the port of Singapore) for the carriage of passengers, mails, livestock or goods, towing or salvage operations, charter of ships or use of the ship as a dredger, seismic ship or vessel used for offshore oil or gas activity, is exempt from Singapore tax.

Income of a shipping enterprise derived (other than within the limits of the port of Singapore) from the carriage of passengers, mails, livestock or goods shipped in Singapore by a foreign (registered) ship, is also exempt from Singapore tax.

### ***Approved International Shipping Enterprise (AISE) Scheme***

A resident shipping company can also apply for the AISE Scheme: it permits the income derived from the operation/charter of the shipping company's fleet of foreign ships to be tax exempt. This incentive also applies to an approved ship leasing company that leases and bareboat charters out ships.

### ***Withholding tax exemption***

Since 17 February 2012, all bareboat, voyage and time charter payments to non-residents (excluding permanent establishments in Singapore) for the use of ships have been exempted from Singapore withholding tax.

**2. Maritime (Ship or Container) Leasing** – Entities under this category will qualify for concessionary tax rates:

1. 0% for ship lessors including income derived from finance leasing of ships; and
2. 5% or 10% on certain prescribed qualifying income (e.g. approved shipping investment management activities, approved container leasing activities etc.), as well as automatic withholding tax exemption on qualifying payments made in respect of qualifying foreign loans taken to finance the purchase or construction of both Singapore-flagged and foreign-flagged ships and acquisition of qualifying containers and intermodal equipment.

**3. Supporting Shipping Services** – Incremental qualifying income derived from the provision of the following qualifying supporting shipping services will be subject to a concessionary tax rate of 10%:-

- (a) Ship management, ship agency, and shipping freight / logistic services;
- (b) Ship broking and forward freight agreement trading; and
- (c) Qualifying corporate services.

### **Tax exemption of vessel disposal gains**

Qualifying ship operators and ship lessors under the relevant MSI schemes will automatically be granted tax exemption on the following:

- (a) Gains from the disposals of vessels;
- (b) Gains from the disposals of vessels under

construction (including new building contracts); and  
 (c) Gains from the disposals of foreign vessels for ship lessors under the MSI-Maritime Leasing (Ship) scheme.

## Registration Requirements

The Singapore Registry of Ships enables quick and easy registration of ships under the Singapore flag. There are several benefits of registering your vessel under the Singapore flag. A ship can be registered within two hours upon the complete submission of all relevant documents. Advance registration facilities are also available to facilitate delivery of a ship in a foreign port.

Only the following may be registered as owners of Singapore vessels:

- Singapore citizens or Singapore permanent residents. Companies incorporated in Singapore – foreign or
- locally owned:
  - A foreign-owned company is defined as a company incorporated in Singapore and has more than 50% of its equity owned by non-Singapore citizens.
  - A locally owned company is defined as a company incorporated in Singapore and has more than 50% of its equity owned by Singapore citizens or another locally owned company.
- If owned by a foreign-owned company, the vessel may be registered in Singapore under the following conditions:
  - The company must have a minimum paid-up capital of SGD50,000.
  - The vessel must be at least 1,600 GT and be self-propelled.
  - Notwithstanding the minimum paid-up capital requirements, the Registrar may in his discretion, waive them provided that the company and/or its related corporation(s) have registered, applied to register, or have informed the Registrar that they will apply to register, ships fulfilling the tonnage criteria of the [Block Transfer Scheme](#).
  - An exemption from the gross tonnage requirement may be granted by the Registrar in his absolute discretion on a case-by-case basis, if the vessel is operated from or based in Singapore. Owners must apply to the Registrar for this exemption.
- If owned by a local-owned company, the vessel may

be registered in Singapore if the company satisfies the minimum paid-up capital requirement.

- For tug- and barge-owning local companies and their holding companies, the paid-up capital will be pegged to 10% of the value of the first tug or barge registered or SGD50,000, whichever is the lesser, subject to a minimum of SGD10,000.

Ships less than 17 years will be considered for registration. The age here takes reference from the Year of Keel Laid of the ship.

## Registration Procedure

### Provisional registration

The Provisional Certificate is valid for a maximum period of one year with no possibility of any extension. The vessel must be transferred to the permanent register before the end of this period. The transfer will be effected when all the outstanding documents for permanent registration are submitted.

No fee is charged for this transfer.

Documents to be submitted for Provisional Registration are the:

- Completed application form
- Company's business profile

### Appointment of an agent

An agent may be appointed to sign the declaration in the provisional registration application form. To appoint an agent, the owner must complete the Appointment of Agent form.

- Where the owner is an individual, he may appoint an agent. The owner must sign the appointment form in the presence of a witness.
- Where the owner is a company and if the provisional registration application form is not signed by a Director or the Secretary of the company, then a person must be appointed as an agent for the purpose of signing the form. The appointment of the agent must be executed under the common seal of the company.

### Appointment of a manager

The vessel manager is responsible for the operations of the vessel, in particular, for all matters related to the crew,

safety and prevention of pollution. All communication relating to the vessel will be directed to the manager.

To appoint a manager, the owner must complete the Appointment of Manager form.

- For every Singapore vessel, the owner must appoint a manager, whose residence is in Singapore.
  - Where the owner is an individual, he may appoint himself as the manager.
  - Where the owner is a company, it may appoint an employee of the company to be the manager.
  - Where a company is appointed manager, the name of the person in the company with the ultimate responsibility for the vessel and his designation in the company must be clearly indicated.

If there is a change in the manager, the vessel owner must complete a new form and submit it to the Registrar of Ships within 7 days of the change.

### **Evidence of ownership**

The following are required as proof of ownership:

- For a new vessel, a photocopy of the Builder's Certificate is required.
- For an existing vessel, a copy of the Bill of Sale is required
- For existing vessel without change in ownership, a transcript of its former registry is required.

Builder Certificate or Bill of Sale is to be submitted together with a copy of the Power of Attorney if it is executed under the Power of Attorney.

### **Evidence that Vessel is Free from Registered Encumbrances**

- A clean transcript from former Registry.
- A copy is to be submitted. In the absence of a clean transcript, a letter evidencing that application has been made to the former Registry to close the Registry of the vessel, or a letter from the outgoing mortgagee/owner indicating the intended date of discharge of the mortgage over the vessel in the former Registry, will be considered.
- The date of issuance of the clean transcript must not be more than 3 days before the date of the change of flag.

### **Value of the vessel**

The owner must declare the value of the vessel in Singapore currency (SGD) on the company's letterhead if this is not reflected in other documents submitted (the Bill of Sale).

### **Tonnage certificate**

All vessels must have their tonnage determined in accordance with the provisions of the Merchant Shipping (Tonnage) Regulations which gives effect to the International Convention on Tonnage Measurement of Ships, 1969 (TM 69).

- A tonnage certificate may be issued by the Maritime and Port Authority of Singapore (MPA) Shipping Division or any of the classification societies authorised by the MPA.
- A TM 69 Tonnage Certificate issued by the government of a contracting state to TM 69 may be accepted for provisional registration only. The vessel must have its tonnage certificate re-issued by the MPA's Shipping Division or any one of the authorised classification societies not later than one year after its initial registration. Should there be any difference in the net tonnage, the registration fee and the annual tonnage tax payable will be adjusted accordingly.
- The tonnage of a Singapore vessel may not be re-determined except in accordance with the provisions of the Regulations mentioned above and re-registration / registration anew may be required. If the intention is to convert or modify the vessel after registration before it is put into service, it should be clearly stated in the application form that the tonnage given is an interim figure.
- In the case of a new construction (newbuild), an interim tonnage certificate issued by the MPA's shipping division or one of the authorised classification societies is required.

### **Class certificate**

- A copy of the vessel's classification certificate issued by any of the authorised classification societies may be accepted as evidence of seaworthiness.
  - For a new vessel, an interim class certificate or statement of entry is required.
  - For an existing vessel, a statement of class maintained is required.

### **Acceptance of provisional registration**

Upon satisfying the requirements stated above, the Certificate of Registry and a Carving and Marking Note will be issued.

The Carving and Marking Note has to be certified by a surveyor from the MPA's Shipping Division or one of the authorized classification societies and returned to the Registry within 30 days of its issuance date.

### **Permanent registration**

In addition to the documents required for a provisional registration, a vessel may be permanently registered or transferred to the permanent registry with the submission of the following documents.

### **Evidence of ownership**

- An original copy of the evidence of ownership is required:
  - For a new vessel, the Builder's Certificate is required.
  - For an existing vessel, the Bill of Sale and a certified transcript of its former registry or any other similar document showing previous ownership are required.
- If there are any intervening changes in ownership, all the intermediate Bills of Sale must also be submitted. There must be continuity of title.
- Any Builder's Certificate or Bill of Sale that is executed outside Singapore must be notarised and legalised. If executor is not a local and documents are executed in Singapore, a letter of confirmation from the executor or notarisation of the documents is required.
- It is the vessel owners' responsibility to ensure that the Bill of Sale or Builder's Certificate is properly executed and conveys good title to them.
- A copy of the original document of title to ownership must be submitted together with a copy. The original document will be returned with an endorsement after completion of the registration formalities.

### **Tonnage certificate**

- A copy of the full-term tonnage certificate issued by the MPA's Shipping Division or one of the authorised classification societies is required.
  - All vessels must have their tonnage determined in accordance with the provisions of the Merchant Shipping (Tonnage) Regulations (which gives effect to the International Convention on Tonnage Measurement of Ships, 1969 (TM 69)).

### **Class certificate**

- A copy of the full-term classification certificate issued by one of the [authorised classification societies](#) may be accepted as evidence of seaworthiness.

### **Statutory certificate**

- Where applicable, the owner must produce copies of the vessel's valid statutory certificates such as:
  - Passenger Ship Safety, Cargo Ship Safety Construction,
  - Cargo Ship Safety Equipment, Cargo Ship Safety Radiotelegraphy/ Radiotelephony,
  - International Load Line/Local Freeboard,
  - International/Singapore Oil Pollution Prevention,
  - Noxious Liquid Substance,
  - Certificate of Fitness, and
  - Thirty Mile/Port Limit Passenger Ship Safety Certificates,
  - Document of Compliance
  - Safety Management Certificate
  - International Ship Security (ISS) Certificate
- These certificates must be issued by the MPA's Shipping Division or one of the authorised classification societies.

### **Evidence of cancellation of the former registry**

- Where the vessel has, at any point in time, been registered in another country, evidence of cancellation of the former registry is required.
  - The evidence may be in the form of a Deletion Certificate or a 'closed' transcript of the former registry.
  - The original document is required.
- A vessel that has been struck off the former registry for non-compliance with mandatory requirements will not be accepted for registration.

### **Certified Carving and Marking Note**

The Carving and Marking Note certified by a surveyor from the MPA's Shipping Division or one of the authorised classification societies must be returned to the Registry within 30 days of its issue.



**Acceptance of registration**

- Upon completion of all the formalities, the vessel will be transferred to the Permanent Register and the Certificate of Registry will be issued.
- No fee is charged for this transfer.
- Ship managers will be informed by fax to collect their Permanent Certificate of Registry in exchange for their Provisional Certificate of Registry.
- If they are unable to produce the Provisional Certificate upon collection, they may produce an official letter undertaking the return of the Provisional Certificate within the next 30 days.

## Taxation

### Tonnage tax

The annual tonnage tax is SGD0.20 per NT to the nearest tonne subject to a minimum of SGD100 (500 NT) and a maximum of SGD10,000 (50,000 NT).

The annual tonnage tax must be paid at the time of initial registration or re-registration and thereafter every year on or before the anniversary date on which the vessel was registered or re-registered, as the case may be.

No refund of the tax will be made if during the year for which the tax has been paid, the registry of the vessel is closed for any reason.

### Goods and Services Tax (GST) on the sale of ships

The sale of ships executed outside Singapore ought to be out of scope of the Singapore GST. There should not be any import duty.

The sale of ships executed in Singapore should be zero-rated for Singapore GST purposes. One can apply to the IRAS for a waiver for GST filing.





## 6. UK

## Individual Taxation

### Income Tax and Capital Gains Tax

The UK can offer a favourable tax regime for individuals moving to the UK. This is because both an individual's residence and domicile status determine the extent to which they are taxed in the UK (as opposed to just their residence position). Unlike most jurisdictions, worldwide income and gains will not immediately fall into the UK tax net once an individual has established UK tax residence, provided their domicile remains outside of the UK.

Domicile is a common law concept and is not defined in the tax statute. Broadly, it is the place where an individual's long term permanent home is situated and it is the country with which an individual has the closest personal, family, economic and social ties. Domicile is distinct from citizenship and residence, and is normally inherited from a parent (usually father) at birth. An individual can only have one domicile at any one time and to acquire a domicile of his / her choice an individual needs to be resident in that country and make a decision to remain there permanently or indefinitely.

A new statutory residence test (SRT) was introduced with effect from 6 April 2013 in order to assess an individual's tax residence status. Prior to the SRT, UK residence was determined by case law, practice and HMRC guidance, which often provided little clarity for an individual aiming to determine their residency position. The SRT should therefore give more certainty in this area.

The SRT is divided into three separate 'tests' that potentially apply to determine an individual's residence status for a tax year. The tests are:

- The automatic UK test – a test to conclude if an individual is conclusively resident in the UK.
- The automatic overseas test – a test to conclude if an individual will be treated as conclusively not resident in the UK.
- The sufficient ties test – this test looks at the number of connections an individual has with the UK and then assigns a number of days that individual can spend in the UK without being regarded as resident, on a sliding scale. The fewer connections one has with the UK, the more days one can spend in the UK without becoming UK resident

An individual is resident in the UK in a particular tax year if they do not meet the criteria for the automatic overseas test but they meet either the automatic UK test for that year or the sufficient ties test is met for that year. If neither of these tests is met for the year, the individual is not resident in the UK. If the automatic overseas test is met, the individual is automatically non-UK resident for that year. An individual should therefore consider the automatic overseas test first as if they meet that test, they will not need to consider any other tests.

Whilst the enactment of the SRT provides more clarity, determining an individual's residency status remains far from straight forward, with the tests outlined above being complex, and professional advice is often needed to determine an individual's residency status.

The UK has a progressive system of income taxation, with the basic rate being 20%, increasing to a higher rate of 40% for individuals with annual taxable income of between £32,011 - £150,000, and rising to an additional tax rate of 45% for those with annual taxable income of over £150,000. The income tax rates for dividends are 10% basic rate, 32.5% for higher rate taxpayers and 42.5% for additional rate taxpayers

Capital gains tax is charged at a flat rate of either 18% or 28% depending on the individual's overall level of income and gains. Unlike some European countries, the UK does not levy wealth tax or real property wealth tax (unless the property is held by 'non-natural person' which includes non-UK companies, collective investment schemes and certain partnerships with corporate members).

### Special Tax Regime

The UK has an attractive basis of taxation that applies to UK resident, non-domiciled individuals – the 'remittance basis'.

Despite recent tax increases all across the western nations, the UK tax system is still very attractive to non-UK domiciled individuals as even once they have established UK tax residence, their foreign income and gains can be taxed only to the extent they are remitted to the UK. This means UK tax exposure can be limited to UK income and UK capital gains only. Whilst the definition of a remittance is broad, with careful planning and structuring in advance, the tax impact of remitting can be significantly mitigated.

A new relief was recently introduced for remittance basis which allows for foreign income and capital gains to be remitted to the UK free from UK income and capital gains tax, provided the remitted funds are used to make a qualifying investment in a qualifying UK business (broadly unlisted trading companies but not investment companies).

The taxpayer must decide whether or not to elect for the remittance basis of taxation to apply each year by filing a UK tax return. Worldwide income and gains do not need to be disclosed on the tax return, only those amounts which are taxable (being UK income and gains and taxable remittances).

There is no charge made in respect of claiming the remittance basis (although it will mean the loss of the modest tax free personal allowance, which is not available to higher earners anyway, and the tax free capital gains allowance). Once an individual has been resident in the UK for 7 out of the previous 9 tax years then a remittance basis charge is levied - a payment to continue to benefit from the remittance basis of tax. This is £30,000 per annum and increases to £50,000 per annum after 12 years of UK residence.

### **Tax Administration**

The UK tax year runs from 6 April to 5 April. If a tax return is required it needs to be filed by 31 October following the end of the tax year if it is being submitted in hard copy (paper filing) or by 31 January following the end of the tax year if filing is done electronically (online filing).

The UK operates a system of Self Assessment for individuals and it is therefore an individual's responsibility to declare income and gains taxable in the UK to the UK tax authorities and pay any tax liability due by the deadline. Individuals who are chargeable to income tax or CGT for any tax year and who have not received a notice from HMRC to file a tax return should notify their chargeability to HMRC within 6 months from the end of the tax year. Any tax due is due by 31 January following the end of the tax year.



## Shipping Taxation

In addition to the standard corporation tax rules, the UK operates a separate tonnage tax regime which may be elected into by companies and groups which operate qualifying ships that are strategically and commercially managed in the UK.

Tonnage tax is an alternative method of calculating corporation tax on profits whereby companies which elect into the regime pay tax based on the net tonnage of the ships operated rather than by reference to the profits earned from such operations, resulting in a very low effective rate of tax.

To prevent non-shipping income benefiting from the tonnage tax regime, the regime is tightly “ring-fenced”, with profits from non-shipping activities computed by reference to normal rules. Arm’s length prices will be imputed for tax purposes where there are transactions across the ring-fence between connected parties and between the tonnage tax and non-tonnage tax activities of a company. The regime exempts shipping income but equally denies tax relief for all expenditure incurred in generating such income.

### Legislation

A UK shipping company may opt between the ‘ordinary’ corporation tax regime and the tonnage tax regime.

An election to enter the tonnage tax regime has a minimum duration of ten years, but may be extended. Tonnage tax companies pay tax based on the net tonnage of the ship operated rather than by reference to the profits earned from such operations.

In this way, the UK tonnage tax regime provides a low effective rate of tax on shipping profits of qualifying shipping companies. It offers shipping companies greater certainty, simplicity and commercial flexibility.

A UK shipping company has a limited period of 12 months in which to opt between the “ordinary” corporation tax regime and the tonnage tax regime, starting from the date on which it began to qualify per the criteria outlined in the next section. If such an election is not made within this time limit, the opportunity to enter tonnage tax is permanently

lost unless and until a new “window” is announced by H M Treasury.

Once an election has been made, this lasts for ten years and all qualifying vessels of the company or group must enter the regime together. Note that a “group” for tonnage tax purposes is defined solely in terms of common control, and as such overseas companies can be considered part of a UK tonnage tax group. Once in the regime a company or group can make a renewal election at any time, always for another period of ten years from the date of the renewal.

### **Definitions and criteria**

In order to qualify for tonnage tax, a company or group must meet all of the following criteria:

- They must be in the charge to UK corporation tax;
- They must operate qualifying ships; and
- The qualifying ships must be strategically and commercially managed in the UK.

### **Charge to UK corporation tax**

Broadly, companies are in the charge to UK corporation tax if they are considered tax resident in the UK, either by virtue of incorporation or by central management and control being exercised in the UK.

### **Qualifying ships**

A company is regarded as operating a ship if it is used by the company itself, time or voyage chartered out, or bareboat chartered out to another UK tonnage tax group company. Qualifying ships are those of at least 100 gross tons which are used for carriage by sea of passengers or cargo, marine assistance, or transport in connection with other services “of a kind necessarily provided at sea”.

The last of these items covers the transport element of a variety of vessel types including cable layers, diving support vessels, remote operated vehicle support, cable repair, firefighting vessels, and pipe laying vessels.

### **Strategic and commercial management**

There is no statutory definition of ‘strategic and commercial management’. However, according to guidance issued by HMRC, a common-sense interpretation will be adopted, taking into account the various strands of activity carried out in the UK, including:



*Strategic:*

- Location of headquarters, including senior management;
- Decision-making of the company board of directors;
- Decision-making of operational board; and
- UK stock exchange listing.

*Commercial:*

- Route planning;
- Taking bookings for cargo or passengers;
- Personnel management;
- Organising training;
- Technical management including making decisions on the repair and maintenance of vessels;
- Extent to which foreign offices / branches work under the direction of UK-based personnel; and
- Support facilities in the UK (e.g. training centre, terminals, etc).

Other factors taken into account include the extent to which the work is carried out in the UK compared to elsewhere, the residence of key staff (including directors) in the UK, and number of employees in the UK.

**An additional 75% test**

In order to be eligible to effectively elect into the regime, the net tonnage chartered in otherwise than on bareboat charter terms must not exceed 75% of total net tonnage of the qualifying ships in a tonnage tax company or group. Once in the regime, if 75% or more of the net tonnage of the fleet operated by a tonnage tax company or group is time chartered in for two or more consecutive periods, then the company or group is ejected from the tonnage tax regime thereafter, i.e. beginning with the third year in which the 75% test is breached.

The 75% figure is calculated as an average over the relevant two year period, and once ejected from the regime, the company or group is excluded from re-entry into tonnage tax. If a company or group breaches the 75% rule, then all of its activities will be excluded from tonnage tax and will be subject to standard UK corporation tax.

**Registration Requirements**

A company entering into the tonnage tax regime must meet a minimum training obligation, requiring companies to agree

and uphold training plans in respect of ships benefiting from the tonnage tax regime. There are penalties which can be levied in the case of non-compliance including, ultimately, the refusal of a renewal election made by a company which has been issued with a certificate of non-compliance in this respect.

The UK tonnage tax regime contains a flagging requirement which in some circumstances requires companies electing into the regime to have a certain proportion of its ships flagged in an EU member state. However, there is no specific requirement for vessels in the regime to be UK or EU flagged.

The effect of this is that where the overall proportion of vessels in the entire UK tonnage tax regime that are registered in EU member states is not decreasing over a three year period, the Treasury is allowed to designate a year as an “excepted year”. In this case, the flagging requirement is not applied on a company by company basis.

In non-excepted years companies and groups have to apply a test when they start to operate a vessel for the first time. If certain conditions are all met, the additional vessel is not a qualifying ship for tonnage tax purposes. However, the company can choose to re-register a ship in a member state or elect to register a substitute qualifying vessel in a member state, in order to change its eligibility.

The conditions to be met are as follows:

- Is the company or group operating the ship for the first time?
- Is the average proportion of the company’s total tonnage that is EU flagged less than 60% over a period beginning with the start of that financial year and ending on the day the company begins to operate the new ship?
- Is the average percentage of the company’s total tonnage which is registered in a member state in the period in condition 2 less than the percentage that was registered in a member state on the later of 17 January 2004 or the date at the end of the accounting period in which the company became a tonnage tax company?

- Is the ship that is operated for the first time registered on a register other than that of a member state?

From the above it follows that, dependent on facts, a tonnage tax company could actually have and add to an entirely non-EU flagged fleet. This is the case if the figure on 17 January 2004 was zero, in which case it cannot have declined. The last three years have been declared to be non-expected years, and therefore the detailed company by company rules are currently in operation.

## Taxation

### Computation of tonnage tax profits

A company's relevant shipping profits are replaced by tonnage tax profits, which are then subject to UK corporation tax at the standard rates. The standard corporation tax rates are as follows:

Year ended 31 March:	Main rate of corporation tax
2014	23%
2015	21%
2016 onwards	20%

Tonnage tax profits are calculated by multiplying a daily profit figure by the number of days in an accounting period that each qualifying ship is operated based on the following:

- For each 100 tons up to 1,000 tons - £0.60
- For each 100 tons between 1,000 tons and 10,000 tons - £0.45
- For each 100 tons between 10,000 tons and 25,000 tons - £0.30
- For each 100 tons in excess of 25,000 tons - £0.15

Interruptions to normal qualifying shipping activities due to maintenance and repair, or poor market conditions, cannot be deducted from the number of days upon which the tonnage based profit is calculated. A company operating only part of a seagoing vessel (i.e. part of a joint operation agreement) will be taxed only on the tonnage attributable to that company.

The net tonnage of the vessel will be rounded down to the order of 100 net tons (e.g. 2,774 NT = 2,700 NT), and as highlighted above, profits earned on activities directly

related to the qualifying operation of seagoing vessels also come within the scope of the tonnage based profit calculation.

To illustrate, a 30,000 ton vessel used every day would generate taxable profits of just over £36,000 a year, regardless of commercial profits generated.

### **Tax depreciation**

Upon entry into the tonnage tax regime, tax depreciation ceases to be available. There is, however, no claw back of tax depreciation previously claimed unlike in some other tonnage tax systems.

While vessels acquired after entry into the regime do not give rise to taxable profits on disposal, subsequent disposals of vessels owned before entry into tonnage tax can have two capital impacts.

- A normal chargeable gain can arise if sales proceeds are in excess of original tax base (cost) plus inflation indexation. The chargeable gain is apportioned according to the duration of ownership of the asset for which the company has been in the tonnage tax regime.
- A balancing charge (a tax depreciation “claw back”) may also arise, resulting in the proceeds from the disposal of assets held at the date of entry being deducted from the frozen tax pool (i.e. the tax value of the asset at the point of entry into the regime) and potentially giving rise to a balancing charge subject to normal UK corporation tax (if in excess of that frozen value). The claw back mechanism means that any balancing charge is reduced by 15% for each completed year within the regime, up to a maximum of 90%. After seven years in the regime, the balancing charge disappears in its entirety, thus after that date there is no possibility for any claw back of tax depreciation claimed on the vessel prior to entry into the regime.

Practically, since a tonnage tax company or group must elect into the tonnage tax regime within 12 months of qualifying, the amount of any tax depreciation that may have claimed prior to entry into the regime is likely to be small (with the exception of groups who entered the regime when it was first introduced).

To the extent that ships operated by companies which have elected into the tonnage tax regime are used for non-tonnage tax activities, tax depreciation will still be available in respect of the ship's total tax written down value but the allowances which can be claimed will be restricted to the proportion of the ship's use in respect of non-tonnage tax activities. No separate tax pool is created for this, but rather a notional tax pool based on the original values for the assets will be used to calculate what a notional total tax depreciation allowance would be. This situation is quite rare, and is normally restricted to construction vessels used on the UK Continental Shelf.

### **Exit from tonnage tax**

The tonnage tax regime applies from the start of the accounting period in which the election is made and runs for ten years from the date the election first has effect. An election can be made for a further ten years at any time.

Exits from the regime can be voluntary (including when an election expires, a withdrawal notice takes effect, a company ceases to be qualifying, or, in certain cases, where a merger takes place) or forced (because of tax avoidance, failing to meet the 75% test on charters in, or, in certain cases, where a merger takes place).

Where a qualifying company or group exit the tonnage tax regime, they are permanently excluded from re-electing into the regime. However, the exception to this is if HM Treasury provided for a further window of opportunity for entry into the regime, and a period of ten years had passed since a company or group previously exited the regime.

In addition, in certain circumstances, where a qualifying group had left the tonnage tax regime, it may be possible to re-elect into the tonnage tax regime if it is not substantially the same as when it was last in the tonnage tax regime. However, there is uncertainty about when a group could be considered 'substantially' different from when it was last in the regime.

Where an exit is for reasons relating wholly or mainly to tax, there is a specific "exit charge". Capital gains on tonnage tax assets disposed of during the six years preceding the exit from the tonnage tax regime are recomputed and subject to tax; in the instance of capital losses having been

incurred, no relief is available. If balancing charges arose on disposals in the six years preceding the exit from the regime that were mitigated by the claw back provisions described above, the total of the reductions also becomes taxable.



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### **About Deloitte Shipping & Ports Group**

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