

# Shipping & Maritime Law Bulletin



Issue VII February, 2010

---

Welcome to our *Special Edition* of the G&A Shipping & Maritime Law Bulletin

---

**1. New Legislation – The Merchant Shipping (Taxation and other Matters Relating to Shipping Organizations) (Amendment) Regulations 2010 - Legal Notice No 83 of 2010.**

Recent legislation, that comes into effect from 1<sup>st</sup> January, 2009, extends the scope of Malta's tax exemptions and other fiscal relief that is granted under Malta's tonnage tax regime to include the following scenarios:

1. A Maltese shipping organisation registering a vessel under another EU flag;
2. A Maltese shipping organisation owning, chartering, managing, administering or otherwise operating a vessel outside the EU; and
3. A Maltese shipping organization, carrying out ship management activities.

This new legislation is inspired by the EU Commission's Guidelines (2009/C132/06). The conditions that must be fulfilled for the tax relief to apply are explained below:

*1. Tax exemption to a Shipping Organization Registering a Vessel under another EU flag.*

This category of ships is referred to as a "Community Ship" in the new legislation. The law grants income tax exemptions and other fiscal relief to this category of ships when owned by a Maltese shipping organisation. To qualify as a Community Ship, the shipping organization has to pay in Malta twenty-five (25) per-centum of the annual tonnage tax that would be payable had the ship been flagged in Malta.

*2. Tax exemption to a Shipping Organization owning, chartering, managing, administering or otherwise operating a vessel outside the EU.*

Under the new legislation, income tax exemptions and other fiscal relief is granted to non-Community Ships owned by a Maltese shipping organisation subject to the fulfilment of a number of conditions:

(i) the strategic and commercial management of all ships is actually carried out by the shipping organisation from the Community; and

(ii) (a) at least 60 (sixty) per cent of the total tonnage of the shipping organisation is owned, managed or operated under a Community flag;  
or

(ii) (b) its total percentage of Community-flagged tonnage is, on the date when the organisation starts operating the ship, not less than the percentage of organisation's Community-flagged tonnage on either (aa) the date when the company was established or (bb) on the 17<sup>th</sup> January, 2004;  
or

(ii) (c) the shipping organisation's percentage of Community-flagged tonnage that it owns entirely, charters, manages, administers or otherwise operates has not decreased over a period of three years or for such shorter period during which the licensed shipping organization was in existence (if established for a period less than three years).

The Registrar-General is given the discretion to deem either of the last two above conditions as having been satisfied if he feels that there is a commitment to increase or at least to maintain the proportion of percentage under EU tonnage.

In all cases at least 25 (twenty-five) per cent of the annual tonnage tax would have to be paid in respect of such vessel.

### 3. Tax Exemption to Ship Managers

Tax exemptions and other fiscal relief is granted to ship managers that are established in the Community as a shipping organization and licensed in Malta. Ship managers that are responsible for technical management or for crew management or for both will qualify.

The income of a ship management company shall be exempt from tax, subject to the satisfaction of all the following conditions:

- (a) payment of 25 (twenty-five) per centum of the annual tonnage tax in respect of each vessel; and
- (b) at least two-thirds of the tonnage handled by the ship manager is managed from the Community; and
- (c) there is compliance with the following additional tonnage requirements that follow:

the tonnage of ships in respect of which the ship manager provides ship management activities must meet at least one of the following conditions:

- i. at least 60 per cent of that tonnage is registered under a Community flag; or
- ii. the percentage of that tonnage that is Community-flagged immediately after it begins to operate an additional ship is not less than that as of 11<sup>th</sup> June 2009 or one year after the ship manager began to operate, whichever is the later; or
- iii. the percentage of that tonnage that is Community-flagged has not decreased over a period of three years or for such lesser period, if the ship manager was not established for a period less than three years

The Maltese Registrar-General has discretion to deem the last two conditions as having been satisfied if he feels that the commitment exists to increase or at least to maintain the share of Community tonnage, in respect of which ship management activities were being provided by it on 11<sup>th</sup> June 2009 or one year from when the ship manager began to operate.

#### *Miscellaneous Issues:*

The recent legislation also contains further improvements to the existing law, restating and re-confirming the practice and interpretation in the industry, eliminating any ambiguity that may have existed under previous legislation, as follows:

- (1) In the first place, it clearly states that no tax shall be suffered on the profits, income or other gains made by a Maltese shipping organisation for the sale, disposal or transfer of a vessel or

from the disposal of any rights to acquire a ship, which when delivered or completed would qualify as a tonnage tax ship.

- (2) That there is no tax on dividends paid to the shareholders of Maltese organizations insofar as they relate to profits derived from shipping activities. In addition, if the shareholders in receipt of a dividend is a company, any dividends flowing upstream (to the extent such dividends are paid out of profits derived from shipping activities) no further tax is suffered.
- (3) The amendments also introduce a new form of tax declaration, which can be completed by a shipping organization, in lieu of a formal tax return. This is understandable in view of the increased benefits now available to a shipping organization.

## 2. *Queries And Suggestions*

We trust that this issue of our *Shipping & Maritime Law Update* was of interest to our readers, however, should you have any queries or suggestions to make, please feel free to contact us. We will be pleased to hear from you. Further should you wish to stop receiving the G&A *Shipping & Maritime Law Update* please let us know immediately.

## *Contributors*

The following persons contributed to this issue:

- Dr. Jotham Scerri Diacono
- Dr. Karl Grech Orr
- Mr. Michael Sillato

### IMPORTANT NOTICE

**DISCLAIMER:** THIS UPDATE IS NOT INTENDED TO IMPART ADVICE; READERS ARE ADVISED TO SEEK CONFIRMATION OF STATEMENTS MADE HEREIN BEFORE ACTING UPON THEM. SPECIALIST ADVICE SHOULD ALWAYS BE SOUGHT ON SPECIFIC ISSUES.

© Ganado & Associates, Advocates. All rights reserved 2010.