

L.N. 224 of 2004**MERCHANT SHIPPING ACT
(CAP. 234)****Merchant Shipping (Taxation And Other Matters Relating To
Shipping Organisations) Regulations, 2004**

IN exercise of the powers conferred by articles 84Z(9) and 374 of the Merchant Shipping Act, the Minister for Competitiveness and Communications with the concurrence of the Prime Minister and Minister of Finance has made the following regulations:—

1. (1) These regulations may be cited as the Merchant Shipping (Taxation And Other Matters Relating To Shipping Organisations) Regulations, 2004.

Title,
commencement and
scope.

(2) These regulations shall enter into force on the 1st May, 2004:

Provided that for the purposes of licensed shipping organisations carrying out activities other than the ownership or chartering of a tonnage tax ship, these regulations shall enter into force on such date as the Minister responsible for shipping may prescribe.

(3) The purpose of these regulations is to provide for the taxation and certain other matters relating to shipping organisations.

2. By virtue of subarticle (9) of article 84Z of the Act, the Act shall be amended as follows:—

Amendment to the
Merchant Shipping
Act.
Cap. 234.

(a) for article 85 there shall be substituted the following: -

“Interpretation. **85.** (1) For the purposes of these Regulations and unless the context otherwise requires -

“dividend” has the same meaning as is assigned to it by article 2 of the Income Tax Act;

Cap. 123.

“tonnage tax ship” means either a ship declared to be a tonnage tax ship by the Minister in terms of article 85A of this Act, or a ship registered under Part II or IIA of the Act of not less than 1000 net tonnage which is owned entirely, chartered, managed, administered or operated by a shipping organisation;

“operation” in respect of a tonnage tax ship includes the operation of such ship in any shipping activities, whether under charter or under any other commercial arrangement;

“resident in Malta” means in the case of a body of persons, any such body as is formed and registered in Malta, or which has a place of business in Malta or which is controlled, directly or indirectly by a person or persons resident in Malta;

“shipping activities” means 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 or as otherwise may be prescribed;

“shipping organisation” shall have the same meaning ascribed to such term in article 84Z of this Act.

(2) A shipping organisation qualified to own a Maltese ship wishing to own or operate tonnage tax ships shall register with the Minister responsible for finance by submitting to him in writing the following particulars:

- (a) the name of the organisation;
- (b) the address of the registered office of the organisation;
- (c) the name and tonnage of the ship which it wishes to own or operate as a tonnage tax ship;

and shall notify the Minister in writing from time to time of any alterations in such particulars.”;

(b) for article 85A there shall be substituted the following:

“Minister
may declare
a ship to be a
tonnage tax
ship.

85A. The Minister may with the concurrence of the Minister responsible for finance and subject to such conditions as he may deem appropriate, declare to be a tonnage tax ship, a ship of any net tonnage, irrespective of operations or trade in which engaged, which but for such tonnage, operations or trade would otherwise satisfy all other requirements of a tonnage tax ship under subarticle (1) of article 85 of this Act.”;

(c) articles 86 and the Fifth Schedule relative thereto shall be deleted;

(d) articles 87 to 88A shall be deleted.

3. (1) Notwithstanding anything contained in the Income Tax Act, or in any enactment replacing that Act, if the condition contained in subregulation (3) hereof is complied with, and provided that all relevant registration fees and tonnage taxes are duly paid as may have been prescribed by regulations made from time to time, including an amount paid to the registrar equal to the annual tonnage tax for that year in addition to that paid by the owner:

Inapplicability of
the Income Tax
Act, Cap. 123.

(a) no further tax under that Act shall be charged or payable on the income, to the extent that such income is derived from shipping activities, of a licensed shipping organisation, or

(b) no further tax under that Act shall be charged or payable on any gain arising on 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:

Provided that the activities and objects of the organisation, where applicable, are restricted to such activities and related activities.

(2) Notwithstanding anything contained in the Income Tax Act or in any enactment replacing that Act, no tax under that Act shall be payable by any person on interest or other income payable to him in relation to any financing of the operations referred to in article 84Z(1) of the Act and any regulations issued thereunder, of licensed shipping organisations, or the financing of any tonnage tax ship:

Provided that the application of such exemption to persons resident in Malta shall be restricted to such persons who are licensed banks, credit or financial institutions under the provisions of applicable law.

(3) The condition referred to in paragraph (1) hereof is that in respect of the year in respect of which exemption from tax is applied, separate accounts were kept clearly distinguishing the payments and receipts by the shipping organisation concerned in respect of shipping activities, including the ownership, operation, administration or management of a tonnage tax ship, and payments and receipts in respect of any other business.

Cap. 281.
Cap. 12.

Cap. 372.

(4) In the case of a licensed shipping organisation, which has no income whatsoever, or which has no income other than income from shipping activities, a declaration may be submitted to the Commissioner of Inland Revenue in the form set out in the Schedule to these regulations by a person holding the warrant of a certified public accountant and auditor under the Accountancy Profession Act, or by a person holding the warrant of advocate in terms of the Code of Organisation and Civil Procedure in lieu of a tax return required in terms of the Income Tax Management Act, and the relative provisions of the Income Tax Management Act shall, for the purpose of these regulations, be construed accordingly:

Provided that where such person has income which is not income from shipping activities, the provisions of this paragraph shall not apply:

Provided further that the provisions of this paragraph shall, in regard to licensed shipping organisations, apply to declarations submitted before the lapse of five years from the publication of these regulations in the Gazette, or as the Minister may prescribe.

Inapplicability of
laws.
Cap. 233.

4. (1) The provisions of the Exchange Control Act, or any other enactment replacing that Act, shall not apply to any licensed shipping organisation, in relation to any transaction connected with the ownership, operation, administration, management, purchase or financing of a tonnage tax ship, or any other shipping activity, or transaction ancillary thereto.

Cap. 318.

(2) Persons not resident in Malta who are officers or employees of a licensed shipping organisation, and the organisation in respect of such officers and employees, shall be entitled to be exempt from the provisions of the Social Security Act, and of any enactment replacing that law:

Provided that this provision shall apply only in respect of transactions, operations, things and persons that are relevant and necessary to the purposes for which a licensed shipping organisation is constituted, or to its management or administration.

5. Notwithstanding anything contained in the Duty on Documents and Transfers Act, or in any enactment replacing that Act, or in any regulations made thereunder, no duty chargeable in accordance with that Act shall be payable in respect of any instrument connected with or involving:

Inapplicability of the Duty on Documents and Transfers Act. Cap. 364.

(a) the registration of a tonnage tax ship under Part II and Part IIA of the Act and other registrations relating to a tonnage tax ship made under the said parts; or

(b) 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 or other company as above; or

(c) the sale or other transfer of a tonnage tax ship or any share thereof; or

(d) 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; or

(e) the assignment of any rights and interests, or the assumption of obligations in respect of any ship or share thereof.

6. The concessions, exemptions, privileges and other benefits granted or allowed by these regulations are so granted at the option of the licensed shipping organisation benefiting therefrom and any such licensed shipping organisation may, by notice in writing to the Registrar-General, opt not to be entitled to any such concession, privilege or benefit, which shall be thereby irrevocably waived.

Concessions and other benefits at the options of licensed shipping organisation.

SCHEDULE
Regulation 4(4)

Declaration In Lieu of Tax Return In Respect of a Licensed Shipping Organisation

Name of Licensed Shipping Organisation

Name of Ship

Official Number

Declaration made by

Year of assessment

⁽¹⁾ I the undersigned do solemnly declare that I have ascertained to the best of my ability that the above mentioned licensed shipping organisation is the owner/operator/manager/administrator ⁽¹⁾ of the above mentioned ship which is a tonnage tax ship under the provisions of the Merchant Shipping (Taxation And Other Matters Relating To Shipping Organisations) Regulations, 2004, and that the objects of the licensed shipping organisation limit its operations to shipping activities as listed in article 84Z (1) of the Merchant Shipping Act, and that the licensed shipping organisation qualifies for the concessions granted by the said regulations for the period commencing _____ and ending _____ and that the relative registration fees and tonnage taxes as applicable for this period have been paid.

⁽¹⁾⁽²⁾ I the undersigned solemnly declare that the above mentioned licensed shipping organisation is not yet/no longer ⁽¹⁾ an owner/operator/manager/administrator ⁽¹⁾ of a tonnage tax ship pursuant to the Merchant Shipping (Taxation And Other Matters Relating To Shipping Organisations) Regulations, 2004 but the objects of the licensed shipping organisation limit its operations to the shipping activities mentioned in article 84Z(1) of the Merchant Shipping Act, and the licensed shipping organisation qualifies for the concessions granted by the said regulations for the period commencing _____ and ending _____ and that the relative registration fees and tonnage taxes for this period have been paid.

⁽¹⁾ I also declare that I have ascertained to the best of my ability that the licensed shipping organisation has not engaged in any business other than the ownership and, or, operation and, or, management and, or, administration of tonnage tax ships and that during any period not covered by the above mentioned dates the licensed shipping organisation has not traded and has not had any income which would not be exempted under the said regulations.

⁽¹⁾ I also declare that the licensed shipping organisation has other objects which are not shipping activities as contemplated by article 84Z(1) of the Merchant Shipping Act, apart from the shipping activities so contemplated. I understand that the concessions applicable under the Act and the regulations do not apply in this case and that a full tax return will be submitted in relation to income which is both income arising from shipping activities and income which is not income arising from shipping activities.

I finally declare that to the best of my knowledge the licensed shipping organisation does not stand to lose any of the concessions granted nor has it waived any of the said concessions under the regulations and the Act.

I make this declaration in full knowledge of the consequence of false declarations under Maltese law.

Signature	Identity Document No	Status	Date
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⁽¹⁾ Delete as necessary.

⁽²⁾ Where the licensed shipping organisation does not yet or, no longer owns, operates, manages or administers a ship, a statement to that effect shall be made.

