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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,977, 13 ta' April, 2018
Taqsima B

L.N. 128 of 2018

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Taxation And Other Matters Relating To Shipping Organisations) Regulations, 2018

IN exercise of the powers conferred by articles 84Z(9) and 374 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects, with the concurrence of the Minister of Finance, has made the following regulations:

Citation, commencement and scope.

1. (1) The title of these regulations is the Merchant Shipping (Taxation And Other Matters Relating to Shipping Organisations) Regulations, 2018.

(2) These regulations shall come into force on the 1st May, 2018.

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

Deletes articles 85 and 85A of the Act.

2. By virtue of sub-article (9) of article 84Z of the Act, articles 85 and 85A of the Act shall cease to have effect.

Interpretation.

3. (1) For the purposes of these regulations and unless the context otherwise requires –

"Act" means the Merchant Shipping Act; Cap. 234

"dividend" has the same meaning as is assigned to it by article 2 of the Income Tax Act; Cap. 123

"EU Maritime State Aid Guidelines" refers to the Community Guidelines on State Aid to Maritime Transport as may be in force from time to time;

"genuine shipping organisation" means a shipping organisation which, has assumed risks and responsibilities related to the operation of a tonnage tax ship or to the carrying out of shipping activities;

"group" shall refer to:

(a) two or more shipping organisations which are owned and controlled, directly or indirectly, as to more than fifty per

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cent by the same persons; or

(b) two or more shipping organisations which are controlled directly or indirectly by the same parent;

"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 and "operator" shall be construed accordingly:

Provided that, for the purposes of these regulations, a shipping organisation shall not qualify as the operator of a tonnage tax ship where the ship has been chartered out by the said shipping organisation on bareboat charter terms unless:

(a) the ship is bareboat chartered to a shipping organisation forming part of the same group as the aforementioned shipping organisation; or

(b) the shipping organisation is a genuine shipping organisation and demonstrates, to the satisfaction of the Registrar-General, that the ship was bareboat chartered due to short-term over-capacity and the term of the charter does not exceed three (3) years.

Provided that, for the purposes of paragraph (b) above, the percentage of net tonnage operated by the group on a bareboat charter basis is below fifty per cent (50%) of the net tonnage operated by the group.

Provided further that, for the purposes of paragraph (b) above, the term ‘short-term over-capacity’ shall refer solely to ships acquired (bought or chartered) by the shipping organisation for the purposes of carrying out its own shipping activities and shall not include any ships specifically acquired (bought or chartered) for the purposes of chartering out on a bareboat basis,

"parent" shall refer to:

(a) a ‘parent organisation’ as defined hereunder; or

(b) an undertaking that meets all of the following characteristics:

- power over the said shipping organisation, based on the current ability to direct the relevant activities which significantly affect returns;

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- exposure, or right, to variable returns from its involvement with the said shipping organisation; and

- the ability to use its power over the said shipping organisation to affect the amount of the person's returns.

"parent organisation" shall refer to an organisation which -

(a) has a majority of the members' voting rights in another shipping organisation (a subsidiary organisation); or

(b) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted with the administration of another shipping organisation (a subsidiary organisation) and is at the same time a member of that shipping organisation; or

(c) has the right to exercise a dominant influence on matters relating to the strategic and/or commercial management of a shipping organisation (a subsidiary organisation) of which it is a member, pursuant to a contract entered into with that shipping organisation or to a provision in that shipping organisation's memorandum or articles of association; or

(d) is a member of a shipping organisation and controls alone pursuant to an agreement with other members of that shipping organisation (a subsidiary organisation), a majority of members' voting rights in that shipping organisation; or

(e) holds a participating interest in another shipping organisation and actually exercises a dominant influence over the shipping organisation (a subsidiary organisation) or manages the subsidiary organisation on a unified basis together with it;

"Registrar-General" shall have the same meaning as assigned to it in the Act;

"ship" shall have the same meaning as is assigned to it in article 2(1) of the Act and shall, to the extent that they are involved in the international carriage of goods or passengers by sea in accordance with the EU Maritime State Aid Guidelines and provided that they satisfy the criteria set out in these regulations, also include the vessels listed hereunder:

(a) cable laying ships;

(b) pipe laying ships;

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(c) crane vessels;

(d) research vessels; and

(e) multi-purpose, break-bulk and other types of support vessels:

Provided that the following ships are excluded for the purposes of these regulations:

(a) fishing and fish factory ships;

(b) private yachts and ships used primarily for sport or recreation;

(c) fixed offshore installations and floating storage units;

(d) non-ocean going tug boats and dredgers;

(e) ships whose main purpose is to provide goods or services normally provided on land;

(f) stationary ships employed for hotel and or catering operations (floating hotels or restaurants);

(g) ships employed mainly as gambling and/or casinos (floating or cruising casinos);

(h) non-propelled barges;

(i) any other description of ship which may be determined, from time to time, by the Registrar-General, as not being engaged in the international carriage of goods or passengers by sea.

"shipping activities" means:

(a) the international carriage of goods or passengers by sea in terms of the EU Maritime State Aid Guidelines and such other activities that have been approved or considered as eligible for tonnage tax purposes by the European Commission;

(b) such activities as are integral or directly linked to the business of operating tonnage tax ships, when carried out in conjunction with activities described in paragraph (a) above;

(c) ancillary activities qualifying in terms of regulation 7 hereof, when carried out in conjunction with activities described

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in paragraph (a) above;

"shipping organisation" shall have the same meaning assigned to it in article 84Z(1) of the Act:

Provided that for the purposes of these regulations, such shipping organisation shall be an organisation duly organised and existing under the laws of a Union State;

"ship manager" means a shipping organisation which is established in the Union that:

(a) has assumed responsibility for either or both of the technical or crew management of a ship or ships referred to in regulation 6(1)(b) hereof; and

(b) complies with international standards and fulfils requirements established under the law of the European Union; and

(c) satisfies such conditions as may be laid down by the Registrar-General; and

(d) specifically includes such activities among the objects contained in its Memorandum of Association; and

(e) registers with the Registrar-General by submitting to him in writing the following particulars:

(i) the name of the organisation and a unique identification number;

(ii) the address of the registered office of the organisation;

(iii) the name, unique identification number and tonnage of the ship or ships for which it has assumed responsibility as set out above;

(iv) any other documentation that may be required for the purposes of satisfying compliance with the respective requirements of these regulations:

Provided that the particular shipping organisation shall notify the Registrar-General in writing every time any alterations in such particulars occurs;

"ship management activities" means those activities carried out

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by a ship manager and consisting in, but not limited to, the provision of competent personnel to supervise the management and general efficiency of a ship referred to in regulation 6(1)(b) hereof, and/or the provision of other technical management services usually performed by the ship manager as defined by the Baltic and International Maritime Council (BIMCO) Standard Ship Management Agreement, in its up-to-date version;

"tonnage tax ship" means a ship that is declared to be a tonnage tax ship by the Minister in terms of regulation 4 hereof;

"Union State" means a Member State of the European Union (including, for the avoidance of doubt, Malta) or of the European Economic Area;

"Union ship" means a ship registered under the laws of a Union State and the terms "Union flag" and "Union-flagged" shall refer to a ship registered in any such State:

Provided that in the case of a ship registered in any Union State other than Malta, the ship shall only qualify as a 'Union ship' for the purpose of these regulations, if an amount equivalent to the Malta tonnage tax is paid to the Registrar-General;

Provided further that relief shall be granted for any tonnage tax imposed under the laws of such Union State in respect of the said tonnage tax ship operated by the said shipping organisation subject to an amount of minimum tonnage tax equivalent to twenty-five per cent (25%) of the annual tonnage tax that would have been payable had the ship been registered under Part II or IIA of the Act.

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

4. (1) The Minister shall, with the concurrence of the Minister responsible for finance, and subject to such conditions deemed appropriate in line with these regulations, declare to be a tonnage tax ship, a ship of any net tonnage, which is engaged in shipping activities.

(2) The Minister shall declare a ship not being a Union ship that is owned, chartered, managed, administered or otherwise operated by a shipping organisation to be a tonnage tax ship where the strategic and commercial management of all ships owned, managed or operated by the shipping organisation is actually carried out from the Union and it is proved to the satisfaction of the Minister that:

(a) the shipping organisation owns, manages or operates at least sixty per cent (60%) of its total tonnage under a Union flag; or

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(b) a percentage of the tonnage owned, managed or operated by the shipping organisation is Union-flagged and that the percentage of Union-flagged tonnage that is owned, managed, administered or otherwise operated by shipping organisations established in Malta has not decreased on average over a period of three years:

Provided that, when a shipping organisation submits an application in terms of sub-regulation (4), the Registrar-General may, accept applications where the said applicable threshold is not less than twenty-five per cent (25%):

Provided further that an amount equivalent to the annual tonnage tax calculated by reference to rates stipulated in the First Schedule to the Act is paid to the Registrar-General by the respective shipping organisation in respect of such tonnage tax ship, with relief being granted for any tonnage tax imposed under the laws of a territory outside Malta relative to the said tonnage tax ship operated by the said shipping organisation, subject to an amount of minimum tonnage tax equivalent to twenty-five per cent (25%) of the annual tonnage tax that would have been payable had the said tonnage tax ship been registered under Part II or IIA of the Act.

(3) For the purposes of sub-regulation (2), the percentage of a shipping organisation's total tonnage which is Union-flagged shall be determined by expressing as a percentage the sum obtained by dividing the aggregate net tonnage of Union-flagged tonnage tax ships owned entirely, chartered, managed, administered or otherwise operated by the shipping organisation at a particular date by the aggregate net tonnage of all ships that are owned entirely, chartered, managed, administered or otherwise operated by the shipping organisation at such date.

(4) For a declaration pursuant to sub-regulation (1) or sub-regulation (2), the shipping organisation wishing to own, manage or operate a tonnage tax ship shall apply to the Registrar-General in the manner as he may determine, from time to time.

(5) The Registrar-General shall, when and as often as he deems necessary, give notice in writing to any person to furnish him, within a reasonable time, information as may be deemed fit, for the purposes of these regulations. Without prejudice to the generality of the foregoing, such information may also include the requirement to submit on an annual basis, such information relative to the vessels operated by the shipping organisation as may be deemed necessary in order to ensure that the particular vessels qualify as tonnage tax ships.

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Inapplicability of the Income Tax Act. Cap. 123.

5. (1) Notwithstanding anything contained in the Income Tax Act, or in any enactment replacing that Act, if the condition contained in sub-regulation (3) hereof is complied with, and provided that all relevant tonnage taxes are duly paid by the shipping organisation as may be prescribed by regulations under the Act, including, in the case of a ship operated under charter as referred to in the relevant provisions of the Act, an amount paid to the Registrar by the shipping organisation equal to the annual tonnage tax for that year in addition to that paid by the owner:

Cap. 123.

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

Cap. 123.

(b) no further tax under the Income Tax Act shall be charged or payable on any income, profits or gains of a shipping organisation derived from the sale or other transfer of a tonnage tax ship which had been acquired and sold whilst under the tonnage tax system or from the disposal of any rights to acquire a ship which when delivered or completed would qualify as a tonnage tax ship:

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

(2) The distribution of profits derived from shipping activities or from other transactions referred to in sub-regulation (1) shall be exempt from tax under the Income Tax Act in the hands of the shareholders:

Cap. 123.

Provided that where the person in receipt of such dividend is itself a company (hereinafter referred to as 'the second company'), any dividend paid to the members of the second company shall, to the extent that such dividend is paid out of profits derived from shipping activities or from other transactions referred to in sub-regulation (1), not be charged to tax under that Act and where a member of the second company is again a company, the provisions of this proviso shall, *mutatis mutandis,* apply as though references to the shipping organisation were references to the second company and as though references therein to the second company were references to that member, and the principle set out in this proviso shall continue to be applied for as long as the profits derived from shipping activities are distributed by way of dividends.

(3) The condition referred to in sub-regulation (1)is that for the year in respect of which exemption from tax is applied, separate

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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.

Furthermore, for the avoidance of doubt, it is hereby clarified that in determining the chargeable income of any person, the provisions of the Income Tax Act shall, *mutatis mutandis,* apply to any income not falling within paragraph (a) of sub-article (1) including, but not limited to, that all outgoings and expenses incurred by such person during the year preceding the year of assessment shall be deductable only to the extent to which such outgoings and expenses were wholly and exclusively incurred in the production of the income in terms of article 14 of that Act.

(4) In the case of a shipping organisation whose activities fall under these regulations, which has no income whatsoever, or which has no income other than income from shipping activities, a return shall be submitted to the Commissioner for Revenue and the Registrar-General in such form set out in the relevant Merchant Shipping Notice, 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 Organization 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:

Cap. 281.
Cap.12.
Cap.372.

Provided that where such person has income which is not income from shipping activities, the provisions of this sub-regulation shall not apply.

6. (1) Any income derived by a ship manager from ship management activities shall be deemed to be income derived from shipping activities and shall be exempt from tax under the Income Tax Act provided that:

Ship management activities.

(a) the condition contained in sub-regulation 5(3) is complied with; and

(b) the ship manager has paid to the Registrar-General an annual tonnage tax to be determined as follows:

(i) in respect of any tonnage tax ship registered under Part II or IIA of the Act, an amount equivalent to twenty-five per cent (25%) of the annual tonnage tax payable in respect of the particular ship on the basis of the

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rates stipulated in the First Schedule to the Act; and

(ii) in respect of any other ship not referred to in paragraph (i) above, an amount equivalent to twenty-five per cent (25%) of the annual tonnage tax calculated by reference to the rates stipulated in the First Schedule to the Act which would have been payable had the ship been registered under Part II or IIA of the Act;

(c) at least two-thirds of the tonnage of the ships to which the ship manager provides ship management activities is managed from the territory of the Union;

(d) the tonnage in respect of which the ship manager provides ship management activities satisfies the flag-link requirement as set out in regulation 4(2) above; and

(e) for the purposes of paragraph (d), the percentage of a ship manager's total tonnage which is Union-flagged shall be determined by expressing as a percentage the sum obtained by dividing the aggregate net tonnage of Union-flagged ships in respect of which the ship manager provides the ship management activities as at a particular date by the aggregate net tonnage of all ships in respect of which the ship manager provides the ship management activities at such date.

(2) The provisions of sub-regulations 5(2) and 5(4) hereof shall, *mutatis mutandis,* apply to a ship manager providing ship management activities.

The provisions of the Act relating to the manner of payment and collection of fees and to penalties imposed in case of default shall also apply *mutatis mutandis* in respect of the annual tonnage tax payable by ship managers providing ship management activities in terms of these regulations.

Qualifying ancillary activities.

7. (1) The provision of ancillary activities linked to maritime transport, may benefit under these regulations, as provided in the Schedule to these regulations:

Provided that revenues generated from such activities is up to fifty per cent (50%) of the gross revenues generated from shipping activities, which threshold shall be applied on a ship-by-ship basis.

(2) Notwithstanding the provisions of sub-regulation (1), any profits generated from, the following ancillary activities may also benefit under these regulations -

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(a) the embarkation and disembarkation of passengers on a tonnage tax ship operated by the shipping organisation;

(b) sales and facilities which are normally provided to customers by seagoing passenger ships, including -

(i) the provision of food or drink for immediate consumption,

(ii) entertainment for which no additional fee is charged, but not betting or gambling;

(c) activities carried on by the shipping organisation in relation to a tonnage tax ship operated by another qualifying shipping organisation in the same group, which would be shipping activities of the first-mentioned shipping organisation if carried on in relation to a tonnage tax ship operated by that shipping organisation;

(d) such other activities that in substance are similar in nature to those listed above or have been approved or considered as eligible for tonnage tax purposes by the European Commission.

(3) Revenues derived from the sale of goods or services on board ships not customarily provided to passengers may not benefit in terms of these regulations.

Qualifying towage and dredging activities.

8. (1) The provision of ocean towage services may benefit from the provisions of these regulations provided that:

(a) the tug is a Union ship;

(b) more than fifty per cent (50%) of the towage activity effectively carried out by the tug constitutes maritime transport. In this respect, towage activities which are carried out *inter alia* in ports, or which consist in assisting a self-propelled vessel to reach port do not constitute maritime transport for the purposes of this provision:

Provided further that any waiting time shall be proportionally assimilated to that part of total activity effectively carried out by a tug which constitutes maritime transport.

(2) The provision of dredging services may benefit from the provisions of these regulations provided that:

(a) the ship providing such services is self propelled and

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is a Union ship;

(b) the ship spends at least fifty per cent (50%) of its yearly operational time in maritime transport which includes time spent for travelling to the dredging site located at sea and for carriage of the dredged goods to the place of discharge; and

(c) sub-regulation 5(1) above shall only apply in respect of income derived from maritime transport services.

Inapplicability of Cap. 233.

9. The provisions of the External Transactions Act, or any other enactment replacing that Act, shall not apply to any 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.

Concessions and other benefits at the options of ~~l~~icensed shipping organisation.

10. The concessions, exemptions, privileges and other benefits granted or allowed by these regulations are so granted at the option of the shipping organisation benefiting therefrom and any such 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.

Benefits not to exceed set parameters.

11. For the avoidance of doubt it is hereby clarified that no person shall receive any benefit from these regulations that exceeds those allowed in terms of the Community Guidelines on State Aid to maritime transport, including but not limited to Section 11 of the said Guidelines.

Repeal. S.L. 243.43

12. The Merchant Shipping (Taxation and other matters relating to Shipping Organisations) Regulations are hereby repealed.

SCHEDULE
(Regulation 7)

Ancillary Activities

(1) Ancillary activities for the purposes of regulation 7(1), shall be determined in accordance with the following paragraphs.

(2) Ancillary activities shall mean activities related to a tonnage tax ship as provided for in paragraphs (3) to (4) of this Schedule, other than commercial activities which form part of the operation of a port carried on for profit, that

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have a substantial connection with the shipping organisation's shipping activities or, where the licensed shipping organisation is a member of a group, the shipping activities of another qualifying licensed shipping organisation in that group.

(3) The following ancillary activities benefit, provided that the gross revenue from those activities is less than fifty per cent (50%) compared to the gross revenue from the licensed shipping organisation's shipping activities, which threshold shall be applied on a ship-by-ship basis:

(a) the carriage of passengers or cargo otherwise than on board a tonnage tax ship operated by the licensed shipping organisation, where -

(i) there is a single contract with the customer for a journey which includes a voyage on the tonnage tax ship, and

(ii) the transport for the remainder of the journey is purchased or obtained by the licensed shipping organisation by provision which would have been made as between independent enterprises;

(b) sales and facilities which are normally provided to customers by seagoing passenger ships, including -

(i) the sale of alcoholic beverages, perfume and tobacco, but not luxury goods,

(ii) the exchange of amounts of different currencies for personal expenditure;

(iii) health and beauty and spa and wellness services

(c) administrative and insurance services which are directly related to the carriage of passengers or cargo, including under a contract described in paragraph (a)(i);

(d) the provision of holidays, sold to the customer under a single contract, where -

(i) part of the holiday is a voyage on a tonnage tax ship operated by the licensed shipping organisation, and the remaining part is land-based ('the land-based part'),

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(ii) the land-based part is purchased or obtained by the licensed shipping organisation by arm's length provision, and

(iii) the cost to the licensed shipping organisation of the land-based part in accordance with sub-paragraph (ii) is less than one half of the price paid by the customer under the single contract;

(e) the loading and unloading of cargo carried on a tonnage tax ship operated by the licensed shipping organisation, and the provision by the licensed shipping organisation of facilities used exclusively for those purposes;

(f) the consolidation or breaking of cargo carried on a tonnage tax ship operated by the licensed shipping organisation, immediately before or after the voyage, where the activity is not haulage-related;

(g) the temporary placement of cargo carried on a tonnage tax ship operated by the licensed shipping organisation, on or at the dockside, where the activity is not part of a long-term storage operation;

(h) the rental or provision to customers of containers for goods to be carried on a tonnage tax ship operated by the licensed shipping organisation;

(i) the provision of excursions for passengers of a tonnage tax ship operated by the licensed shipping organisation, where any cabin for the passenger remains available for exclusive use;

(j) advertising and marketing, if these correspond to the sale of advertising space on board tonnage tax ships.

(4) The following ancillary activities benefit at the permitted levels as follows -

(i) betting or gambling facilities normally offered to customers by seagoing passenger ships for entertainment, and

(ii) the sale to passengers on seagoing ships of luxury goods of a kind normally offered to such passengers,

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Provided that the turnover from such activities amounts to less than twenty-five per cent (25%) of the turnover from the licensed shipping organisation's shipping activities referred to in paragraph 3 of this Schedule.

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Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.72