

Item 1. European Commission Approves Malta Tonnage Tax Rules

First, a very positive aspect emerging from such decision is that Malta will not have to recover amounts granted in breach of the above mentioned points with the sole exception of:

- i) capital gains arising from the sale of shares in shipping companies applied to Maltese residents; and
- ii) duty on documents and transfers for the transfer of shares in shipping organisations for Maltese residents.

Due to the reduced amount of exemptions granted in this respect the impact is expected to be minimal.

The EC's decisions and measures therein agreed are valid for ten years and thus represent an important stepping stone for the Maltese shipping cluster. Changes will be implemented by Maltese Authorities within the coming weeks (not later than 19th March 2018). We expect that the new measures may pose new challenges to all those vessels whose main profits arise from the provision of ancillary services (i.e. cruise liners), tug boats used predominantly within port areas and entities involved in financial lease of vessels.

Nevertheless the Maltese legislative frameworks offers valid alternative solutions to those ship-owners not able to avail from the benefits of the tonnage tax rules such as benefits arising from [Securitisation in Malta](#) or tools provided by the recent introduction of the [Notional Interest Deduction](#).

As anticipated in the editorial, our main focus will be the recent Commission decision with respect to the tonnage tax rules. The recommendations will be implemented by Maltese Authorities in the coming weeks and a further update will follow soon after, but meanwhile the EC declared Maltese Tonnage Tax Rules (the "Rules") compliant with State Aid Regulations, subject to the implementation of a number of conditions as follows.

New Rules

1. Ships excluded from Tonnage Tax regime

The current regime benefits mainly those vessel engaged in the international carriage of persons and goods and in line with same, the first commitment consists of clearly indicating vessels which will be excluded from the application of the Rules:

- Fishing and fish factory ships;
- Private yachts and ships used primarily for sport or recreation (Commercial Yacht will however be able to benefit from the tonnage tax exemptions);
- Fixed offshore installations and floating storage units;
- Non-ocean going tug boats and dredgers;
- Ships whose main purpose is to provide goods or services normally provided on land;
- Stationary ships employed for hotel and or catering operations (floating hotels or restaurants);
- Ships employed mainly for gambling/as casinos (floating or cruising casinos);
- Cable-laying vessels;
- Pipe laying vessels;
- Crane vessels;
- Research vessels.

2. Exemptions on Interests to Financial Institutions

Exemptions granted to financial institutions with respect to the payment of any tax on income payable in relation to the financing of the operations referred to under Section 84Z(1) of the Merchant Shipping Act will no longer be available.

3. Shipping Activities

Tonnage Tax measures will be available to those persons assuming risks and responsibilities for the operation of a tonnage tax ship, such as the carrying out of shipping activities technical management or crewing.

4. Bareboat Out Activities

Bareboat Charter Out to third parties will be able to benefit from the tonnage tax rules exemptions where carried out as an ancillary activity of a genuine shipping company when:

- there is a situation of temporary excess capacity;
- it is limited to a maximum period of 3 years;
- the amount of vessels bareboated out does not exceed 50% of the shipping companies' fleet (calculated on a group basis); and
- it is impossible to acquire ships for bareboating out purposes.

Bareboat - In activities will still be expected to benefit from the tonnage tax rules.

5. New Entry Requirements to the Tonnage Tax Scheme

Any new entrant to the Tonnage Tax Scheme must have at least 25% of its tonnage tax fleet flying an EEA Flag notwithstanding the requirement to maintain or increase the shares set out under point 3.1 (paragraph 8) of the Maritime Guidelines.

6. Dredgers

In line with the Maritime Guidelines dredgers flying an EEA Flag will be able to benefit from tonnage tax exemption where the majority of their activities within a calendar year consists in the transport at deep sea of extracted materials.

7. Towage

Similarly to dredgers, towage ships will be able to benefit from the tonnage tax exemption where the majority of their activities within a calendar year constitute maritime transport. This includes also waiting time and excludes all those activities carried out in ports, or consisting in assisting a self-propelled vessel to reach port.

8. Ancillary Activities

Maltese legislation will introduce a neater distinction between core shipping activities, which will benefit from the tonnage tax regime in full, and ancillary services which will very likely benefit from such regime within certain parameters and up to a certain extent.

9. Sale of Ships

Capital gains on sale of ships will be available to tonnage tax ships which are engaged in genuine shipping activities.

10. More defined rules for Shipping Companies to benefit from Tonnage Tax Rules

Shipping Companies (other than Ship Management Companies) will be able to benefit from the tonnage tax rules where 60% or more of their tonnage fleet is flying an EU/EEA flag (including bareboat in vessels and excluding bareboat out). During the first year of operation such percentage can be as low as 25%. Non-EEA Ships (up to 40% of the group's fleet) will be able to benefit from the Malta Tonnage Tax where their commercial and strategic management takes place from an EU/EEA country.

11. Anti-breach provisions

Measures will be introduced to avoid the circumnavigation or breach of the tonnage tax rules by:

- Implementing Section 11 of the Maritime Guidelines on the control of the aid ceiling; and
- Requesting beneficiaries of tonnage tax ships the submission of mandatory annual compliance declarations including information on the activities performed by the vessel, net tonnage, days in use, flag requirements, types of operations and compliance with aid ceiling.

12. Fee Structuring

The Schedule of Fees under the Merchant Shipping Regulations will clearly distinguish between qualifying and non-qualifying ships for purposes of tonnage tax. As to the exemption from payment of fees, this will be granted to ships involved in philanthropic and humanitarian operations not offering goods and services on the market.

13. Exclusions

The Decision has finally cleared what is, and what is not compliant with the Rules thus no longer eligible for a tonnage tax exemption, namely:

- income generated from the operation of non-propelled barges, oil rigs and fishing vessels;
- income generated from towage and dredging vessels and from bareboat chartering out without restriction;
- income generated from vessels under time/voyage chartering without restriction;
- revenues from ancillary activities, subject to a number of conditions agreed between the EC and Maltese Authorities;
- the eligibility for tonnage taxation of shipping activities referred to under Section 85 of the Merchant Shipping Act "as otherwise may be prescribed";
- capital gains arising from the sale or transfer of ships or from the sale of shares in shipping companies applied to Maltese residents;
- interest income or other income of financial institutions in relation to the financing of shipping companies or tonnage tax ships;
- duty on documents and transfers for the transfer of shares in shipping organisations for Maltese residents;
- the exemption from payment of fees at ministerial discretion.

Item 2. Other News

GOOD TO KNOW:

Merchant Shipping Notices

1. MS Notice No. 140 on Registration of Thetis MRV

This notice follows Notices No.133 and No.137 concerning the implementation of Regulation (EU) 2015/757 on the Monitoring, Reporting and Verification of Carbon Dioxide Emission from Maritime Transport. Through this instrument the Merchant Shipping Directorate reminds all concerned parties that, in accordance with Article 6 of the above mentioned Regulation, the submission of the monitoring plans to verifiers should have been completed by 31 August 2017. Furthermore, the flag administration recalls that on 1 January 2018, companies shall start the per-voyage and annual monitoring of the parameters specified in Regulation (EU) 2015/757.

Full text can be accessed [here](#).

2. MS Notice No. 139 on Use of Electronic Certificates

This notice follows the adoption by the International Maritime Organisation of the Guidelines for the Use of Electronic Certificates (FAL.5/Circ.39/Rev.2) which aims at facilitating the use and acceptance of electronic certificates thus reducing the administrative burden on Administrations, port State control officials, ships' crew and other stakeholders caused by, amongst other reasons, the reliance on traditional paper certificates.

Full text can be accessed [here](#).

WHERE YOU THERE?

1. KPMG in Malta attends the Super-Yacht Investor 2018 in London

Stephan Piazza attended the Super Yacht Investor 2018 held in London between 30th January and 1st February.

The third edition of the Superyacht Investor London was held at the LandMark Hotel in London. The conference witnessed the participation of over 150 senior executives representing shipyards, brokers, banks, law firms, corporate service providers, builders, financiers, tax specialists, security specialists, yacht managers, appraisers, insurers and others involved in the sale and purchase of superyachts. The conference analysed latest industry trends and developments through the use of in-depth panel discussions and presentations. The conference was an ideal venue to identify new business opportunities as well as examining current market challenges.

2. Malta Maritime Law Association seminar on Maritime Environmental Law

Stephan Piazza from our Shipping and Yachting Team was invited to deliver a presentation at the Malta Maritime Law Association organized seminar entitled 'New Frontiers in the Maritime Environmental Law Sector' held on 23rd November, 2017 at the Chamber of Commerce in Valletta and attended by over 100 delegates from the Maltese Shipping cluster.

Stephan Piazza spoke about Ship Recycling and the challenges that both flag administration and ship-owners will face in light of the coming into force of the EU Ship Recycling Regulations and measures. Stephan highlighted the content of the said regulation, its objectives and the administrative and cost related burdens for ship-owners.

WATCH OUT FOR:

- **Comite' Maritime International Colloquium Malta** – 27th February, 2018 – High Level Technical Colloquium on a Draft International Instrument on Foreign Judicial Sales of Ships and their recognition Malta Chamber of Commerce.
- **6th Annual Opportunities in Superyachts** 22nd March, 2018 – Intercontinental Malta.
KPMG will be there to address your queries and assist you meeting the new Rules as well as with opting for alternatives to the tonnage tax system.

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