

SUBSIDIARY LEGISLATION 234.43

**MERCHANT SHIPPING (TAXATION AND OTHER
MATTERS RELATING TO SHIPPING
ORGANISATIONS) REGULATIONS**

1st May, 2004

LEGAL NOTICE 224 of 2004, as amended by Legal Notice 83 of 2010.

1. (1) The title of these regulations is the Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations.

Title,
commencement
and scope.
Amended by:
L.N. 83 of 2010.

(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 1st January, 2009.

(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 Merchant Shipping Act, the said Act shall be amended as follows:

Amendment to the
Merchant Shipping
Act.
Amended by:
L.N. 83 of 2010.
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 -

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

"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 Community ship 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 including the ownership, chartering or any other operation of a ship engaged in all or any of the above activities or as otherwise may be prescribed;

"shipping organisation" shall have the same meaning ascribed to such term in article 84Z of this Act;

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

"Community ship" means a ship registered under the laws of a Member State of the European Union (including, for the avoidance of doubt, Malta) or of the European Economic Area and the terms "Community flag" and "Community-flagged" shall refer to a ship registered in any such State;

Provided that in the case of a ship registered in any Community jurisdiction other than Malta, the ship shall only qualify as a "Community ship" for the purpose of these regulations if 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, with relief being granted for any tonnage tax or registration fees or their equivalent imposed under the laws of a territory outside Malta in respect of the said tonnage tax ship subject to an amount of minimum tonnage tax equivalent to twenty five per centum (25%) of the annual tonnage tax that would have been payable had the ship been registered under Part II or IIA of the Act;

"reference date" means the date on which the shipping organisation was established or the 17 January 2004, whichever is the later;

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"ship manager" means a licensed shipping organisation which is established in the Community, which has assumed responsibility for either or both of the technical or crew management of a ship or ships referred to in regulation 3(6)(i)(b) of the Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations, and which complies with international standards and fulfils requirements established under the law of the European Union, satisfies such conditions as may be laid down by the Registrar-General who shall be guided in this respect by such guidelines, communications, circulars, clarifications, codes, decisions, directives, instruments, interpretations, manuals, notices, publications, recommendations, regulations, resolutions, rules or any other similar medium of any competent institution of the European Union, specifically includes such activities among the objects contained in its Memorandum of Association, and registers 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 or ships for which it has assumed responsibility as set out above:

Provided that the particular licensed shipping organisation shall notify the Minister in writing every time any alterations in such particulars occurs;

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"ship management activities" means those activities carried out by a ship manager and consisting in, but not limited to, the entire crewing of a ship referred to in regulation 3(6)(i)(b) of the Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations, and, or the provision of technical management thereto.

(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. (1) 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 article 85(1).

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

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

(b) the percentage of the licensed shipping organisation's total tonnage which is Community-flagged immediately after the shipping organisation begins to operate the said ship is not less than the percentage of the shipping organisation's total tonnage which was Community-flagged on the reference date; or

- (c) the percentage of Community-flagged tonnage that is owned entirely, chartered, managed, administered or otherwise operated by a shipping organisation that is in possession of a valid licence issued by the Registrar-General has not decreased over a period of three years or, where the said licensed shipping organisation was in existence for a period of less than three years, for such lower period in which the licensed shipping organisation was in existence:

Provided that where the requirements of paragraph (b) or (c) are not fulfilled, the provisions of the particular paragraph shall still be deemed to be satisfied where it is proven to the satisfaction of the Registrar-General that a commitment exists to increasing or at least maintaining under the flag of one of the Member States the share of tonnage that was being operated under such flags on the reference date:

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 in respect of such tonnage tax ship, with relief being granted for any tonnage tax or registration fees or their equivalent imposed under the laws of a territory outside Malta relative to the said tonnage tax ship, subject to an amount of minimum tonnage tax equivalent to twenty five per centum (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-article(2)(b), the percentage of a licensed shipping organisation's total tonnage which is Community-flagged shall be determined by expressing as a percentage the sum obtained by dividing the aggregate net tonnage of Community-flagged tonnage tax ships at a particular date by the aggregate net tonnage of all ships of not less than 1000 net tonnage that are owned entirely, chartered, managed, administered or otherwise operated by the shipping organisation at such date.";

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

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

Inapplicability of
the Income Tax
Act.
Amended by:
L.N. 83 of 2010.
Cap. 123.

3. (1) Notwithstanding anything contained in the Income Tax Act, or in any enactment replacing that Act, if the condition contained in subregulation (4) 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, 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 equal to the annual tonnage tax for that year in addition to that paid by the owner:

- (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, and
- (b) no further tax under that Act shall be charged or payable on any income, profits or gains of a licensed shipping organisation 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, and
- (c) 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.

Cap. 123.

(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 Merchant Shipping 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.

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

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 subregulation (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 apply *mutatis mutandis* as though references to the licensed 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.

(4) The condition referred to in subregulation (1) 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.

(5) 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:

Cap. 281.

Cap.12.

Cap. 372.

Provided that where such person has income which is not income from shipping activities, the provisions of this subregulation 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 three years from the date which may be prescribed by the Minister responsible for shipping.

(6) (i) 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:

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(a) the condition contained in subregulation (4) is complied with; and

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

1. in respect of any tonnage tax ship registered under Part II or IIA of the Act, an amount equivalent to twenty five per centum (25%) of the annual tonnage tax payable in respect of the particular ship on the basis of the rates stipulated in the First Schedule to the Act;

2. in respect of any other ship not referred to in paragraph (1) above, an amount equivalent to twenty-five per centum (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; and
- (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 Community, and
- (d) the tonnage of the ships in respect of which the ship manager provides ship management activities meets any of the following conditions:
1. at least 60% of the said tonnage is registered under a Community flag, or
 2. the percentage of the said tonnage which is Community-flagged immediately after the ship manager begins to operate an additional ship is not less than the percentage of the ship manager's tonnage which was Community-flagged on the later of 11 June 2009 or one year from the day on which the ship manager began to operate; or
 3. the percentage of the said tonnage which is Community-flagged has not decreased over a period of three years or such lesser period in which the ship manager was in existence if the said ship manager was in existence for a period of less than three years:
- Provided that where the requirements of paragraph (2) or (3) are not fulfilled, the provisions of the particular paragraph shall still be deemed to be satisfied where it is proven to the satisfaction of the Registrar-General that a commitment exists to increasing or at least maintaining under the flag of one of the Member States the share of tonnage under such flags in respect of which ship management activities were being provided on the later of 11 June 2009 or one year from the day on which the ship manager began to operate.
- (e) For the purposes of sub-paragraph (d), the percentage of a ship manager's total tonnage which is Community-flagged shall be determined by expressing as a percentage the sum obtained by dividing the aggregate net tonnage of Community-flagged ships in respect of which the ship manager provides the ship management activities at a particular date by the

aggregate net tonnage of all ships of not less than 1000 net tonnage in respect of which the ship manager provides the ship management activities at such date.

- (ii) The provisions of subregulations (3) and (5) hereof shall apply *mutatis mutandis* 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.

4. (1) The provisions of the External Transactions 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.

Inapplicability of laws.
Cap. 233.

(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:

Cap. 318.

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.

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

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.

SCHEDULE

Regulation 3(5)

Declaration in lieu of Tax Return in respect of a Licensed Shipping Organisation

Name of Licensed Shipping Organisation

Income Tax Registration Number

Name of Ship(s)

Official Number(s)

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 tax tonnage ship(s) 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 for this year of assessment the licensed shipping organisation qualifies for the concessions granted by the said regulations and has not had any income which would not be exempted under the said regulations, and that the relative registration fees and tonnage taxes as applicable for this period have been paid.

⁽¹⁾ 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 for this year of assessment the licensed shipping organisation qualifies for the concessions granted by the said regulations and has not had any income which would not be exempted under the said regulations, and that the relative registration fees and tonnage taxes for this period have been paid.

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 No	Status	Date

(1) Delete as necessary.
