Tonnage Tax

Latest Update

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UK tonnage tax provides an attractive low tax regime designed to encourage shipping companies and groups to base their shipping operations in the UK.

Overview of Topic

1. The UK tonnage tax regime is designed to encourage shipping companies and groups to base their operations in the UK.

2. It does so by providing a simple method of calculating profits subject to UK corporation tax based solely on the tonnage of the vessels operated. The amount of tax due is also generally negligible compared to the amount that would be payable by a profitable shipping operation calculating its profits under normal corporation tax rules.

3. Only certain shipping activities, principally those involving transport of passengers and cargo, towage, salvage and maritime rescue qualify for tonnage tax.

4. The shipping company must also meet certain requirements covering matters such as the management (strategic and commercial) and ownership of its vessels, the flagging of its tonnage tax fleet and the training of officer sea cadets.

5. As tonnage tax is considered to be a form of State aid for the purposes of EU rules, HM Revenue & Customs has tended to be strict in its enforcement of these requirements.

Key Acts

Schedule 22 to the Finance Act 2000

Key Subordinate Legislation

Tonnage Tax (Training Requirement) Regulations 2000/2129

Tonnage Tax Regulations 2000/2303

Key Quasi-legislation

Commission Communication C(2004) 43 - Community guidelines on State aid to maritime transport

Key European Union Legislation

None.

Key Cases

Western Ferries (Clyde) Ltd v Revenue and Customs Commissioners [2011] UKFTT 243 (TC)

Euroceanica (UK) Ltd v Revenue and Customs Commissioners [2013] UKFTT 313 (TC)

Key Texts

HM Revenue & Customs Tonnage Tax Manual

Discussion of Detail

Introduction

1. UK resident companies and offshore companies within the scope of UK corporation tax can elect into the UK tonnage tax regime if they operate certain types of vessel and manage their vessels in the UK.

2. Once in the regime, corporation tax is based on the net tonnage of the company's fleet rather than shipping profits calculated in the ordinary way (so depreciation, operating profits and losses, and capital gains become irrelevant).

3. The general aim is to achieve a low tax environment with simplicity, certainty and clarity with regard to costs and liabilities. The regime is designed to be attractive.

4. The UK tonnage tax regime is provided for at Sch.22 to the Finance Act 2000 ("**Schedule 22**"). All rates and allowances shown are for illustration only and are current as at the date of this note.

5. Unless otherwise stated, all paragraph references relate to the corresponding paragraph of Sch.22 and all references to regulations are to the corresponding regulation in the Tonnage Tax Regulations 2000/2303.

Who can enter into tonnage tax?

1. A single company that is a " *qualifying company* " (para.16(1)) may elect into UK tonnage tax. To be a *qualifying company* , the company must be within the charge to UK corporation tax and:

   a. "**operating**" (para.18)

   b. "**qualifying ships**" (para.19) which are carrying out

   c. "**qualifying activities**" and are

   d. "**strategically and commercially managed in the UK**". There are also requirements in respect of the

   e. "**flagging**" of the *qualifying company's* fleet and obligations for the *qualifying company* to commit to

   f. "**training**" officer cadets

2. Each of these requirements is discussed in more detail below.

3. If the *qualifying company* is a member of a group (a "**qualifying group**", para.16(2)), all the *qualifying companies* in the *qualifying group* must join in the tonnage tax election. Each company or group in relation to which a tonnage tax election has effect is called a **"tonnage tax company"** or "**tonnage tax group**" (para.2).

4. If a *qualifying company* operates a *qualifying ship* in partnership, the profits may still come within tonnage tax, regardless of whether the other partners are within tonnage tax. However, the tonnage tax provisions in relation to partnerships are not well drafted and care is required to ensure that the *qualifying company* is actively involved in operating the *qualifying ship* .

"Operating" a ship

1. Subject to the comments below, a *qualifying company* will be treated as operating *qualifying ships* that it:

   a. owns; or

   a. charters in on bareboat terms; or

   b. charters in on time-charter terms.

2. A maximum of 75% of the net tonnage of *qualifying ships* can be chartered in on time-charter terms (ignoring time-charters between *qualifying companies* in the same

tonnage tax group) (paras 37-40).

3. A *tonnage tax company* is not treated as operating a *qualifying ship* that it has chartered out on bareboat terms unless the bareboat charter is to another member of the same *tonnage tax group or* if the bareboat charter is entered into because of short term (up to three years) over-capacity (para.18(3)).

4. The meaning of over-capacity was considered in Euroceanica (UK) Ltd v Revenue and Customs Commissioners [2013] UKFTT 313 (TC) in which the company acquired five *qualifying ships* (the "Crystal Fleet") but did not have sufficient management capacity to manage the ships directly. The company bareboat chartered out the ships until it was able to bring the ships into its own management. The Tribunal held that

   > "the "over-capacity" envisaged by pargraph [18(5)] is not apt to cover the Appellant's position, whci was more an under-capacity of management ability than an over-capacity of ships."

5. The Tribunal also held that ""pargraph 18 is premised on a relevant shipping activity having commneced in relation to a particualr ship before the bareboat charter is entered into, which was not the case here, save for the scintilla of time between the signing of the agreement for the acquisition of the Crystal Flet and the entering into of the bareboat charter, which all occured on the same day"". Accordingly, the company was not treated as operating the ships until they were fully operated under time charter by the company.

6. A *tonnage tax company* is not treated as operating a ship where only part of the ship has been chartered to it (para.18(2)).

Qualifying ships

1. A *qualifying ship* must be over 100 tons gross tonnage and must be used (by the end user of the ship) for one or more *qualifying activities* (para.19(1)).

2. The ship must be "seagoing" (i.e. certified for navigation at sea - para.19(4)). This is a question of merchant shipping, rather than tax, legislation.

3. The requirement to be seagoing was considered in Western Ferries (Clyde) Ltd v Revenue and Customs Commissioners [2011] UKFTT 243 (TC), which related to ships operating as ferries across the river Clyde. In *Western Ferries* it was held that

   > "a certificate entitling ships to embark on voyages at sea, but only in severely restricted circumstances, would be insufficient for the ships to be classified as seagoing ships."

4. The main purpose for which the *qualifying ship* is used must not be for the provision of goods or services of a kind normally provided on land. Therefore, for example, a floating restaurant or hotel would not be a *qualifying ship* . However, seagoing ferries and cruise ships may still be *qualifying ships,* even where they provide restaurant and hotel accommodation, as these facilities are incidental to their main activities (para.19(2)).

5. Certain specified types of ship (including fishing vessels, pleasure craft, harbour or river ferries, tankers dedicated to a particular oil field and certain types of dredgers) are specifically excluded from being *qualifying ships* (para.20).

6. If a ship begins to be used for a non-qualifying activity, or as an excluded type of vessel (see para.5 above), it will cease to be a *qualifying ship* unless the non-qualifying use is de minimis (less than 30 days in any 12-month accounting period (para.22).

Qualifying activities

1. The qualifying activities are:
    a. the carriage by sea of passengers;
    b. the carriage by sea of cargo;
    c. towage, salvage or other (similar) maritime assistance;
    d. transport in connection with other services of a kind necessarily provided at sea.

2. The final category is a sweeper-up category of *qualifying activities* and is not defined in the tonnage tax legislation. HMRC's Tonnage Tax Manual (TTM03570) provides a non-exhaustive set of examples of vessel types which they consider will fall into this category (including pipelaying, diving support, survey and vessels). Care is, however, required where *qualifying ships* are used in offshore activities, where special rules apply, as discussed below.

3. HMRC now accepts that all activities (transportation and other activities) of a mixed use *qualifying ship* fall within tonnage tax. This is a change from HMRC's position prior to July 2009.

Strategic and commercial management in the UK

1. The requirements for strategic and commercial management to be carried out in the UK are not defined in the tonnage tax legislation and so it is necessary to rely on guidance in the HMRC Tonnage Tax Manual.

2. Strategic management is similar to, but not the same as, the central management and control test for corporate residence and looks at high level decision-making. For strategic management to be in the UK, the UK directors and key personnel must have effective power to make strategic decisions without recourse to any other body outside the UK. Conceding this level of delegation can cause difficulties for international groups. HMRC considers it unlikely that a UK permanent establishment would satisfy this test, although this would, ultimately, be a question of fact (TTM03810).

3. HMRC guidance includes a non-exhaustive list (TTM03820) of commercial activities to be taken into account in determining the location of commercial management. These include the management of normal commercial matters (including route planning, bookings, insurance, financing, personnel management, provisioning and training) and technical

matters (including repairs and maintenance, location of ship superintendent, safety management, crew management and employment, support facilities and classification society).

4. As tonnage tax is considered as a form of state aid, and one of the purposes of the tonnage tax regime is to ensure that shipping experience is maintained in the UK, HMRC has historically taken a strict view in determining whether strategic and commercial management is in the UK. For a period, from mid 2010 to late 2012, HMRC's view was that:

    "It is unlikely that a company will qualify for [tonnage tax] if technical management of the ships is not in the UK."

5. This view was accompanied by investigations into the detailed operating procedures of several *tonnage tax companies* . After significant campaigning from interested bodies, including the Chamber of Shipping, HMRC softened its position, amending its guidance to say that:

    "The test … has to be interpreted purposively according to Commission guidelines and it is not possible to lay down clear rules on the extent and nature or the above criteria [those set out in the non-exhaustive list at TTM03820] which must be included"

6. According to HMRC guidance (TTM03830):

    a. The more elements that are carried out in the UK, the more likely it is that the company will be treated as satisfying the strategic and commercial management test.

    b. HMRC will give greater weight to higher levels of decision making as opposed to routine day to day management activities.

    c. Commercial management contracted out to a third party will still count as a contributing factor provided that it is carried on in the UK.

    d. For international groups, there needs to be a reasonable balance of activities in the UK taking into account the proportion of the world-wide fleet represented by ships in the UK tonnage tax regime.

    e. Vessels do not need to be operated in UK waters.

    f. Not every ship in the *tonnage tax group* needs to be managed in like manner and to the same extent as every other one. However, each ship must satisfy sufficient of the strategic and commercial management criteria and the company's fleet as a whole must be strategically and commercially managed from the UK.

Flagging of ships

1. In 2005, HMRC introduced new flagging rules to give effect to revised EU Guidelines on State aid, published on 17 January 2004. However, these rules can be disapplied on a year by year basis if the tonnage of tonnage tax ships on EU/EEA Member states' registers, as a proportion of tonnage tax ships registered worldwide has not fallen from the previous year's

calculation. The rules were first brought into effect in relation to ships first brought into service by a *tonnage tax company* in the period starting 1 April 2008 and have remained in effect every year since then.

2. The general position is that a *tonnage tax company* should not reduce the percentage of its fleet that is EU flagged below the percentage of its fleet that were EU flagged on 17 January 2004 or, if later, the end of the accounting period in which the company became (or becomes) a *tonnage tax company* . The main exceptions to this position are that:

   a. tugs and qualifying dredgers newly brought into service must be EU flagged under all circumstances; and

   b. in respect of other *qualifying ships* , the percentage of EU flagged tonnage does not need to exceed 60% of the fleet tonnage (para.22A).

3. If a ship that should be EU flagged under the new rules is flagged outside the EU, it will not be a *qualifying ship* and its earnings will be outside tonnage tax. However, it may be possible to bring in a new (non-EU flagged) ship within tonnage tax, by reflagging another "substitute" ship on an EU flag.

4. For non-EU flagged ships, regular reports are required demonstrating that the ships comply with international and EU safety and environmental standards.

Training requirements

1. Each year, a *tonnage tax company* or *tonnage tax group* must commit, either directly or by sub-contract, to start the training of one new officer cadet, for every 15 officers within the "effective officer complement". The "effective officer complement" is calculated by reference to the size of the fleet, the number of deck officers and engineers employed (including back-up officers).

2. The officer cadets must be ordinarily UK resident and:

   a. EEA nationals; or

   b. British citizens from the Channel Islands or the Isle of Man

3. (Paragraphs 23-28 and the Tonnage Tax (Training Requirement) Regulations 2000/2129).

4. As training will typically take approximately three years, after three years in tonnage tax, a company will be sponsoring three trainees (one in each of the first, second and third year of training), for every 15 officers.

5. Where the same ship is operated by more than one *qualifying company* within a *tonnage tax group* , the ship is only counted once in determining the number of officer cadets required.

6. Where a *tonnage tax company* or group reduces the size of its fleet in any year, it must continue the training of all cadets whose training started in previous years. However, the

Department for Transport ("**DfT**"), which administers the training requirement, may allow the company to reduce the number of new trainees until a balance of three trainees for every 15 officers is restored.

7. Instead of training cadets, a *qualifying company* may, at least partially, satisfy its training obligation by making "payments in lieu of training" (referred to as "**PILOTs**") to the Maritime Trading Trust. As at April 2013, the PILOT rate is £1,092 per calendar month per trainee, with a higher rate applying if the number of actual trainees is less than 50% of the training obligation.

8. Rather than allowing a *qualifying company* to satisfy its training commitment by way payment of PILOTs, the DfT may require trainees to be sponsored by sub-contracting. Only in exceptional circumstances would a *tonnage tax company* be permitted to satisfy its training commitment solely by making PILOTs. This is because one of the underlying aims in introducing the tonnage tax system is to expand the pool of qualified UK or EEA officers.

Process of election into tonnage tax

1. To elect into tonnage tax, a *qualifying company* applies to HMRC providing details of its name, UK tax reference and the accounting period from which the election is to have effect. Where the company is a member of a group, it must also provide full details of the group structure (including any non-qualifying companies) and a name for the *tonnage tax group* . It is recommended that a group nominate a company to act as representative of the group.

2. The *qualifying company* (or the representative company in the case of a group election) must give a declaration confirming that all companies included on the election are *qualifying companies* and that all *qualifying companies* in the *tonnage tax group* are included in the election. A certificate of approval from the DfT with respect to the initial training commitment is also required.

3. Although a single company can represent a *tonnage tax group* in relation to most matters, HMRC require all *tonnage tax companies* in the group to sign any tonnage tax election (for example when a new company joins the group or when a renewal election is being made).

4. Before entering tonnage tax, a company can apply for a pre-election non-statutory clearance as to whether it would qualify for tonnage tax. The clearance application should include the same information as would be provided in the application itself together with details of matters such as the company's or group's proposed activities, the ships it will operate and how it will strategically and commercially manage them. Care should be taken in drafting a clearance application as HMRC may use this as a basis for any future enquiry into whether the company or group is meeting the requirements for tonnage tax.

Timing of election into tonnage tax

1. The election must in general be made within 12 months of a company or group first becoming a *qualifying company* or *qualifying group* and takes effect from the date on which the relevant company or group first qualified for tonnage tax.

2. If a *tonnage tax company* or *tonnage tax group* establishes a new company or is party to a merger, specific provisions relating to mergers and demergers will determine whether any election applies.

3.

An election into tonnage tax has effect for 10 years unless the company ceases to be a *qualifying company* or the company is excluded from tonnage tax (para.13) but a *tonnage tax company* can renew its election at any time, effectively restarting the 10-year tonnage tax period (para.15).

4. A *tonnage tax company* cannot generally elect out of tonnage tax. However, a *tonnage tax company* or *tonnage tax group* may be forced to exit tonnage tax (see below).

5. If a company has exited tonnage tax, it will generally be prevented from electing back into tonnage tax for 10 years from the date of exit (para.140).

6. The above timing requirements were relaxed on the first introduction of tonnage tax, in July 2001, and also following significant changes to the tonnage tax regime in 2005.

Calculation of tonnage tax profits

1. Following an election into tonnage tax, a *qualifying company's* "**relevant shipping profits**" (or losses) will be taken out of its calculation of profits subject to UK corporation tax and will be replaced by notional "**tonnage tax profits**" in its corporation tax computations. Therefore, any profits categorised as *relevant shipping profits* are, effectively untaxed.

2. *Tonnage tax profits* are calculated by reference to the net tonnage (as shown in the International Tonnage Certificate) of the *qualifying ships* operated by the *qualifying company* in the relevant accounting period. The rates are currently as follows:

Net Tonnage	Daily profit rate Per 100 n.t.
0 – 1,000	£0.60
1,000 – 10,000	£0.45
10,000 – 25,000	£0.30
Above 25,000	£0.15

3. Therefore, for a ship of 45,000 net tons, the daily tonnage tax profits will be:

Charging Band (Net Tons)	Net Tons within band	Rate (per 100 net tons)	Daily profit
0 – 1,000	1,000	£0.60	£0.60 x 10 = £6.00
1,000 – 10,000	9,000	£0.45	£0.45 x 90 = £40.50
10,000 – 25,000	15,000	£0.30	£0.30 x 150 = £45
25,000 – 45,000	20,000	£0.15	£0.15 x 200 = £30
		Total	£121.50

4. The tonnage tax regime is intended to be more attractive to a profitable ship operating company than the ordinary corporation tax regime. However, if a *tonnage tax company* makes a loss in respect of its *relevant shipping profits* , it will still be liable to corporation tax on its *tonnage tax profits* and will not be able to make use of those losses.

5. Any other profits or losses of a *tonnage tax company* continue to be subject to corporation tax as normal and the corporation tax at the rate in force is then applied to the sum of the profits calculated in the normal way plus the notional *tonnage tax profits* .

6. For example, if a *qualifying company* operating a *qualifying ship* of £45,000 net tons has profits of £2m, of which £1.5m are *relevant shipping profits* , its tax computation will be:

Profits	£2,000,000
Less *relevant shipping profits*	(£1,500,000)
Profits calculated according to normal corporation tax rules	£500,000
Tonnage tax profits (£121.50 x 365)	£44,347.50
Profits subject to corporation tax	£544,347.50

7. *Tonnage tax profits* are calculated for each *tonnage tax company* that operates a *qualifying ship* . Therefore, if two *qualifying companies* in the same *tonnage tax group* operate the same ship, they will both be taxable *on tonnage tax profits* in respect of that ship.

8. No double tax treaty relief or relief by reference to foreign taxes is available to reduce UK *tonnage tax profits* .

9. Non-UK resident companies can elect into tonnage tax in respect of their operations from a UK permanent establishment. However, there is potential for double tax unless credit is given (in the company's home jurisdiction or under a double tax treaty) for UK tax under the tonnage tax regime. In any event (as noted above), HMRC consider it unlikely that a permanent establishment of a non-UK company would qualify for tonnage tax.

Relevant shipping profits

1. *Relevant shipping profits* comprise:

   a. the trading (but not investment) income of a *tonnage tax company* from "**tonnage tax activities**";

   b. any capital gains derived from "**tonnage tax assets**";

   c. certain distributions of "**overseas shipping companies**"; and

   d. certain interest.

2. *Tonnage tax activities means* :

    1. the company's *qualifying activities* (see above) in operating *qualifying ships* and other ship related activities that are a necessary and integral part of the business of operating its *qualifying ships* ("**core qualifying activities**");

    2. activities which are necessary and integral to the operation of a qualifying ship (" **qualifying secondary activities**"); and

    3. ship-related incidental activities (but only up to 0.25% of the turnover from other activities within the tonnage tax ring-fence).

3. *Qualifying secondary activities* are activities that have a substantial connection with the *core qualifying activities* and are set out in the tonnage tax regulations. These include activities such as transport of cargo and passengers to and from a *qualifying ship* (provided that there is a single contract for the whole journey), cruise ship excursions, provision of food and drink loading, unloading and consolidation or breaking up of cargo.

4. Dividends of overseas shipping companies can, under certain circumstances, also be treated as *relevant shipping profits* ; however, this is less relevant now that dividends of most overseas companies are exempt from corporation tax.

5. Interest received by a *qualifying company* in respect of working capital on deposit will generally qualify as *relevant shipping profits* . However, interest on other cash deposits will be subject to corporation tax on a standard basis.

6. HMRC takes a strong line in restricting the extent to which interest qualifies as *relevant shipping profits* and, for example, reviews carefully whether cash deposits exceed the amount required for working capital. However, in *Euroceanica* , the taxpayer succeeded against HMRC in claiming that interest on cash collateral deposited with its banks (as part of its loan arrangements with those banks for the financing of its fleet) should be treated as *relevant shipping profits* .

Profits and losses outside tonnage tax, capital allowances and capital gains

1. There are no specific tax charges on entry into the tonnage tax regime but all carried forward tax reliefs (e.g. trading losses) relating to activities which become part of the company's tonnage tax trade are extinguished except for capital losses.

2. Profits from activities that are not tonnage tax activities will not be treated as *relevant shipping profits* and will be subject to corporation tax on the normal basis.

3. As the profits of a *tonnage tax company* are not calculated on the normal corporation tax basis, a *tonnage tax company* cannot make use of capital allowances. If a company enters tonnage tax owning assets on which it has previously claimed capital allowances, there will be no balancing charge on entry but if the company sells the asset whilst it is in tonnage tax for more than the tax written down value there will be a balancing charge (which will be treated as income of the company's non-tonnage tax trade). However, if the asset has been used in the company's tonnage tax trade, the balancing charge will taper by 15% ("**tapering relief**") for each complete year following entry into tonnage tax (so that there will be no balancing charge after the end of the seventh year following entry). Subject to certain

requirements being met, it is also possible to "roll" a balancing charge into expenditure on a replacement ship.

4. As with capital allowances, a company is not taxed on capital gains in respect of assets it has acquired and held whilst within tonnage tax. If a company enters tonnage tax owning capital assets, entry into tonnage tax is not treated as a disposal event and so no gain or loss is crystallised. If the asset is subsequently sold, any capital gain is time apportioned between the time during which the company held the asset outside and the time inside tonnage tax. Only the proportion relating to the period outside tonnage tax is chargeable. A *tonnage tax company* can also carry forward capital losses accrued before it entered tonnage tax and use these against capital gains realised when in tonnage tax.

5. Special rules apply to ring-fence *tonnage tax profits* from normal corporation tax profits so that losses and reliefs generated within tonnage tax (which are of no value in the tonnage tax regime) cannot be used to reduce profits within the normal corporation tax regime. HMRC pays particular attention to the allocation of costs between tonnage tax and non-tonnage tax activities to prevent loading of expenses, including finance costs, against normal corporation tax income (e.g. through non-arm's length transactions or weighting of finance costs).

Offshore activities

1. A special regime applies to *qualifying ships* while they are engaged in "**offshore activities**" (i.e. oil related exploration and exploitation activities in the UK sector of the continental shelf) except when engaged in certain specified activities principally related to transport and safety or rescue services (para.104(1A)). Subject to those limitations, if more than 30 ship days are spent engaged in *offshore activities* in a single accounting period, then the profits from those activities will fall outside the tonnage tax regime and instead will be calculated and taxed in the normal way.

Financing shipping operations

1. Where a *tonnage tax company* borrows money to acquire assets used in its tonnage tax trade, it will not be able to make use of any deduction for interest under the loan.

2. Where a member of a *tonnage tax group* makes an intra-group loan, the lender may be taxed on interest (the lending of money is not a tonnage tax activity) but the borrower may not be entitled to a deduction in respect of the interest. This can lead to tax inefficiency.

3. *Tonnage tax companies* can obtain the benefits of tax-enhanced finance through leasing (subject to certain restrictions) under which the lender leases the ship to a *tonnage tax company* and claims capital allowances in respect of its expenditure on the ship, using the value of the capital allowances to reduce the cost of finance to the *tonnage tax company* . However, the rate of capital allowances available on ships have reduced to 8%, the rate of corporation tax is reducing (targeted to reach 20% in April 2015) and, since the financial crisis in 2008, many lenders have withdrawn from offering tax-enhanced leasing arrangements. Therefore, the benefits and opportunities for tax-enhanced leasing are not as great as they have historically been; however, with the right lender, there are still limited benefits available.

Exiting tonnage tax

1. A *tonnage tax company* will exit the tonnage tax regime 10 years following its election (or

last renewal election) into tonnage tax.

2. A *tonnage tax company* may also be excluded from tonnage tax if, for example, it ceases to qualify for tonnage tax or it abuses the tonnage tax rules. HMRC states (TTM05510) that its power to exclude *tonnage tax companies* involved in abuse is aimed at deliberate cases of serious or repeated abuse and will not be invoked to attack, for example, minor errors, genuine misunderstandings or bona fide restructuring to allow a group to enter into UK tonnage tax.

3. A failure to meet the training requirement does not require a *tonnage tax company* or *tonnage tax group* to exit the regime but may prevent a company from making a renewal election. It may also result in payment of a training commitment surcharge.

4. Penalties may apply when a *qualifying company* exits the tonnage tax regime for reasons relating wholly or mainly to tax or is disqualified from the regime for abuse of the tonnage tax system. Broadly speaking the penalties consist of a claw back of tax on exempted capital gains and a claw back of any balancing charge that was reduced by *tapering relief* (as discussed above) in some circumstances.

5. The current penalties for early exit from the regime should not generally affect foreign ship operators not previously within the scope of UK corporation tax.

6. A *qualifying company* cannot generally re-enter the tonnage tax regime within ten years of exit apart from where it re-enters as a result of merger with another *tonnage tax company* or group.

Analysis

KEY AREAS OF COMPLEXITY OR UNCERTAINTY

1. Areas of uncertainty within the tonnage tax regime include:

    a. the distinction between activities that are tonnage tax activities (in particular *qualifying secondary activities* and *qualifying incidental activities*) and those that are not tonnage tax activities is not always clear;

    b. determining whether mixed use ships are *qualifying ships* ;

    c. apportionment of cost and income between ring-fenced tonnage tax profits (in respect of which no deduction for costs can be made) and profits subject to normal corporation tax (in respect of which the costs can be deducted);

    d. determining whether interest received by a *qualifying company* is *relevant shipping income* or falls outside the tonnage tax ringfence (and so is subject to corporation tax on the standard basis).

    e. the risk of double taxation where a *tonnage tax company* carries on activities outside the UK, or is resident in another jurisdiction;

    f. determining whether there is sufficient UK strategic and commercial management of *qualifying companies* that are members of an international shipping group that pools its resources on a global basis.

LATEST DEVELOPMENTS

None.

POSSIBLE FUTURE DEVELOPMENTS

1. The European Commission opened a " *Consultation on review of the Community guidelines on state aid to maritime transport* ". The consultation period closed on 14 May 2012 and contributions from Member States and other interested parties are available but the European Commission's response has not yet been published.

HUMAN RIGHTS

None.

EUROPEAN UNION ASPECTS

1. State Aid.

Further Reading

None.