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SHIPPING AND AVIATION NEWSLETTER

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“...no income tax would be payable on the income which is derived from shipping activities of licensed shipping organizations.”

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NEW TAX INCENTIVES IN MALTA – MERCHANT SHIPPING

Malta has, over the last decades, seized opportunities and developed its maritime flag for the benefit of ship-owners and the ship-operating sectors. In fact, Maltese law in the Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations¹, offers a number of tax incentives to shipping organizations. These benefits have been availed of by both commercial vessels owning companies and spv's acting as owner of commercial registered yachts in Malta

By virtue of Legal Notice 83 of

2010 entitled 'Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) (Amendment Regulations 2010', (the 'Amending Regulations') published on the 16th of February 2010 certain new incentives have been introduced. These incentives are in line with the relevant European Community Guidelines for the State Aid to the Maritime Sector.

The main principle of the tonnage tax model adopted in Malta is that the payable tax is based on the tonnage of the vessels instead of the actual accounting profits from the commercial operation of a commercial vessel or commercial yacht. Thus no income tax would be payable on the income which is derived

from shipping activities of licensed shipping organizations.

The Amending Regulations have extended these benefits which were already being enjoyed by shipping organizations owning and operating a tonnage tax ship to shipping organizations established in a Member State of the European Union (including Malta) or of the European Economic Area, carrying on ship management activities. As defined in the amending Regulations, such ship management activities would include all those activities carried out by a ship manager and consisting in, but not limited to, the entire crewing of a ship or the provision of technical management thereto. Therefore, subject to the fulfillment of certain conditions, any income derived by a ship manager from such ship management activities will be deemed to constitute income derived from shipping activities and will thus be exempt from tax under the Income Tax Act, provided that:

a. Separate Accounts be kept clearly distinguishing the payment and receipts by the shipping organization concerned in respect of shipping activities, including ownership, operation, administration or management of a tonnage

tax ship, and payments and receipts in respect of any other business.

- b. The ship manager has paid the Registrar- General the respective annual tonnage tax;
- 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:
 - i) At least 60% of the said tonnage is registered under a Community flag;
 - ii) 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 11th June 2009 or one year from the day on which the ship

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manager began to operate;

- iii) 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.

Where the said tonnage does not fulfill these requirements the regulation shall still be deemed to be satisfied where the ship manager proves to the satisfaction of the Registrar-General that it is committed to increasing or at least maintaining under the flag of one of the Member States the share of tonnage in respect of which the ship manager was providing ship management activities under such flags.

Another important feature of the Amending Regulations is an extension of the benefits which were already enjoyed by shipping organizations owning and operating a Maltese registered commercial vessels or commercial yachts to ships/commercial yachts registered under the laws of different jurisdictions provided

that requirements akin to those required for shipping organizations involved in ship management activities are satisfied.

Undoubtedly these amendments present new opportunities especially in the ship management sector trading in the form of Maltese spv's.

SHIPPING NEWS

The Shipping and Aviation Department at Mamo TCV is currently engaged in several projects which should be concluded throughout the course of 2010. These engagements including the following:

- 1) Reflagging of Chemical tanker fleet from various jurisdictions to Malta;
- 2) Acting for a major European Banks with regard to the financing of acquisition of newly built chemical product tankers;
- 3) Registration of 35 mtrs catamaran and 37 mtrs custom built sailing yacht, both to be registered as Commercial Yachts in Malta;
- 4) VAT leasing transactions for yachts ranging from super

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yachts to privately owned vessels;

- 5) Acting for major European financing banks with regard to the finance and purchase of executive business jets to be registered in Malta;
- 6) Major litigation with regards to bird strike incident at Malta international Airport in 2004, Hull damage recovery procedures;
- 7) Court approved sale of vessels (survey ship).

to Aircraft Equipment;

Once the act comes into force financiers can opt to either register their interest over an aircraft under the traditional mortgage system which once implemented will be akin to that which is currently in place or will otherwise be able to opt to register its interest in terms of the Cape Town Convention.

¹ Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations, SL 234.43 of the Laws of Malta

“...The Aircraft Registration Act 2010 has been presented before the House of Representatives in Malta as a Parliamentary Bill...”

AVIATION NEWS

The Aircraft Registration Act 2010 has been presented before the House of Representatives in Malta as a Parliamentary Bill. Amongst the major proposals one can note the following:

- 1) Integration of Aircraft Registry and the mortgage registry;
- 2) New provisions regulating mortgage registration and privileges over aircraft;
- 3) Implementation of the Cape Town Convention on International Interests in Mobile Equipment and Protocol in Matters Specific



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MAMO TCV Advocates is one of the largest legal practices in Malta. Operating from offices in the capital Valletta, MAMO TCV offers an impressive depth and breadth of expertise which enables the firm to handle a variety of different legal areas, and provide, in essence a 'one-stop' service to clients. The firm is actively involved in all areas of commercial law, with a particular focus on shipping and aviation.

The Shipping and Aviation Department within the firm is committed to providing bespoke legal solutions to major players in the shipping and aviation communities. Our mission is to deliver high-quality services in structuring and implementing clients' proposals, operations and products in a pro-active, efficient and timely fashion. Our local and international network allows us to offer comprehensive and integrated services to clients.

For the past years MAMO TCV has been top ranked by Legal 500, IFLR 100, Martindale-Hubell, Chambers Global and Chambers Europe. In the 2008 edition, Chamber Europe describes MAMO TCV as a "sophisticated and impressive outfit" and "thanks to several key lawyers, the team really stands out and attracts many of the most important clients." In the 2009 edition, the Legal 500 refers to MAMO TCV as having a "strong track record of acting on transactions for prominent clients, both local and international."

A list of the partners and associates and their qualifications is available on the firm's website.

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law and one should always seek detailed legal advice before taking any action. Prior results do not necessarily guarantee a similar outcome in all cases.

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