

EFTA SURVEILLANCE AUTHORITY DECISION

of 23 June 2017

on a six-month prolongation of the special tax system for shipping
(Norway)

The EFTA Surveillance Authority (“the Authority”),

Having regard to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61 and 62,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) By letter dated 22 June 2017, the Norwegian authorities notified for the second time a six-month prolongation of the special tax system for shipping (“the Special Tax System for Shipping” or “the Scheme”), pursuant to Article 1(3) of Part I of Protocol 3.

2 Preceding scheme

- (2) The Norwegian authorities replaced the ordinary Norwegian corporate tax on profits for companies in the maritime sector with a tonnage tax in 1996. The Authority approved that scheme in its decision of 1 July 1998 (Decision No 164/98/COL) (“the 1998 Scheme”).
- (3) The 1998 Scheme with amendments, was again approved by the Authority in its decision of 3 December 2008 (Decision No 755/08/COL) (“the 2008 Scheme”). The 2008 Scheme allows for a permanent exemption from corporate tax of profits derived from certain activities eligible under the Scheme.

- (4) Further amendments to the 2008 Scheme were approved by the Authority on 31 March 2009 (Decision No 181/09/COL), 7 July 2010 (Decision No 292/10/COL), 27 October 2010 (Decision No 407/10/COL), 10 September 2014 (Decision No 322/14/COL) and 26 November 2014 (Decision No 519/14/COL). On 11 November 2016, the Authority approved a six-month extension (until 30 June 2017) of the 2008 Scheme (Decision No 201/16/COL).

3 The notified scheme

- (5) The Authority is currently assessing a ten-year prolongation of a modified special tax scheme for shipping (“new scheme”). The six-month extension has been notified to allow the 2008 Scheme to continue while the Norwegian authorities finalise the design of the new scheme in light of relevant developments at the EU level, which may impact the ultimate assessment of the new scheme. The notified extension would in the meantime ensure legal certainty and predictability for the shipping industry concerned. Due to the functioning of the Norwegian tax system, which works on the basis of the calendar year, the notified extension until the end of 2017 does not affect the tax position of the beneficiaries under the Scheme.
- (6) The notified Scheme is identical to the 2008 Scheme and, apart from the commitment on transparency (see Section II.4 below), contains no alterations. Therefore, reference is made to the Authority’s decisions concerning the 2008 Scheme for a more detailed description of the current aid scheme.

4 National legal basis

- (7) The national legal basis for the notified measure is the Norwegian Tax Act¹ Sections 8-10 to 8-18 and Section 8-20.
- (8) The tonnage tax rates are set in the Norwegian parliamentary resolution on income and net wealth taxes.² For constitutional reasons, the parliamentary resolution must be adopted ahead of every income year. Further provisions are set out in the General Regulation to the Tax Act³ Sections 8-11, 8-13, 8-15, 8-16 and 8-20.

5 Budget and duration

- (9) The duration of the notified scheme is six months from 1 July 2017 to 31 December 2017. The budget is NOK 100 million.

¹ The Norwegian Taxation Act of 26 March 1999 No 14 (Norwegian: *Lov av 26. mars 1999 nr. 14 om skatt av formue og inntekt (skatteloven)*).

² Norwegian: *Stortingsvedtak om skatt av inntekt og formue mv.*

³ The Norwegian General Tax Regulation of 19 November 1999 No 1158 concerning supplementation and implementation of the Taxation Act of 26 March 1999 No 14 (Norwegian: *Forskrift av 19. november 1999 nr. 1158 til utfylling og gjennomføring mv. av skatteloven av 26. mars 1999 nr. 14*).

II. ASSESSMENT

1 The presence of state aid

- (10) Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

- (11) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.
- (12) The Authority has already concluded that the 2008 Scheme constitutes state aid.⁴ There is nothing in the current notification to alter that conclusion. The application of the lower tonnage tax rather than the standard corporate tax leads to a loss of state revenues, estimated to NOK 100 million for the notified period. The measure applies only to the maritime sector and is therefore selective. The tonnage tax strengthens the ship owners' position towards their competitors within the EEA. Hence, the Scheme is liable to affect trade between the Contracting Parties and to distort competition. The Scheme therefore constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2 Procedural requirements

- (13) Pursuant to Article 1(3) of Part I of Protocol 3: *“the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”*.
- (14) By submitting a notification of the extension and awaiting the Authority's approval before letting it enter into force, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (15) With its decisions referred to in part I.2 of this decision, the Authority concluded that the Scheme currently in place was compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c) and the state aid guidelines on aid to maritime transport (“the Maritime Guidelines”).⁵
- (16) The Authority notes that an interruption in the applicability of the special tax system for shipping may lead ship owners to register their vessels in other, non-EEA ship registers. These ship registers usually have lock-in mechanism, meaning vessels may not be registered in the non-EEA registers for only a short period of time. Given the importance

⁴ See in particular Decision No 755/08/COL.

⁵ OJ C 103 28.4.2005, p. 24.

for the EEA, as well as for the Norwegian authorities, of having the Special Tax System for Shipping in place without interruptions, the extension represents a proportionate measure. This extension of the Scheme is limited in time to six months, which allows the Scheme to continue until the Norwegian authorities finalise the design of the new scheme in light of relevant developments at the EU level, which may impact the ultimate assessment of the new scheme. In this context, the Authority notes that the European Commission's decisions under the Maritime Guidelines concerning the EU Tonnage Tax Schemes, which are relevant for the Authority's approval of the new scheme, have evolved since the Authority's approval of the 2008 Scheme. In the interest of a homogenous interpretation and application of the state aid provisions throughout the EEA, the Authority considers it justified to approve the notified extension of the Scheme. A prolongation of the Scheme secures predictability and legal certainty for shipping companies within the Special Tax System for Shipping until the end of 2017.

4 Transparency

- (17) The Norwegian authorities have committed to publish information about the aid granted in accordance with the general transparency requirement. The Norwegian authorities will publish the full text of the aid scheme and make the necessary disclosures on a central website.

5 Conclusion

- (18) On the basis of the foregoing assessment, the Authority considers that the six-month prolongation of the Scheme constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. This aid is compatible with the functioning of the EEA Agreement.
- (19) The Norwegian authorities are reminded that all plans to modify the Scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

Not to raise objections to the six-month prolongation of the special tax system for shipping on the grounds that it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this Decision is authentic.

Done in Brussels, on 23 June 2017.

For the EFTA Surveillance Authority, acting under Delegation Decision No 068/17/COL.

Sven Erik Svedman
President

Carsten Zatschler
Director

This document has been electronically signed by Sven Erik Svedman, Carsten Zatschler.