

Case No: 65913  
Event No: 517162  
Dec. No: 181/09/COL

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 31 March 2009  
on the notification of amendments to the Norwegian Special Tax System for Shipping  
(Norway)

**THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>**

Having regard to the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement<sup>4</sup>,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>5</sup>, and in particular Part IV on Aid to Maritime Transport<sup>6</sup> thereof,

Whereas:

## **I. FACTS**

### **1 Procedure**

The Norwegian authorities notified the amendments to the Special Tax System for Shipping, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 17 February 2009 (Event No. 509224).

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<sup>1</sup> Hereinafter referred to as the Authority.

<sup>2</sup> Hereinafter referred to as the EEA Agreement.

<sup>3</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>4</sup> Hereinafter referred to as Protocol 3.

<sup>5</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. The Guidelines were last amended on 29 January 2009. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/guidelines/>

<sup>6</sup> Hereinafter referred to as the Maritime Guidelines.

## 2 Description of the proposed measures

### 2.1 Background

The Norwegian authorities have notified changes to the Special Tax System for Shipping which was approved by the Authority by Decision No. 755/08/COL of 3 December 2008. By this decision, the Authority had approved both the new tax system which is currently in place and transitional measures dealing with the exit from the prior tax system.

The Special Tax System for Shipping currently in place<sup>7</sup> and approved by the Authority on 3 December 2008, is an exemption regime, *i.e.* shipping income is tax exempt on a permanent basis. The ship owner pays a tonnage tax, *i.e.* an amount of tax linked directly to the tonnage operated. Such tax is payable irrespective of the company's actual profits or losses.

The previous Special Tax System for Shipping offered eligible undertakings a postponed taxation of profits derived from the operation of ships until either untaxed income was distributed to shareholders or the company exited the special tax system (instead of paying standard corporate tax on profit generated by eligible maritime activities). Until such an event, eligible undertakings paid a tonnage tax.

By its decision of 3 December 2008, the Authority also approved transitional measures from the prior tax system to the new one. Indeed, as the prior Special Tax System for Shipping was based on postponed taxation of profits, putting an end to the prior system resulted in the question of how deferred taxation should be dealt with. The Norwegian authorities put in place the following transitional measures:

- up to one third of the deferred tax can be set aside to an environmental fund which can be used for different kinds of environmental investments. The aim of the environmental fund is to provide incentives to companies to achieve higher environmental protection. An environmental measure is a measure that reduces pollution from maritime transport and which has an environmental effect for at least one year.
- two thirds or more of the deferred tax may be subject to corporate tax over ten years with a 10% linear depreciation.

Undertakings had the possibility to benefit from the transitional measures only if they opted for the new tonnage tax system.

The Norwegian authorities notified on 17 February 2009 two amendments to the existing Special Tax System for Shipping: an amendment concerning the functioning of the environmental fund (2.2) and a change in the limitations concerning the possibility for a company within the special tax system to extend loans and guarantees to companies outside the special tax system (2.3).

### 2.2 The environmental fund

According to the Special Tax System for Shipping currently in place, in order to benefit from the favourable environmental fund regime, the undertaking must invest in environmental measures within a period of 15 years as from 1 January 2007.

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<sup>7</sup> Since 1 January 2007.

The Norwegian authorities have decided to abolish the 15 year limit; the companies will have no duty to invest in environmental measure within a specific time limit.

### **2.3 Possibility to extend guarantees for loans to group companies outside the scheme**

According to the current regime, companies within the special tax system with a deferred tax liability from the previous regime are not allowed to:

- extend loans to shareholders outside the scheme with direct or indirect ownership interests in the company, or to persons closely related to such shareholders,
- guarantee for loans to shareholders/persons as mentioned here above regardless of whether the guarantee is given to an associated company or a third party (such as a financial institution).

The Norwegian authorities have notified an amendment which will enable companies with a deferred tax liability from the previous regime to guarantee for loans to shareholders outside the scheme with direct or indirect interests in the company, or to persons closely related to such shareholders.

## **II. ASSESSMENT**

### **1 Procedural requirements**

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”*.

The Norwegian authorities submitted a notification of the amendments to the Special Tax System for Shipping. In the notification the Norwegian authorities state that the amendments will not take effect before the Authority has approved them.

The Authority concludes that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

### **2 Compatibility of the aid**

The two notified amendments are the only proposed changes to the scheme which had been approved by the Authority on 3 December 2008. All other aspects of the scheme remain unchanged. The Authority refers to sections 3.1 and 3.2 of the assessment part of its above mentioned decision and considers that the compatibility assessment contained therein is also applicable as regards the amendments under assessment.

With regard to the abolition of the time limit for investments in the environmental fund, the Authority considers that this amendment does not affect the assessment of compatibility of the transitional measures, cf. section 3.1 of its previous decision. In relation to the relaxation of the rules relating to the possibility to extend guarantees, the Authority notes that they are a part of the ring fencing measures described in section 2.2.4 of its decision of 3 December 2008. With reference to the assessment of compatibility of

the ring fencing measures contained in section 3.2.4 the Authority is of the opinion that the notified amendment is not of such a nature as to alter its previous assessment.

## **2 Conclusion**

On the basis of the foregoing assessment, the Authority considers that the notified amendments to the Special Tax System for Shipping which the Norwegian authorities are planning to implement is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.

The Norwegian authorities are reminded to provide annual reports on the implementation of the scheme according to Article 21 of Part II of Protocol 3 and Article 6 of Decision 195/04/COL.

All plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the two amendments to the Special Tax System for Shipping on the basis of Article 61 of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 31 March 2009

For the EFTA Surveillance Authority,

Per Sanderud  
President

Kurt Jaeger  
College Member