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EFTA SURVEILLANCE  
AUTHORITY

Ministry of Trade, Industries and Fisheries  
PO BOX 8090 Dep  
0032 Oslo  
Norway

**Subject: The Norwegian Special Tax System for Shipping 2018-2027**

## 1 Summary

- (1) The EFTA Surveillance Authority (“the Authority”) informs the Norwegian authorities that, having assessed the notified special tax system for shipping for the period 2018-2027 (“the Tonnage Tax Scheme”), the Authority considers that the measure constitutes state aid and decides not to raise objections<sup>1</sup> to the measure, as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

## 2 Procedure

- (2) By letter dated 24 May 2017, the Norwegian authorities notified the Tonnage Tax Scheme to the Authority, pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and Court of Justice (“Protocol 3”). By letter dated 9 June 2017, the Norwegian authorities submitted additional information.
- (3) By letter dated 4 July 2017, the Authority requested additional information from the Norwegian authorities. By letter of 20 September 2017, the Norwegian authorities submitted additional information. The notification was discussed during the package meeting held in Oslo, Norway on 28 September 2017. The Authority and the Norwegian authorities have also had informal exchanges of information by email and video conferences.
- (4) By letter dated 4 December 2017, the Norwegian authorities submitted an updated and complete notification.

## 3 The Tonnage Tax Scheme

### 3.1 General features

- (5) The notified measure is based on the principle of permanent exemption from the ordinary corporate tax on profits derived from eligible activities. Companies within the Tonnage Tax Scheme will be subject to a tonnage tax<sup>2</sup> instead of the ordinary Norwegian corporate

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<sup>(1)</sup> Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>(2)</sup> Tonnage Tax, as defined in the Authority’s Guidelines on Aid to maritime transport (OJ C 103, 28.4.2005, p. 24 and EEA Supplement No 21, 28.4.2005, p. 18) (the “Maritime Guidelines”), means that the ship owner pays an amount of tax linked directly to the tonnage operated.

tax, irrespective of any profits or loss.<sup>3</sup> Activities other than eligible shipping activities are not subject to the tonnage tax. These activities are subject to the ordinary corporate tax.

- (6) 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 by its decision of 1 July 1998 (Decision No 164/98/COL).
- (7) The Authority approved a prolongation of the tonnage tax by its decision of 3 December 2008 (Decision No 755/08/COL). Amendments to that 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). The Authority approved a six-month extension (until 30 June 2017) of the tonnage tax on 11 November 2016 (Decision No 201/16/COL) and a second sixth-month extension (until 31 December 2017) on 23 June 2017 (Decision No 109/17/COL).

### 3.2 The Norwegian maritime sector

- (8) Norway has the world's tenth largest shipping fleet measured in tonnage. From 2004 to 2014, the Norwegian shipping fleet's contribution to Norway's GDP increased from NOK 10 billion to NOK 45 billion.
- (9) Norway's fleet of offshore vessels<sup>4</sup> is the world's second largest, the largest being that of the United States. The Norwegian maritime offshore fleet has since 2004 experienced considerable growth. For instance, the number of employees has increased from 7 600 to more than 19 000 from 2004 to 2014. The Norwegian offshore fleet expanded from 361 vessels in 2004 to 607 in July 2016. However, the market conditions for offshore vessels have deteriorated considerably over the last years, and the number of offshore vessels taken out of operation is increasing. As of October 2016, more than 110 Norwegian controlled offshore vessels were laid up.
- (10) The net tonnage within the previously approved tonnage tax schemes has increased since 2007. As of 2015, approximately 1 500 vessels were covered by the current tonnage tax scheme.
- (11) The number of registered vessels in the Norwegian Ordinary Ship Register (NOR) has remained stable over the last years. The number of registered vessels in the Norwegian International Ship Register (NIS), however, was until recently in steady decline. In 2015, NIS registered vessels represented about 20% of the total Norwegian controlled fleet, down from about 35% around ten years ago. The number of NIS registered vessels increased in 2016, following the liberalisation of NIS trade area restrictions.<sup>5</sup>
- (12) The following figures show an overview of the development in number of vessels within the previously approved tonnage tax schemes.<sup>6</sup>

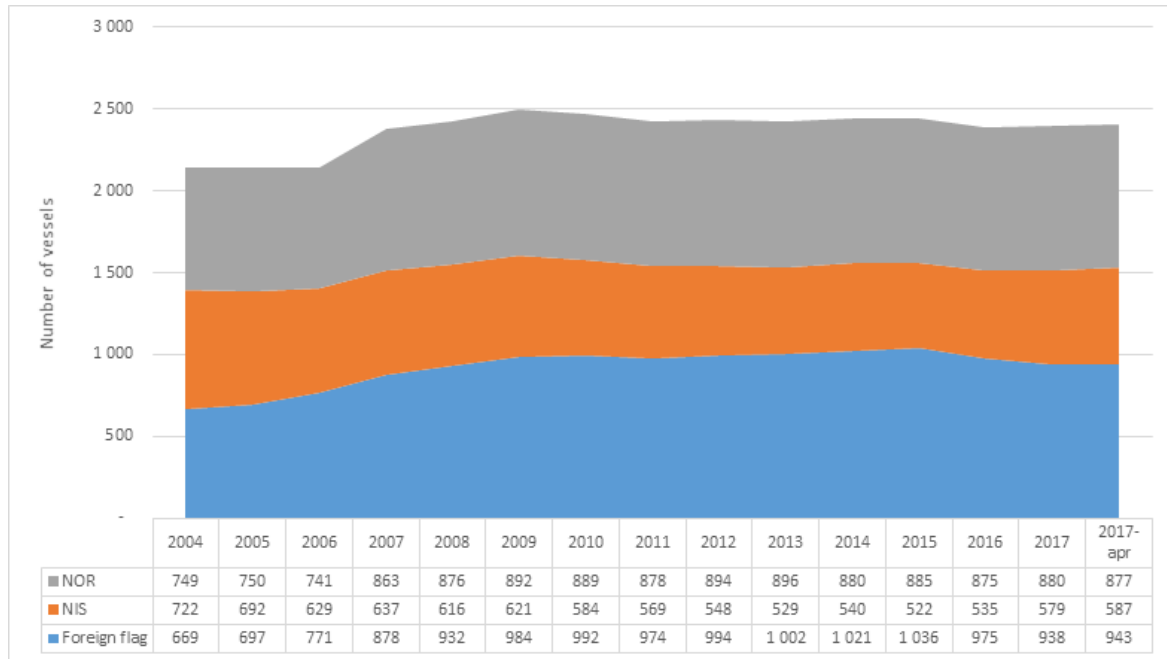
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<sup>(3)</sup> Section 3.1(4) of the Maritime Guidelines.

<sup>(4)</sup> See Section 3.13.4 below for a definition of offshore vessels.

<sup>(5)</sup> For a description of the NIS trade area, see the Authority's Decision No 199/17/COL.

<sup>(6)</sup> Source: The Norwegian Shipowners' Association, the Norwegian Maritime Authority and Statistics Norway.



Year	Vessels in total	Vessels chartered in
2007	709	No verified data
2008	963	151
2009	1152	155
2010	1200	125
2011	1419	346
2012	1422	277
2013	1452	252
2014	1484	231
2015	1523	246

### 3.3 Objectives

(13) The objectives of the Tonnage Tax Scheme are:

- maintaining and improving maritime know-how, and protecting and promoting employment for EEA seafarers;
- ensuring safe, efficient, secure and environmentally friendly maritime transport;
- encouraging the flagging or re-flagging to NOR and NIS; and
- contributing to the consolidation of the Norwegian maritime sector, while maintaining an overall competitive fleet.

### 3.4 National legal basis

- (14) The national legal basis for the Tonnage Tax Scheme is the Norwegian Tax Act, Sections 8-10 to 8-18, and Section 8-20.<sup>7</sup> Further provisions are set out in the General Regulation to the Tax Act, Sections 8-11, 8-13, 8-15, 8-16 and 8-20.<sup>8</sup>
- (15) The tonnage tax rates are set in the Norwegian parliamentary resolution on income and net wealth taxes.<sup>9</sup> For constitutional reasons, a parliamentary resolution must be adopted for every income year.

### 3.5 Administration

- (16) The Tonnage Tax Scheme is administrated and controlled by the Norwegian tax authorities.

### 3.6 Duration

- (17) The Norwegian authorities have notified the Tonnage Tax Scheme from 1 January 2018 until 31 December 2027. In addition, the amendment concerning the windmill farm vessels referred to in Section 3.10.5 below, has been notified for the income year of 2017.

### 3.7 Budget

- (18) The estimated loss of tax revenue amounts to NOK 200 million annually.

### 3.8 Transparency

- (19) The Norwegian authorities have committed to publish information about the aid granted, in accordance with the general transparency requirements.

### 3.9 Eligible undertakings

- (20) The Tonnage Tax Scheme is open for private and public limited companies<sup>10</sup> carrying out eligible shipping activities. Eligible assets can also be held through partnerships, limited partnerships (Norwegian or foreign) and Controlled Foreign Corporations (CFCs) based in low tax countries.<sup>11</sup> Shipping profits derived by limited companies under the Tonnage Tax Scheme through partnerships, limited partnerships or CFCs may also be covered by the Tonnage Tax Scheme.
- (21) Companies similar to Norwegian limited liability companies and registered in other EEA States, and which only carry out eligible shipping activities taxable in Norway, also qualify for the Tonnage Tax Scheme (see Section 3.12 below).
- (22) In order to be eligible for the Tonnage Tax Scheme, a company must own either a ship eligible under the Tonnage Tax Scheme, or shares or interests in limited liability companies, partnerships or CFCs that own such ships. The minimum ownership share in partnerships, limited partnerships and CFCs is 3%.

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<sup>(7)</sup> 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)*).

<sup>(8)</sup> 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*).

<sup>(9)</sup> Norwegian: *Storingsvedtak om skatt av inntekt og formue mv.*

<sup>(10)</sup> Norwegian: *aksjeselskap (AS)* and *allmennaksjeselskap (ASA)*.

<sup>(11)</sup> A CFC is a corporate entity that is registered and conducts business in a different jurisdiction than the residency of the controlling owners.

- (23) Companies and groups that are part of the Tonnage Tax Scheme have to enter all their eligible vessels in the Tonnage Tax Scheme.

### 3.10 Eligible vessels

#### 3.10.1 Introduction

- (24) Vessels eligible under the Tonnage Tax Scheme are either defined as “transport ships” or “support vessels in petroleum activities” as further defined in the Norwegian Tax Act. These terms are then applied by the Norwegian tax authorities when assessing whether a vessel is eligible for the Tonnage Tax Scheme or not. In general, all “transport ships” are eligible for the Tonnage Tax Scheme, unless excluded. “Support vessels in petroleum activities” are eligible insofar as their activity constitutes maritime transport as such, or maritime transport by analogy.<sup>12</sup> Vessels eligible under the Tonnage Tax Scheme are not exhaustively described in the Norwegian Tax Act. According to the Norwegian authorities, a list of specific vessel types would easily be outdated and new vessels that in fact are active in maritime transport could then fall outside the Tonnage Tax Scheme.

#### 3.10.2 Transport ships

- (25) According to administrative practice of the Norwegian tax authorities, the term “transport ships” has been interpreted to include the following types of vessels:
- Passenger ships, for example ferries and cruise ships.
  - Ships transporting liquid and dry cargo, for example:
    - o Bulk carriers
    - o Tankers
    - o Container ships
    - o Car carriers
    - o Roll-on roll-off carriers
    - o Refrigerated cargo vessels
    - o Chemical tankers
    - o Shuttle tankers
    - o Live fish carriers (well boats).
  - Cable laying vessels for high-voltage cables and data communication cables (with remotely operated underwater vehicles (“ROVs”), controlled from cable laying vessels).
  - Tugboats not used in petroleum activities (to qualify as a “transport ship”, at least 50% of the towage activity must constitute maritime transport).
  - Windmill farm vessels used in transportation assignments, for example:
    - o Vessels transporting and unloading parts to windmills at sea, but not taking part in construction, maintenance etc.
    - o Installation support vessels (“ISVs”) for windmill farms. ISVs support the connection of cables to offshore windmills. The vessels are used for transporting crew and equipment from land to windmill farms and between windmills. In connection with the transport, the vessels are also used for temporary storage and accommodation of equipment and personnel.
    - o Vessels used for transport and grouting of concrete to wind turbine foundations.
  - Seismic vessels not engaged in petroleum activities.

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<sup>(12)</sup> Vessels included by analogy means vessels that perform activities that share a sufficient number of characteristics comparable with maritime transport, i.e. that the vessels operate in a market open to international competition, the vessels require qualified seafarers and there is a risk of de-flagging and relocation.

- Rock-dumping vessels not engaged in petroleum activities.
- Barges towed by other vessels. These barges are only eligible insofar as they are seagoing, in other words not operating on inland waterways, see Section 3.10.6.
- Vessels used for transport of dredged materials.

(26) The following vessels are not considered as “transport ships”:<sup>13</sup>

- Ships in domestic traffic smaller than 100 gross registered tons.
- Ferries in scheduled traffic between Norwegian ports where the distance between the first and last port is less than 300 nautical miles.
- Ships operating on inland waterways.
- Ships conducting stationary activities (e.g. in ports) or other activities where the sailed distance is less than 30 nautical miles (applies only to domestic traffic). This exemption applies only when more than 50% of the ships’ activities during a year consist of stationary activities or other activities where the sailed distance is less than 30 nautical miles.
- Vessels which are not self-propelled, unless the vessel is operated in connection with a self-propelled vessel.
- Receiving boats, and vessels used as working platforms.
- Pleasure crafts.
- Fishing boats.

(27) Vessels active in international maritime transport of goods or passengers are eligible for the Tonnage Tax Scheme irrespective of the above-mentioned limitations in paragraph (26).

### 3.10.3 *Dredging vessels*

(28) Transport of dredged materials, including loading of such material to a transport vessel, is allowed under the Tonnage Tax Scheme. Such activity constitutes maritime transport. Vessels used for transport of dredged materials are also eligible under the Tonnage Tax Scheme. However, if a vessel is also active in dredging activities, such activities would make the vessel ineligible under the Tonnage Tax Scheme.

### 3.10.4 *Support vessels in petroleum activities*

(29) Support vessels used in petroleum activities are eligible under the Tonnage Tax Scheme. According to the Norwegian authorities, the activities of the support vessels constitute both maritime transport as such, as well as maritime transport by analogy. The vessels employ qualified seafarers and transport equipment used for various offshore purposes. When the tax authorities assess the eligibility of vessels under the Tonnage Tax Scheme, they look into the functions of the vessels, and assess which of these four categories the vessels belong to:

1. Support vessels in petroleum activities other than entrepreneur vessels.
2. Entrepreneur vessels not in operation on the continental shelf.
3. Mobile installations (such as drilling rigs, production ships and accommodation platforms).
4. Fixed installations.

(30) Only vessels in categories 1 and 2 are eligible under the Tonnage Tax Scheme.

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<sup>(13)</sup> Section 8-11 of the General Regulation to the Tax Act.

- (31) According to the administrative practice of the Norwegian tax authorities, the term “support vessels in petroleum activities” has been interpreted to include the following types of vessels:
- Supply ships. According to the Norwegian authorities, supply ships qualify both as “transport ships” and “support vessels in petroleum activities”:
    - o Ships supplying provisions to and from petroleum offshore installations
    - o Fast supply vessels that provide crew and provisions transport to and from petroleum offshore installations.
  - Seismic vessels.
  - Anchor handling tug supply vessels (AHTS).
  - Tugboats qualify as a “support vessel in petroleum activities”, and are not subject to the limitation that 50% of the towage activity must constitute maritime transport.
  - Emergency response and rescue vessels, diving vessels, fire vessels.
  - Pipe laying vessels.
  - Lifting vessels.
  - Subsea vessels, including vessels designed for deep ocean operations.
  - Well-intervention vessels.
  - Rock-dumping vessels.
  - Supply ships used as connecting links between production ships and tankers.
  - Multipurpose vessels, performing two or more of the tasks described in this paragraph.

#### 3.10.5 *Windmill farm vessels*

- (32) Windmill farm vessels active in maritime transportation are eligible under the Tonnage Tax Scheme. Vessels engaged in the construction, maintenance, repair and disassembly of windmills at sea are also eligible for the Tonnage Tax Scheme. These vessels also provide extra capacity at the offshore site. This extra capacity is used for temporary accommodation of crew, as workshop facilities and/or storage of spare parts etc.
- (33) Windmill farms at sea represent a significant industry in Europe. According to the Norwegian authorities, the windmill farm vessels operate under similar competitive and technical conditions as vessels involved in the transportation of goods and passengers by sea. The vessels require the same level of qualification for seafarers. There is also a risk that the companies operating such vessels could relocate their activities outside the EEA for the purpose of finding more accommodating fiscal climates and subsequently re-flag their vessels under flags of convenience.
- (34) Windmill farm vessels operating in Norwegian internal waters or territorial waters are, however, not eligible under the Tonnage Tax Scheme.<sup>14</sup> Thus, only windmill farm vessels operating outside these waters are eligible. The reason is that foreign companies performing activities on windmill farms in Norwegian internal waters or territorial waters will be liable to ordinary corporate tax in Norway. Consequently, Norwegian companies performing such activities in internal or territorial waters should also be liable to the ordinary corporate tax.
- (35) Unlike the remainder of the notified measure, which envisages an approval as from 1 January 2018, the notification entails that vessels engaged in the construction, maintenance, repair and disassembly of windmills at sea are eligible for the Tonnage Tax Scheme as of the income year 2017.

<sup>(14)</sup> The Norwegian territorial waters are extending 12 nautical miles from the sea boundary (“grunnlinjen”).

- (36) The inclusion of windmill farm vessels was announced by the Norwegian authorities on 6 October 2016. However, the inclusion of such vessels was made conditional upon approval by the Authority. According to the Norwegian authorities, the inclusion of windmill farm vessels has incentive effects also for activities initiated in 2017. The information on the inclusion of the windmill farm vessels was available to the industry on 6 October 2016.<sup>15</sup> From that day, the industry actors have known that the rules, subject to the Authority's approval, would apply as from 1 January 2017. Against this background, the Norwegian authorities have reasons to believe that the industry has acted and taken business decisions based on the windmill farm vessels being included in the Tonnage Tax Scheme.

#### 3.10.6 Eligibility of barges

- (37) Non-self-propelled barges are eligible vessels under the Tonnage Tax Scheme, insofar as the barges (i) qualify as a transport ship under the Norwegian Tax Act; (ii) are operated in sea-going transport activities and not mainly in inland waterways or costal activities; (iii) are operated in connection with a self-propelled vessel; (iv) are at least 1 000 gross tonnes; and (v) are registered in an EEA country.
- (38) First, these requirements will ensure that non-self-propelled vessels that operate mainly in inland waterways (regardless of the country of operation) are excluded from the Tonnage Tax Scheme. Second, non-self-propelled vessels that are used for storage purposes or operations inside a harbour area do not qualify for the Tonnage Tax Scheme. This will also mean that non-self-propelled vessels that are not transporting cargo, but are themselves being transported by a propelled vessel to perform an activity not related to transport at their place of arrival, do not qualify as "transport ships". However, as with other transport ships, the barges may sail without cargo between transport missions.
- (39) As regards the requirement that the vessels must be at least 1 000 gross tonnes, the Norwegian authorities have explained that these barges in reality serve as an extension of the deck area/hull space of a vessel. Non-self-propelled barges of 1 000 gross tonnes or larger are often used for transportation of large installations or modules, which would not fit on the deck of a vessel. Such vessels are often a pre-requisite in order to be able to take on certain transport assignments. The Norwegian authorities have submitted a picture of a barge typically operated by eligible companies under the Tonnage Tax Scheme.<sup>16</sup>

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<sup>(15)</sup>[https://www.regjeringen.no/contentassets/83f4ddc3a3e54345aa45c5cd17e4e12c/no/pdfs/prp2016201700\\_011s0dddpdfs.pdf](https://www.regjeringen.no/contentassets/83f4ddc3a3e54345aa45c5cd17e4e12c/no/pdfs/prp2016201700_011s0dddpdfs.pdf)

<sup>(16)</sup> The Norwegian authorities have not made an individual assessment of the eligibility of this particular vessel. The barge will, as all other barges, be assessed in accordance with the eligibility criteria.





- (40) As an example, barges may transport modules used in offshore renewable (windmill) and petroleum installations, as well as modules used for shipbuilding and infrastructure. Normally, the barges are towed to a port of shipment and loaded, before being towed to a port of discharge or an offshore installation for unloading. Finally, the barges are towed to their place of storage, awaiting new transport missions.
- (41) According to the Norwegian authorities, the inclusion of non-self-propelled barges contributes to the objectives of the Maritime Guidelines. The requirement that the barges must be registered in an EEA register means that the barges are subject to European regulations on safety and security. Moreover, the barges are operated by maritime personnel/seafarers with the same maritime qualifications and competencies as on-board vessels carrying out traditional maritime transport.

### **3.11 Laid up vessels, vessels under repair and shipbuilding contracts**

- (42) Vessels laid up or under repair are eligible under the Tonnage Tax Scheme if the vessel in question was eligible prior to the repair or prior to the laying up. A removal of such vessels from the Tonnage Tax Scheme would entail an administrative burden on both the tax authorities and the owners of these vessels. Furthermore, a re-entry into the Tonnage Tax Scheme may trigger taxation of capital gains, making further activity in the Tonnage Tax Scheme less attractive, which would counteract the objectives of the Tonnage Tax Scheme.
- (43) Shipbuilding contracts concerning eligible vessels are also accepted as eligible assets within the Tonnage Tax Scheme. The contracting of vessels is an integrated part of the shipping activity, and an entry into the Tonnage Tax Scheme after the completion of the vessel may trigger taxation on capital gains, making it less attractive to enter the Tonnage Tax Scheme.

### **3.12 Eligible activities**

#### *3.12.1 Introduction*

- (44) Companies within the Tonnage Tax Scheme are only allowed to carry out activities that are eligible under the Tonnage Tax Scheme, and can only own assets necessary to carry out these activities. Consequently, companies subject to the Tonnage Tax Scheme may not own non-shipping related assets. Companies are, however, allowed to own financial assets, but such assets are subject to ordinary corporate taxation. Companies carrying out

eligible activities as well as other activities are not eligible under the Tonnage Tax Scheme.

### 3.12.2 *Principal activities*

- (45) Eligible activities are ownership, leasing and operation of vessels whether directly owned by the eligible companies or chartered in. The Tonnage Tax Scheme implies some restrictions on chartering in and chartering out activities (see Section 3.13 below). Companies are entitled to have employees of their own. Capital gains on the sale of assets utilised for qualifying shipping activities are included in the profits that are tax exempt.
- (46) Ship management companies are not eligible under the Tonnage Tax Scheme. However, strategic and commercial management, including daily technical operations and maintenance of vessels owned or chartered in by the shipping company itself and vessels owned or chartered in by associated limited companies, associated partnerships and associated CFCs, are eligible activities.
- (47) There is no general strategic management requirement in the Tonnage Tax Scheme, i.e. it is not required that vessels under the Tonnage Tax Scheme be strategically and commercially managed from within the EEA. However, for companies chartering out parts of the fleet on bareboat terms in the offshore sector, the strategic management of all vessels chartered out must be carried out from within the EEA.
- (48) Currency hedging instruments connected to the qualifying shipping activities are treated in the same way as ancillary activities.<sup>17</sup> Eligible companies may also generate profits as a result of joint and several liability for employer obligations under Norwegian law.<sup>18</sup>

### 3.12.3 *Ancillary activities*

- (49) According to the Norwegian authorities, the following activities are considered ancillary activities falling within the scope of the Tonnage Tax Scheme:
- Loading and unloading of goods.
  - Temporary storage of goods at or near the harbour, pending further transport.
  - Leasing out of containers.
  - Door-to-door transport for the maritime leg of the transport only (i.e. joint transport that consists of sea transport by a qualifying vessel, and inland/air transport, when the inland/air transport is carried out by an independent contractor).
  - Transport of goods and persons in the port area.
  - Embarking and disembarking of persons.
  - Sale of goods and services for consumption on board.
  - Operation of ticket offices and passenger terminals.
  - Hiring out premises on board of vessels.
- (50) The ancillary activities are exempt from the ordinary corporate tax insofar as the activities are closely connected to the transport activities subject to the Tonnage Tax Scheme. Compliance with the “closely connected” requirement is controlled by the Norwegian tax authorities.

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<sup>(17)</sup> In its Decision of 7 July 2010 (Decision No 292/10/COL), the Authority approved currency hedging instruments as an eligible activity under the Scheme.

<sup>(18)</sup> In its Decision of 10 September 2014 (Decision No 322/14/COL), the Authority approved profits from joint and several liability for employer obligations as an eligible activity.

- (51) There is no cap on the revenue from the ancillary activities. However, according to the Norwegian authorities, there is only a theoretical possibility that non-core revenues would amount to more than 50% of a vessel's total gross revenues. This owes to the fact that ancillary activities will only benefit from the tax exemption insofar as the activities are closely connected to the transport activities that are core activities within the Tonnage Tax Scheme. Furthermore, the only non-core shipping activities that are eligible within the Tonnage Tax Scheme are the sale of services for consumption on board and the hiring out of conference rooms.
- (52) The above-mentioned activities can only be performed for vessels owned or chartered in by the shipping company itself, and vessels owned or chartered in by associated companies within the Tonnage Tax Scheme.
- (53) A company can perform strategic and commercial management, including technical operations and daily maintenance, for its own vessels, and vessels in associated companies, partnerships, CFCs and shipping pool companies (where the company is one of the participating companies in the joint venture), independently of whether the associated company is taxed under the Tonnage Tax Scheme. However, other secondary activities can only be performed for the company's own vessels, and vessels in affiliated companies taxed under the Tonnage Tax Scheme.

### **3.13 Bareboat chartering in and out**

#### *3.13.1 Introduction*

- (54) According to the Norwegian authorities, chartering activities are an integrated part of the shipping activities (whether being on time charter, voyage charter or bareboat terms). Bareboat chartering in and out are, with certain limitations, eligible activities under the Tonnage Tax Scheme. In its most simplistic form, bareboat chartering can be defined as a rental of vessel only. According to the Norwegian authorities, many contracts are not clear-cut bareboat contracts. Responsibility for certain tasks may be retained by the shipowning company even though the vessels are chartered out on bareboat terms. In a charter contract negotiated by the parties, the charter may take elements from both time and bareboat charter. This means that it is often not possible to define a negotiated contract as either a time or bareboat charter. In the Tonnage Tax Scheme, bareboat chartering is defined as the chartering out of vessels without the crew. However, when assessing chartering contracts, the tax authorities will have to examine the details of the contract arrangements to assess whether they should be considered as a bareboat contract or not.
- (55) In cases where staffing services are carried out by a related party,<sup>19</sup> bareboat chartering out limitations will not apply. In such cases, the charterer receives a time charter contract (chartering of a vessel with crew), although an element of bareboat is present for one of the companies involved in the arrangement. The bareboat limitations will not apply in these situations. In view of the Norwegian authorities, these agreements are in reality a time charter service to the customer, although the contracts may formally be entered into as a bareboat chartering contract.
- (56) There are no limitations on intra-group bareboat chartering. Intra-group chartering is used for reasons of internal distribution of shipping activities within a company group.

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<sup>19</sup> In order to constitute a related party, a minimum of 25% ownership/control is required. The definition of "related party" coincides with the definition of "associated enterprise" in the ATAD directive (Council Directive (EU) 2016/1164).

### 3.13.2 *Limitations on bareboat chartering out*

- (57) Chartering out on bareboat terms is an eligible activity within the Tonnage Tax Scheme. However, limitations apply in order to ensure that shipping activities remain the core activity of the company.

### 3.13.3 *Delineation of activities inside and outside the “offshore sector”*

- (58) Due to the specificities of the Norwegian maritime sector, there is a need for differing regulation of bareboat chartering out in the offshore sector. The Norwegian fleet is dominated by vessels in the offshore sector. By carving out the offshore sector, a distinction is made on the ship type. The starting point of the separation is the characteristics of the two sectors “traditional shipping” and the “offshore sector”. As to the maritime activities taking place offshore, the term “maritime sea and ocean related activities” is used. These are activities that need to be supported by vessels including the transportation of goods and equipment.
- (59) These maritime sea and ocean related activities could take place in any territorial waters, economic zone and continental shelf, under the jurisdiction of a nation state. Furthermore, the sea and ocean activity could take place under the seabed (inter alia petroleum exploration and production, mining etc.), on the seabed (inter alia cable laying), in the ocean (inter alia fish farming, tidal energy production) or on the ocean surface (windmills).
- (60) Furthermore, such maritime sea and ocean related activities involving vessels would typically be subject to various national rules and regulations applying to a particular national continental shelf, economic zone or territorial waters. The vessels servicing these activities will typically be subject to different national regulations. This could be a flag requirement of the state controlling the continental shelf, economic zone or territorial waters, or a need to use bareboat chartering out contracts in order to provide services.
- (61) The inclusion of a vessel type will depend on whether that vessel type is typically subject to national regulations applying to particular continental shelves, economic zones or territorial waters. Further, the vessels must be connected to activities in the petroleum sector, renewable power, aquaculture, or ocean floor segments. By applying these principles, the following vessels will be included in the “offshore sector”:
- Support vessels for petroleum activities.
  - Windmill farm vessels.
  - Shuttle tankers operating from petroleum installations.
  - Live fish carriers (well boats).
  - Cable laying vessels.
  - Tugboats for offshore activities beyond petroleum activities, and not used in “traditional shipping”.
  - Seismic vessels.

- (62) “Traditional shipping”, on the other hand, would comprise all other maritime activities. That is, mainly transportation of goods and passengers between two or more harbours on shore.

### 3.13.4 *Limitations on bareboat chartering out in the offshore sector*

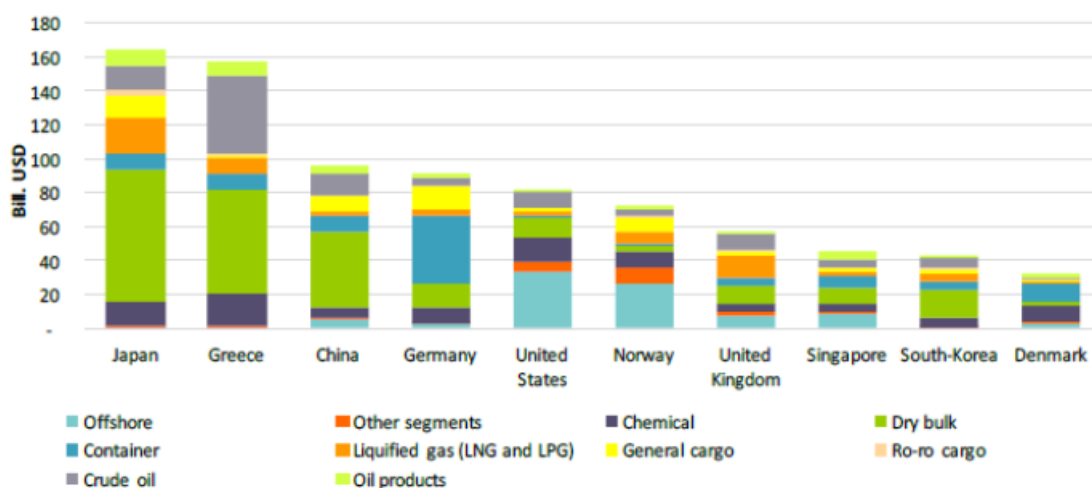
- (63) Chartering out on bareboat terms may not exceed 50% of the company’s fleet during an income year. This limitation is measured annually, counting the tonnage chartered out each day of the year. Furthermore, there is an option to measure the share chartered out of

the total tonnage over a period of four years, in order to avoid unmerited exclusions from the Tonnage Tax Scheme.

- (64) Secondly, contracts concerning bareboat chartering out are usually of a duration of between three and five years, often with an option to extend the charter period by up to three years. Consequently, there will be a limitation in the Tonnage Tax Scheme that bareboat chartering out must not exceed a contract period of five years, with a possibility to extend the contract by three years.
- (65) Finally, all strategic management of vessels chartered out on bareboat terms must be carried out from an EEA State. The strategic management is the higher management of the company, such as carried out by the CEO and the Board of Directors. It includes the determination of plans, budgets and guidelines for its operations, together with the financial management of the company, such as the signing of agreements for the purchase/sale of ships, long-term charters, various cooperation agreements, financing agreements, loan agreements, pledge agreements and insurance contracts.
- (66) The limitations in the offshore sector may in some cases not be suitable for certain companies within the Tonnage Tax Scheme. In order to ensure that these companies are not subject to an unsuitable regime, companies in the offshore sector may, as an alternative, choose to apply the restrictions for bareboat charter outside the offshore sector.

### 3.13.5 Rationale for the limitations on bareboat chartering out in the offshore sector

- (67) According to the Norwegian authorities, the Norwegian shipping sector differs substantially from the shipping sector of other countries. The Norwegian shipping sector is dominated by offshore service vessels. The Norwegian offshore fleet is the second largest in the world, and the most modern offshore fleet in the world. The composition of some of the main fleets in the world is illustrated in the table below:<sup>20</sup>



SOURCE: IHSMENON ECONOMICS

- (68) The offshore vessels are largely active outside the EEA, including in Australia, West Africa, Brazil, Indonesia, Malaysia, the Gulf of Mexico and Canada.

<sup>(20)</sup> The figure is published in the report "Maritime Outlook 2016" by the Norwegian Shipowners' Association.

- (69) Bareboat chartering out is frequently used in the offshore segment. In order to be competitive in the operating state, companies operating abroad will often separate the ownership of the vessel and the operational activities. Being able to offer vessels on bareboat chartering terms is often a prerequisite when bidding for contracts in the host state. This is *inter alia* due to regulatory requirements concerning the flag and staffing of vessels set by the host state. Local manning requirements apply to different types of vessels in a number of jurisdictions.
- (70) These local requirements mean that chartering out on bareboat terms may be the only commercially rational way of operation. In many cases, operating a vessel on bareboat chartering terms is also a contractual requirement set by the purchasing party. Thus, vessels active in the offshore sector may in some cases be chartered out, and even registered in local ship registers.
- (71) Finally, there may be other commercial reasons as to why bareboat chartering out is the preferable arrangement. This may concern risk related to crew availability, costs related to crew, timely access to ship repairs and maintenance, spare parts and other necessities for running the ship, and costs related to ship repairs and maintenance.
- (72) Even though the vessels are chartered out on bareboat contracts, there is, according to the Norwegian authorities, a substantial spillover to the Norwegian and European maritime sector. The Norwegian maritime sectors' efforts in the offshore segment abroad rely heavily on suppliers in the Norwegian maritime supply industry. In addition, Norwegian suppliers largely carry out the development of the vessels.
- (73) Moreover, the bareboat chartering out activity involves and requires certain types of maritime competencies and know-how, and is not an entirely passive activity. The ship owner remains, for instance, responsible for structural maintenance, inspection by class, insurance, and modifications to the ship imposed by new rules for safety and environment. The owner also has a direct economic interest in the market value of the ship, which is a direct function of the freight market. Many contracts are therefore not "clear-cut" bareboat contracts, but leave responsibility for certain tasks, for example technical management, with the shipowning company.

#### 3.13.6 *Bareboat chartering out outside the offshore sector (the traditional shipping sector)*

- (74) In order to exclude pure ship-lessors, the Tonnage Tax Scheme draws a distinction between financial bareboat chartering out and operational bareboat chartering out, outside the offshore sector. Operational bareboat chartering out will be allowed under certain conditions. Financial bareboat chartering out is not an eligible activity under the Tonnage Tax Scheme outside the offshore sector.
- (75) The main function of the requirements is to exclude from the Tonnage Tax Scheme any ship owner that does not retain the market risk of the ownership beyond the chartering period. As opposed to this, a financial charter agreement may transfer ownership of the vessel to the charterer by the end of the chartering term at a fixed price, or by other means transfer the market risk to the charterer.
- (76) Operational bareboat chartering out may not exceed 40% of the company's fleet during an income year. This limitation is measured annually, counting the tonnage chartered out each day of the year. Furthermore, there is an option to measure the share chartered out of the total tonnage over a period of four years, in order to avoid unmerited exclusions from the Tonnage Tax Scheme. The share of tonnage chartered out on bareboat terms is

measured on a company group level. This is because shipping companies are often organised as company groups with special purpose companies owning one vessel each.

- (77) Operational leasing will often in practice include additional responsibilities for the chartering party. The essential feature of the distinction between operational and financial leasing is that considerations other than the financing of a vessel must be the main reason for the choice of a chartering out agreement on bareboat terms.
- (78) A bareboat chartering out agreement, if considered part of a financial leasing activity, is excluded from the Tonnage Tax Scheme. Financial leasing activity is all activity where the owner essentially transfers all or a substantial part of the market risk to the charterer. The Norwegian model is based on accounting standards.<sup>21</sup> An agreement is considered financial leasing if the activity has any of the following characteristics:
- The charter transfers ownership of the vessel to the charterer or a third party at the end of the chartering term, except when the transfer price is based on a fair value determination made after the end of the chartering period.
  - The charterer or a third party has an option to purchase the vessel, except when the transfer price is based on a fair value determination made after the end of the chartering period.
  - Other circumstances make it probable that the charterer or a third party will take possession of the vessel during or at the end of the chartering period, except when the transfer price is based on a fair value determination made after the end of the chartering period.
  - The present value of the minimum chartering payments at the inception of the charter exceeds 90% of the fair value of the chartered vessel.
  - The gains or losses from the fluctuation in the fair value of the residual at the end of the chartering period accrue completely or partially to the charterer.
  - The charterer has the possibility to continue the charter for a secondary period at a rent that is lower than market rent.
  - The vessel is leased for more than 50% of its expected total lifespan estimated at the start of the chartering period.
- (79) Operational leasing activity is all leasing activity that is not financial, in other words, all activity where the charter agreement does not have any of the characteristics listed above. Whether the activity is operational or financial is assessed for each party, not on a contract level. This means that the activity of one owner might be different from the activity of other owners with whom it owns the vessels. Operational activities will often include additional responsibilities for the chartering party.

### 3.13.7 Rationale for the limitations on bareboat chartering out outside the offshore sector

- (80) According to the Norwegian authorities, the exclusion of financial bareboat chartering out will exclude pure ship lessors and maritime brokers from the Tonnage Tax Scheme, as such companies do not contribute to the objectives of the Maritime Guidelines to the same extent as other market participants in the shipping industry. On the other hand, operational bareboat chartering out will often include additional responsibilities for the chartering party, and thus contribute to the objectives of the Maritime Guidelines.

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<sup>(21)</sup> See for example *Norsk RegnskapsStandard (NRS) 14 Leieavtaler*.

### 3.14 Chartering in on bareboat terms

- (81) No limitations apply to chartering in on bareboat terms, provided that the eligibility requirements are fulfilled. The company in question operates the ship and is responsible for the crew and technical management, and it is thus active in maritime transport.

### 3.15 Voyage charter/time chartering in

- (82) Chartering in on voyage or time charter is limited to 90% of non EEA-flagged vessels. The limitation entails that a minimum of 10% percent of the tonnage of a company/company group that is taxed under the Tonnage Tax Scheme must be either owned, chartered in on bareboat terms and/or registered in an EEA ship register.
- (83) The limitation is measured annually, but counting the tonnage chartered out for each day of the year. According to the Norwegian authorities, chartering in on voyage chartering or time chartering terms is an integrated part of the operation of a shipping company. Consequently, in the view of the Norwegian authorities, chartering in on time or voyage charter terms contributes to the preservation of maritime know-how in the EEA.

### 3.16 Tonnage tax rates

- (84) The Tonnage Tax Scheme is an exemption from the ordinary corporate tax. Companies within the Tonnage Tax Scheme do not pay ordinary corporate tax, and no tax is imposed on profits from eligible activities. Rather, the shipping companies pay a tonnage tax calculated by reference to each of the vessels operated by the shipping company. The tonnage tax is calculated as follows, by reference to the net tonnage of each of the vessels operated by a company, within the Tonnage Tax Scheme at the following rates per day:
- NOK 0.9 per 100 net tons up to 1 000 net tons,<sup>22</sup> thereafter,
  - NOK 9 per 1 000 net tons for the first 1 000 net tons, thereafter,
  - NOK 18 per 1 000 net tons from 1 001 to 10 000 net tons, thereafter,
  - NOK 12 per 1 000 net tons from 10 001 to 25 000 net tons, thereafter,
  - NOK 6 per 1 000 net tons above 25 000 net tons.
- (85) The tonnage tax may be reduced by up to 25% based on the environmental rating of the vessel in question. Pursuant to the Norwegian Regulation on Environmental Declaration,<sup>23</sup> shipping companies may submit a voluntary declaration to the Norwegian Maritime Authority, by using the Form for Calculation of the Environmental Factor<sup>24</sup> issued by the Maritime Authority. This form sets out the criteria for determining the environmental rating of a ship from 1 to 10. The reduction of the tonnage tax based on the environmental rating is calculated as follows:

Environmental rating	Tonnage tax reduction
Up to 1	2.5 %
1 to 2	5.0 %

<sup>(22)</sup> In the 0 to 1 000 net tons interval, the tonnage will be rounded to the nearest 100 net tons. For vessels with a tonnage below 50 net tons, the tonnage will be set to 100 net tons, i.e. for all vessels with a tonnage between 0 and 149 net tons, the tonnage tax will be NOK 0.9 per day. Tonnage exceeding 1 000 net tons will be rounded to the nearest thousand net tons.

<sup>(23)</sup> Regulation of 28 November 2000 No 1194 concerning environmental declaration in connection with environmental differentiation for ships and mobile installations (Norwegian: *Forskrift av 28. november 2000 nr. 1194 om miljødeklarasjon i forbindelse med miljødifferensiering for skip og flyttbare innretninger*).

<sup>(24)</sup> Norwegian Regulation of 28 November 2000 No 1194 concerning environmental declaration in connection with environmental differentiation for ships and mobile installations, section 5 (Norwegian: *Forskrift av 28. november 2000 nr. 1194 om miljødeklarasjon i forbindelse med miljødifferensiering for skip og flyttbare innretninger*).



2 to 3	7.5 %
3 to 4	10.0 %
4 to 5	12.5 %
5 to 6	15.0 %
6 to 7	17.5 %
7 to 8	20.0 %
8 to 9	22.5 %
9 to 10	25.0 %

- (86) The objective of the reduction referred to above is to provide an incentive for shipping companies to use more environmentally friendly ships.

### 3.17 Flag-link

- (87) As a starting point, the Tonnage Tax Scheme requires a link with the flag of one of the EEA States, in order for the company groups to be eligible for the Tonnage Tax Scheme. However, fleets comprising vessels flying other flags are also eligible, provided that the eligible companies commit themselves to increase or at least maintain the share of the tonnage operated under the flag of one of the EEA States. The EEA tonnage share requirement does not apply to undertakings operating at least 60% of their tonnage under an EEA flag, or if the EEA flagged share of the total tonnage eligible for tax relief in Norway did not decrease on average the previous year. For companies within the Tonnage Tax Scheme that prepare consolidated accounts, cf. the Seventh Council Directive 83/349/EEC, the flag requirement applies to the companies as a group.<sup>25</sup>
- (88) Tugboats and barges are required to be EEA flagged.
- (89) Companies within the Tonnage Tax Scheme are obliged to annually report to the Norwegian tax authorities all relevant information concerning the EEA registered tonnage share. Compliance with the requirement to “increase or maintain” the share of the flag of one EEA State is assessed by the tax authorities. If the flag link requirement is not met, then all profits will be taxed under the ordinary corporate tax regime.

### 3.18 Ring-fencing measures

- (90) The Norwegian authorities have submitted the following list of ring-fencing measures to prevent spillover into non-shipping activities, and to restrict the fiscal advantages to shipping activities only.
- Arm’s length principle: The general provision in Norwegian tax legislation that imposes an arm’s length principle on transaction between associated companies and persons will apply. Normal market conditions will be used for tax purposes where a transaction takes place within a group of companies benefiting from the Tonnage Tax Scheme and companies subject to the ordinary corporate tax.
  - Taxation of hidden reserves upon entry into the Tonnage Tax Scheme: Profits derived from shipping activities outside the Tonnage Tax Scheme, including gains on assets, are subject to taxation upon entry into the Tonnage Tax Scheme. All non-financial hidden reserves and losses will be a part of the income settlement. Financial assets are however not subject to settlement as such profits are taxed both within and outside the Tonnage Tax Scheme.

<sup>(25)</sup> For the purpose of the flag requirement, a company group may consist of more than one chain of companies within the Tonnage Tax Scheme. Each chain will be consolidated separately.

- Lock-in period: Companies that opt for the Tonnage Tax Scheme commit to remain under the Tonnage Tax Scheme for a ten-year period. If a company exits the Tonnage Tax Scheme prior the end of the period, the company may not re-enter the Tonnage Tax Scheme before the expiry of the ten-year period.
- All-or-nothing-rule: A company eligible for the Tonnage Tax Scheme and belonging to a group of companies, in which some companies have opted for the Tonnage Tax Scheme, is obliged to opt for the Tonnage Tax Scheme. The decision to opt for the Tonnage Tax Scheme is made collectively at the level of the group.
- Rule against thick capitalisation: The Tonnage Tax Scheme prevents all capitalisation not producing deductible costs being attributable to non-eligible activities. To prevent shifting of interest payments, a minimum amount of debt for eligible companies is stipulated equal to 30% of the company's total capital. If a company has less debt than 30%, the difference between the actual debt and the minimum debt multiplied with a regulated interest rate, is treated as taxable income.
- Tax neutral effect of group contributions: Companies within the Tonnage Tax Scheme are allowed to make group contributions to, and receive group contributions from, companies both within and outside the Tonnage Tax Scheme. However, a group contribution shall be tax neutral, i.e. a group contribution will not be deductible for the contributor, and will not be treated as taxable profits for the receiver.
- Restrictions on group contributions subsequent to an exit from the Tonnage Tax Scheme: The Tonnage Tax Scheme may provide the companies with incentives to opt into the Tonnage Tax Scheme for income years with a profit, and opt out for income years with a deficit. Profit is not subject to tax under the Tonnage Tax Scheme, while a deficit is tax deductible outside the Tonnage Tax Scheme. In order to counteract such adaptations, companies exiting the Tonnage Tax Scheme are not entitled to receive group contributions for tax purposes in the exit year and the two following years.
- Exit from the Tonnage Tax Scheme: As previously stated, profits from shipping activities are tax exempted on a permanent basis under the Tonnage Tax Scheme. New bases of depreciation on the assets in the Tonnage Tax Scheme will be calculated at the time of exit, equal to market value. This is in order to ensure that an increase in the value of a company's assets will remain tax-free and a decrease not tax deductible.

### 3.19 Control and sanctions

- (91) If a company no longer fulfils the conditions of the Tonnage Tax Scheme, the company must revert to ordinary corporate taxation, irrespective of whether the breach of the requirements was deliberate or not. However, in order to avoid unmerited exclusions from the Tonnage Tax Scheme, a company in breach has two months to fulfil the requirements starting from the time of the breach. In cases where the breach is insignificant, or caused by circumstances outside the control of the company, the time limit runs from the time the breach ought to have been discovered by the company. The time limit may be extended if the company has particular problems in fulfilling the requirements. The possibility of an extension has been applied strictly by the Norwegian tax authorities, and is not applied in cases where a fulfilment of the requirements within the two-month deadline is merely less convenient or more costly than a delayed fulfilment.

### 3.20 Transitional rules

- (92) The Norwegian authorities have notified certain transitional provisions to avoid unmerited exclusion from the Tonnage Tax Scheme.

### 3.20.1 *Bareboat chartering out*

- (93) To encourage companies to adapt to the new requirements and continue their presence within the Tonnage Tax Scheme, the limitations on bareboat chartering out contracts will only apply to new contracts. Tonnage chartered out on existing contracts (including options to extend existing contracts) will not be subject to the limitations. However, in order to exclude pure ship lessors from the Tonnage Tax Scheme, this exemption from the limitations on bareboat chartering out contracts will not apply to long-term contracts. The definition of long-term contracts depends on whether the offshore chartering out limitation or the operational chartering out limitation is applied.
- (94) In the offshore sector, bareboat chartering out contracts are usually of a duration of between three and five years. When the offshore bareboat chartering out limitation is applied, the transitional rule will therefore take effect in cases where the original contract period exceeded five years, but the remaining period is five years or less. This will allow companies to adjust to the new five plus three year limitation in sectors where the five plus three year maximum is a viable business option, but for some reason a longer contract period has been chosen for an already existing bareboat charter agreement.
- (95) For the operational chartering out limitation, which is mainly targeted at non-offshore vessels, the transitional rule will not take effect unless the remaining duration of the charter is 8 years or less. In the non-offshore segment, bareboat contract lengths vary, but they are usually of a duration of 5 years or more. Option agreements, to extend the charter period after the original period ends, are in practice not entered into in the non-offshore shipping segment.
- (96) To avoid any risk of abuse of the system, any changes to the existing bareboat chartering out contracts, made between 15 November 2017 and 31 December 2017, that influence the remaining contract period, will not be taken into consideration.

### 3.20.2 *Chartering in on time charter/voyage charter terms*

- (97) In order to provide companies with the possibility to adopt to the new rules on chartering on time/voyage charter terms, the limitation referred to in Section 3.15 will only apply to new chartering in contracts. Options to extend existing contracts will be treated in line with existing contracts.

### 3.20.3 *Time limit to comply with the requirements of the Tonnage Tax Scheme*

- (98) As stated above in Section 3.19, companies that have breached the requirements under the Tonnage Tax Scheme, generally have a two-month time limit to fulfil the requirements. The Norwegian authorities will apply an extended time limit in so far as the companies need to fulfil new requirements that will come into force as of 1 January 2018, concerning bareboat chartering out and the gross register tonnage of non-self-propelled vessels.
- (99) The companies will in these cases have the possibility to adjust to the new regulations by 1 November 2018. The transitional time limit cannot be extended by the tax authorities. Also, the transitional provision will be applicable only to company groups that are already taxed within the previously tonnage tax scheme for the income year of 2017. Company groups entering the Tonnage Tax Scheme after 2017 must comply with the new requirements as of 1 January 2018.
- (100) Companies that fail to comply with the requirements on 1 November 2018 will exit the Tonnage Tax Scheme as from 1 November 2018. This implies that all income, regardless of their eligibility for the Tonnage Tax Scheme, will be taxed under the ordinary corporate

taxation rules for the period of 1 November 2018 to 31 December 2018. Income received before 1 November 2018 will be taxed under the Tonnage Tax Scheme. The distribution of income will be based on the principles used when a taxpayer transfers to or from a divergent financial year.

#### **4 Presence of state aid**

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

“(…) 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 (…).”

(102) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

##### **4.1 Presence of state resources**

(103) The aid measure must be granted by the State or through state resources. The application of the lower tonnage tax, rather than the ordinary corporate tax, leads to a loss of state revenue. The Authority therefore considers that the measure is granted through state resources.

##### **4.2 Favouring undertakings**

(104) The aid measure must confer on shipping companies advantages that relieve them of charges that are normally borne from their budgets. The Tonnage Tax Scheme provides shipping companies advantages by way of tax concessions, as the eligible companies would, without the Tonnage Tax Scheme, be subject to an ordinary corporate tax rate that is higher than the tax rate under the Tonnage Tax Scheme. Hence, the Tonnage Tax Scheme must be considered as conferring an advantage on shipping companies.

##### **4.3 Selectivity**

(105) The aid measure must be selective in that it favours “certain undertakings or the production of certain goods”. The Tonnage Tax Scheme is limited to the maritime sector and therefore favours only certain undertakings. Hence, the measure must be viewed as selective within the meaning of Article 61(1) of the EEA Agreement.

##### **4.4 Distortion of competition and effect on trade between Contracting Parties**

(106) The aid measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement. The tax relief in the form of a tonnage tax strengthens the shipping companies’ position towards their competitors within the EEA. The maritime activities in question are carried out both within the EEA and between EEA and third countries. Hence, the measures is liable to distort competition and affect trade between the Contracting Parties.

##### **4.5 Conclusion**

(107) The Authority therefore considers that the Tonnage Tax Scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Procedural requirements

- (108) 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”.
- (109) By submitting a notification of the Tonnage Tax Scheme and awaiting the Authority’s approval before letting it enter into force (including for the windfarm vessels for the year 2017 as described in paragraph (36) above), the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

## 6 Compatibility of the aid

### 6.1 Introduction

- (110) Under Article 61(3)(c) of the EEA Agreement, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the functioning of the EEA Agreement where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Authority considers Article 61(3)(c) of the EEA Agreement together with the Maritime Guidelines to form the legal basis for assessing the compatibility of the Tonnage Tax scheme.
- (111) The Maritime Guidelines, at Section 1.2(c), paragraph 4, allow EFTA States to support the maritime transport industry, by stating that: “maritime industries are inextricably linked to maritime transport. This association is a strong argument in favour of positive measures whose aim it is to maintain a fleet dependent on EEA shipping. Since maritime transport is one of the links in the chain of transport in general and in the chain of the maritime industries in particular, measures seeking to maintain the competitiveness of the European fleet have also repercussions on investments on land and maritime-related industries and on the contribution of maritime transport to the economy of the EEA as a whole, and to jobs in general”.
- (112) Furthermore, the Maritime Guidelines at Section 1, paragraph 3 recognise the differences in the importance of the maritime sectors between EEA States, by stating that: “The strategies adopted and the budgets allocated to support measures differ from one EEA State to the other in reflection of the attitude of those States to public aid or the importance they attach to the maritime sector”.
- (113) The current notification concerns operating aid, i.e. aid which is intended to relieve an undertaking of expenses that it would normally have had to bear in its day-to-day management of its usual activities. The Maritime Guidelines provide for the possibility to grant operating aid in Section 3.1.
- (114) Section 3.1 of the Maritime Guidelines applies to fiscal treatment of shipowning companies and specifically concerns tonnage tax, generally defined as a system of replacing the ordinary corporate tax system by a tonnage tax, where the shipowner pays an amount of tax linked directly to the tonnage operated, irrespective of actual profits or losses. The notified measure is a tonnage tax scheme in the sense of Section 3.1, paragraph 4 of the Maritime Guidelines.

### 6.2 Objective of common interest

- (115) Section 2.2, paragraph 1 of the Maritime Guidelines provides for specific objectives of EEA interest that may be supported with state aid.

- (116) First, based on the information submitted by the Norwegian authorities, the Authority finds that the Tonnage Tax Scheme contributes to the consolidation of the Norwegian maritime sector, while maintaining an overall competitive fleet. Since its introduction, the previously approved tonnage tax schemes have ensured the competitiveness of the Norwegian tax framework and contributed to a growth in the Norwegian maritime sector. As stated above in paragraph (10), the net tonnage, within the previously approved tonnage tax schemes, has increased since 2007.
- (117) Second, the Tonnage Tax Scheme maintains and improves maritime know-how, and protects and promotes employment for European seafarers. The Tonnage Tax Scheme ensures that maritime know-how is kept and improved in Norway and the EEA, and the Tonnage Tax Scheme has significant spillover effects to the EEA maritime industry.
- (118) Third, the Tonnage Tax Scheme contributes to the flagging or re-flagging to EEA registers, as the eligibility criteria described above in Section 3.9 to 3.15 encourage flagging and re-flagging.
- (119) Finally, the Tonnage Tax Scheme helps to improve an environmentally friendly maritime transport, as it encourages the use of more environmentally friendly vessels.<sup>26</sup>
- (120) In conclusion, the Tonnage Tax Scheme contributes to a number of objectives in the common interest.

### **6.3 Competition with flags of convenience; improvement of the fiscal climate for shipping companies**

- (121) Section 3.1, paragraph 1 of the Maritime Guidelines suggests that the creation of conditions allowing fairer competition with flags of convenience seems the best way forward to avoid the flagging out of vessels.
- (122) As stated above in Section 3.2, the Norwegian maritime offshore fleet has since 2004 experienced considerable growth. The preceding schemes are likely to have contributed to this positive trend in terms of tonnage managed from Norway and EEA. At the same time, the market conditions for offshore vessels over the last years have deteriorated considerably.
- (123) Against this background, the Authority finds that the Tonnage Tax Scheme is needed to maintain and ensure the competitiveness of the Norwegian and EEA maritime sector.
- (124) Furthermore, Section 3.1, paragraph 1 of the Maritime Guidelines suggests that the fiscal climate in many third countries is considerably milder than within EEA States, which has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation.
- (125) Given that the Tonnage Tax Scheme in question is a special measure to improve the fiscal climate for shipping companies in Norway, the Tonnage Tax Scheme is an appropriate policy instrument, as it addresses the challenge of flagging out of vessels.

### **6.4 Provision of fiscal incentives to stimulate competitiveness**

- (126) Section 3.1, paragraph 5 of the Maritime Guidelines provides for the legal presumption that, *inter alia*, a system of replacing the ordinary corporate tax system by a tonnage tax is

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<sup>(26)</sup> See Section 3.16 above.

suitable to provide a fiscal incentive to stimulate the competitiveness of the EEA shipping industry.

- (127) Information submitted by the Norwegian authorities shows that the previously approved tonnage tax schemes so far has provided the beneficiaries with an incentive to manage more tonnage from Norway and other EEA States.
- (128) The Authority also notes that tonnage tax schemes are widely used in the EEA and that there is no evidence suggesting that the Tonnage Tax Scheme does not entail an incentive to manage more tonnage from the EEA.
- (129) The Tonnage Tax Scheme will therefore have an incentive effect on beneficiaries to pursue activities in the common interest mentioned in Section 6.2.
- (130) The Tonnage Tax Scheme also has an incentive effect for windmill farm vessels included in the Tonnage Tax Scheme as of 1 January 2017. The inclusion of windmill vessels was known by the industry as of 6 October 2016<sup>27</sup> and the industry has been able to take this impending inclusion into account in their planning and daily operations.

## 6.5 Eligibility for aid

### 6.5.1 Introduction

- (131) The Authority has assessed whether the aid under the Tonnage Tax Scheme is exclusively aimed at the beneficiaries, ships and activities permitted by the Maritime Guidelines, is limited to the necessary minimum and whether it is transparent.

### 6.5.2 Eligible activities

- (132) The Maritime Guidelines at Section 2, paragraph 3, provide that they “are applicable to ‘maritime transport’ activities as defined in Regulation (EEC) No 4055/86<sup>28</sup>, incorporated into the EEA Agreement as point 53 in Annex XIII to the EEA Agreement, and in Regulation (EEC) No 3577/92<sup>29</sup>, incorporated as point 53 a in Annex XIII to the EEA Agreement<sup>30</sup>, that is to say, the ‘transport of goods and persons by sea’. They also, in specific parts, relate to towage and dredging”.
- (133) As described in Section 3.12, only companies carrying out qualifying activities are eligible for aid under the Tonnage Tax Scheme. The qualifying activities are ownership, leasing and operation of ships, whether directly owned or chartered in. Capital gains on the sale of assets utilised for qualifying shipping are included in the profits that are tax exempt. Currency hedging instruments connected to the qualifying shipping activities are treated in the same way as ancillary activities.<sup>31</sup> Eligible companies may also generate profits as a result of joint and several liability for employer obligations under Norwegian law.<sup>32</sup>

<sup>(27)</sup> <https://www.regjeringen.no/contentassets/83f4ddc3a3e54345aa45c5cd17e4e12c/no/pdfs/prp2016201700011s0dddpdfs.pdf>

<sup>(28)</sup> Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1).

<sup>(29)</sup> Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

<sup>(30)</sup> By Joint Committee Decision No 70/97 (OJ L 30, 5.2.1998, p. 42 and EEA Supplement No 5, 5.2.1998, p. 175), e.i.f. 1.8.1998.

<sup>(31)</sup> In its Decision of 7 July 2010 (Decision No 292/10/COL), the Authority approved currency hedging instruments as an eligible activity under the current tonnage tax scheme.

<sup>(32)</sup> In its Decision of 10 September 2014 (Decision No 322/14/COL), the Authority approved profits from joint and several liability for employer obligations as an eligible activity.

- (134) As to the ancillary activities described in paragraph (49), the Authority considers that these activities indeed are closely linked to the provision of maritime transport services. Loading and unloading of goods and temporary storage of goods, at or near the harbour, transport of goods and persons in the port area and leasing out of containers, constitute an integrated part of maritime transport services. In connection with the loading or unloading of goods that are transported by a shipping company's vessels, it can be necessary and practical to place the cargo temporary at the harbour or at a storage nearby, pending further transport. Door-to-door-transport is also an integral part in the overall transport service provided by shipping companies. The ability for shipowners to offer integrated transport contracts, although not taking part in inland/air transport activities themselves, is important in order to be competitive in the maritime transport market. Embarking and disembarking of persons, and operation of ticket offices and passenger terminals also constitute an integral part of maritime transport services.
- (135) The only non-core ancillary activities allowed under the shipping tax scheme are income from sale of services for consumption on board, and hiring out of premises on board. The Authority notes that these activities are activities that are frequently provided on board maritime transport, and which do not threaten to excessively distort competition with land based providers
- (136) Although there is no cap on the revenue from ancillary activities, the Authority considers that the scope of the ancillary activities is in line with the Maritime Guidelines, as there is merely a theoretical possibility that non-core shipping revenues would cover more than 50% of a vessel's total gross revenues.<sup>33</sup> The scope of the eligible principal activities is therefore in line with the Maritime Guidelines.

#### 6.5.2.1 Revenues from bareboat chartering out

- (137) Revenues from bareboat chartering out, as described in Section 3.13 above, will be allowed under the Tonnage Tax Scheme, subject to the limitations set out in the same Section. The Norwegian maritime sector differs from the maritime sectors of other EEA States, with the largest offshore fleet in the EEA. Chartering out on bareboat terms is particularly common in the offshore sector, especially due to local requirements that apply to the offshore sector in many countries in the world. These local requirements make it necessary to bareboat charter out vessels for a longer period.
- (138) The Tonnage Tax Scheme will also exclude any financial bareboat chartering out, and thus exclude any pure ship lessors and maritime brokers from the Tonnage Tax Scheme.
- (139) According to the Norwegian authorities, there are significant spillover effects into the Norwegian maritime sector also where vessels are chartered out on bareboat terms. The companies active in the offshore segment abroad rely heavily on suppliers in the Norwegian maritime supply industry. The vessel in question will often be designed, built, financed, classified, and insured by Norwegian companies.
- (140) The chartering out on bareboat terms that is covered by the Tonnage Tax Scheme, is therefore not a passive activity. It requires maritime competence and know-how.
- (141) In the opinion of the Norwegian authorities, bareboat chartering out contributes positively to the achievements of the aims of the Maritime Guidelines. Chartering out on bareboat

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<sup>(33)</sup> In its decision SA.33828 Greek tonnage tax scheme and other State measures in favour of shipping companies, the Commission expressed that the core revenues should always cover more than 50% of the vessel's total (core and ancillary) gross revenues.



terms allows the ownership of vessels to be retained in Norway. A substantial part of land based activities will be carried out in Norway, and the management may be carried out from an EEA State. For bareboat chartering out in the offshore sector, there is a requirement that the strategic management is conducted from an EEA state.

- (142) The objective of the Maritime Guidelines is *inter alia* to maintain and improve the maritime know-how in the EEA States. Based on the above considerations, the limitations on bareboat chartering out are in line with the Maritime Guidelines, because of the significant spillover effect on the Norwegian maritime sector.
- (143) The Tonnage Tax Scheme also covers revenues from voyage charter and time charter. In the Authority's view, this is in line with the Maritime Guidelines, as the shipping company eligible for the Tonnage Tax Scheme still manages the vessel and generally retains the operating costs (i.e. the crew, maintenance and repair), and therefore contributes to the preservation of maritime know-how in the EEA.<sup>34</sup>
- (144) Chartering in on bareboat terms is allowed unconditionally under the Tonnage Tax Scheme. When chartering in, the company will operate the ship, and be responsible for crew and technical management. This will thus contribute to the preservation of maritime know-how in the EEA.<sup>35</sup>
- (145) Based on the above considerations, the Authority considers that the proposed mechanisms in the Tonnage Tax Scheme, excluding companies not engaged in maritime transport from the Tonnage Tax Scheme, is in line with the Maritime Guidelines. The objectives in the common interest, as spelled out in the Maritime Guidelines, such as: "*maintaining and improving maritime know how and protecting and promoting employment for European seafarers*" and "*contributing to the consolidation of the Maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets*", are safeguarded.

### 6.5.3 Eligible vessels

- (146) As was described above in Section 3.10, only certain vessels are admitted to the Tonnage Tax Scheme. First, transport ships are included. Second, support vessels used in petroleum activities are eligible under the Tonnage Tax Scheme. In the view of the Authority, such vessels carry out maritime transport, in accordance with the Maritime Guidelines, either directly or by analogy.
- (147) The Commission has applied its Maritime Guidelines by analogy to activities that do not constitute classic maritime transport, provided that the activities require similarly qualified staff and are similarly exposed to international competition.<sup>36</sup> The Commission has found compatible with its Maritime Guidelines the granting of aid to offshore vessels when these vessels operate under the same competitive and technical conditions as vessels involved in the transport of goods and passengers at sea. The Commission has raised no objections to

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<sup>(34)</sup> See the European Commission's Decision of 25 February 2009 C 2/08 (ex N 572/07) on the amendment to the maritime tonnage tax system which Ireland is planning to implement, where the Commission accepted a ratio of owned to time chartered ships of 1:10.

<sup>(35)</sup> The Commission has also allowed chartering in unconditionally under tonnage tax schemes. See the European Commission Decision of 25 February 2009 C 2/08 (ex N 572/07) on the amendment to the maritime tonnage tax system which Ireland is planning to implement, paragraph 6.

<sup>(36)</sup> See the European Commission Decision of 18 December 2015 in case SA.33828 (Greece) - Tonnage tax Scheme and other tax relieves provided in Law No 27 of 19 April 1975 as amended, paragraph 111 with further references. See also the European Commission Decision of 13 April 2015 in case SA.38085 (Italy) - Prolongation of the tonnage tax Scheme, paragraph 54.

aid to ships involved in exploration and providing other services related to activities at sea such as vessels servicing offshore installations (such as liaison ships, stand-by and supply vessels), cable laying vessels, pipeline layers, and research vessels.<sup>37</sup> Furthermore, the Commission has considered crane vessels, and vessels providing rescue at sea and maritime assistance on the high seas as eligible vessels under the guidelines.<sup>38</sup>

- (148) Windmill farm vessels engaged in the construction, maintenance, repair and disassembly of windmills at sea are eligible under the Tonnage Tax Scheme. The Authority considers that these vessels carry out maritime transport by analogy. The vessels operate under similar competitive and technical conditions as vessels involved in transportation of goods and passengers by sea. The vessels require the same level of qualification for seafarers, and face the same risk of relocation of on-shore services with subsequent re-flagging of vessels.
- (149) Non-self-propelled barges are eligible vessels under the Tonnage Tax Scheme, provided that they are seagoing, above 1 000 gross tonnes, registered in an EEA register, and used as a part of a transport mission. The Authority notes that these vessels operate under similar competitive and technical conditions as vessels directly involved in transportation of goods and passengers by sea. The vessels require the same level of qualification for seafarers.
- (150) Moreover, the Tonnage Tax Scheme excludes smaller and non-seagoing vessels, ensuring that only barges active in maritime transport are eligible under the Tonnage Tax Scheme. The requirement that the vessels must be registered in an EEA register ensures that the vessels are subject to European regulation on safety and security applicable in the state of registration.
- (151) The inclusion of non-self-propelled vessels contributes to the objectives of the Maritime Guidelines concerning preserving EEA standards on safety, environment and security.
- (152) The Authority also considers that the inclusion of laid up vessels, vessels under repair and shipbuilding contracts are in line with the Maritime Guidelines, as non-inclusion of vessels and contracts would counteract the aims of the Maritime Guidelines.
- (153) The Authority further notes that tugboats are only eligible under the Tonnage Tax Scheme insofar as at least 50% of the towage activity constitutes maritime activity. This is in accordance with Section 3.1, paragraph 13 of the Maritime Guidelines. The Authority also notes that only transport of dredged materials are eligible under the Tonnage Tax Scheme. The Authority considers this to be in line with Section 3.1, paragraph 16 of the Maritime Guidelines.
- (154) Consequently, the vessels eligible under the Tonnage Tax Scheme are in line with the Maritime Guidelines, as these vessels are active in maritime transport as such or by analogy.

#### 6.5.4 *Eligible undertakings*

- (155) Section 3.1 of the Maritime Guidelines implies that only shipowners operating their own ships, and other ship operators, such as charterers and ship managers in respect of vessels

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<sup>(37)</sup> See the European Commission Decision of 1 April 2015 in case SA.37912 (Croatia) - Introduction of a tonnage tax Scheme in favour of international maritime transport, paragraph 84, OJ C 142 22.4.2016 p. 1.

<sup>(38)</sup> See the European Commission Decision of 18 December 2015 in case SA.33828 (Greece) - Tonnage tax Scheme and other tax relieves provided in Law No 27 of 19 April 1975 as amended, paragraph 111.

for which they have been assigned the entire crew and technical management, are eligible for fiscal aid such as tonnage taxation.

- (156) The benefits of the Tonnage Tax Scheme will be limited to providers of maritime transport services. The Authority finds that the Tonnage Tax Scheme is in line with the requirement in Section 3.1 of the Maritime Guidelines.

#### 6.5.5 *Tonnage tax rates*

- (157) Section 3.1, paragraph 18 of the Maritime Guidelines provides that: “the notional profit rates provided for by EC States have been homogeneous up to now. However, since corporate tax rates may vary significantly across the EC, the tonnage taxes to be paid, for the same tonnage might be very uneven in the different EC States. In order to keep the present equitable balance, the EC Commission stipulated that it will only approve schemes giving rise to a tax load for the same tonnage fairly in line with the schemes already approved. Based on its experience, the Authority notes that instead of calculating virtual profits to which the ordinary corporate tax rate is applied, some States may decide to directly fix special tonnage tax rates. The Authority will likewise seek to keep an equitable balance in line with already approved systems”.
- (158) The tonnage tax rates in Norway are generally higher than in similar schemes in other EEA States.<sup>39</sup> The Authority therefore considers that the tonnage tax rates applicable in Norway are in line with the Maritime Guidelines.

#### 6.5.6 *Flag link requirement*

- (159) One of the objectives of the Maritime Guidelines is the flagging or re-flagging to EEA States’ registers through the aid. Accordingly, Section 3.1, paragraph 7 of the Maritime Guidelines requires as a matter of principle a link with the flag of one of the EEA States. However, and as stated in the same paragraph, fleets comprising vessels flying other flags may also be granted aid, provided that the beneficiary company commit to increasing or at least maintaining the share of tonnage operated under one of the EEA flags.
- (160) As described in Section 3.17 above, the Tonnage Tax Scheme requires a link with the flag of one of the EEA States. However, fleets comprising vessels flying other flags are eligible within the Tonnage Tax Scheme, provided that the companies commit to increasing or at least maintaining the share of tonnage operated under one of the EEA flags. This obligation does not apply to companies operating at least 60% of their fleet under an EEA flag, or if the EEA flagged share of the total tonnage eligible for tax relief did not decrease on average the previous year.
- (161) The Norwegian maritime sector is dominated by offshore vessels, in contrast to the situation of the maritime sector in other Contracting Parties. In particular, these vessels are active on continental shelves around the world. Registration of vessels in the country of operation may in some cases be a requirement to operate on the continental shelves in question. Consequently, many vessels may for a period of time have to be registered in non-EEA registers even though the company itself is still subject to the Tonnage Tax Scheme.
- (162) In other cases, locally registered vessels may receive preferential treatment even though there is no requirement of local registration.

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<sup>(39)</sup> See the European Commission Decision of 1 April 2015 in case SA.37912 (Croatia) - Introduction of a tonnage tax Scheme in favour of international maritime transport, paragraph 84, OJ C 142 22.4.2016 p. 1, with further references.

- (163) Another particular feature of the Norwegian maritime sector is the presence of small shipping companies with only few vessels. As referred above, vessels may have to be registered in non-EEA registers, in order to operate on foreign shelves. Consequently, a stricter flag requirement could prevent smaller enterprises from participating in operating on foreign shelves.
- (164) Based on these considerations, the Authority acknowledges that a flag link requirement in many cases could prevent Norwegian companies from operating on foreign shelves, and thus could counteract the aims of the Maritime Guidelines.
- (165) In this respect, the Authority notes that the Maritime Guidelines in Section 2.2, paragraph 3 state that flag-neutral aid may be approved in exceptional cases where a benefit to the common objectives of the EEA States is clearly demonstrated. For the reasons set out above, the Authority considers that the specificities of the Norwegian maritime sector constitute an exceptional case.
- (166) The Authority therefore considers that the Tonnage Tax Scheme is in line with the flag link requirement of the Maritime Guidelines.
- (167) The Authority notes that tugboats and barges are required to be EEA flagged. This is in line with the Maritime Guidelines in Section 3.1, paragraphs 13 to 16.
- (168) The Authority also notes that if any of the beneficiary companies no longer fulfil the flag requirement, the company will be excluded from the Tonnage Tax Scheme.
- (169) Based on the above, the Authority considers that the Tonnage Tax Scheme is in line with Section 3.1, paragraph 7 of the Maritime Guidelines.

*6.5.7 Restriction of aid to shipping activities: avoidance of spillover into non-shipping activities*

- (170) The Maritime Guidelines at Section 3.1, paragraph 19 provide that: “in all cases, the benefits of schemes must facilitate the development of the shipping sector and employment in the common interest of the Contracting Parties. Consequently, the fiscal advantages (...) must be restricted to shipping activities; hence in cases where a shipowning company is also engaged in other commercial activities, transparent accounting will be required in order to prevent ‘spillover’ into non-shipping activities. This approach would help EEA shipping to be competitive, with tax liabilities comparable to levels applying elsewhere in the world but would preserve an EEA State’s normal tax levels for other activities and personal remuneration of shareholders and directors”.
- (171) One of the main conditions attached to the compatibility of tonnage tax regimes with the common market is the existence of a series of ring-fencing measures intended to ensure that no activities other than maritime transport, in the EEA State in question, or in any other EEA State or third country, would indirectly benefit from the regime.
- (172) As mentioned above, in order to protect against abuse, the Tonnage Tax Scheme contains several ring-fencing measures (taxation of hidden reserves upon entry into the Tonnage Tax Scheme, lock-in period, all-or-nothing rule, rules against thick capitalisation, tax neutral effect of group contributions, restrictions on group contributions subsequent to an exit from Tonnage Tax Scheme, arm’s length principle, and rules concerning exit from the Tonnage Tax Scheme). Furthermore, the Tonnage Tax Scheme includes control mechanisms and sanctions in case of non-compliance with the requirements.

- (173) The Tonnage Tax Scheme also contains transitional rules on chartering out on bareboat terms, and on non-self-propelled barges. The Authority considers that the transitional rules are in line with the Maritime Guidelines. The Authority notes that the transitional rules are of a limited duration (until 1 November 2018), and are limited to company groups that are already subject to the current tonnage tax scheme.
- (174) The Authority considers that the ring-fencing measures and control mechanisms provide a sufficient level of protection against any potential abuse of the Tonnage Tax Scheme and ensure that there is no spillover to non-shipping activities.

#### 6.5.8 *Aid limited to the minimum; transparency*

- (175) According to Section 2, paragraph 2 of the Maritime Guidelines, state aid must be restricted to what is necessary to achieve its purpose, and be granted in a transparent manner. In this respect, Section 11, paragraph 2, sets a maximum level of aid, in order to avoid cumulation of aid to levels which are disproportionate to the objectives of common interest of the Contracting Parties and could lead to a subsidy race between EEA States. Total aid for the benefit of shipping companies may not provide any benefit greater than the benefit represented by a reduction to zero of taxation and social charges for seafarers and a reduction to the level specified in Section 3.1, second last paragraph of the Maritime Guidelines.
- (176) The Authority has approved a support scheme related to income taxation and social charges with respect to seafarers.<sup>40</sup> The Tonnage Tax scheme and the seafarer scheme concern different eligible costs. For the purpose of the assessment of the present Tonnage Tax Scheme, the Authority finds that the abovementioned seafarers support scheme does not affect compliance with the permitted aid ceiling.

### 6.6 **Distortion of competition**

- (177) Pursuant to Section 2, paragraph 2 of the Maritime Guidelines, aid schemes should not be conducted at the expense of other EEA States' economies and must be shown not to risk distortions of competition between the Contracting Parties to an extent contrary to the common interest.
- (178) As demonstrated above, the notified tax rates do not significantly deviate from rates in other EEA States. The information submitted to the Authority does not suggest that the Tonnage Tax Scheme encourages either the flagging out or corporate relocation from other EEA States to Norway.
- (179) The Authority therefore finds that the Tonnage Tax Scheme does not risk distorting competition contrary to the common interest.

## 7 **Transparency**

- (180) According to the general transparency requirement, only aid granted in a transparent manner can be approved on the basis of Article 61(3)(c) of the EEA Agreement. The Norwegian authorities have committed to publish information about the aid granted, in accordance with the general transparency requirement, by publishing the full text of the Tonnage Tax Scheme, and making the necessary disclosures on a central website. The Authority therefore concludes that the Norwegian authorities have complied with the transparency requirement.

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<sup>(40)</sup> Authority Decision No 085/16/COL of 27.4.2016.

## **8 Conclusion**

- (181) On the basis of the foregoing assessment, the Authority considers that the notified special tax system for shipping 2018-2027 constitutes state aid with the meaning of Article 61(1) of the EEA Agreement. Since no doubts are raised as to its compatibility with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), the Authority has no objections to the implementation of the measure.

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

Yours faithfully,

Sven Erik Svedman  
President

Carsten Zatschler  
Director

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