

THE MERCHANT SHIPPING (FEES AND TAXING PROVISIONS) LAW OF 2010
(LAW 44 (I)/2010)

The Tonnage Tax (Special Provisions on the Levy and Collection) Notification of 2010 ¹

(Notification by virtue of sections 13(2), 15(1)(b), 21(2), 23(2), 25(1)(b), 31(1), and 65(1) of the Law)

44(I) of 2010.

The Director of the Department of Merchant Shipping of the Ministry of Communications and Works, exercising the powers vested upon him under sections 13 (2), 15(1)(b), 21(2), 23(2), 25(1)(b) , 31(1), and 65(1), of the Merchant Shipping (Fees and Taxing Provisions) Law of 2010, issues the following Notification:

Short title.

1. This Notification shall be cited as the Tonnage Tax (Special Provisions on the Levy and Collection) Notification of 2010.

Interpretation.

2. — (1) In this Notification -

“Department” means the Department of Merchant Shipping as defined by section 2 of the Law ;

“Director” means the Director of the Department of Merchant Shipping as defined in section 2 of the Law.

“independent accountant” means an independent accountant practicing in the Republic and duly authorised by the Minister of Finance to prepare accounts and computations of objects of the tax;

“Law” means the *Merchant Shipping (Fees and Taxing Provisions) Law of 2010*.

“Minister” means the Minister of Communications and Works.

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*According to Article 3 of the Constitution of the Republic of Cyprus, the official languages of the Republic of Cyprus are Greek and Turkish and therefore the present translation into English is **not the authentic version.***

The authentic and therefore legally binding version is the Greek version of this Notification.

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“ object of the tax” means as the case may be :

(a) the operation of a qualifying ship in maritime transport by a person being an owner of a ship which is subject to the tax according to paragraph 3(a) of this Notification ;

(b) the operation of a qualifying ship in maritime transport by a person being a charterer of a ship which is subject to the tax according to paragraph 3(b) of this Notification ;

(c) the provision of ship management services to any qualifying ship by a person which is subject to the tax according to paragraph 3(c) of this Notification .

“person” means the person subject to the tax as prescribed in paragraph 3 of this Notification .

“tax” means the tonnage tax which is imposed annually according to sections 13, 15(1) , 21 , 23 , 25(1) and 31 of the Law , as the case may be, on the qualifying ship owners , qualifying charterers , and qualifying ship managers in relation to the qualifying ships they operate or manage .

(2) Terms contained in this Notification and not otherwise defined herein shall have the meaning attributed to such terms in the Law.

*Person
subject to
the tax.*

3. Person subject to the tax, is as the case may be :

(a) every qualifying owner of a qualifying foreign ship which earns income from the operation of such ship in maritime transport and is taxed according to the provisions of sections 13 and 15(1) of the Law.

(b) every qualifying charterer which earns income from the operation of any qualifying ship in maritime transport and is taxed according to the provisions of sections 21, 23 and 25(1) of the Law.

(c) every qualifying ship manager which earns income from the provision of ship management services to qualifying ships and is taxed according to the provisions of section 31 of the Law.

*Calculation
and
payment of
the tax.*

4. The tax is calculated by the person and is payable to the Department annually, for as long as, according to each case, the ship was operative or the ship management contract remained in force during the fiscal year or part of it. For the purpose of calculating the tax, any fraction of the month shall be considered as a whole month.

*Tax
declaration.*

5. — (1) The person is obliged, between the 1st January and 28th February of the next year following the fiscal year, to submit to the Director a declaration of the object of the tax and to pay the calculated amount according to the declaration. The declaration of the object of the tax is submitted to the Department in hard copy, duly signed and duly certified, as provided in subparagraphs (3) and (4) below. In addition a copy of the declaration should be submitted to the Department electronically. The date of submission of the tax declaration shall be the date on which the hard copy is submitted to the Department.

(2) The form of the declaration is prepared by the Director and the said declaration is available from the Department to any person. The fact that a person has not received a printed form from the Director, does not constitute a defence.

(3) In the case of a person subject to the tax according to paragraphs 3(a) and 3(b) of this Notification, the declaration mentioned in subparagraph (1) above must be signed by a duly authorised director of the qualifying owner or of the qualifying charterer, as the case may be, and must be certified by an independent accountant. If the declaration of the person subject to the tax, according to paragraphs 3(a) and 3(b) of this Notification, is not certified by an independent accountant, the Director shall require the said person to produce supporting documents with regard to the declaration.

(4) In the case of a person subject to the tax according to paragraph 3(c) of this Notification, the declaration must be signed by a duly authorised director of the qualifying ship manager and with no exception, must be certified by an independent accountant.

(5) In all cases the Director may demand the submission of additional supporting documents.

*Examination
of the tax
declaration
and imposition
of tax.*

6.—(1) The Director examines the declaration mentioned in paragraph 5 of this Notification and -

(a) either accepts the object of the tax mentioned in the declaration and imposes the tax accordingly, or

(b) does not accept the object of the tax, whenever he is of the opinion that, with regard to a particular fiscal year, the object of the tax of any person is reduced either by transactions which in the reasoned opinion of the Director are artificial or fictitious or by omissions. In such case, the Director may demand from the person the submission of additional supporting documents within a timeframe of thirty (30) days. The Director, if not satisfied, may disregard any such transaction or omission and impose the applicable tax.

The imposition of the tax is made by notice in writing and is served personally or sent by registered mail to the person, within one hundred and twenty (120) days from the date of the submission of the declaration to the Director or from the date of submission of any requested additional supporting documents to the Director.

(2) (a) In case where the person has paid an amount less than what had been imposed as a result of the application of the provisions of paragraph 6(1)(b) above, then the person is obliged to pay the difference within sixty (60) days from the date the notice for the imposition of the tax was served. If the difference is not paid within the above specified timeframe of sixty (60) days, interest for late payment is imposed according to the provisions of paragraph 11 of this Notification.

(b) In case where the person has paid an amount greater than what had been imposed as a result of the application of the provisions of paragraph 6(1)(b) above, then the Director is obliged to refund the amount of tax paid in excess, within sixty (60) days from the date the notice for the imposition of the tax was served.

(c) In case where the payable/ refundable tax does not exceed the amount of thirty five (35) euro , this tax is brought forward to the following fiscal year.

*Non-submission
of a tax
declaration.*

7. In case where a person has not submitted a declaration and the Director is of the reasoned opinion that such person is obliged to pay tax, the Director may within six (6) years from the expiration of the fiscal year determine, the object of the tax and impose such tax on the relevant person.

The imposition of the tax is made by notice in writing and is served personally or sent by registered mail to the person who is then obliged to pay the tax and interest for late payment, in accordance with the provisions of paragraph 11 of this Notification, within thirty (30) days from the date the notice was served.

*Objection
to
taxation.*

8. — (1) Every person who disputes the imposed tax, may by notice of objection in writing, apply to the Director for the review and revision of same. The notice must state the grounds of the objection and must be submitted not later than thirty (30) days from the date the notice of imposition of the tax was served as provided in paragraphs 6 and 7 of this Notification.

(2) In case where a person had not submitted a declaration to the Director, in order for the objection to be examined, the person must first pay the tax and the interest for late payment as provided in paragraph 7 of this Notification and submit a declaration for the period for which the objection relates to.

(3) After receipt of the notice of objection referred to in subparagraph (1) above, the Director may require by notice in writing from the person who submitted the objection, to furnish within a specified time-limit, such particulars as the Director may deem necessary for identifying the object of the tax.

(4) When an agreement is reached between the Director and the person objecting in relation to the imposed tax, the tax shall be amended accordingly, and a notice in writing shall be served personally or sent by registered mail to such person and the payable or refundable tax, as the case may be, must be paid or be refunded within thirty (30) days from the date of issue of such notice.

(5) If no agreement is reached between the Director and the said person, the Director determines the tax on the basis of the information before him, and informs such person by notice in writing served personally or sent by registered mail of the payable or refundable tax, as the case may be, which must then be paid or be refunded within thirty (30) days from the date of issue of such notice.

(6) In all cases, the decision of the Director on an objection submitted under subparagraph (1) above, must be issued within three (3) months from the date of such filing.

In the case where the time-limit of three (3) months expires and the Director has not issued any decision, the Director is then obliged to amend the imposed tax on the basis of the objection filed, and to serve him personally or send him by registered post a new notice in writing of the refundable tax, which is refunded within thirty (30) days thereafter.

It is further provided that, the three (3) months period is extended by the period for which the person taxed delays, beyond the time-limit specified by the Director according to the provisions of subparagraph (3) above, to furnish the additional particulars which may be deemed necessary during the review of the case.

*Recourse
against
a decision of
the Director.*

9. — (1) Any person aggrieved by the tax imposed upon him and who within the objection procedure has failed to come to an agreement with the Director as provided in subparagraph (5) of paragraph 8 of this Notification, is entitled to:

(a) recourse to the Supreme Court of the Republic according to Article 146 of the Constitution of the Republic, or

(b) file an hierarchical recourse to the Minister against the said decision, which must be accompanied by all relevant evidence,

within a period of forty-five (45) days from the date of notification of the decision of the Director, by registered mail to his last known address or by personal service to him.

The onus of proving that the taxation in relation to which the hierarchical recourse to the Minister is made, is excessive, lies with the person making the recourse.

(2) The Minister notifies the hierarchical recourse made by such person to the Director and requires from the Director the submission within a time-limit of fifteen (15) days of a written report and of any particulars he may deem necessary. Upon receipt of the written report made by the Director, the Minister examines the hierarchical recourse and may fix a hearing to the person making the recourse or his representative, as well as to the Director, or he may give them the opportunity to express their views in writing with regard to any matter relating to the said recourse.

Provided that, neither the Director, nor the person making the recourse have the right during an examination of a recourse by the Minister to present grounds or particulars which had not been furnished during the examination of the objection of the person making the recourse by the Director, unless such particulars, due to proven grounds of objective inability, could not have been furnished by such person at the given stage or could not have been revealed under the circumstances by the reasonable investigation by the Director.

It is further provided that hierarchical recourses, which in the opinion of the Minister are unfounded, may be summarily examined and may be rejected without calling before him the person making the recourse or the Director.

(3) The Minister decides on the hierarchical recourse not later than six (6) months from the date of submission of the hierarchical recourse.

(4) Upon the conclusion of the examination of the hierarchical recourse, the Minister may on the basis of the particulars furnished to him, issue one of the following decisions:

- (a) Cancel or ratify in its entirety or in part the decision of the Director,
- (b) amend the decision of the Director,
- (c) issue a new decision in replacement of the decision of the Director,
- (d) refer the case back to the Director with instructions to take specific action.

(5) Any person who considers himself aggrieved by the decision of the Minister on the basis of the provisions of the previous subparagraph has the right to a recourse to the Supreme Court of the Republic according to Article 146 of the Constitution of the Republic.

(6) If as a result of the decision of the Supreme Court or of the Minister, it becomes necessary to make a new imposition of tax in order to give effect to the decision of the Supreme Court or of the Minister, such new imposition of tax shall be made within a period of two (2) months from the date of issue of the decision of the Supreme Court or of the Minister, as the case be. Provided that in such cases, the provisions of subparagraph (2) of paragraph 6 of this Notification shall apply.

Supplementary assessment and re-payment of tonnage tax .

10. If the Director is of the opinion that for any reason, a person has been taxed with an amount less than what he was obliged to be taxed, or has paid tax in excess of the tax due, the Director shall act in accordance with the provisions of section 53 of the Law.

Interest for late payment of tax.

11. If the tax is not paid within the time limits prescribed, in paragraphs 5, 6 (2) (a) and 7 of this Notification, interest shall be charged thereon at the rate of interest determined from time to time by an order of the Minister of Finance by virtue of the provisions of *the Uniform Public Interest of Late Payment Law of 2006*.

167(I) of 2006.

Directors of legal persons.

12. The director or other individual having the management of any legal person shall be responsible for submitting the declaration and for the carrying out of all other necessary acts and representations required to be done by virtue of the Law and this Notification. It is provided that the submission of the declaration and the carrying out of all the necessary acts and representations required to be done by virtue of the Law and this Notification, can be carried out by certified auditors as long as they are duly authorised by the legal person.

Service of notices.

13. The notices shall be served to a person either personally or by being sent by registered mail to the last known address of the person. In the latter case, the notices shall be deemed to have been served, not later than the seventh (7) day following the day on which the letter was posted. In proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

Repeal-savings of relevant legal provisions.

14. — (1) With the present Notification and by virtue of the provisions of section 65 (1) of the Law, the Regulations 2 until 10, 12, 15, 17, 18 and 23 of the *Merchant Shipping (Taxation of Ship Management Services) Regulations of 2000* are repealed.

P.I. 395/2000.

(2) Notwithstanding the provisions of subparagraph (1) above and of section 65 (I) of the Law, it is provided that the following provisions of the *Merchant Shipping (Taxation of Ship Management Services) Regulations of 2000*, apply until their full repeal and replacement thereof with Regulations issued by virtue of section 62 of the Law:

- Regulation 11 (*Power of Director to require particulars to be furnished*);
 - Regulation 13 (*Official secrecy*);
 - Regulation 14 (*Power of Director for search*);
 - Regulation 16 (*Particulars, documents and records to be kept*);
 - Regulation 19 (*Court proceedings for the collection of the tax*);
 - Regulation 20 (*False statement criminal offence*);
 - Regulation 21 (*Other offences*); and
 - Regulation 22 (*Compounding of offences*).
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