WATSON FARLEY & WILLIAMS

MARITIME: BRIEFING

THE NEW SPANISH TAX LEASE: A REAL CHOICE FOR FOREIGN SHIPOWNERS

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THIS BRIEFING PROVIDES AN OVERVIEW OF THE RECENTLY APPROVED SPANISH TAX LEASE SCHEME AND HOW IT MAY HELP TO BOOST THE SPANISH SHIPPING MARKET

The approval of the new Spanish tax lease scheme by Law 16/2012, of 27 December, on tax measures aimed to consolidate public finances and stimulate economic growth in Spain, following the authorisation given by the European Commission on 20 November 2012, is starting to have a positive impact on the Spanish shipbuilding sector, which suffered a significant loss of newbuild orders during the investigation of the old tax lease scheme by the EU Commission. The Commission finally decided on 17 July 2013 that the old tax lease scheme constituted state aid.

Since the new scheme was implemented we have seen shipbuilding contracts between foreign shipowners and Spanish shipyards being already structured under the new tax lease scheme and many others are currently under negotiation.

In addition, the recent publication of the long awaited new Spanish Maritime Navigation Law, which updates the Spanish maritime law and aligns it with international maritime law (including international conventions and treaties and EU shipping legislation), may help to boost the Spanish shipping market.

A factor that is delaying the implementation of new structures is that the Spanish Government and the European Commission are still negotiating the amount of the tax aid to be refunded by the investors of the Spanish Economic Interest Groups ("EIG") under the old tax lease schemes. This means that some banks and investors that were actively involved in the old scheme appear hesitant to participate in the new tax lease scheme. Conversely, we are seeing new players (both banks and EIG's investors) willing to participate in structures under the new tax lease scheme.

The new tax scheme combines an accelerated depreciation (up to three times the accounting amortisation of the vessel) with an early depreciation as from the date of the steel cutting. Tax losses generated over the finance lease period are passed by the EIG to the EIG's investors.

The basic structure of the new system consists of the following contracts:

- Shipbuilding contract between the shipyard and the shipowner (transferred to the leasing company).
- Finance lease agreement between the leasing company and the EIG.
- Bareboat charter agreement between the EIG and the shipowner from the delivery of the vessel until the end of the lease term.
- Conversion of the EIG into a Spanish Limited Liability Company ("SL").
- Sale and purchase of the SL quotas between the EIG's investors and the shipowner at the end of the finance lease which coincides with the end of the bareboat charter agreement.
- Time charter agreement between the SL and the shipowner or a third party from the end of the lease term until the end of the structure.

The main difference between the old and the new tax lease is that, instead of acquiring the vessel at the end of the finance lease, the shipowner acquires the entity owning the vessel – the EIG converted into an SL – and typically enters the Spanish Tonnage Tax Regime ("TTR") for a period of about five years. After such period of five years the shipowner can leave the structure and the TTR.

Another feature is that in order to qualify for the Spanish TTR the SL owning the vessel must be a real shipping company which requires that enters into a time charter agreement. It should be possible that the SL bareboat-charters the vessel to another Spanish company of the same group – or even to another EU company of the same group – which would in turn time-charter it to a third party company, although this should be cleared in advance with the tax authorities.

Moreover, the new system is not only applicable to vessels, but is also open to any other assets that meet unique technical and design criteria and which are not mass produced, i.e. assets manufactured according to the buyer's technical spefications, so it could potentially apply to other maritime assets.

In summary, based on interest already seen by us to date, we believe that wider implementation of the new tax lease scheme is just a matter of time. As soon as more structures are implemented (making the scheme more tested and familiar for foreign shipowners) and the amount of the tax aid to be refunded by the EIGs' investors is finally determined allowing the entrance of the "traditional players" in this sector, we believe that the new Spanish tax lease becomes an attractive choice for foreign shipowners, further enhancing the Spanish shipbuilding industry.

CONTACTS

Should you like to discuss any of the matters raised in this Briefing, please speak with the authors, Luis Soto and Laura Cadenas Zamora, a member of our maritime team below or your regular contact at Watson Farley & Williams.

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