

# WATSON FARLEY & WILLIAMS

## BRIEFING

### 20 YEARS GERMAN TONNAGE TAX REGIME DECEMBER 2018

- UNDER THE TONNAGE TAX REGIME, ENTERPRISES AND INDIVIDUALS WITH SEAGOING VESSELS HAVE THE OPPORTUNITY TO BE TAXED ON THE BASIS OF A DEEMED PROFIT RELATED TO THE SHIP'S TONNAGE INSTEAD OF THE ACTUAL OPERATING RESULTS.



“THE GERMAN SHIPPING INDUSTRY CAN LOOK BACK AT ALMOST 20 YEARS OF SUCCESSFUL OPERATION UNDER THE REGIME IN A GLOBALLY COMPETITIVE TAX ENVIRONMENT”.

The German tonnage tax regime offers shipping companies fixed and low taxation on the profits from their international operations. It was implemented into German tax law as of 1<sup>st</sup> January 1999. According to the preamble of the introductory act it was intended to maintain and secure jobs in the German maritime sector. Today, the German shipping industry can look back at almost 20 years of successful operations under the regime in a globally competitive tax environment.

Technically, tonnage tax is not a tax itself. Rather, the term “tonnage tax” describes a calculation method to determine a deemed taxable profit based on the capacity and operating days of an eligible vessel. This calculation method replaces the general determination rules for taxable profits. The lump sum tax base is subject to ordinary income taxation in Germany with corporate or individual income tax and trade tax.

This briefing provides an overview on the key aspects of the German tonnage tax system.

### Characteristics of the regime

Under the tonnage tax regime, businesses and individuals with seagoing vessels can elect to be taxed on the basis of a deemed profit related to the ship's tonnage instead of its actual operating results. The basis for the calculation of the deemed profit is an amount per net ton and the operating day of the ship in international traffic. Under the German tonnage tax system, taxable profit is fixed at a specified amount which is usually much lower than the average profit calculated on the basis of the regular rules of profit determination. All profits, including capital gains from the disposal of the vessel as well as losses from the shipping business, are covered by this lump sum profit. Effectively, the lump sum allows a company to enjoy near tax-free income from its shipping business.

The lump sum is calculated on the basis of the net tonnage (*Nettoraumzahl*) and the actual days of operation. The valuation factor for net tonnage decreases in four stages:

€0.92 per 100 net tons up to 1,000 net tonnage

plus €0.69 per 100 net tons between 1,000 and 10,000 net tonnage

plus €0.46 per 100 net tons between 10,000 and 25,000 net tonnage

plus €0.23 per 100 net tons for more than 25,000 net tonnage

The total of the valuation based on net tonnage has to be multiplied by the number of operational days to calculate the tax base. Said result is subject to ordinary income taxation and trade tax. Currently, the applicable income tax rates for individuals are between 14% to 45%, while for corporations a fixed rate of 15% applies. A 5.5% solidarity surcharge is levied in addition on the effective income tax amount. Furthermore, a shipping business is subject to trade tax with local tax rates varying between 7% and 18%.

For example, a container vessel with a capacity of 6,500 TEU and a net tonnage of 45,000 tons is taxed for 365 operating days on the basis of a deemed profit in the amount of €65k. The tax burden for a corporation on such profit amounts to (with an approximately 30% total tax rate) €20k pa.

### Requirements

In order to qualify for the German tonnage tax system the following requirements must be fulfilled:

- operation of merchant ships in international traffic (see (a) below);
- qualifying presence in Germany (see (b) below); and
- irrevocable application (see (c) below).

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(a) Operation of merchant ships in international traffic

Merchant ships are operated in international traffic, if owned or chartered (self-equipped) seagoing vessels fulfil the registration and the transportation requirements. This means that the vessels are required to be predominantly registered during the business year in a German ship register although it is not necessary to fly the German flag or a flag of a European Union Member State. Furthermore it is mandatory that such vessels are used in this business year for transportation of goods or passengers with or between foreign ports, within foreign ports or between a foreign port and the high seas during more than half of their total operating time. Other qualifying ship types are vessels used for towage, salvage or exploration of natural resources. For cruise ships an individual tax ruling is recommended.

(b) Qualifying presence in Germany

The requirements for a qualifying presence in Germany are that the effective place of management of a shipping company be located in Germany and that said shipping company has to undertake almost all of the strategic, personal, technical and commercial ship management services from Germany.

(c) Irrevocable application

Switching to the German tonnage tax system is optional, though the application is irrevocable. The application has to be filed in the business year during which the ship was built or bought (commissioning), with effect from the beginning of the respective business year and including any related profits from previous years. Election is binding for a period of ten years. Operational losses can neither be set off nor carried forward.

“SWITCHING TO THE GERMAN TONNAGE TAX SYSTEM IS OPTIONAL, THOUGH THE APPLICATION IS IRREVOCABLE.”

**Operational aspects**

An operating fleet of vessels under the tonnage tax regime can be expanded by vessels chartered in from another ship owner. In cases where the chartered vessels are not registered in Germany, a specified proportion of foreign registered to German registered vessels must not be exceeded. The law explicitly expands the tonnage tax regime to vessels provided on time charter in cases where the above mentioned requirements are met and ship management is performed by a charterer in Germany. However, income from bareboat charters out does not qualify for the tonnage tax regime.

According to recent case law, an intention to operate the vessel on a long term basis is required in order to benefit from the tonnage tax system. In cases where a qualifying vessel is sold within the first year following acquisition, such a long-term perspective is denied unless the taxpayer is able to show that they had a long-term perspective when acquiring the vessel.

**European perspective**

The German tonnage tax regime is based on the European guidelines for state aid to maritime transport. It has been approved by the European Commission in accordance with the state aid provisions of the Treaty on the Functioning of the European Union (TFEU).

Many other members of the European Union have established similar regimes to support their domestic shipping industries. This fact underlines the common view that the German tonnage tax system will remain available for – at least - the next 20 years.

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## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this briefing, please speak with our German Tax Partner Gerrit Bartsch or your regular contact at Watson Farley & Williams.



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See also [UK TONNAGE TAX](#).

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