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# NEWSLETTER

THE NEW TONNAGE TAX: A PORTUGUESE  
GEOSTRATEGIC ASSERTION

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## SUMMARY

Following the approval by the European Commission on April 6, 2018 in the context of EU State Aid rules, the Portuguese Government has taken the first step by approving Law proposal no. 111/XIII. A special tax scheme enhancing maritime transport activities is proposed with the intention to encourage and strengthen the maritime industry. It is expected that this scheme will boost even further Madeira's International Shipping Register.



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## INTRODUCTION

Law proposal no. 111/XIII was approved by the Council of Ministers with the intention to contribute to international competitiveness of the Portuguese merchant fleet and to preserve the economic growth in the national market. This proposal establishes a special tax scheme for maritime transport activities, called tonnage tax, as well as a tax and contributory benefits scheme applicable to the seafarers of the vessels.

The proposed Law – which also contains an Authorization Act proposal as well as a corresponding draft of Decree-Law – follows the approval of the tonnage tax scheme by the European Commission on April 6, 2018 (the non-confidential version of the decision is not yet available), issued in the context of the Commission's supervision of (Fiscal) State Aid.

## TONNAGE TAX

The tonnage tax is considered an optional method for determining the applicable

taxable income regarding the income derived from ships and vessels registered and both strategically and commercially managed in the European union (EU) or the European Economic Area (EEA). The tonnage tax allows the Portuguese ship-owners to calculate their taxable income on the basis of the net tonnage of the vessels, i.e. based on the size of the maritime fleet. Hence, it deviates from the principle of taxation based on the companies' actual profit.

## APPROVAL BY THE EUROPEAN COMMISSION

One of the main reasons for approving this type of different tax scheme is that the EU has observed and is conscious of the European-wide need to avoid the risk of relocation or flagging out of shipping companies to low-tax countries, particularly, outside of the EU.

Indeed, this view stems from the Commission's Guidelines on Maritime Transport, that have been implemented

since 2004, as well as various decisions concerning Fiscal State Aid rules.

By granting the above-mentioned approval, the Commission also seeks to ensure that the favorable tax treatment of shipping companies does not spill over into other sectors unrelated to maritime transport, that there is no discrimination against other EEA State registries, and that the aid does not exceed the maximum limit set out in the Maritime Transport Guidelines.

## ECONOMIC SUBSTANCE REQUIREMENTS

Pursuant to the proposed Law, the application of the tonnage tax scheme is subject to certain legal requirements:



### LOCATION OF STRATEGIC AND COMMERCIAL MANAGEMENT

The beneficiary companies are required to be strategically and commercially managed from a country that is a member of the EU or the EEA.



### VESSEL HOLDERS

If the beneficiaries are vessel holders, at least 60% of the net tonnage of their fleet is required to be registered under the flag of the location in question.



### VESSEL CHARTERERS

If, on the other hand, the beneficiaries are vessel charterers, the net tonnage is required to be less than 75% of the total fleet of the owner.



### SEAFARERS' ORIGIN

At least 50% of the seafarers (workers) are required to be nationals from the EU, the EEA or Portuguese-speaking Countries.

## COVERED AND EXCLUDED MARITIME ACTIVITIES



### COVERED ACTIVITIES

The beneficiary companies are also required to carry out certain activities

consisting of maritime transport of persons and goods, namely the transport as such, the sale of goods for consumption onboard as well as the supply of services directly related with the transport. Also the activities of research vessels, support of offshore activities, and towage and dredging are covered, provided that, among other things, 50% of the annual operations constitute maritime transport.



#### **(EXPLICITLY) EXCLUDED ACTIVITIES**

The proposed scheme excludes the activities not covered by the scheme, but it also explicitly excludes, namely, the following activities:

- i. regular passenger transport activities, unless carried out in Madeira and the Azores;
- ii. activities the object of which is not the transport of goods or passengers, such as fishing;
- iii. provision of services consisting of loading, unloading, piloting, and towing to third parties;

- iv. museological activities, feasibility studies, exploration and extraction of natural resources, and marine conservation;
- v. permanently anchored vessels; and
- vi. leisure, recreational, educational, or social activities.

### **COVERED REVENUES**

The new tonnage tax will be applied to:

- i. core revenues derived from maritime transport activities (goods and passengers);
- ii. ancillary revenues strictly related to shipping activities, which have been limited to maximum of 50% of each eligible vessel's operating revenues; and
- iii. revenues derived from towage and dredging.

### **CALCULATION OF TAXABLE INCOME**

Pursuant to the proposed Law, when the net tonnage exceeds 1,000 net tonnes, the amount of taxable income of taxable entities subject to Portuguese Corporate

Income Tax (IRC) is calculated by applying each level to a vessel's net tonnes covered by such level, according to the following table:

Net tonnage	Daily taxable income for each 100 net tonnes
Up to 1,000 net tonnes	€ 0,75
Between 1,001 and 10,000 net tonnes	€ 0,60
Between 10,001 and 25,000 net tonnes	€ 0,40
More than 25,001 net tonnes	€ 0,20

Furthermore, reductions have been granted to the taxable income calculated according to the description above for start-ups of the maritime industry, the reduction being 50% and 25% in the first two active years, as well as a reduction of 10% to 20% for the vessels with the capacity exceeding 50,000 net tonnes, provided that they meet certain environmental requirements.

## OPTION INTO THE TAX REGIME

The proposed tax regime is optional by nature. However, the entities that opt to enter into the special scheme must stay in it for at least three years.

## TAX REGIME'S TEMPORARY DURATION

The optional scheme can be applied to tax periods beginning on or after January 1, 2018, so that the established scheme remains in force for ten years, i.e. until 2028, with a conditional renewal by the European Commission in the context of Fiscal State Aid.

## MADEIRA'S INTERNATIONAL SHIPPING REGISTER

In this context, companies in the maritime industry have the possibility to register their vessels and shipping companies in Madeira's International Shipping Register (*Registo Internacional de Navios da Madeira*, RIN-MAR), which is among the largest Shipping Registers in the EU.



## SEAFARERS' PERSONAL INCOME TAX (IRS)

With regard to the fiscal and contributory benefits applicable to the seafarers of vessels eligible for the tonnage tax scheme, it is also noteworthy that the new tonnage tax exempts the seafarers from paying personal income tax (IRS).

## SEAFARERS' SOCIAL SECURITY

The new scheme also enables the contribution payment of the social security (*Segurança Social, SS*) at reduced rates, being at 4.1% and 1.9% for the employers and the employees respectively, as well as corresponding social protection.

## ENTRY INTO FORCE

After the presentation of the proposed Law in question by the Government to the Parliament, and once all the approval steps are adopted, it will enter into force on the following day of its publication.

## CONCLUSION

The maritime areas of sovereignty and jurisdiction originated by the continental coast and thirteen Atlantic islands determine Portugal's relationship with the sea.

The fact that 53% of the EU's external trade takes place in the waters under Portuguese jurisdiction underlines the importance of the tonnage tax. In addition, approximately 60% to 70% of all Portuguese external trade and national import occurs by sea.

Taking into account that Portugal has the 11<sup>th</sup> largest area of jurisdictional water in the world, and one of the most influenced places by maritime traffic in the world, activities by sea play a strategic role in the creation of vital economic synergies for the country.

Lisbon, May 8<sup>th</sup>, 2018

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