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Cross Heading: Flagging: rule for ships other than dredgers and tugs. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 7

#### TONNAGE TAX

##### PART 1

###### AMENDMENTS OF SCHEDULE 22 TO FA 2000

*Flagging: rule for ships other than dredgers and tugs*

8 After paragraph 22 insert—

*“Flagging: rule for ships other than dredgers and tugs*

- 22A(1) This paragraph applies if the following conditions are satisfied in the case of a ship which—
- (a) is neither a qualifying dredger nor a tug, and
  - (b) would, apart from this paragraph, be a qualifying ship.
- (2) Condition 1 is that, at a time after the later of the reference date (see paragraph 22B(1)) and 30th June 2005,—
- (a) in the case of a tonnage tax company which is a single company, the company begins, in a financial year which is not excepted (see paragraph 22B(2)), to operate the ship for the first time, or
  - (b) in the case of a tonnage tax company which is a member of a tonnage tax group, the company begins, in a financial year which is not excepted, to operate the ship for the first time, the ship not having previously been operated by any other member of the group.
- (3) Condition 2 is that less than 60% of the company's total tonnage is Community-flagged (see paragraph 22B(3)) on average over the period—
- (a) beginning with the first day of the financial year mentioned in condition 1, and
  - (b) ending with the day on which the company so begins to operate the ship.
- (4) Condition 3 is that—
- (a) the percentage of the company's total tonnage which is Community-flagged on average over the period mentioned in condition 2,  
is less than
  - (b) the percentage of the company's total tonnage which was Community-flagged on the reference date.

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- (5) Condition 4 is that, on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers (see paragraph 22B(7)).
- (6) Where this paragraph applies in relation to the ship, the ship shall not, at any time on or after that date, be regarded as—
- (a) a qualifying ship operated by the company, or
  - (b) if immediately before that date the company is a member of a tonnage tax group, a qualifying ship operated by any company that is or becomes a member of the group.
- (7) But sub-paragraph (6) does not apply if—
- (a) the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date, or
  - (b) the conditions in sub-paragraph (8) are satisfied.
- (8) Those conditions are that—
- (a) a substitute ship which was not registered in one of the Member States' registers has, during the period mentioned in sub-paragraph (7)(a), become so registered, and
  - (b) no later than the end of that period—
    - (i) if the company is a single company, the company makes an election under this sub-paragraph in relation to the substitute ship, or
    - (ii) if the company is a member of a tonnage tax group, all the qualifying companies in the group jointly make such an election.
- (9) In sub-paragraph (8) a “substitute ship” means a qualifying ship—
- (a) the tonnage of which is no less than that of the ship mentioned in sub-paragraph (1), and
  - (b) which was first operated by the company or, if the company is a member of a tonnage tax group, by any other member of the group more than three months before that date;
- and for this purpose the tonnage of a ship is to be determined on the same basis as it is under paragraph 22B(3).
- (10) An election under sub-paragraph (8) is made by notice to the Inland Revenue.

*Flagging: meaning of terms used in paragraph 22A*

- 22B (1) In paragraph 22A “the reference date” means 17th January 2004 or, if later,
- (a) in the case of a single company, the date of the end of the accounting period in which the company became (or becomes) a tonnage tax company;
  - (b) in the case of a member of a group, the date of the end of the accounting period in which the group became (or becomes) a tonnage tax group;

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but where the members of a group had (or have) different accounting periods at the time the group became (or becomes) a tonnage tax group, paragraph (b) has effect by reference to the first of those accounting periods.

- (2) For the purposes of sub-paragraph (2) of paragraph 22A a financial year is excepted if it is designated by an order made by the Treasury as a financial year in relation to which that paragraph is not to have effect (see further paragraph 22C(1) to (3)).
- (3) For the purposes of paragraph 22A the percentage of a company's total tonnage which is Community-flagged is—

$$\frac{\text{CFT}}{\text{TT}} \times 100$$

where—

CFT is the aggregate tonnage of such of the relevant ships as are registered in one of the Member States' registers, and

TT is the aggregate tonnage of all the relevant ships.

- (4) For the purposes of sub-paragraph (3) the ships which are the relevant ships are—
- (a) if the company is a single company, the ships operated by the company, or
- (b) if the company is a member of a tonnage tax group, the ships operated by each member of the group which is a qualifying company.
- (5) Sub-paragraphs (3) and (4) are subject to any regulations made under paragraph 22C(4).
- (6) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (3) the aggregate tonnage of relevant ships.
- (7) In this Schedule “Member States' registers” has the meaning given by the Annex to Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport (as from time to time amended or replaced).

*Flagging: provisions supplementing paragraphs 22A and 22B*

- 22C (1) An order under paragraph 22B(2) designating a financial year shall be made if—
- (a) the Treasury are satisfied, on the basis of the information available to them, that the percentage of the tonnage tax fleet which is Community-flagged has not decreased on average over a prescribed three year period, and
- (b) the order is made before the beginning of that financial year.
- (2) The Treasury may make provision by regulations for or in connection with—

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- (a) specifying the meaning, for the purposes of sub-paragraph (1)(a), of the percentage of the tonnage tax fleet which is Community-flagged;
  - (b) specifying the way in which an average is to be calculated for those purposes;
  - (c) requiring any tonnage tax company or tonnage tax group to provide prescribed information for the purposes of enabling the Treasury to determine whether the condition in sub-paragraph (1)(a) is met;
  - (d) imposing penalties in respect of a failure to comply with a provision of the regulations made by virtue of paragraph (c) (including, in prescribed cases or circumstances, the exclusion of a company or group from tonnage tax).
- (3) Section 828(3) of the Taxes Act 1988 shall not apply in relation to an order under paragraph 22B(2).
- (4) The Treasury may make provision by regulations as to the way in which the percentage of a company's total tonnage which is Community-flagged is to be calculated for the purposes of paragraph 22A.
- (5) The provision that may be made by regulations under sub-paragraph (4) includes provision for or in connection with—
- (a) determining the percentage of a company's total tonnage which is Community-flagged on average over a period;
  - (b) specifying the basis on which the tonnage of a ship is to be determined;
  - (c) treating ships which would, but for the regulations, be relevant ships for the purposes of paragraph 22B(3) as not being relevant ships for those purposes;
  - (d) including in the calculation set out in paragraph 22B(3) only such proportion of the tonnage of a relevant ship as may be prescribed.
- (6) Regulations under this paragraph—
- (a) may make different provision for different cases or circumstances, and
  - (b) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Treasury to be necessary or expedient.
- (7) In this paragraph “prescribed” means—
- (a) specified in, or
  - (b) determined in accordance with, regulations under this paragraph.”.

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