

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Part V. (See end of Document for details)

SCHEDULES

SCHEDULE 22

TONNAGE TAX

PART V

OTHER REQUIREMENTS

The requirement that not more than 75% of fleet tonnage is chartered in

- 37 (1) It is a requirement of entering or remaining within tonnage tax—
- (a) in the case of a single company, that not more than 75% of the net tonnage of the qualifying ships operated by it is chartered in;
 - (b) in the case of a group, that not more than 75% of the aggregate net tonnage of the qualifying ships operated by the members of the group that are qualifying companies is chartered in.
- (2) For this purpose a ship is “chartered in”—
- (a) in relation to a single company, if it is chartered to the company otherwise than on bareboat charter terms, or
 - (b) in relation to a group, if it is chartered otherwise than on bareboat charter terms to a qualifying member of the group by a person who is not a qualifying member of the group.
- In paragraph (b) “qualifying member of the group” means a qualifying company that is a member of the group.
- (3) A ship shall not be counted more than once in determining for the purposes of subparagraph (1)(b) the aggregate net tonnage of the qualifying ships operated by the members of a group that are qualifying companies.
- (4) In the following provisions the requirement in this paragraph is referred to as “the 75% limit”—
- paragraph 38 (election not effective if limit exceeded), and
- paragraphs 39 and 40 (exclusion of company or group where limit exceeded).
- (5) References to the limit being exceeded in an accounting period are to its being exceeded on average over the period in question.

The 75% limit: election not effective if limit exceeded

- 38 (1) Where a tonnage tax election is made before the end of the initial period and the 75% limit is exceeded in the first relevant accounting period, the election is treated as never having been of any effect.

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- (2) Where a tonnage tax election is made after the end of the initial period, then—
- (a) if the 75% limit is exceeded in the first relevant accounting period, the election does not have effect in relation to that period;
 - (b) if the 75% limit is exceeded in the first and second relevant accounting periods, the election does not have effect in relation to either of those periods; and
 - (c) if the 75% limit is exceeded in the first, second and third relevant accounting periods, the election is treated as never having been of any effect.
- (3) For the purposes of sub-paragraphs (1) and (2) the first, second or third relevant accounting period means—
- (a) in relation to a single company, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of the company after its entry into tonnage tax;
 - (b) in relation to a group, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of a member of the group that would have been a tonnage tax company.
- (4) Sub-paragraphs (1) and (2) do not apply to a renewal election.

The 75% limit: exclusion of company if limit exceeded

- 39 (1) If the 75% limit is exceeded in two or more consecutive accounting periods of a single company subject to tonnage tax, the Inland Revenue may give notice excluding the company from tonnage tax.
- (2) The effect of the notice is that the company's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the company that follows the second consecutive accounting period of the company in which the limit is exceeded.

The 75% limit: exclusion of group if limit exceeded

- 40 (1) If the 75% limit is exceeded in relation to a tonnage tax group in two or more consecutive accounting periods of any tonnage tax company that is a member of the group ("the relevant company"), the Inland Revenue may give notice excluding the group from tonnage tax.
- (2) The effect of the notice is that the group's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the relevant company that follows the second consecutive accounting period of that company in which the limit is exceeded.

- (3) Notice under this paragraph need only be given to the relevant company.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

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The requirement not to enter into tax avoidance arrangements

- 41 (1) It is a condition of remaining within tonnage tax that a company is not a party to any transaction or arrangement that is an abuse of the tonnage tax regime.
- (2) A transaction or arrangement is such an abuse if in consequence of its being, or having been, entered into the provisions of this Schedule fall to be applied in a way that results (or would but for this paragraph result) in—
- (a) a tax advantage being obtained for—
- (i) a company other than a tonnage tax company, or
- (ii) a tonnage tax company in respect of its non-tonnage tax activities,
- or
- (b) the amount of the tonnage tax profits of a tonnage tax company being artificially reduced.
- [^{F1}(3) In this paragraph “tax advantage” has the meaning given by section 840ZA of the Taxes Act 1988.]
- (4) A ^{F2}... lease is not to be taken as being an abuse of the tonnage tax regime by reason of the lessor obtaining capital allowances as a result of the lease being, or having been, entered into.
- [^{F3}In this sub-paragraph “lease”, and “lessor” in relation to a lease, have the meaning given by paragraph 89(2).]

Textual Amendments

- F1** Sch. 22 para. 41(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 395](#) (with [Sch. 2](#))
- F2** Word in Sch. 22 para. 41(4) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 32 para. 2\(1\)\(a\)](#), [Sch. 43 Pt. 3\(11\)](#) (with [Sch. 32 para. 4](#))
- F3** Words in Sch. 22 para. 41(4) substituted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 32 para. 2\(1\)\(b\)](#) (with [Sch. 32 para. 4](#))

Tax avoidance: exclusion from tonnage tax

- 42 (1) If a tonnage tax company is a party to any such transaction or arrangement as is mentioned in paragraph 41(1), the Inland Revenue may—
- (a) if it is a single company, give notice excluding it from tonnage tax;
- (b) if it is a member of a group, give notice excluding the group from tonnage tax.
- (2) The effect of the notice in the case of a single company is that the company’s tonnage tax election ceases to be in force from the beginning of the accounting period in which the transaction or arrangement was entered into.
- (3) The effect of such a notice in the case of a group is that the group’s tonnage tax election ceases to be in force from such date as may be specified in the notice.
- The specified date must not be earlier than the beginning of the earliest accounting period in which any member of the group entered into the transaction or arrangement in question.

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- (4) The provisions of paragraphs 138 and 139 (exit charge: chargeable gains and balancing charges) apply where a company ceases to be a tonnage tax company by virtue of this paragraph.
- (5) Notice under this sub-paragraph (1)(b) need only be given to the company mentioned in the opening words of that sub-paragraph.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

Appeals

- 43 (1) An appeal [^{F4}may be made] against a notice given by the Inland Revenue under—
- paragraph 39 or 40 (exclusion of company or group from tonnage tax if 75% limit exceeded), or
- paragraph 42 (exclusion from tonnage tax of company or group where tax avoidance arrangement entered into).
- (2) Notice of appeal must be given to the Inland Revenue within 30 days of the date of issue of the notice appealed against.
- (3) In the case of a notice under paragraph 40 or 42(1)(b) only one appeal may be brought, but it may be brought jointly by two or more members of the group concerned.

Textual Amendments

F4 Words in Sch. 22 para. 43(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 294(2)**

[^{F5}The requirement to prove compliance with safety etc standards

Textual Amendments

F5 Para 43A and cross-heading inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 7 paras. 11, 18(2)**

- 43A (1) The Secretary of State may make provision by regulations for or in connection with requiring qualifying companies or qualifying groups to provide evidence of compliance with prescribed standards relating to—
- (a) health and safety in connection with qualifying ships which are not registered in any [^{F6}relevant register (see paragraph 22B(6A))];
- (b) environmental performance of such ships;
- (c) working conditions on such ships.
- (2) The provision that may be made by regulations under this paragraph includes provision for or in connection with—
- (a) requiring returns to be made at prescribed intervals;
- (b) authorising the Secretary of State to require persons to provide prescribed information in prescribed cases or circumstances;

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- (c) enabling audits to be carried out on behalf of the Secretary of State;
 - (d) authorising the Secretary of State to issue certificates of non-compliance in prescribed cases or circumstances;
 - (e) the effect of such a certificate (including preventing the making of a renewal election when such a certificate is in force);
 - (f) enabling persons to apply to the Secretary of State for the cancellation of such a certificate;
 - (g) requiring or enabling the Secretary of State to revoke a tonnage tax election after a prescribed period of non-compliance;
 - (h) the making of appeals;
 - (i) authorising the disclosure of information between the Secretary of State and the Inland Revenue.
- (3) Regulations under this paragraph may create criminal offences in respect of failures to comply with requirements imposed by the regulations.
- (4) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Regulations under this paragraph—
- (a) may make different provision for different cases, and
 - (b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (6) In this paragraph “prescribed” means prescribed by regulations under this paragraph.]

Textual Amendments

- F6** Words in [Sch. 22 para. 43A\(1\)\(a\)](#) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/332\)](#), regs. 1, **2(6)**

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