Tormod Torvanger

Access to the Norwegian tonnage tax system

GYLDENDAL

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ACCESS TO THE NORWEGIAN TONNAGE TAX SYSTEM

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Abstract

This thesis mainly concerns the issue of what types of vessels and vessel activities that may benefit under the Norwegian special tax framework for the shipping industry which is commonly known as the tonnage tax system. As the framework implies a tax relief in favor of a particular industry, this issue does not only concern Norwegian law in a narrow sense, but also how the prohibition against state aid of the EEA Agreement, to which Norway is a party, is to be understood.

Part 1 of the thesis explains the concept of tonnage tax, presents the research questions, accounts for the purpose and relevance of the study and provides an overview of the Norwegian framework. Moreover, this part of the thesis contains a brief overview of the Norwegian wage scheme, as the content of this framework is relevant for the research questions in certain regards. Part 1 also accounts for the events leading up the adoption of the original Norwegian tonnage tax scheme, hereunder for the circumstances that led this concept of taxation to expand rapidly within the EU/EEA-area from the mid-nineties. Finally, an account for the methodology of the study and for the relevant legal sources is contained in this part of the dissertation.

Part 2 concerns the legal implications that the general prohibition against state aid applicable under EU/EEA law have for the European tonnage tax frameworks. Emphasis in this respect is placed on the issue of what types of vessels and vessel activities the Commission/the EFTA Surveillance Authority have accepted such schemes to favor. Furthermore, emphasis has been placed on the extent to which it has been accepted that entities under such schemes may charter in vessels on time/charter party terms and/or charter out vessels on bareboat terms.

In this context, it is accounted for the considerations that the acceptance of tonnage tax schemes within the EU/EEA area have been based on. Common objections against aid in this form to the shipping industry are also presented in this part of the thesis.

Part 3, which must be considered as the main part of the thesis, analyses the vessel related conditions to benefit under the Norwegian tonnage tax system.

This part discusses what types of maritime structures that can be considered as "ships" for tonnage tax purposes. It is also discussed how an entity has to be connected with a ship of a qualifying/permissible nature in order to qualify for the scheme with it.

Moreover, part 3 elucidates the conditions contained in the general vessel category of "ships in service" of paragraph a of NTA section 8-11 (1), i.e. what types of vessels that may be qualifying/permissible for the scheme pursuant to this category. Thereafter, the conditions to be qualifying/permissible pursuant to the altogether four petroleum-related vessel categories of paragraph b of NTA section 8-11 (1) is subject to an analysis. Subsequently, the newly adopted category of windmill farm vessel contained in paragraph i of NTA section 8-11 (1) is analyzed.

This part of the dissertation does also comprise two issues that goes beyond the question of what types of vessels and vessel activities that may benefit under the Norwegian scheme. Firstly, it is discussed whether and to what extent an entity under the scheme may conduct data processing onboard seismic vessels. Secondly, the eligibility of different types of petroleum-related vessels under the Norwegian scheme is compared with the extent to which the types of vessels in question may benefit under the tonnage tax schemes of the UK, the Netherlands and Denmark respectively.

Part 4, which is the last part of the thesis, sums up the most notable features of the Norwegian tonnage tax system. In this respect, the wide extent to which the framework facilitates for specialized vessels to benefit under the scheme is emphasized and it is accounted for positive and negative aspects of the rather open-ended way in which the framework identifies qualifying/permissible vessels. Moreover, it is commented on positive and negative aspects of the fact that the Norwegian framework, unlike what is common within the EU/EEA area, is not built on a principle of split accounts and on the framework's relatively liberal requirements to management from within the EU/EEA area. Finally, this part of the dissertation questions the necessity of the positive requirements to sailing distances that apply to vessels unrelated to the petroleum industry in contexts where such vessels operate domestically.

Preface

I became familiar with the main issue of this thesis when I started working as a legal advisor at the Central Tax Office for Large Enterprises in 1997, practically at the same time as the original Norwegian tonnage tax scheme was introduced. Already at this stage, it struck me as remarkable how open the question of what types of vessels and vessel activities that could be accepted to benefit under the special tax system was in many regards - and how challenging it appeared to be to regulate this issue in a practicable manner.

Subsequently, when working as a tax lawyer from 2000 to 2011, I experienced the challenges that this issue gave rise to from a shipping point of view. Although some guidance could be found in interpretive statements and published tax administrative practice, I experienced this question as a recurring, and in many regards uncertain, issue also during this time period.

Eventually, I got the possibility to study this issue from a theoretical point of view. In August 2011, I entered the PhD program at the University in Bergen and commenced with the project which resulted in this dissertation. The project was financed through a research scholar position at the Norwegian School of Economics (NHH), where I also have been lecturing in tax law up to present.

Although the legal staff at NHH is relatively small, I have indeed had a very interesting and inspiring time at this institution. I would like to express my gratitude to my colleagues at the Department of Accounting, Auditing and Law at NHH (IRRR) for the way they have been facilitating for, and supporting, my studies. Special thanks go to the head of IRRR; associate professor Finn Kinserdal, the deputy head of IRRR Professor Katarina Kaarbøe, the head of administration Maren Dale-Raknes and associate professor/lawyer Oddleif Torvik.

I also thank the Faculty of Law at the University of Bergen, and in particular Professor Karl Harald Søvig and Professor Bjarte Askeland (the latter is now in a position as an appeal court judge) whom I had most to do with under the inspiring scientific training

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Furthermore, I owe my gratitude to Professor/ tax advisor Ton Stevens in the Netherlands for guidance and help with issues relating to the Dutch tonnage tax system. In this respect, I also express my thanks to Robert Bogard with the Dutch tax authorities (now retired). Heartfelt thanks also go to Victor Baker with the British tax authorities (HMRC) and to lawyer (PhD) Ann Rask Vang in Denmark for assistance in relation to the British and Danish tonnage tax schemes respectively.

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Moreover, I thank Julie Wille for proofreading the manuscript and stud. jur. Even Torvanger for updating the notes and the reference list prior to this edition of the dissertation.

I also owe thanks to my partners at the law firm Rasmussen & Broch DA for accepting that I have had flexible and unconventional ties to the firm for the last four years. It is hard to see how this project could have been finalized without their support.

Furthermore, I am deeply grateful for the way in which my supervisor, Professor Frederik Zimmer at the University of Oslo, has contributed to the thesis. Professor Zimmer's extraordinary insight in practically all aspects of Norwegian tax law is well known and it has indeed been a privilege to work with him. I very much appreciate the friendly, thorough and patient way in which he has guided me through this study.

I am also thankful to the scientific committee, consisting of Professor Rune Sæbø (the University of Bergen), Professor Ton Stevens (Tilburg University) and Professor Isabelle Richelle (the University of Liege), for their thorough and generous assessment of the dissertation.

Finally, I would like to thank my dear children Even, Mari and Kristin for their patience during this project and to apologize for spending too much time at the office. I dedicate this work to you.

The dissertation is up to date per 30 June 2020.

Bergen, August 2020

Tormod Torvanger

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