Brussels, 10.03.2009
C(2009) 1482

Subject: State aid N 457/2008 – The Netherlands – Reduction of Tonnage Tax for Large Vessels and Ship Management

1. Procedure

(1) By letter dated 10 September 2008, the Dutch authorities notified the Commission, in accordance with Article 88(3) of the EC Treaty, of their intention to introduce amendments to their existing tonnage tax scheme No N 738/1995 approved by the Commission with letters from 12 April 1996 and 31 July 1997. The scheme was subsequently brought into line with the current Guidelines on state aid to maritime transport (hereinafter "the Guidelines").

(2) The notification was registered under reference N 457/2008. By letters dated 24 October 2008 and 20 November 2008 the Commission requested additional information regarding this measure. By letters dated 9 December 2008 and 24 December 2008, the Dutch authorities provided the Commission with the requested information.

2. Detailed Description of the Measure

2.1. Title

(3) Reduction of tonnage tax for large vessels and ship management.

Zijne Excellentie de Heer Maxime VERHAGEN
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
NL - 2500 EB Den Haag

1 Registered under Reference SANI 1390.
2 Reference SG (96)D/3852.
3 Reference SG (97)D/6453.
4 OJ C 13 of 17.01.2004, p.3.
2.2. **Background to the notified measure**

(4) The Dutch tonnage tax measure is a tax system whereby legal entities which are liable to corporate tax in the Kingdom of the Netherlands engaged in international maritime transport by ship or in an activity directly related thereto can change the tax base for their operating profits. Companies qualifying for tonnage tax may opt for a tax calculated on the net tonnage of the fleet that they operate (tonnage tax) instead of being taxed on the actual profits of their maritime transport activities.

(5) The amount of tax to be paid by qualifying companies is established on the basis of the net tonnage of their qualifying vessels. Qualifying companies shall be taxed on the basis of a fixed profit calculated as a lump sum determined on the basis of the net tonnage of each of the qualifying vessels, per 100 net tons (NT) and per number of days when the vessel concerned is operational.

(6) The current tonnage tax scheme was approved by the Commission on 20 March 1996 and brought into line with the current Guidelines in accordance with Section 13 thereof. In a letter to the Dutch authorities dated 28 October 2005 the Commission services took note of the proposed appropriate measures.

2.3. **The first amendment concerning the tonnage tax rate applicable to large vessels**

(7) The proposed amendment of Article 3.23(1) of the Income Tax Act introduces an extra bracket in the table contained in that paragraph. That last bracket in the table quoted below introduces a lower rate of € 0.50 per 1 000 net tons per day, which will apply with regard to the tax base for the tonnage in excess of 50 000 net tons.

<table>
<thead>
<tr>
<th>Amount per day per 1 000 net tons</th>
</tr>
</thead>
<tbody>
<tr>
<td>€9.08</td>
</tr>
<tr>
<td>€6.81</td>
</tr>
<tr>
<td>€4.54</td>
</tr>
<tr>
<td>€2.27</td>
</tr>
<tr>
<td>€0.50</td>
</tr>
</tbody>
</table>

(8) It must be noted that for large vessels with tonnage exceeding 50 000 net tons, the eligibility criteria will remain the same as the implementing rules and conditions governing the operation of ships under the current tonnage tax scheme. For example, vessels must be owned or part-owned, on a bareboat charter.

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Furthermore, the vessel must fly the flag of one of the Member States of the European Union or the European Economic Area.

(9) Moreover, in their letter from 9 December 2008 the Dutch Authorities committed to apply the following condition: ships with tonnage exceeding 50,000 net tons can benefit from the proposed reduced rate only if they are new or if they have been registered under the flag of a third country during the five years preceding their entry into the tonnage tax scheme. In this way, the objective laid down in the Community guidelines to transfer ships controlled by Community ship-owners and registered under the flag of a third country to Community ships' registers would be attained, without running the risk of adversely affecting intra-Community trade.

2.4. The second amendment concerning the extension of tonnage tax to ship-managers

(10) The tonnage scheme also applies to ship managers.

(11) According to Article 3.22(5)(d) of the Income Tax Act ship management companies are eligible for tonnage tax in so far as they are fully responsible for both the technical management and the management of the crew. In other words, the ship manager must assume full responsibility for the vessel's operation. Ship managers must also assume all the obligations and requirements laid down in the ISM Code\(^\text{10}\).

(12) With the current notification the Dutch authorities propose to insert a second sentence in Article 3.23(1) of the Income Tax Act, with the aim to lower the tonnage tax base by 75% for ship management companies defined in Article 3.22(5)(d), thereby indirectly cutting the existing tonnage rates by 75% for such companies.

(13) In the opinion of the Dutch authorities, the 75% reduction of the tax base for ship managers is justified because a ship manager's turnover and profit are much lower than that of a conventional shipowner managing the same vessel, as a result of which the profits established at a flat rate on the basis of the vessel tonnage are often higher than the profits actually obtained. The flat-rate profit tax under the tonnage tax scheme is therefore often higher than the tax due under the normal corporation tax. Therefore, the greater the tonnage of the vessel, the less advantageous the tonnage tax regime becomes compared to the corporation tax.

(14) This is illustrated by the following figures for 2007 related to management activities carried out in the Netherlands concerning certain vessels.

Table 1

| Return after taxes, management of product tankers less than 7 years old, 2007 |

10 International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the International Maritime Organisation (IMO) by resolution A.741(18).
These two tables show that return after taxes for ship management companies under the tonnage tax regime were only slightly more beneficial than normal corporate taxation. According to the Dutch authorities, when vessel tonnage exceeds significantly 6000 net tons the tonnage tax regime can even lead to a disadvantage compared with the normal corporate taxation.

It must be also noted that in years with poor market conditions the tonnage tax regime is not advantageous even for managers with small vessels. As a result, there is little or no improvement of the competitiveness of such management activities on the world markets if they opt for tonnage tax.

The Dutch authorities provided another example according to which for a vessel with net tonnage of 3200 NT in 2007 under tonnage tax the tax burden constituted about 30.38% of the return before taxes for ship managers, while for shipowners this figure was only 0.75%. This was due to the fact that the overall profit of the ship managers was much lower than the one of the shipowner for the same vessel.

Furthermore, the Dutch authorities clarified that for 2007 ship management was carried out only for dozens of vessels, while the total number of vessels managed by Dutch shipowners (ownership, bare boat, time of voyage charter, approximately 1 500) was significantly higher. This shows that the current tonnage tax rules are not sufficiently attractive for ship management activities to be carried out on a large scale from the Netherlands.
An academic survey\(^{11}\) also confirms the findings of the Dutch authorities, namely that the tax liability of ship managers (for different types of vessels) can be much higher under tonnage tax rules than under corporate tax rules (as shown in the table below).

**Ship manager's tax liability for a number of vessel types, under tonnage rules and normal rules, in euros**

<table>
<thead>
<tr>
<th>Vessel type</th>
<th>Tax liability under normal rules</th>
<th>Tax liability under tonnage rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>LPG tanker, 7 545 NT</td>
<td>5 500</td>
<td>17 980</td>
</tr>
<tr>
<td>LNG tanker, 28 136 NT</td>
<td>15 400</td>
<td>43 900</td>
</tr>
<tr>
<td>LPG tanker, 1 039 NT</td>
<td>4 200</td>
<td>3 730</td>
</tr>
<tr>
<td>Bulk carrier, 58 083 NT</td>
<td>4 800</td>
<td>55 860</td>
</tr>
<tr>
<td>Crude oil tanker, VLCC, 100 899 NT</td>
<td>4 200</td>
<td>63 670</td>
</tr>
<tr>
<td>Crude oil tanker, ULCC, 162 477 NT</td>
<td>5 800</td>
<td>74 910</td>
</tr>
</tbody>
</table>

Moreover, the same study shows that a ship manager’s turnover per ship is very small compared to a shipping company’s turnover. Per ship, ship management fees make up less than 2% of a shipping company’s turnover. Applying – in absolute figures – the same tonnage tax rates for shipping companies and ship managers does not take into account the significant differences in scale and earning potential. This survey shows that the annual turnover of a ship manager (range of 80,000 US dollars to 100,000 US dollars) arising from the management of a Capezize /Panamax bulker, represents just 0.3% to 1.8% of a ship-owner’s annual turnover for the operation of the same type of vessel (range of 5.5 million US dollars (loss-making situation) to 29 million US dollars). In the case of a VLCC tanker, a 'conventional' shipowner's turnover is between USD 7 million and USD 55 million, while for the ship manager of this vessel type, the payment is approximately USD 130 000.

### 2.5. Expected effects

The Dutch authorities claim that the proposed amendments of the Dutch tonnage tax scheme will make the Netherlands attractive to ship-owners as a base from

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\(^{11}\) Study entitled "Application of Tonnage Tax to companies managing ships on behalf third parties, March 2005" and commissioned by the Royal Association of Belgian Shipowners to Policy Research Corporation. This study was also quoted by the Dutch authorities.
which to operate large ships (i.e. vessels of over 50 000 net tons). The Dutch authorities explained that an increase in the size of the Dutch merchant fleet would have a positive impact on the Netherlands as a host nation for shipping activities.

Moreover, in view of the Dutch authorities a stronger maritime cluster in the Netherlands would ultimately have a knock-on effect on the European maritime cluster as a whole, for example by increasing employment opportunities in Europe. For example, the reduction of the tonnage tax base for ship-management companies would stimulate the development of this industry in the Community/EEA and would attract such activities from third countries. As far as the reduction of the tonnage tax for large vessels is concerned, it would also attract vessels from third countries, given the condition that vessels coming from other Member States would not be eligible.

The Dutch authorities project that the two measures will create jobs for some 2 100 people with a minimum of government financial input. This is primarily because there are hardly any large vessels operating from the Netherlands at the moment. Consequently, they are currently not taxed in the Netherlands. Therefore, both measures will generate revenue for the Dutch Government, with an estimated return of €9.4 million.

The added value of the measures in question for the Dutch economy has been calculated as € 670 million in total. In 2005, the shipping industry in the Netherlands generated a total added value of approximately € 1.6 billion and provided employment for 11 610 people.

Reducing the tonnage rate for large vessels could increase the fleet by some 160 vessels. In terms of net tonnage, this would double the size of the merchant fleet. Reducing the tonnage rates for ship managers is expected to lead to ship management being carried out from the Netherlands for at least 100 ships, thereby doubling the number of ships managed from the Netherlands.

Closer economic ties with the Netherlands will also increase the chances of a vessel opting to fly the Dutch flag, which, at the same time, also promotes the Community flag. Overall, it is expected that the Netherlands will also become more attractive to ship-owners from outside the EU as a host nation for shipping activities.

As regards the reduction in tonnage tax for large vessels (vessels of over 50 000 net tons), the Dutch authorities indicate that, at the moment, there are hardly any large ships operating from the Netherlands, and thus taxed under the Dutch tonnage tax scheme. Furthermore, given that this will, for the most part, affect larger ship-owners, it is, for the time being, expected to concern fewer than 10 beneficiaries.

As regards the extension of tonnage tax to ship managers, it is estimated by the Dutch Authorities that there will be a few dozen beneficiaries, given the number of companies carrying out ship management activities in the Netherlands for third parties.
2.6. Budget

(29) The total budgetary loss caused by the notified measure is expected to be some € 0.5 million per year. The budgetary loss from the operation of large vessels will be minimal, as there are hardly any large ships operating from the Netherlands at the moment. Consequently, they are not taxed in the Netherlands anyway.

(30) In view of the number of companies already working in the field of ship management, most of the impact on the budget will come from the measure relating to that market.

(31) The measure relating to large vessels could generate extra revenue for the Dutch Government, because, as already mentioned, there are currently hardly any large ships operating from the Netherlands. Therefore, after an initial loss of revenue, the measure relating to ship-management is expected to be a source of revenue for the Dutch Government\textsuperscript{12}.

2.7. Duration

(32) These aid measures will be enacted by Royal Decree only after the European Commission has given its approval. The Dutch authorities intend to bring the notified measures into force as from 1 January 2009.

(33) By letter of 24 December 2008, the Dutch authorities took the commitment to re-notifying the amendments in the existing tonnage scheme subject to the present decision within ten years as from the date of the implementation of the notified measure.

2.8. Cumulation of aid

The Dutch authorities have indicated that no other scheme in favour of the Dutch ship-owner exists.

3. Assessment of the aid

3.1. Existence of aid under Article 87(1) of the EC Treaty

(34) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(35) Through the tonnage tax scheme, under its current form or after the proposed amendments enter into force, the Dutch authorities grant an advantage, by lowering the corporate tax that this sector would otherwise have to bear, through

\textsuperscript{12} See paragraph (23) of the present decision.
State resources, thereby favouring certain undertakings since the measure is specific to the international shipping sector. Such subsidies threaten to distort competition and could affect trade between Member States, since such shipping activities are essentially carried out on a worldwide market. Therefore, the Commission considers that the notified measures do not alter the qualification of the scheme as State aid within the meaning of Article 87(1) of the EC Treaty.

3.2. Legal basis for the assessment

(36) Under Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, and thus provides a possible basis for an exemption from the general prohibition of State aid. In the present case, the Commission considers Article 87(3)(c) of the EC Treaty to be the appropriate legal basis applicable to the notified scheme.

(37) In particular, aid in favour of the maritime sector must be examined in the light of the 2004 Community guidelines on State aid to maritime transport\(^\text{13}\) (hereinafter "the Guidelines").

3.3. Assessment of compatibility

(38) The Guidelines determine the conditions under which Member States are allowed to set up certain State aid schemes to support their maritime transport industry in the pursuit of general objectives, such as:

- improving a safe, efficient, secure and environment friendly maritime transport,
- encouraging the flagging or re-flagging to Member States' registers,
- contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets,
- maintaining and improving maritime know-how and protecting and promoting employment for EU/EEA seafarers, and
- contributing to the promotion of new services in the field of short sea shipping following the White Paper on Community transport policy.

(39) Chapter 3.1 fifth subparagraph of the Guidelines specifically mentions tonnage tax schemes as examples of fiscal measures that "have been shown to safeguard high quality employment in the on-shore maritime sector", and may thus be considered compatible with the common market\(^a\).

\(^\text{13}\) See footnote Error! Bookmark not defined..
However, the Guidelines lay down certain criteria, which such schemes must meet to be considered compatible with the common market.

The Commission will thus assess below whether the scheme once modified will still remain compatible with the common market.

3.3.1. Examination of the compatibility of the notified measures

3.3.1.1. Low rate for tonnage exceeding 50 000 net tons

It is important to underline that the Commission has so far endeavoured to maintain the rates used for the calculation of the tax base of tonnage tax companies approximately at the same level in all Member States that have notified the introduction of a tonnage tax scheme in line with Section 3.1 eighteenth paragraph of the Guidelines.

The Commission recalls that it opened the investigation procedure in the case of the Belgian tonnage tax with respect to a very low rate of 0.05 Euro per 100 ten tons and per day for tonnage exceeding 40 000 net tons. The Commission was then concerned that such a low rate might attract large vessels operated from other Member States and thus taxed under a tonnage tax scheme that is not equipped with such a low rate.

The Commission eventually accepted the introduction of such a low rate only on the condition that a ship re-flagged to the Belgian flag must have been previously registered under a non-Community flag for a minimum period of five years. Such a condition would make it possible to attain the objective laid down in the Community guidelines to transfer ships controlled by Community ship-owners and registered under the flag of a third country to Community ships' registers without running the risk of adversely affecting intra-Community trade.

By letter of 09 December 2008, the Dutch authorities took the commitment to submit the application of the proposed rate of 0.50 euro per 100 net tons and per day for tonnage exceeding 50 000 net tons to equivalent conditions. In this respect the Dutch authorities agreed to impose on ships with tonnage exceeding 50 000 net tons the condition that they can benefit from the proposed reduced rate only if they are new or if they have been registered under the flag of a third country during the five years preceding their entry into the tonnage tax scheme.

Therefore, on the basis of this commitment the Commission considers that the introduction of the new rate described above is compatible with the common market.

3.3.1.2. Ship management

(47) In line with Section 3.1., eleventh subparagraph of the Guidelines ship management companies are eligible under the current tonnage tax scheme for the ships for which they are responsible for crew management and technical management. Such companies may be eligible only if they assume full responsibility for the operation of the ship and all the duties and responsibilities imposed by the ISM code.

(48) Indeed, ship management companies that operate on the territory of the Community/EEA ensure that the know-how in terms of the crew management and the technical management of vessels is sustained and further developed in the Community. They also provide numerous employment opportunities in Europe. As a result, they contribute to the objectives set out in section 2.2 first subparagraph fourth indent of the Guidelines, namely "maintaining and improving maritime know-how and protecting and promoting employment for European seafarers".

(49) It is also pertinent to say that management activities contribute to another objective of the Guidelines, as they ensure that on-shore and off-shore activities related to the vessels under tonnage tax are maintained within the Community/EEA. Here the objective pursued is to contribute "to the consolidation of the maritime cluster established in the Member States" in line with section 2.2 first subparagraph third indent of the Guidelines.

(50) In this respect, the Commission is mindful of the need to find a more suitable taxation system which takes better account of ship-managers' profits, the latter being much lower than the ones of the shipowners. Moreover, outsourcing of ship management should not be fiscally penalised with respect to in-house ship management, provided that the same requirements applied to shipowners are also met by ship managers and that granting the benefit to them helps achieving the objectives of the Guidelines in the same way as the provision of aid to shipowners.

(51) At the same time, externalising ship management is a global trend as it significantly increases efficiency in the maritime sector. Therefore, the Commission acknowledges that further incentives should be found in order to promote ship management activities to be carried out on the territory of the Community/EEA and thus to stimulate the competitiveness of the Community shipping activities on a global level.

(52) With regard to the level of taxation for entities managing ships on behalf of third parties, the Commission notes, on the basis of the figures supplied by the Dutch authorities as well as by an independent study\(^\text{15}\), that for an equal fleet tonnage a ship-manager has a much lower turnover and profit than a ship-owner. As a result, ship managers pay much higher tonnage tax as a percentage of their profit than ship-owners. It follows from the above that imposing lower tax rates for ship-

\(^{15}\) See paragraph (19) of the present decision.
managers than to ship-owners would better reflect the economic position of the ship-managers.

(53) Therefore, the Commission considers that a reduction by 75% of the tax base is proportionate to reflect the significantly minor profit that a ship-manager can derive from a given fleet compared to a ship-owner who would have operated this fleet.

3.3.2. Compliance with aid ceiling

(54) Chapter 11 of the Guidelines indicate that "the total amount of aid granted under Chapters 3 to 6 [that is to say tonnage tax, exemption from the payment of income tax and social contributions for seafarers, aid to crew relief, investment and regional aid] should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers".

(55) At the moment, there is to the Commission's knowledge no existing aid scheme in The Netherlands that would be capable of adding to the benefits of the present scheme. Therefore the Commission concludes that the aid ceiling provided for in Chapter 11 of the Guidelines will be respected.

3.3.3. Conclusion on the compatibility of the scheme with the common market

(56) Therefore and having regard to the analysis set out above the Commission can conclude that the notified amendments comply with all the requirements of the Guidelines.

4. DECISION

(57) In light of the above, the Commission has decided to consider that the notified amendments of the fiscal scheme are compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty.

(58) The notified amendments will apply as from 1 January 2009 and shall be re-notified to the Commission after 10 years.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm . Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Energy and Transport
Directorate A - General Affairs
B-1049 Brussels
Fax No: ++ 32 2 296 41 04

Yours faithfully, For
the Commission

Antonio TAJANI
Vice-President of the Commission
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty  
Cases where the Commission raises no objections  
(Text with EEA relevance)

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<td>Member State</td>
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<td>Region</td>
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<td>Title (and/or name of the beneficiary)</td>
<td>The Netherlands – Reduction of Tonnage Tax for Large Vessels and Ship Management</td>
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<td>Objective</td>
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<td>Form of aid</td>
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The authentic text of the decision, from which all confidential information has been removed, can be found at: [http://ec.europa.eu/community_law/state_aids/index.htm](http://ec.europa.eu/community_law/state_aids/index.htm)