

THE SHIP FINANCE PUBLICATION OF RECORD

MARINE MONEY

INTERNATIONAL

HAMBURG ♦ SINGAPORE ♦ LONDON ♦ NEW YORK ♦ OSLO ♦ PIRAEUS

OCTOBER/NOVEMBER 2014

VOLUME 30, NUMBER 6



LNG? January 1, 2015!!!
 0.1% sulphur in all ECA/SECA areas
 LSMCO? Fit scrubber? ~~Do nothing~~
 Explore liability

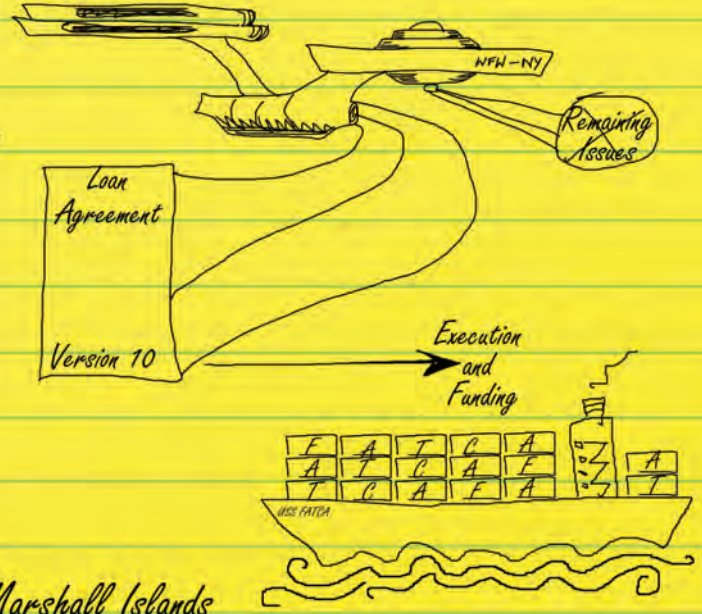
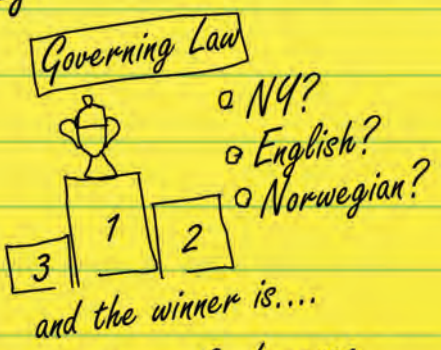


And the term sheet provides?
 F-4/F-1 - submit to SEC @ 9-20-2014

IT IS ALL GREEK TO ME



WHITHER SANCTIONS?



- Ⓢ Book Marine Money Conference
- Ⓢ Speak to Jim
- Marshall Islands
- PwC | E+Y | D+T | KPMG

Whilst readers may not find such things as amusing as us, I suspect all we lawyers had plenty of fun ruminating on our core values, key life principles and other burning issues that occupy our days, like "MM's Legal Issue"

IMPORTANCE OF DOUBLE TAX RELIEF IN LIGHT OF NEW CHINESE TAX REGULATIONS

By Dr. Jean-Pie Gauci-Maistre, Director / Advocate,
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China's State Administration of Taxation recently issued a notice for the *Provisional Measures on the Collection of Tax on Non-resident Taxpayer Engaged in International Transportation Business* ("Provisional Measures"), which came into force on the 1st August 2014. Given the timing of the legislation coming into effect, many in the industry could, and should, be forgiven for being more pre-occupied with their summer vacations. However, as August came to an end and everyone began to have more frequent access to their emails, many came to realise the true consequences of the new Chinese legislation.

The Provisional Measures state that income such as charter hire, freight and surcharges, charges for loading and unloading, warehousing costs, amongst others, received by non-resident enterprises conducting International Transportation Business ("ITB") in China, must be declared and taxed accordingly. The non-resident enterprise has the option to declare and pay tax directly or through an

appointed agent. Failure to do so would result in the tax having to be settled nonetheless, plus fines and penalties.

Many are still seeking clarifications from China's State Administration of Taxation as to how the Provisional Measures are going to be interpreted and implemented. Until such clarifications are forthcoming two issues remain predominant. Although it is apparent that those immediately affected are non-Chinese owners doing business with Chinese charterers and shippers, it is yet to be seen if the Provisional Measures will kick in if a foreign owner charters a vessel to a Chinese charterer, but the transportation is among foreign ports. Another question mark remains as to whether tax will be due if a foreign owner charters a vessel to a foreign charterer, with the vessel calling at a Chinese port.

Given that the Provisional Measures define International Transportation Business as transportation into or from Chinese ports, it seems that even a shipment without a

Chinese charterer involved could be considered as ITB and therefore taxable in accordance with the Provisional Measures.

For vessels fixed on time-charters or voyage-charters (demise charters seem to fall outside the Provisional Measures' scope) owners should check whether the charter-party contains a clause that shifts the tax burden involved in trading of the vessel on to the charters or, more importantly, whether the vessel owning company has been incorporated and has its place of effective management in a country with a treaty-based tax exemption. For new fixtures on time-charter or voyage-charter basis, owners could naturally plan ahead bearing the above in mind.

Given that Malta has a double tax treaty with the People's Republic of China, enquiries have begun coming in, requesting clarifications and advice on the applicable articles. Article 8 of the Double Taxation relief (Taxes on Income) (People's Republic of China) Order, 2011 (Legal Notice 423 of 2011 of the Laws

of Malta) states that profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. The article goes as far as to state that if the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident. The provisions of Article 8 also applies to profits from the participation in a pool, a joint business or an international operating agency.

Article 3 (1) (g) of the double taxation treaty defines 'international traffic' as any transport by a ship operated by an enterprise that has its place of effective management in a Contracting State, except when the ship is operated solely between places in the other Contracting State. On the other hand the Provisional Measures refer to 'International

Transportation Business' as transportation into or from Chinese ports.

Therefore, based on the above, should a vessel owning company carry out International Transportation Business in China, Article 8 of the double tax relief should be applicable. However, should the ship in question be operated solely between places within China, the double taxation relief would not necessarily apply.

It is being reported that in order for a non-resident company to apply for treaty benefits, as required by the Provisional Measures, it would be necessary

to transmit certain documents such as its tax resident certificate to the tax authority in charge (in China) where tax registration is completed.

Non-resident companies entitled to treaty benefits should obtain the relevant license for carrying passengers and commodities across domestic ports of China with the relevant government authorities. Their international transportation income entitled to treaty benefits should include passenger receipts, freight receipts and relevant auxiliary services income.

It would also appear that where a non-resident company failed

to enjoy the treaty benefits that it is entitled to, it may apply retroactively for a reimbursement of the overpaid taxes, up to three years later. However, it seems that late filings would not be entertained.

From a Malta tax authority perspective, upon a request being submitted to the Inland Revenue Department of Malta by the Merchant Shipping Organisation that owns the vessel (or by its representative in Malta), a certificate will be issued confirming that the company in question has been registered for tax purposes within a given year of assessment. The certificate will also

state the tax number assigned to the company. Therefore, a certificate would have to be requested every basis year, reflecting the year of assessment in which the non-resident companies conducted International Transportation Business in China. Should more specific wording be requested by the relevant authorities in China, representations could be made to the Inland Revenue Department. From our experience, as long as the necessary supporting documentation is provided by the Merchant Shipping Organisation, the authorities would do their utmost to assist.



The content of this article is intended to provide a general guide to the subject matter and should in no way be construed as advice. Specialist advice should be sought about your specific circumstances.

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