

WATSON FARLEY  
&  
WILLIAMS

BRIEFING

AMENDMENTS TO THE ITALIAN  
TONNAGE TAX REGIME  
OCTOBER 2016

THE LAW OF 7 JULY 2016 NO. 122, EFFECTIVE FROM 23 JULY 2016, CONTAINS SIGNIFICANT AMENDMENTS TO THE ITALIAN TONNAGE TAX REGIME.



Law of 7 July 2016 No. 122, which came into force in July 2016 (the “Law”) contains significant amendments to the Italian tonnage tax regime laid down by articles 155-161 of the Italian Income Tax Code (“IITC”).

The Italian Council of Ministers is expected to issue a law decree in the next few weeks introducing further tax and social security incentives in the maritime sector in compliance with the guidelines set out by the Law.

The Italian Government sought approval in advance from the European Commission of the new provisions, and requested that for the existing Italian tonnage tax scheme be extended by 10 years. The Commission approved this extension<sup>1</sup>, meaning that the Italian tonnage tax scheme (including the envisaged amendments) is in line with the Community guidelines on State aid for maritime transport<sup>2</sup>.

The most significant regulatory changes brought about by the Law are described below.

#### Duration of the option

According to Article 155 of the IITC, the option for tonnage tax regime is exercised for a “lock-in period” of 10 fiscal years. Thus, if a shipping company opts for this regime, it cannot switch to the ordinary corporate tax regime for 10 fiscal years. Moreover, if a shipping company loses the right to tonnage tax following a breach of

<sup>1</sup> Decision No. C (2015) 2457 of 13 April 2015

<sup>2</sup> Commission communication C (2004) 43

---

the legal eligibility criteria, no re-entry is allowed before the end of the original 10-year period.

The Law tightens this rule further by stipulating that an additional five-fiscal year minimum period must elapse between exiting the tonnage tax regime and being allowed to apply for re-election. In essence, this affects those cases where the breach of the eligibility criteria occurs from the sixth year onwards. This new rule will apply only in relation to breaches of the eligibility criteria that occurred in the tax period during which the Law came into force.

### **Capital gains from the disposal of vessels**

The Law amends taxation under the tonnage tax regime of capital gains from the disposal of vessels acquired prior to the option for tonnage tax. This is to ensure that the disposal of vessels acquired prior to the election for tonnage tax and those acquired when the tonnage tax regime is in force are treated the same way. Further, it provides that the non-taxation of the portion of capital gain deriving from the increase in value of the vessels before the election is not considered as additional aid.

Under the previous scheme, the taxable capital gain was calculated as the difference between the sale proceeds, net of directly imputable costs and the tax value of the vessels measured on the last tax period prior to the election for tonnage tax regime.

Now, under the Law, the taxable base is to be computed as the lower of the so-called "unrealised capital gain" and the capital gain actually realised from the disposal of the vessel.

To this aim, the "unrealised capital gain" amounts to the difference between the arm's length value of the vessel and the non-depreciated cost of the latter, measured on the last day of the tax period prior to the election for tonnage tax, while the realised capital gain amounts to the difference between consideration for the vessel and the not-depreciated cost at that date (as resulting from the computation made according to Article 8 of the Ministerial Decree of 23 June 2005).

The taxable amount will not be lower than the unrealised capital gain, net of any taxable income deriving from the vessel during the tonnage tax regime, which therefore represents the bottom line for the taxable amount.

As a result, if the capital gain actually realised is lower than the unrealised capital gain, the taxable amount will be the higher of the realised capital gain and the unrealised capital gain net of the taxable income generated under the tonnage tax regime.

Notably, capital losses deriving from the disposal of vessels under the tonnage tax regime cannot be deducted for tax purposes.

This new rule will apply only in relation to elections for tonnage tax made in the tax period during which the Law came into force and in the following tax periods. Specific rules are set out in case of renewal of the option exercised in previous tax periods.

### **The extension of the eligibility criteria to be included in the Italian International Shipping Register**

The Law has also been extended to apply to vessels owned by EU persons and enrolled in the Italian International Shipping Register by virtue of being bare boat chartered to Italian or EU residents where the primary flag has been suspended (regardless of whether it is an EU or non-EU register)<sup>3</sup>. The previous scheme only allowed this for vessels owned by non-EU persons enrolled in non-EU shipping registers.

Clearly, this amendment aims to avoid discriminating between vessels under a non-EU flag and those under an EU flag.

### **Regularisation of breaches of training requirements**

The Italian Tonnage Tax scheme includes a mandatory requirement to undertake officer cadet training. However, training obligations can be discharged by an annual payment in lieu of training<sup>4</sup>. According to the Law, the breach of these payment obligations for amounts below certain thresholds (i.e. not exceeding €10,000 or 10% of the due amount, if lower) does not void the tonnage tax regime. However, beside the amount owed the shipping company shall also pay a fine equal to 50% of such amounts. This provision aims to reduce potentially catastrophic consequence (i.e. the application of ordinary corporation income tax) which would derive from exclusion from the tonnage tax regime owing to, for example, a delay or a minor omission in the annual payments.

Further, the Law introduces a mechanism designed to rectify any mispayment within a certain time period, provided that the competent authorities have not challenged it or started an inspection and verification procedure. In particular, the unpaid debt can be settled by paying the due amounts and a penalty (equal to the 20% of the amount due) and interest, within a year after the payment deadline has expired.

The Ministry of Infrastructure and Transport and the Ministry of Finance will issue a decree stipulating the procedure defining the above amounts, including those deriving from mispayment that occurred before the Law came into force. In the latter case, the Law sets for a period of 90 days for settlement starting from the date on which the Law came into force.

### **New governmental law decree**

Finally, the Law sets out that the Government will issue a law decree to regulate tax and social security contribution incentives by 31 October 2016. Among other things, this law decree may restrict access to incentives (including tonnage tax regime) for ferries that operate maritime cabotage.

<sup>3</sup> Article 1, letter c) Legislative Decree 30 December 1997, no. 457

<sup>4</sup> Article 7 (3) Ministerial Decree of 23 June 2005

## FOR MORE INFORMATION

---

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



**EUGENIO TRANCHINO**  
Head of Italy and Partner  
Milan and Rome

T +39 02 721 7071  
T +39 06 684 0581  
[etranchino@wfw.com](mailto:etranchino@wfw.com)



**FURIO SAMELA**  
Partner  
Rome

T +39 06 684 0581  
[fsamela@wfw.com](mailto:fsamela@wfw.com)



**GIUSEPPE FRANCH**  
Counsel, Tax  
Milan

T +39 02 721 7071  
[gfranch@wfw.com](mailto:gfranch@wfw.com)