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Article

The Application of European Tonnage Tax Regimes on (Offshore) Service Vessels: Towards a (New) Level Playing Field?

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1 Introduction

On 25 October 2013 the Department of Accounting, Auditing and Law of the Norwegian School of Economics of Bergen (Norway) organized a seminar (hereafter: 'The Bergen Seminar') on the application of tonnage tax regimes on so-called (offshore) service vessels in four countries: Denmark,[1] Norway,[2] the Netherlands[3] and the United Kingdom[4] (hereafter: 'UK' or 'United Kingdom'). The conclusion drawn by the majority of the attendants of the seminar was that although all four countries apply their domestic tonnage tax regime on certain types of service vessels there is a wide variety of conditions under which service vessels are included into these regimes. This variety seems partly caused by the European Commission (hereafter: 'the Commission') that did not sail a clear and straight-line course in approving (the extension of) tonnage tax regimes including service vessels.

In the light of the revision of the Guidelines on State Aid to Maritime Transport (hereafter: 'the State Aid Guidelines' or 'the Guidelines') the European Community Ship owners' Association (hereafter: 'ECSA') raised the question as to whether the Guidelines would be extended and/or clarified with respect to service vessels.[5] This article seeks to deliver an answer to exactly that (research) question: 'Should the Guidelines be clarified in order to confirm to what extent the Guidelines apply to service vessels?' To answer this question we shall first in sections 2 and 3 provide an overview of the tonnage tax regimes in the four mentioned countries in general and their application on service vessels in particular. This overview is to a large extent based on the findings of the Bergen seminar.[6] In section 4 we will further analyse the yawing course of the Commission with respect to its decisions on service vessels and come to a preliminary answer of our research question. During the Bergen seminar for some countries a clear relationship between some definitions used in tax treaties and in the application of tonnage tax regimes on service vessels was identified. In section 5 this interconnection between the taxation of service vessels and the division of taxation rights under tax treaties is further explored. Finally, section 6 gives a summary of our findings and recommendations.

2 Tonnage tax regimes

The State Aid Guidelines provide the boundaries for member states of the European Union (hereafter: 'EU') and the European Economic Area (hereafter: 'EEA') to render financial support ('aid') to the maritime transport sector by introducing e.g. a so-called tonnage tax regime. A tonnage tax regime means that the company is taxed on the basis of a fixed (often lower) profit, directly related to the operated capacity of a vessel, instead of on the basis of the commercial profit made. The Guidelines do not go into detail on tonnage tax regimes. Therefore, member states can, to a certain extent, decide on the concrete details of their tonnage tax regime themselves.

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1 The country report on Denmark was presented by Ann Rask Vang, who is a PhD-researcher at the Department of Law of the School of Business and Social Sciences of Aarhus University. Her PhD-thesis focuses on the Danish tonnage tax regime.

2 The country report on Norway was presented by Tormod Torvanger, who is a PhD-researcher and lecturer at the Department of Accounting, Auditing and Law of the Norwegian School of Economics of Bergen and organized the seminar. The subject of his PhD-thesis is Business within the Norwegian Tonnage Tax system.

3 The country report on the Netherlands was presented by Robert Boogaard, who is working with the shipping tax department of the Dutch tax office in Rotterdam.

4 The country report on the United Kingdom was presented by Victor Baker, who is working at the shipping tax policy department of HM Revenue & Customs in London.

5 Maritime state aid guidelines review: Scope – service vessels, ECSA, 30 Apr. 2012.

6 The authors thank the Danish, Norwegian and UK country reporters for their kind willingness to provide the authors with the background information of their presentations and with their comments on the country reports in the draft manuscript of this article. Needless to say, that the whole content of this article is the sole responsibility of the authors.

In this section, we will provide an overview of the tonnage tax regimes of Denmark, the Netherlands, Norway and the United Kingdom in general. Consideration is given to the qualifying corporate forms, vessels, activities and assets and other relevant requirements. Furthermore, the profit calculation, tax rates and the formal procedures of the regimes are discussed briefly. This section is concluded with an overview of the discussed tonnage tax regimes in general.

2.1 Denmark

2.1.1 Qualification

The Danish tonnage tax regime is applicable to legal persons, being Danish limited companies, foreign companies with permanent establishments in Denmark and foreign companies that are subject to tax in Denmark because the effective management is located there.[7]

The Danish regime mainly focuses on qualifying activities and qualifying assets, rather than on qualifying vessels. In any case, a minimum size of twenty gross registered tons is required to be eligible for the Danish tonnage tax regime.[8] Furthermore, it is also a prerequisite that the strategic and commercial management of the ship is performed in Denmark. Commercial activities with transport of passengers or freight are eligible, as well as some activities related to the transport of passengers or freight. In this context the Danish law mentions the activities that are considered to be related to transport activities (i.e. use of containers, operation of loading, unloading and maintenance facilities, operation of ticket offices and passenger terminals).[9] Feasibility studies, exploration or extraction of hydrocarbons or other natural resources are excluded from the application of the tonnage tax regime, as well as the construction of offshore installations and pipe layers.

Recently changes to the Danish Tonnage Tax Act were proposed. The changes propose the extension of the applicability of the Danish tonnage tax regime to construction activities of a vessel in connection to the building of wind turbines and coastal protection. Moreover, the proposed changes entail that pipe-laying and cable-laying activities are covered by the regime, as well as activities such as guard and security services in connection to the exploration of natural resources and in connection to the construction of offshore installations.

Vessels owned by the shipping company itself, vessels taken in on a bareboat charter basis and vessels hired on a time charter basis are considered qualifying vessels for the application of the Danish tonnage tax regime.[10] In case an owned or chartered vessel is operated by another company, the vessel can still qualify for the tonnage tax regime, provided that the other company operates the ship for the same qualifying purpose as the shipping company that owns the vessel. The application of the Danish tonnage tax regime to a vessel leased out on a bareboat charter basis is, however, only allowed once per vessel and only under the condition that the vessel is leased out for reasons of temporary excess capacity and given that the charter period of the relevant vessel does not exceed three years.[11]

With regard to ship management companies, being companies performing technical and crew management, the Danish tonnage tax regime is applicable as well, provided that the vessel managed by these companies meet the minimum size conditions, meet the EU or EEA flag requirement and that the strategic and commercial management is performed in the EU.[12]

Although the Danish tonnage tax regime mainly focuses on qualifying activities, the regime is clear on the fact that it is only applicable to ships,[13] as well as equipment, buildings and installations. The treatment of shares and intangible assets under the Danish regime is still in question.[14]

2.1.2 Other Requirements

A vessel is only considered for the Danish tonnage tax regime if it flies a Community flag.[15] However, under certain circumstances the vessels are exempted from this so-called flag requirement. This is the case when the taxpayer commits himself to increasing or at least maintaining under the flag of one of the Member States the share of tonnage that they will be operating under such flags. Also exemption is granted when the taxpayer operates at least 60% of his tonnage under a Community flag and when the Community-flagged share of the global tonnage eligible for tax relief in Denmark has not decreased on average during the previous year.[16]

The Danish tonnage tax regime does not prescribe rules concerning a profit split, but only income related to qualifying activities can be taxed under the tonnage tax regime. Therefore, the general transfer pricing rules, which could provide a legal basis for a profit split, should be applicable. The Danish Tax Authorities intent to assess the activities of each case on its merits which would effectively mean that in principle only the transport activities qualify for the tonnage tax regime.

[7] The Danish Tonnage Tax Act Art. 1.
[8] The Danish Tonnage Tax Act Art. 6, para. 1.
[9] The Danish Tonnage Tax Act Art. 10, para. 2.
[10] The Danish Tonnage Tax Act Art. 6.
[11] The Danish Tonnage Tax Act Art. 6, para. 2.
[12] The Danish Tonnage Tax Act Art. 21a.
[13] There are specific vessels, such as floating docks and drilling rigs which are not considered vessels within the meaning of the Danish Tonnage Tax Act Art. 8, para. 2.
[14] These assets are not mentioned in the Danish Tonnage Tax Act.
[15] The demanded flag link in the Danish tonnage tax regime resembles the flag requirement provided in the State Aid Guidelines, but is not included in the text of the Danish Tonnage Tax Act as such.
[16] The Danish Tonnage Tax Act Arts 6a and 6b.

However, it seems that in practice no policy on the application of a profit split is published.

2.1.3 Profit Calculation and Tax Rates

When opting for the Danish tonnage tax regime the corporate income tax is paid over a fixed profit. This fixed profit is computed by multiplying the amount of tonnage, with a certain rate. The calculated profit is subject to the ordinary Danish corporate income tax rate, being 22% in 2016.

2.1.4 Formal Procedures

Qualifying companies may, instead of applying the normal corporate income tax regime, elect for the application of the tonnage tax regime. The choice for this regime must be made when filing the tax return of the year in which the entity is qualifying for the tonnage tax regime for the first time. This choice continues to apply for the following ten years.

2.2 The Netherlands

2.2.1 Qualification

The Dutch tonnage tax regime is applicable to both legal entities and individuals.[17] However, application of the regime is subject to a number of conditions. In addition to the application of the tonnage tax regime to qualifying vessels, the regime also applies to business assets connected with allowed activities. In principle, the Dutch tonnage tax regime is only applicable to profits attributable to transport activities. Consequently, the activities related to the transport activities of a vessel are eligible as well.[18] The Explanatory Memorandum discusses what is understood to be a transport related activity.[19] Furthermore, although court decisions seem to use a contradictory view, in practice the tonnage tax regime applies to interest income from working capital.[20]

First, vessels operated for the purpose of transport of goods and people in the international traffic overseas are eligible for the Dutch tonnage tax regime. This selection is expanded with vessels operated for the purpose of transport over sea of goods and people in favour of the exploration or exploitation of natural resources, for the exploration of the sea bed, for cable laying and pipe laying at the sea bed and for vessels performing hauling and lifting activities at sea to certain vessels and installations, to the extent that transport activities are performed. Also, vessels operated for the purpose of dredging activities, of which the yearly operating time largely (i.e. for more than 50%) consists of transport and vessels performing towing and support activities at sea, of which the yearly operating time largely (i.e. for more than 50%) consists of maritime transport qualify.[21]

A vessel can be operated within the meaning of the Dutch tonnage tax regime in several ways. First, this is the case when the (co)-owner (who did not give the vessel in bareboat charter) or the bareboat charterer performs the management of the vessels to a substantial degree (i.e. for at least 30%) in the Netherlands, and this vessel is flying a flag of a member state of the EU or of the EEA. Second, the operation of the vessel qualifies for the tonnage tax regime when the commercial management is to a large extent (i.e. for at least 70%) performed in the Netherlands on behalf of someone else, provided that the taxpayer manages one or more other vessels as a qualifying owner, co-owner or bareboat charterer. Also the operation qualifies when the vessel is held in time or voyage charter, provided that the taxpayer manages one or more other vessels as a qualifying owner, co-owner or bareboat charterer. Finally, the tonnage tax regime is applicable when the entire crew and technical management of the vessels is performed in the Netherlands on behalf of someone else.[22]

2.2.2 Other Requirements

The Dutch legislator followed the State Aid Guidelines by implementing a flag requirement for owned vessels and vessels in bareboat charter. These vessels need to be linked with the flag of one of the EU or EEA member states. In certain cases exemption from the flag requirement is granted.[23] This is the case when the taxpayer commits himself to increasing or at least maintaining under the flag of one of the EU or EEA Member States the share of tonnage that they will be operating under such flags. Also exemption is granted when the taxpayer operates at least 60% of his tonnage under a EU/EEA flag and when the EU/EEA-flagged share of the global tonnage eligible for tax relief in the Netherlands has not decreased on average during the previous year. The State Secretary of Finance has stated that, with regards to the calendar year 2015 the national level test applies.[24]

It should be noted that for certain vessels (i.e. dredgers, crane vessels and survey vessels) that can qualify for the Dutch tonnage tax regime, Dutch tax legislation requires a profit split. Only the transport activities of these vessels can fall within the scope of the

[17] Article 3.22 Income Tax Act 2001 jo Art. 8, para. 1 Corporate Income Tax Act 1969.
[18] Article 3.22, para. 4 Income Tax Act 2001.
[19] Explanatory Memorandum, Kamerstukken II 1995/96, 24 482, no. 2.
[20] D.E. van Sprundel & K. Dans, *Whether or Not Interest Income Should Fall under the Scope of the Tonnage Tax Regime,* European Taxn. (December 2011).
[21] Article 3.22, para. 4 Income Tax Act 2001.
[22] Article 3.22, para. 5 Income Tax Act 2001.
[23] Article 3.22, para. 5, sub a, jo. para. 6 Income Tax Act 2001.
[24] Implementing regulations Income Tax Act 2001, Art. 9a as applicable on 1 Jan. 2015.

tonnage tax regime, for which reason the owners of these vessels need to split their profit in a part allocable to transport and a part allocable to remaining activities.

2.2.3 Profit Calculation and Tax Rates

When applying the Dutch tonnage tax regime the profit from sea-going activities is determined per day on a fixed amount per 1,000 net tons. The taxable income computed using these fixed amounts, is subject to the ordinary corporate income tax rate, being 20% for the first EUR 200,000 of the taxable amount and 25% for the excess.[25]

2.2.4 Formal Procedures

Ship owners can opt for the application of the Dutch tonnage tax regime by submission of a request in the first year of making taxable profit from sea-going activities, or in every tenth year thereafter.[26] This regime will be in force for the following ten years, with the possibility to extend, given that the ship owner remains to meet the requirements.[27]

2.3 Norway

2.3.1 Qualification

The Norwegian tonnage tax regime is applicable to Norwegian limited companies and public limited companies.[28] Also comparable corporate forms within the EU and EEA are, under certain conditions eligible.[29] However, a qualifying entity is subject to a set of limitations on what types of assets and activities are allowed under the tonnage tax regime.

The Norwegian regime focuses on vessel-eligibility. The regime applies two different sets of requirements for vessels to qualify. First, requirements are set out for 'ships in service',[30] which is a general vessel category. A limitation on qualifying vessels (i.e. accommodation vessels, vessels used as a platform and vessels for fishery are not allowed in this category) and a specific requirement to sailing distances (thirty nautical miles unless sailing in international waters) is applied. Furthermore, the vessels must possess their own propulsion machinery and must be at least 100 gross register tons.[31]

Second, requirements are set out for 'specialized vessels within the petroleum industry'.[32] These vessels are, as a starting point, required to have a support function in relation to the petroleum industry.[33] As opposed to the requirements for ships in service, no specific requirements to the size or the sailing distance exist for this category. Four eligible vessel-categories are mentioned: 'personnel- and supply vessels', 'tug vessels', 'offshore construction vessels' and 'other support vessels'. The application of the tonnage tax regime is limited for these vessels with respect to their properties and use. A vessel that fails to qualify as a specialized vessel can still qualify as a ship in service, provided that the vessel meets the requirements.[34]

Under the Norwegian tonnage tax regime it is not possible to have split accounts. Hence, performing non-qualifying activities or holding non-qualifying assets may have severe consequences. However, the regime provides for a category of permitted non-qualifying assets. Therefore, non-qualifying assets do not necessarily imply disqualification insofar as the assets in question are permitted under the Norwegian tonnage tax regime. Assets allowed under the regime are ships in service and assisting vessels for use in offshore petroleum activities. Furthermore, it is permitted to hold financial assets (except for shares in non-listed limited liability companies and ownership interest in partnerships subject to ordinary taxation and financial instruments with right to buy or sell the aforementioned shares and ownership interest), shares or ownership interest in pool arrangements, ownership interest in a partnership only owing qualifying assets, shares in a CFC only owning qualifying assets, shares in other companies under tonnage tax and business assets connected with allowed activities.

The Norwegian tonnage tax regime is applicable when the taxpayer is operating or hiring out the owned or chartered-in vessels.[35] As opposed to most other European regimes, this includes chartering out vessels on bareboat terms. The taxpayer should carry out strategic, commercial and daily technical management and perform the maintenance of these ships owned or chartered in by the company, by group companies or by companies in the same shipping pool.[36] Also activities that are closely related to these activities are considered for the tonnage tax regime.[37] Any other activity performed in the tonnage tax company will disqualify the company for the application of the regime.[38]

[25] Rates applicable in 2016.
[26] Article 3.22, para. 2 Income Tax Act 2001.
[27] Article 3.22, para. 3 Income Tax Act 2001.
[28] Sktl. (Nor.) § 8 – 10 (1).
[29] Sktl. (Nor.) § 8 – 10 (2).
[30] Sktl. (Nor.) § 8 – 11 (1) a.
[31] The conditions and limitations in this respect, which are relatively detailed, are set out in Regulatory provisions to the tonnage tax rule set in the Norwegian Tax Act. Regulatory provisions to the Norwegian Tax Act of 19 Nov. 1999 no. 1158, § 8-11-1.
[32] Sktl. (Nor.) § 8 – 11 (1) b.
[33] Please note that construction vessels may have independent functions.
[34] It should be noted that the mobility requirement that applies to ships in service is often a challenge in this respect.
[35] Sktl. (Nor.) § 8 – 13 (1) uses the expression 'rental and operation of own and hired ships or support vessels'.
[36] Sktl. (Nor.) § 8 – 13.
[37] Regulatory provisions of 19 Nov. 1999 no. 1158, § 8-13-1. The rules regarding ancillary activities appear to be built on the approval practice of the EC and should be in line with the other EU tonnage tax regimes.
[38] Sktl. (Nor.) § 8 – 13 (1), first sentence.

Next to the Norwegian Ordinary Ship Register,[39] Norway provides for an alternative ship register, namely the Norwegian International Ship Register.[40] The Norwegian tonnage tax regime is applicable to vessels registered in both ship registers.

2.3.2 Other Requirements

The Norwegian tonnage tax regime applies a flag requirement for owned vessels.[41] Under certain circumstances exemption from this requirement can be granted. This is the case when the taxpayer commits himself to increasing or at least maintaining under the flag of one of the Member States the share of tonnage that they will be operating under such flags. Also exemption is granted when the taxpayer operates at least 60% of his tonnage under a EU/EEA flag and when the Community-flagged share of the global tonnage eligible for tax relief in Norway has not decreased on average during the previous year.

2.3.3 Profit Calculation

Initially, the Norwegian tonnage tax regime was set up as a facility that merely postponed the taxation of profit from shipping activities. This system was converted to a tax exemption system in 2007. The Norwegian regime does, as opposed to most other European tonnage tax regimes, not provide for the determination of the profit on the basis of the net tonnage. Instead, the regime provides for the computation of the amount of tax on the basis of the net tonnage.[42]

2.3.4 Formal Procedures

When qualifying for the Norwegian tonnage tax regime, the regime is only applicable if the entity opts for the application through filing a tax return designed for tonnage tax purposes for the year in question. The regime will remain in force for the following ten years. The regime may be exited at any time, but may not be re-entered within a ten year period starting from the first year of qualification.

2.4 United Kingdom

2.4.1 Qualification

In the United Kingdom companies are eligible for the application of the tonnage tax regime only if they are subject to UK corporation tax.[43]

The regime is applicable to qualifying assets, being qualifying vessels, dividend income from qualifying overseas shipping companies and certain interest income, with the exception of investment income. Vessels can qualify for the UK tonnage tax regime if they are sea-going and they perform 'core qualifying activities', 'qualifying secondary activities' and 'qualifying incidental activities'.[44] Certain vessels are excluded from the application of the regime, for example fishing vessels, offshore installations and tankers dedicated to a particular oil field.

Core qualifying activities consist of activities in operating qualifying ships and other ship-related activities that are a necessary and integral part of the business of operating those qualifying ships. Such a vessel qualifies when it is used for transport of passengers or cargo, towage, salvage or other marine assistance, or transport in connection with other services of a kind necessarily provided at sea. A ship-related activity is a necessary and integral part of the operating business when it is essential to enable the ship operation to take place.[45]

Secondary qualifying activities consist of ship-related activities customarily provided, or desirable, as part of the qualifying shipping activities of the company or of other group companies, provided that there is a substantial connection with the core qualifying activities of the company or of a company in the same tonnage tax group.[46]

Finally, qualifying incidental activities are activities that are incidental to the core qualifying activities, not being qualifying secondary activities of which the income does not exceed 0.25% of the total turnover in the same accounting period from its core qualifying activities and its qualifying secondary activities.[47]

The qualifying vessels are eligible for the UK tonnage tax regime when they are strategically and commercially managed in the UK. The more elements that are carried out in the UK, the more likely it is that the company will qualify. Great value is attached to higher levels of decision-making and management, as opposed to routine day-to-day management activities.[48]

2.4.2 Other Requirements

The UK tonnage tax regime has, under certain conditions, a derogation from the strict flag link prescribed in the State Aid Guidelines. Where the proportion of vessels in the UK tonnage tax regime is stable or increasing over a rolling three year period no

[39] The Norwegian Maritime Code No. 39 of 24 Jun. 1994, Chapter 2.
[40] Act of 12 Jun. 1987 No. 48 relating to a Norwegian International Ship.
[41] Sktl. (Nor.) § 8 – 11 (8) and (9).
[42] Sktl. (Nor.) § 8 – 16.
[43] Schedule 22, Finance Act 2000, para. 16.
[44] HMRC TTM06030 – Relevant Shipping Profits.
[45] Schedule 22, para. 46 Finance Act 2000, in conjunction with HMRC TTM06050 – Relevant Shipping Profits: Core qualifying activities.
[46] Schedule 22. para. 47, Finance Act 2000 and Tonnage Tax Regulations 2000, SI 2000/2303, regulation 3, in conjunction with HMRC TTM06100 – Relevant Shipping Profits: Qualifying secondary activities.
[47] Schedule 22, para. 48 Finance Act 2000.
[48] HMRC TTM03830 – Qualifying companies and ships: strategic and commercial management – additional factors.

further action is needed. Where it is falling, a calculation is required at tonnage tax group/company level designed to ensure that the group/company's Member State-registered tonnage[49] as a proportion of the global tonnage eligible for tax relief in the United Kingdom has not decreased on average during the previous year. The group/company is exempt from this requirement where this proportion is at least 60%.

Ship management activities can be seen as ship-related activities that are a necessary and integral part of the business of operating a qualifying vessel, which means that these activities are eligible for the UK tonnage tax regime.

In the United Kingdom no profit split is applied to income derived from qualifying vessels.

2.4.3 Profit Calculation and Tax Rates

The profit of a vessel under the UK tonnage tax regime is determined per day per 100 net tons.[50] The profit computed on the basis of these fixed amounts is subject to the regular tax rate of 20% for the first GBP 300,000 and 21% for the excess.[51]

2.4.4 Formal procedures

Ship owners have to opt for the application of the UK tonnage tax regime. The choice needs to be made within a period of twelve months from the first day the business qualifies for the regime.[52] The regime will remain in force for ten years and can subsequently be extended.[53]

2.5 Overview

The general overview of the tonnage tax systems in the four research countries can be summarized by the following table.

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
Corporate form	– Danish limited companies – Foreign companies with permanent establishment in Denmark – Foreign companies that are subject to tax in Denmark because the effective management is in Denmark	– Legal entities – Independent entrepreneurs – Participants in a transparent entity	– Norwegian limited companies – Norwegian public limited companies – Comparable corporate forms within the EU and EEA	– Legal entities
Qualifying assets	– Qualifying vessels – Equipment – Buildings and installations – The treatment of shares and intangible assets is still in question	– Qualifying vessels – Interest income from operating capital – Business assets connected with allowed activities	– Qualifying vessels – Financial assets (except for shares in non-listed limited liability companies and ownership interest in partnerships subject to ordinary taxation, and financial	– Qualifying vessels – Dividend income from qualifying overseas shipping companies – Certain trade-related interest income, but not investment income.

[49] Which is taken to include EU and EEA States – HMRC TTM03945.
[50] Schedule 22, para. 4 Finance Act 2000.
[51] Rates applicable in year to 31 Mar. 2015. A uniform rate of 20% applies after that date.
[52] Schedule 22, para. 10 Finance Act 2000.
[53] Schedule 22, para. 13 Finance Act 2000.

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
			instruments with right to buy or sell the aforementioned shares and ownership interest) – Shares or ownership interest in pool arrangements – Ownership interest in a partnership only owning qualifying vessels – Shares in a CFC only owning qualifying vessels – Shares in other companies under TT – Business assets connected with allowed activities	
Qualifying vessels	Vessels with a minimum size of 20 gross register tons, used for commercial activities with transport of passengers or freight, excluding: – feasibility studies, exploration or extraction of hydrocarbons or other natural resources; and – construction of offshore installations, laying pipelines	Vessels operated: – in international traffic overseas; – for the purpose of the exploration or exploitation of natural resources; – for the exploration of the sea bed; – for cable laying or pipe laying at the sea bed; – to perform hauling and lifting activities to vessels and installations at sea; – for dredging activities at sea of which the yearly operating time largely consists of transport activities; – for towing and support activities at sea of which the	– Ships in service with a minimum sailing distance of 30 nautical miles unless sailing in international waters, an own propulsion machinery and a minimum of 100 gross register tons – Specialized vessels with a support function in relation to the petroleum industry. 1. personnel & supply vessels 2. tug vessels 3. offshore vessels 4. other support vessels	Sea-going ships over 100 gross register tons used for: – carriage of passengers or cargo – towage – salvage – marine assistance transport in connection with other services of a kind necessarily provided at sea.

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
		yearly operating time largely consists of transport activities.		
Eligible income	Income from: – shipping activities (covering a transport need and carried out on sea); – activities in connection to the shipping activity; – ship management, provided that the management company performs the entire technical and crew management. Capital gains on qualifying vessels. Activities with a mixed character; a concrete assessment is made. Income from vessels leased out on time charter only eligible if lessee uses the vessel to obtain eligible income. Income from vessels leased out on bareboat charter only eligible if temporary surplus capacity.	Income from: – the management/ operation in the Netherlands, to a substantial degree, of a qualifying vessel that is (co-) owned or held in bareboat charter and that is not chartered out on bareboat terms; – the commercial management of vessels on behalf of third or related parties if principally (i.e. at least 70%) carried out in the Netherlands; – the operation of vessels chartered in voyage or time charter; and – ship management activities, provided that the management company performs the entire technical and crew management on behalf of another party. Capital gains on qualifying vessels. It is allowed for a company applying the tonnage tax regime to have other, non-qualifying activities.	Income from: – chartering out (also on bareboat terms) and/or operating qualifying vessels owned or chartered in; – carrying out strategic and commercial management and daily technical management and maintenance of ships owned or chartered in by the company, by group companies or by companies in the same shipping pool; – carrying out activities closely connected to these activities. Capital gains on qualifying vessels. No other, non-qualifying activities are allowed within a company applying the tonnage tax regime.	Income from: – core qualifying activities, i.e. from using or time/ voyage (or bareboat if to a UK group company) chartering-out a qualifying vessels owned or chartered in and strategically and commercially managed in the UK; – ship management activities; – qualifying secondary activities, being substantially connected activities; and – qualifying incidental activities limited to 0.25% of other eligible turnover Capital gains on qualifying vessels.

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
Flag requirement	Yes, owned vessels and vessels held in bareboat charter have to fly an EU or EEA flag. Exceptions: – non-decrease test – 60% test – national level test Note that tugs and dredgers must always be registered within the EU or the EEA.	Yes, owned vessels and vessels in bareboat charter have to fly an EU or EEA flag. Exceptions: – non-decrease test – 60% test – national level test (applied in 2015/ does not apply in 2016) Note that tugs and dredgers must always be registered within the EU or the EEA.	Yes, owned vessels have to fly an EU or EEA flag. Exceptions: – non-decrease test – 60% test – national level test Note that tugs and dredgers must always be registered within the EU or the EEA.	Yes, owned vessels have to fly an EU or EEA flag. Exceptions: – non-decrease test – 60% test – national level test
Profit split	No, each case is assessed on its merits but only qualifying activities are eligible for the tonnage tax regime. TP rules to allocate income.	Profit split for income derived with qualifying vessels in profit allocable to transport activities (tonnage taxation) and profit allocable to other activities (ordinary taxation).	No profit split for income derived with qualifying vessels / activities, all income qualifies.	No profit split for income derived with qualifying vessels.
Profit calculation	Profit is determined per day on a fixed amount per 100 net tons.	Profit is determined per day on a fixed amount per 1,000 net tons.	The Norwegian tonnage tax does not provide for a profit calculation.	Profit is determined per day on a fixed amount per 100 net tons.
Tax rate	22% in 2016.	20% for the first €200,000 taxable amount. 25% for the excess.	The tax rate is determined on the basis of the net tonnage of the vessel.	20% in 2016.
Formal procedures	Choose between ordinary taxation and tonnage taxation.	Choose between ordinary taxation and tonnage taxation.	Choose between ordinary taxation and tonnage taxation.	Choose between ordinary taxation and tonnage taxation.
	Commitment period of ten years	Commitment period of ten years	Commitment period of ten years.	Commitment period of ten years.

3 Tonnage tax regimes for (offshore) service vessels

In the foregoing paragraph, the tonnage tax regimes of Denmark, the Netherlands, Norway and the United Kingdom were discussed briefly. In the past years the tonnage tax regimes of the EU member states were opened to certain types of (offshore) service vessels. In this paragraph we deal with the application of the tonnage tax regimes in the four research countries to these kind of vessels in more detail.

Service vessels are vessels that are not solely involved in transport activities. They offer complex shipping activities, integrating transportation and other specialized activities.[54] Consideration could be given to laying or repairing undersea cables or pipelines,

[54] ECSA Maritime State aid guidelines review: scope – service vessels, 30 Apr. 2012.

prospecting for oil, conducting oceanographic research, diving assistance and servicing offshore wind farms and oil and gas platforms. On the whole, the different types of service vessels are not standardized, but built for a particular task, which means that each version of a service vessel has varying specifications. Furthermore, there is a clear tendency to build new vessel types that combine certain activity ('multipurpose vessels').

Service vessels that are especially appropriate for the provision of offshore services are specified as Offshore Service Vessels. Offshore Service Vessels can be divided in three main categories, that is Anchor Handling Tug Supply ('AHTS'), Platform Supply Vessel ('PSV') and Construction Support Vessel ('CSV'). Each phase in an offshore project, such as the exploration and production of an offshore oil & gas field or the building of offshore wind farms, requires support from specific vessels. Also with respect to offshore service vessels there is a clear tendency to build multipurpose vessels.

In this paragraph attention is devoted to the categorization of service vessels, the relation with a possible Petroleum Tax Act, the relation with tax treaties or the Nordic Tax Treaty and a possible application of a profit split under the tonnage tax regimes of the four research countries (Denmark, The Netherlands, Norway and the United Kingdom). This section is concluded with an overview of the application of the discussed tonnage tax regimes to service vessels.

3.1 Denmark

3.1.1 Categorization

Basically, the Danish tonnage tax regime does not provide for a categorization in vessel types. Eligibility of a vessel is mainly determined on the basis of the activities performed by a vessel and the assets used by the company. As discussed in paragraph 2.1.1 a vessel qualifies for the Danish regime in case it performs commercial activities with transport of passengers or freight. Feasibility studies and the exploration or extraction of hydrocarbons or other natural resources are excluded from the application of the tonnage tax regime, as well as the construction of offshore installations and pipe layers. Note that the recently proposed changes to the Danish Tonnage Tax Act entail the extension of the Danish tonnage tax regime to the construction activities of a vessel in connection to offshore windparks or coastal protection. Furthermore, the proposed changes entail the inclusion of pipe-laying and cable-laying activities under the regime.

3.1.2 Relation with the Petroleum Tax Act

Denmark does not provide for special provisions concerning the taxation of petroleum revenues. Therefore, no provisions regarding the concurrence between the qualification for the Danish tonnage tax regime and a possible petroleum taxation are included in the Danish law.

3.1.3 Relation with the Nordic Tax Treaty

The term tonnage tax is not mentioned in the Nordic Tax Treaty. Article 21, paragraph 5 of the Nordic Tax Treaty states that profits derived by an enterprise of a Contracting State from the transportation of personnel or supplies by ships to or within the other Contracting State or the exploration or exploitation area of the other Contracting State in which business activities are carried on in connection with surveying and exploration for or exploitation of hydrocarbons, or from the operation of tugboats, supply ships or other auxiliary vessels in connection with such activity, shall be taxable only in the first-mentioned State. As such, the Nordic Tax Treaty make a distinction between 'personnel-and supply vessels', 'tug vessels', and 'other support vessels'.

The Danish tonnage tax regime basically does not provide for a categorization of vessels. However, the focus on qualifying activities and qualifying assets does result in the eligibility of personnel- and supply vessels under the Danish tonnage tax regime, as well as eligibility of different kinds of tugs. Whether the Danish tonnage tax regime is applicable to other support vessels varies per vessel type. As the Danish law excludes feasibility studies, the exploration or extraction of hydrocarbons or natural resources and the construction of offshore installations and (up till now) laying pipelines, several vessel types that would fall under the term other support vessels in the meaning of Article 21, paragraph 5 of the Nordic Tax Treaty do not qualify for the Danish tonnage tax regime. As such, the demarcations within the Danish tonnage tax regime are not totally in line with the demarcations made under the Nordic Tax Treaty.

3.1.4 Profit Split

The Danish tonnage tax regime is open for several types of service vessels. In this respect, the Danish TTA does not provide for a split between profit derived from transport activities and profit derived from other activities. However, only income from qualifying activities is eligible for the tonnage tax regime. Income allocation is based on general transfer pricing rules. The Danish tax authorities intent to assess the activities of each case on its merits. However, it seems that no policy on the application of a profit split is published.

3.2 The Netherlands

3.2.1 Categorization

In the Dutch Income Tax Act the categorization of vessels is relatively clear, as the legislator explicitly mentions which vessels are eligible for the Dutch tonnage tax regime. This is determined on the basis of

the purpose of the operation of the vessels. On the whole the operation of a vessel for the purpose of transport of goods or people in the international traffic overseas does not result in problems. Some vessels that are operated for the purpose of transport of goods and people and additionally fulfil another function, are included as qualifying in other provisions of the law. This applies for pipe layers, cable layers and crane vessels as well as, under certain conditions, dredging vessels and tug vessels.

However, the situation gets more complicated with regard to vessels operated for the purpose of the exploration or exploitation of natural resources at sea. The parliamentary explanatory mentions that this provision pertains to the operation of vessels used in the offshore industry, such as stand-by vessels and supply vessels.

3.2.2 Relation with the Petroleum Tax Act

The Netherlands does provide for special rules regarding the taxation of petroleum revenues (*staatswinstaandeel*). However, they do not include transportation or service activities. Therefore, no special provisions are included in the Dutch legislation with regard to the concurrence between the qualification for the tonnage tax regime and a possible qualification for a petroleum tax act.

3.2.3 Relation with Tax Treaties

Most tax treaties the Netherlands has entered into allocate the profits derived from the exploitation of vessels to the State in which the place of effective management of the enterprise is situated. According to the commentary on Article 8 of the OECD Model Tax Convention (hereafter: 'OECD MTC'), profits derived from the exploitation of vessels consist of two categories. First, profits directly obtained by the enterprise from transportation of passengers or cargo by ships that are operated in international traffic, and second, profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships in international traffic.

These categories of profits bear a close resemblance to the distinction made in the Dutch tonnage tax regime between profit derived from qualifying vessels and profit derived from activities directly related to the operation of the qualifying vessels. However, the Dutch tonnage tax regime applies a much stricter approach to the latter activities than the OECD MTC. As a result, profit derived from activities that, according to the OECD MTC are directly or not directly connected to the operation of a vessel allocated to the Netherlands pursuant to a tax treaty, do not necessarily qualify for the application of the Dutch tonnage tax regime.

Another difference between the OECD MTC and the Dutch tonnage tax regime seems to be the qualification of vessels performing towing and support activities. Under the tonnage tax regime vessels performing these activities are allowed, while under the OECD MTC these vessel types normally are excluded.

Finally, it should be noted that the Dutch treaty policy[55] in respect of offshore operations derogates from the OECD policy on this subject. On the basis of Dutch legislation and regulation offshore operations that, in total, exceed a period of thirty days within a twelve month period of time, constitute a fictitious permanent establishment. In order to effectuate the national right to levy, the Netherlands aims to include a provision in its treaties that extends the term 'permanent establishment' such that the right to levy over profits derived from offshore operations stays with the Netherlands. It should be noted that the extension of the term 'permanent establishment' does not extend to the 'income from employment' provision.

3.2.4 Profit Split

The Dutch tonnage tax regime requires a profit split for certain vessels. In accordance with the Guidelines, for dredging vessels and tugging vessels only the transport activities can qualify for the tonnage tax regime. As stated above, due to budget constraints, the Dutch government opened the tonnage tax system for crane vessels, survey vessels, cable layers and pipe layers, but also only for the transport part of the activities (profit split to be made). The profit split method is not laid down in the law, but in practice the Dutch tax authorities accept two methods: (i) profit split on an operating time spent-basis, and (ii) profit split on a Capital Investment/Crew Employed ratio basis.[56] In practice, however, certainly the time-spent method is considered to be administrative burdensome, whereas the ratio-based method can lead to arbitrary results.

3.3 Norway

3.3.1 Categorization

As discussed in paragraph 2.3.1, the Norwegian tonnage tax regime makes a distinction between ships in service and specialized vessels within the petroleum industry.

The term 'ships in service' gives rise to some delimitation issues, mainly relating to the mobility requirement. A minimum sailing distance of thirty nautical miles is applied, unless the vessel is sailing in international waters.[57] Stationary elements forming part of the operation of the vessel might give rise to uncertainties. Therefore, dredging activities do not

[55] Note on the fiscal tax treaty policy 2011, § 2.6.3.

[56] E. Boich and D. Laub, *Tonnage taxation of cable layers, research and crane vessels*, 9 HANSA Int'l Maritime J. 148 (2011). S.W.C. Wortelboer, *Het tonnageregime, FED Fiscale Brochures* 62/63 (Kluwer 2004).

[57] Regulatory provisions to the Norwegian Tax Act of 19 Nov. 1999 no. 1158, § 8 – 11 – 1 (1) d.

qualify for the Norwegian tonnage tax regime. Although tug vessels under this category are subject to the general requirements regarding sailing distance, such vessels can also qualify for the tonnage tax regime if they are operated in ports and similar.[58] However, such stationary activities are only allowed under the regime if less than 50% of the operating time of the vessel consists of these activities.

Although the specialized vessels within the petroleum industry also require a certain level of mobility, this requirement is unspecified. Especially activities performed by tug vessels might give rise to uncertainty, as they could be considered too stationary. Furthermore, for these vessels it is generally required that the vessel in question has a support function in relation to the petroleum industry. The specialized vessels within the petroleum industry are split in four subcategories, namely 'personnel- and supply vessels', 'tug vessels', 'offshore construction vessels' and 'other support vessels'.

The personnel- and supply vessel category and the tug vessel category apply requirements to the property, while the offshore construction vessel category and the other support vessel category mainly focus on the use of the property. A distinction between these categories is important as the requirements for the application of the tonnage tax regime differ for the categories. In this respect, as opposed to the other categories of vessels, offshore construction vessels are not allowed to generate income which is generally subject to petroleum taxation. The categorization is based on both property and use, but in general use is considered the dominating criterion.

As opposed to the other specialized vessels within the petroleum industry, the offshore construction vessels are allowed to carry out independent operations. On the Norwegian continental shelf they are only allowed to have such functions to the extent that they are operating on bareboat terms. In this regard the support function mainly expresses that operations implying activities within the core of the petroleum industry are implying non-qualification. Types of vessels that are generally acknowledged as offshore construction vessels are amongst others, pipe-laying vessels, cable-laying vessels, crane vessels, inspection, maintenance and repair vessels (IMR vessels), and intervention vessels.

The other support vessels category is a category meant for remaining vessel types. Firefighting vessels, diving support vessels, multipurpose vessels and seismic vessels are included in this category.

A vessel that fails to qualify as a specialized vessel can still qualify as a ship in service, provided that such vessel meets the requirements for ships in service.

[58] Regulatory provisions to the Norwegian Tax Act of 19 Nov. 1999 no. 1158, § 8 – 11 – 1 (1) d.

3.3.2 Relation with the Petroleum Tax Act

The Norwegian taxation system provides for a special tax regime for petroleum revenue extracted in Norwegian waters, territorial seas and on the continental shelf.[59] This tax is levied in addition to the Norwegian corporate income tax, on the exploitation of petroleum resources. Therefore, a double basis for taxation of Norwegian companies performing activities on the Norwegian continental shelf exists, but this does not imply double Norwegian taxation.

As the Norwegian tonnage tax regime is, amongst others, applicable to specialized vessels within the petroleum industry, a concurrence of the eligibility of vessels for the tonnage tax regime and the subjection to Norwegian petroleum taxation might occur. In the past a general prohibition applied against the application of the tonnage tax regime to vessels generating income that is subject to the petroleum tax act.

Since 1997, a company can basically benefit from the Norwegian tonnage tax regime, while being subject to the petroleum tax act. As from this year an exemption applies from the prohibition against generating income that is subject to the petroleum tax act, with regard to personnel- and supply vessels, tug vessels and other support vessels. However, the crucial issue is that this exemption is not applicable to offshore construction vessels.[60] As a result companies operating such vessels on the Norwegian continental shelf can still not apply the tonnage tax regime. The tonnage tax regime can only be applied to such vessels if hired out on bareboat terms.

For offshore construction vessels that fail to qualify for the tonnage tax regime, it is possible to qualify as a ship in service, provided that the vessel has support functions.

3.3.3 Relation with Nordic Tax Treaty

The term tonnage tax is not mentioned in the Nordic Tax Treaty. Article 21, paragraph 5 of the Nordic Tax Treaty states that profits derived by an enterprise of a Contracting State from the transportation of personnel or supplies by ships to or within the other Contracting State or the exploration or exploitation area of the other Contracting State in which business activities are carried on in connection with surveying and exploration for or exploitation of hydrocarbons, or from the operation of tugboats, supply ships or other auxiliary vessels in connection with such activity, shall be taxable only in the first-mentioned State.

The demarcation of the vessel types falling under the specialized vessels within the petroleum industry, is basically in line with the demarcation as applied in the Nordic Tax Treaty. The personnel- and supply vessel

[59] Section 1 Norwegian Petroleum Tax Act.
[60] Sktl. (Nor.) § 8 – 13 (3).

category, the tug vessel category and the other support vessel category in the Norwegian tonnage tax regime are based on the vessel-categories in Article 21, paragraph 5 of the Nordic Tax Treaty. Together these categories are referred to as offshore support vessels. Article 21, paragraph 5 of the Nordic Tax Treaty also mentions supply vessels. The Norwegian tonnage tax provision only mentions seismic vessels, which are for the purpose of the Norwegian tonnage tax provision considered support vessels, but are not considered as such under the Nordic Tax Treaty. Although other types of supply vessels are not mentioned in the Norwegian tonnage tax provision, these vessels do generally fall within the scope of the Norwegian tonnage tax regime as well.

Vessels like drilling rigs, crane vessels, pipe-laying vessels, accommodation vessels and seismic vessels are, for the purpose of the Nordic Tax Treaty, considered to be too stationary to qualify as an 'other support vessel'. As some of these vessels are eligible for the Norwegian tonnage tax regime, the regime is not totally in keeping with the Nordic Tax Treaty.

3.3.4 Profit Split

As it is not possible to have split accounts (i.e. a mix of qualifying and non-qualifying activities) under the Norwegian tonnage tax regime, no profit split is applied for income derived from qualifying vessels and qualifying activities. Therefore, all eligible profit derived from qualifying vessels benefits from the Norwegian tonnage tax regime. However, this is different for offshore construction vessels working on the Norwegian Continental Shelf falling under the Petroleum Tax Act. For such vessels, the tonnage tax regime only applies if the vessel is put on a bareboat lease, effectively reducing the application of the tonnage tax regime to transport activities and thus practically resulting in a profit split since the non-transport activity is carried out by a different company not subject to tonnage tax.

3.4 The United Kingdom

3.4.1 Categorization

The application of the tonnage tax regime of the United Kingdom is not so much limited by the vessel types, as by activities. As discussed in paragraph 2.4.1, the qualifying vessels can be categorized in vessels performing 'core qualifying activities', 'qualifying secondary activities' and 'qualifying incidental activities'.[61]

Core qualifying activities consist of activities in operating qualifying ships and other ship-related activities that are a necessary and integral part of the business of operating those qualifying ships. Such a vessel qualifies when it is used for transport of passengers or cargo, towage, salvage or other marine assistance, or transport in connection with other services of a kind necessarily provided at sea.[62] A ship-related activity is a necessary and integral part of the operating business when it is essential to enable the ship operation to take place.[63]

Secondary qualifying activities consist of ship-related activities customarily provided, or desirable, as part of the qualifying shipping activities of the company or of other group companies, provided that there is a substantial connection with the core qualifying activities of the company or of a company in the same tonnage tax group.[64]

Finally, qualifying incidental activities are activities that are incidental to the core qualifying activities, not being qualifying secondary activities of which the income does not exceed 0.25% of the total turnover in the same accounting period from its core qualifying activities and its qualifying secondary activities.

Certain vessels are excluded from the application of the UK tonnage tax regime, for example fishing vessels, offshore installations and tankers dedicated to a particular oil field.

3.4.2 Relation with the Petroleum Tax Act

At the time of the introduction of the UK tonnage tax regime, the United Kingdom took the decision to preserve the tax revenues arising from the oil & gas fields around the UK Continental Shelf. Therefore, their tonnage tax regime includes special rules regarding offshore activities. The Finance Act interprets offshore activities as activities in connection with the exploration or exploitation of so much of the seabed or subsoil or their natural resources as is situated in the UK sector of the continental shelf.[65] Special rules apply when a vessel, qualifying for the tonnage tax regime is engaged in offshore activities for a period exceeding thirty days within one accounting period.[66] The special rules provide that the profits from offshore activities are computed according to ordinary corporation tax principles as if they were not part of the company's relevant shipping profit.[67] However, the special rules are not applicable to offshore supply vessels, tugs, anchor-handling vessels and tankers.

[61] HMRC TTM06030 – Relevant Shipping Profits.

[62] HMRC TTM03570 gives examples of the vessel types likely to meet the definition.

[63] HMRC TTM06050 – Relevant Shipping Profits: Core qualifying activities.

[64] These are described in detail at regulation 3 of the Tonnage Tax Regulations 2000, SI 2000/2303.

[65] Schedule 22, para. 104 Finance Act 2000.

[66] Schedule 22, para. 103 Finance Act 2000.

[67] HMRC TTM11001 – Offshore Activities: Outline of special rules for offshore activities.

3.4.3 Relation with Tax Treaties

Most tax treaties the UK entered into are based on the OECD MTC. Article 8 of the OECD MTC allocates the profits derived from the exploitation of vessels to the State in which the place of effective management of the enterprise is situated. In the Commentary on Article 8 of the OECD MTC a distinction is made between profits directly obtained by the enterprise from the transportation of passengers or cargo by ships that are operated in international traffic, profits from activities directly connected with such operations and profits from activities not directly connected to the operation of the enterprise's ships in international traffic. This approach is in accordance with Article 4 of OECD MTC, on the basis of which the 'place of effective management' is designated as the preferred criterion for enterprises.

It should be noted that currently a proposal to change Article 8 of the OECD MTC is pending. This proposal entails that Article 8 of the OECD MTC will in the future allocate the profits derived from the exploitation of vessels to the State of residence. The UK is in favour of this proposal as most of its treaties are already based on a residence basis.

The tonnage tax regime of the UK does not follow the approach of the OECD MTC. In the UK the qualification of a vessel is determined on the basis of the operation of the vessel and the related core activities of this vessel. Furthermore, the commercial activities and the incidental activities with a connection to core activities qualify. Therefore, we can conclude that the UK applies a broader interpretation of profits derived from the exploitation of vessels than the OECD MTC.

Furthermore, the qualification of towing and support activities under Article 8 of the OECD MTC is uncertain. These activities do qualify for the UK tonnage tax regime.

3.4.4 Profit Split

Profit derived from qualifying vessels under the tonnage tax regime of the United Kingdom does not require the application of a profit split. Therefore, all eligible profit derived from qualifying vessels benefits from the UK tonnage tax regime.

3.5 Overview

The overview of the application of tonnage tax systems in the four research countries on (offshore) service vessels can be summarized in the table below.

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
Drilling rigs Drilling vessels FPSOs	No	No	No	No
Well intervention vessels Maintenance vessels IMR vessels	Uncertain	Yes*	Yes***	Yes
Accommodation vessels	No*****	No	No	No
Platform supply vessels	Yes	Yes	Yes	Yes
Shuttle tankers Tankers	Yes	Yes	Yes	No/ Yes
AHTS Tugs Ice breaking tugs	Yes**	Yes**	Yes	Yes
Stand-by vessels Safety vessels Firefighting vessels Chase & guard vessels	Uncertain*****	Uncertain	Yes	Yes***
Cable layers Pipe layers	No*****	Yes*	Yes***	Yes***

	Denmark	*The Netherlands*	*Norway*	*United Kingdom*
Inspection vessels Survey vessels Seismic vessels Drilling support vessels Diving support vessels	Uncertain	Yes*	Yes	Yes***
Crane vessels Installation vessels Wind park installation vessels	No*****	Yes*	Yes***	Yes***
Dredging vessels	No	Yes****	Yes	Yes****

* In as far as the activities consist of maritime transport (profit split).

** Provided that the tug activities are performed at sea to certain vessels (profit split).

*** Specific rules may apply for vessels used in the offshore business.

**** Provided that the activities are performed at sea and the yearly operating time largely consists of transport (profit split).

***** Please note that the proposed changes to the Danish TTA entail the extension of the application of the Danish tonnage tax regime to (i) accommodation vessels engaged in the building of wind turbines, (ii) safety vessels, firefighting vessels and chase and guard vessels engaged in the exploitation of natural resources and offshore constructions engaged in the building of wind turbines, (iii) cable layers and pipe layers and (iv) crane vessels, installation vessels and maintenance vessels engaged in wind park or coastal protection.

4 State aid guidelines

4.1 General

The State Aid Guidelines set the framework within which member states of the EU are allowed to introduce aid measures for the benefit of the maritime transport sector. The purpose of the introduction of the State Aid Guidelines was mainly the maintenance of vessels under a community flag and the employment of seafarers. The application is restricted to transport activities over sea. In the text and the history of the State Aid Guidelines, however, no reason can be found for the restricted scope of applicability. Moreover, the objectives of the State Aid Guidelines do not give a reason not to apply the State Aid Guidelines to activities other than transport. A cause for the restriction might be found in the fact that, at the time of drawing up the State Aid Guidelines (offshore) service vessels were of lesser importance than they are nowadays. Since the 2004 Guidelines, the term 'transport activities over sea' also includes towing at sea of other vessels, oil platforms, etc. and dredging, provided that the activities of the dredger consist of transport at sea for more than 50% of their annual operational time. Tugs and dredgers are the only two service vessels explicitly dealt with in the Guidelines.

The Guidelines underline the interest of the Community shipping industry. Third countries obtain a competitive advantage, since Member States of the European Union apply strict conditions to flying their flag or registration in their register. According to the ECSA, the Guidelines have played a crucial role in the curtailment and reversal of the maritime sector in the EU. Member States that have introduced aid measures called a halt to the structural decrease of the fleet and furthermore indicated a trend of vessels being (re)flagged in their national registers. On the other hand, member states that did not, or did only recently introduce aid measures, have faced a structural decrease of the fleet.[68]

The Commission pointed out that the Guidelines aim at promoting the community Maritime's interest. The objectives of the Guidelines consist of (i) improving a safe, efficient, secure and environment friendly maritime transport, (ii) encouraging the flagging or re-flagging to Member States' registers, (iii) contributing to the consolidation of the maritime cluster established in the Member State while maintaining an overall competitive fleet on world markets, (iv) maintaining and improving maritime know-how and protecting and promoting employment for European seafarers, and (v) contributing to the promotion of new services in the field of short sea shipping following the White Paper on Community transport policy.

One of the possibilities given by the Guidelines is the introduction of tonnage tax regimes, as discussed in the previous paragraphs.

[68] 'The EU needs a successful and competitive shipping industry and this depends on the continuation of the guidelines on state aid to maritime transport', ECSA (SF 5.110), 23 Jun. 2010, www.ec.europa.eu/competition/consultations.

4.2 Specific Decisions Focusing on Service Vessels

The measures taken by the EEA member states (i.a. Norway) within the scope of the Guidelines are assessed by the EFTA surveillance authority. As explained above, the Norwegian tonnage tax system was applied on certain types of service vessels as from the introduction of the system in 1996. This tonnage tax system was approved in 1998 by the EFTA surveillance authority based on the 1997 Guidelines.

The measures taken by the member states of the European Union within the scope of the Guidelines are assessed by the Commission. However, the Commission has not always been consistent in its decisions on tonnage tax regimes. This might have caused some of the differences mentioned before. In respect of the application of the tonnage tax regime to (offshore) service vessels, the Commission issued three relevant decisions.

Initially, the Commission did not approve the inclusion of cable layers, research vessels and crane vessels in the Dutch tonnage tax regime. Reason for the rejection in 2005 was that the extension would be incompatible with the internal market.

However, in 2009 Denmark requested for the extension of the regime exempting maritime transport companies from the payment of income tax and the social contributions of seafarers to dredging and cable-laying activities.[69] This extension was approved by the Commission. Although the Commission is of the opinion that the activities of cable layers do not meet the definition of 'maritime transport' as referred to in the Guidelines, the Commission considers that the aid measures concerning ship owners can be applicable to these activities by analogy. With regard to dredging activities the EC states that this indeed concerns maritime transport.

Following on from this Commission decision, in 2010 the Dutch government notified the Commission of their intention to extend the Dutch tonnage tax regime to cable layers, pipeline layers, research vessels and crane vessels. This time the European Commission approved the extension.[70] Although the main activities of these vessels do not consist of maritime transport, the activities bear a close resemblance to maritime transport. Moreover, the vessels are governed to the same labour law and also undergo the same technical and safety controls as vessels dedicated to maritime transport. The arguments used by the Commission are exactly the same as those in the 'analogy' decision of the Commission in the above-mentioned Danish case.

In its decision concerning the extension of the Italian tonnage tax regime in 2015, the Commission specifically addressed a couple of service vessels.[71] The Commission specifically approved that carriage *and* installation of offshore facilities is an eligible activity under the present aid scheme in accordance with the State Aid Guidelines. The Commission thus refrained from using a 'by analogy' approach for these type of activities. Moreover, the Commission considered that 'rescue at sea and marine assistance on the high seas' is not considered maritime transport and thus not eligible under the present scheme in *direct* application of the State Aid Guidelines. However, the Commission stipulated that '*the State Aid Guidelines can be applied by analogy to vessels that do not perform maritime transport, provided that the market where they operate is open to international competition and there is a high risk of de-flagging and relocation'*. The considerations made by the Commission are pretty much in line with the 2010 Commission decision above, i.e. (i) the need for qualified seafarers, (ii) the application of similar technical and safety controls as vessels dedicated to maritime transport since they are sea-going vessels and (iii) the risk of relocation on-shore activities and re-flagging vessels outside the EU. The Commission considers these features to be reflected in the general objectives of the State Aid Guidelines.

The Netherlands introduced the extension to the Dutch tonnage tax regime with cable layers, pipeline layers, research vessels and crane vessels in combination with the profit split system as explained in paragraph 3.2.4. The sole reason for the introduction of the profit split system, however, were state budget constraints. As mentioned in paragraph 3.2.4 the Dutch tax authorities accept two methods: (i) profit split on an operating time spent-basis, and (ii) profit split on a Capital Investment/ Crew Employed ratio basis.[72] In practice, however, certainly the first mentioned, time spent-based method is considered to be administrative burdensome, whereas the second mentioned, ratio-based method could lead to arbitrary results.

Following on the positive Commission Decisions with regard to the Danish and the Dutch tonnage tax regime, the UK adjusted its tonnage tax regime. Qualifying vessels are vessels used for transport of passengers or cargo, towage, salvage, other marine assistance or other services necessarily provided at sea. The regime now refers to the core activities of the vessel. All core activities as well as other ship-related activities that form a necessary and integral part of the operation of a qualifying vessel fall within the scope of the tonnage tax regime. Furthermore, the commercial activities and the incidental activities with a connection to core activities qualify.

Finally, it should be noted that – as stated above – (offshore) service vessels have fallen within the scope of

[69] Commission decision C 22/07 (ex N 43/07) 13 Jan. 2009.
[70] Commission decision C (2010) 6094 (ex N 714/2009) 28 Apr. 2010.
[71] Commission decision C (2015) 2457 final 13 Apr. 2015.
[72] E. Boich and D. Laub, *Tonnage taxation of cable layers, research and crane vessels*, 9 HANSA Int'l Maritime J. 148, jaargang (2011).

the Norwegian tonnage tax regime as from the introduction of that regime.

4.3 Revision of the State Aid Guidelines

The Guidelines explicitly state that they should be reviewed within seven years of their date of application. In preparation for the upcoming review the Commission published a consultation questionnaire. European member states and other relevant institutions were invited to provide information on the development of the maritime sector and to provide feedback on the maritime Guidelines. The Commission analysed the outcome of this consultation before moving on to reviewing the Guidelines. The responses to the consultation showed a widespread support for the continuation of the Guidelines. However, the respondents asked for the clarification of several aspects of the Guidelines. Also, the majority of the respondents seem to be in favour of the extension of the application of the Guidelines to service vessels.

In 2012 the ECSA published four 'special issue papers' concerning the European tonnage tax regimes, prior to the revision of the Guidelines. One of these papers concerns the scope of the tonnage tax regimes for (offshore) service vessels.

4.3.1 Special Issue Paper on the Scope of Tonnage Tax Regimes for (Offshore) Service Vessels

In the special issue paper on the scope of tonnage tax regimes for (offshore) service vessels the ECSA establishes that the use of terms like 'maritime transport' and 'shipping' by the European Commission caused inconsistency and uncertainty as to whether so-called service vessels should qualify for the application of the State Aid Guidelines. Service vessels generally perform transport activities in combination with complex activities. The exclusion from tonnage tax regimes has caused the relocation of several shipping companies to third countries. The lack of clarity was partly lifted by the positive decision of the EC with regard to the notification of aid to certain service vessels in Denmark, followed by the positive decision issued to the Netherlands. In these decisions the EC determined that the application of tonnage tax regimes to certain service vessels would 'by analogy' be compatible with the internal market. In practice there is no difference between the activities of service vessels and the activities of ships performing conventional transport. Service vessels are subject to the same regulatory framework with regard to technical requirements, manning and legal constraints. Furthermore, service vessels experience the same disadvantages from the severe competition with third countries.

The application of the State Aid Guidelines to service vessels would in the view of ECSA contribute to the fulfilment of the objectives of the Guidelines. First, only the rendering of support can lead to management activities to stay in the EU. As specialization and delivering quality is seen as the future for European shipping companies, creating a favourable competitive position is of great importance. At the same time, this will have a positive effect on the competitive position of the European shipping sector in general. Second, the exploitation of service vessels by European shipping companies will create jobs for European seafarers, which is favourable for maintaining and improving maritime know-how and the protection of employment for European seafarers. Without fiscal measures the qualitative advantage of the EU seafarers cannot be maintained.

The ECSA is of the opinion that the maintenance of service vessels in the EU should be guaranteed, seeing that these vessels generate a high added value. When implementing the Guidelines, we need to look beyond the artificial distinction between transport and service activities. Specialized service vessels should be treated in the same way as other commercial shipping activities. A confirmation of such a policy will provide the requisite certainty on the long term.

4.3.2 No Revision

In October 2013, the European Commission announced to continue the 2004 State Aid Guidelines without revision. The European Commission is of the opinion that the current approach is still appropriate. According to the EC the 2004 Guidelines have a positive effect on the employment and the competitiveness of the European shipping sector. Possibly necessary clarifications, such as the scope of the tonnage tax regime for service vessels and answers to substantive issues will be agreed upon on official level. The Commission's decision to continue the 2004 Guidelines without revision has been well received by the member states and other relevant institution, even though clarifications failed to materialize. The Commission did state that tonnage tax regimes of certain Member States[73] will be further looked into.

4.3.3 Conclusions/Recommendations

The State Aid Guidelines provides the opportunity for member states of the EU and the EEA to render support to the maritime transport sector in the form of a tonnage tax regime. The comparison between the tonnage tax regimes of Denmark, the Netherlands, Norway and the United Kingdom shows that the different regimes bear a close resemblance to each other. However, as the Guidelines do not discuss the application of tonnage tax

[73] Already in 2012 and 2013 the Commission started in-depth state aid investigations with respect to the Maltese (case SA.33829) and French (case SA. 14551) tonnage tax regimes. The French case was closed by the Commission earlier this year.

regimes in great detail, the member states are, to a certain extent, free to give their own interpretation to their tonnage tax regime. Namely for (offshore) service vessels this causes different treatments in various member states. Differences between the regimes are mainly found in the wide variety of conditions under which vessels are included into these regimes. Furthermore, in the Netherlands and Denmark a profit split in a part allocable to transport activities and a part allocable to remaining activities is applied for (offshore) service vessels, while Norway and the UK in general do not apply a profit split although the regimes of the UK and Norway provide for a limitation of the application of the tonnage tax regimes for certain profits derived from petroleum related activities.

With regard to the Dutch and Norwegian tonnage tax regimes a clear relationship between the definitions in the tax treaties and the Nordic Tax Treaty and the tonnage tax regimes can be identified. The tonnage tax regimes of Denmark and the UK are less in line with the tax treaties and the Nordic Tax Treaty.

The EFTA Surveillance Authority has approved the application of tonnage tax regimes (i.e. the Norwegian system) on some types of (offshore) service vessels already in 1998. The Commission, however, has not been very clear on the application of the State Aid Guidelines to service vessels in its Commission Decisions. After denying the extension of the Dutch tonnage tax system for certain type of service vessels, the extension of the Danish regime was approved. Afterwards, the Netherlands extended their tonnage tax system to some types of service vessels, Needless to say that a consistent approach is important for the creation of a level playing field within the EU. We are of the opinion that clear guidance from the Commission is required on the application of the Guidelines to (offshore) service vessels. Theoretically, three options can be distinguished:

(1) All service vessels, which to any extent perform transport activities are included in the scope of the State Aid Guidelines. No profit split is required for the activities performed by the service vessel;
(2) All service vessels are excluded from the State Aid Guidelines, consequently their service activities, as well as their transport activities are not taken into account;
(3) All service vessels fall within the scope of the State Aid Guidelines in as far as the activities consist of maritime transport. Consequently a profit split is applied to the activities performed by the service vessel.

Based on the decisions for the Norwegian, Dutch and Danish tonnage tax regime, as well as on the accepted extension of the UK regime, option 2 does not seem a viable alternative for the Commission. The application of a profit split basis has been proven to be arbitrary, unclear and administrative burdensome in practice. In our view, the Commission should, therefore, follow option 1 and confirm that the Guidelines allow tonnage tax regimes for all (offshore) service vessels without the need to apply a profit split system. In our view, the recent decision concerning the Italian tonnage tax regime has paved the way for inclusion of service vessels in the scope of the State Aid Guidelines without applying a profit split, also for other vessels whose activities comply with the objectives of the State Aid Guidelines.

5 Application of tax treaties on (offshore) service vessels

5.1 General

During the Bergen seminar for some countries a clear relationship between some definitions used in tax treaties and in the application of tonnage tax regimes on service vessels was identified. In this section this interconnection between the taxation of service vessels and the division of taxation rights under tax treaties is further explored. At first sight the fact that a service vessel is taxed within a countries' tonnage tax regime should not have any impact on the application of tax treaties on the income derived with the exploitation of such service vessels. On the other hand, tonnage tax regimes are generally not applicable on foreign tax payers.[74] If the tax treaty grants taxation rights to the source country where the service vessel operator is operating a vessel for a certain period, the taxation right shifts from the residence country (tonnage tax regime) to the source country (normal tax regime) which might lead to a substantial increase in effective tax burden. Such an increase might distort the level playing field because domestic competitors resident in the source country can use the tonnage tax regime for the same activities.

All four research countries are OECD member states. For that reason it seems logical to use the OECD model tax convention as a starting point for the investigation of the application of tax treaties on service vessels. However, all four countries also have extensive activities on their part of the Continental Shelf (hereafter: 'the CS'). For that reason it is part of their treaty policy to take up special treaty provisions relating to such CS activities. Needless to say that service vessels are normally operated to a large extent on the CS of these countries. For that reason the application of these special treaty provisions relating to the CS on the income derived with the exploitation of service vessels will be discussed separately.

[74] We will not discuss in this article the question whether such denial of the tonnage tax regime to foreign tax payers might be a breach of EU-law.

5.2 Demarcation between Article 7 and Article 8

Income derived by service vessel operators[75] normally qualifies as business income under Article 7 MTC. In case such business income can be qualified as 'profits from the operation of ships in international traffic' Article 8 would be applicable instead of Article 7. Article 8 is generally seen as 'lex specialis' for Article 7.[76] The term 'international traffic' is defined in Article 3(1)(e) 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.' We already see in this definition the same focus on transportation as is laid down in the present State Aid Guidelines. In the vast majority of cases the activities of service vessels will not qualify as 'profits from the operation of ships in international traffic', because either the vessels are not pursuing transportation services or they are performing such services solely between places in the source state (e.g. between one or more harbours located in the source state and the part of the CS that belongs to the source state). Quite often, therefore, the income derived with the operation of service vessels shall be regulated by the division rules as laid down in Article 7 MTC. Under Article 7 MTC, in principle, the resident state of the service vessel operator has the taxation right, unless there is a permanent establishment (Article 5 MTC) (hereafter: 'PE') in the source state (Article 7(1) MTC). Due to the fact that the activities performed by service vessels quite often are only of a short-term duration, under the Article 5 MTC-modelled PE-clauses seldom[77] a PE will be constituted in the source state. In those cases the taxation rights stay with the residence state of the service vessel operator which means that the whole profit derived can be taxed under the tonnage tax regime.[78] However, the situation might be different in case of activities on the CS, where all four countries apply special treaty provisions which provide for PE-clauses also covering activities with a short-term duration nature (often referred to as 'thirty-days rule', hereafter also referred to as 'offshore treaty clauses'). The impact of such special treaty provisions will be discussed in the next sub-section.

[75] It is assumed that the service vessel owner is operating itself the service vessels (time charter) and is not leasing the vessel out on a bareboat basis. In case of bareboat leasing Article 8 normally is not applicable, but Art. 7 or Art. 12 (pre-1992 version of Art. 12(2) MTC) will be applicable.

[76] See Art. 7(4) MTC.

[77] The wording of para. 6 of the OECD Commentary on Art. 5 is, however, not very clear and has laid to some contradicting case law: see for an overview of this case law *Perdelwitz*, A Certain Degree of Permanence – Between Temporary and Everlasting Business Activities, in *Gutiérrez/Perdelwitz*, Taxation of Business Profits in the 21st Century, IBFD 27–56 (Amsterdam, 2013).

[78] Assuming that the country of residence applies the tonnage tax regime on the service vessel without profit split system.

5.3 Special Treaty Provisions Relating to Continental Shelf Activities

The OECD did not take up a model for a special treaty provision relating to CS activities. For that reason a variety of different types of special treaty provisions exists.[79] However, to a large extent they all use the same main features: (i) certain defined 'offshore activities', constitute a PE, in case (ii) a certain defined duration test (quite often thirty days in a twelve month period) is met. Quite often the definition of 'offshore activities' is a very broad one, in the sense that all activities that serve or facilitate[80] the exploration for or the extraction of natural resources on the CS will qualify as offshore activities. The duration test is normally a fixed one, but contains some anti-avoidance rules to avoid 'contract splitting' between related group companies in order to underscore the duration limit. In the majority of cases certain types of activities are excluded from the definition of 'offshore activities' or the fictitious PE. The consequence of such exclusion, normally, is that the residence state of the service vessel operator has the sole taxation right.[81] As an example reference can be made to Article 24 of the 1996 Denmark – Netherlands tax treaty that excludes from the definition of 'offshore activities' the following activities; (i) activities that fall under the 'negative list' of a PE (preparatory or auxiliary activities: Article 5(4) MTC) ('Category 1 Exception'), (ii) the operation of tugboats and other vessels auxiliary to offshore activities ('Category 2 Exception'), and (iii) the transport of supplies or personnel by ships or aircraft ('Category 3 Exception').[82] The operation of service vessels, normally, shall only in seldom cases be qualified as preparatory or auxiliary activities in the sense of Article 5(4) MTC. However, certain types of service vessels can qualify under the other two categories of excepted activities/vessels. The Category 3 Exception is clearly introduced to exclude supply vessels from the offshore PE-fiction.[83] The scope of the Category 2 Exception is much less clear:[84] from literature it can be derived that normally tugs and

[79] See for an overview of the different type of provisions *Susanti*, An Analysis of the Special Treaty Provisions Relating to Continental Shelf Activities, European Taxation, April 2008, 186–194. An excellent overview of the history of the offshore activity clause can be derived from *Skaar*, PE, IBFD Doctoral Series, Nr. 13, Part 4, Offshore business activities, 419–460.

[80] The special treaty provisions quite often use the term 'in connection with' the exploration for or the extraction of natural resources, which provides the basis for such broad interpretation by local tax authorities and courts.

[81] Either because the offshore clause explicitly states that the taxation rights solely rest with the residence state, or the offshore clause refers to Art. 8 or Art. 7 (in the latter case a 'normal' PE could be constituted under the rules of Art. 5). See *Susanti*, ET, 190/191, for an overview of the different types of offshore clauses.

[82] In some tax treaties this exception is limited to the transport of supplies or personnel by ships or aircraft in international traffic. See *Susanti*, ET, 190, for an overview of the different type of exceptions of each category.

[83] See *Skaar*, PE, 451, who speaks of the 'supply-ship exception'.

[84] See *Skaar*, PE, 452, and *Susanti*, ET, 190/191.

anchor handling tugs are covered but that there is not much consensus what should be the delimitation of the term 'auxiliary activities'. In literature,[85] based on public rulings and case law, the delimitation test for both the Category 2 and 3 Exception is found in the supply/transportation character of the activities/vessels. For that reason the term 'auxiliary activities' is interpreted in a very restricted way by various countries; on the one hand stand-by vessels and firefighting vessels are considered to be 'auxiliary' vessels, but maintenance vessels and survey vessels are not. One could raise the question for what reason these types of activities are excluded from the definition of 'offshore activities'? The Category 3 Exception is clearly linked with the transport activities that fall under Article 8 MTC and if the restricted interpretation as described above for the Category 2 Exception should be followed, the same linking with transportation should be applicable for that category. The reason for exclusive residence[86] state taxation under Article 8 MTC is traditionally[87] to avoid multiple source state taxation in the case of internationally operating shipping and aircraft enterprises. Seen from this background it seems logical to extend Article 8 MTC and the exceptions to the offshore clauses also to those service vessels, e.g. maintenance and survey vessels, that quite often are used for short periods in a number of jurisdictions and face the same multiple source state taxation as traditional transportation/supply vessels. Up till now we did not see any change of tax treaty policy in such direction in the four research countries. The introduction of tonnage tax regimes for (offshore) service vessels in various EU member states did not change the risk of multiple source state taxation under the various offshore tax treaty clauses, but might cause a severe increase of the effective tax burden of those domestic service vessel operators that start international operations. The combination of offshore tax treaty clauses and the rejection to apply tonnage tax regimes to foreign tax payers might have a negative impact on the level playing field between domestic and foreign-service vessel operators, both active on the CS of the source country.

5.4 Overview

The coverage of the various types of service vessels by the tonnage tax regimes compared to the transport and special offshore provisions in bilateral tax treaties can summarized in the below table.

	Tonnage Tax	*Article 8 (Transport / International Traffic)*	*Offshore Provision*
Drilling rigs	No	No	Yes
Drilling vessels	No	No	Yes
FPSOs	No	No	Yes
Well intervention vessels	Yes	No	Yes
Maintenance vessels	Yes	No	Yes
IMR vessels	Yes	No	Yes
			Yes
Accommodation vessels	No	No	Yes
Platform supply vessels	Yes	Maybe (international traffic)	Maybe, exception 3, lack of connection
Shuttle tankers	Yes	Maybe (international traffic)	Maybe, exception 3, lack of connection
Tankers	Yes	Yes	No, exception 3, lack of connection

[85] See *Skaar*, PE, 451–456.

[86] Or state of effective management of the shipping enterprise, depending on the exact wording of the Art. 8 MTC-like treaty provision. For the purposes of this article we have assumed that the effective management of the shipping enterprise is in the same state as the residence state of the service vessel operator. See also the proposed changes to the OECD Model Tax Convention dealing with the operation of ships and aircraft in international traffic, 15 Nov. 2013 – 15 Jan. 2015.

[87] See for an overview of the history of Art. 8 MTC *Cutrera*, Shipping, Inland and Waterways Transport and Air Transport, in Ecker/Ressler, *History of Tax Treaties, Series on International Tax Law*, Nr. 69, Linde Verlag (Wien, 2011), 363–385.

	Tonnage Tax	*Article 8 (Transport / International Traffic)*	*Offshore Provision*
AHTS	Yes	No	No, exception 2
Tugs	Yes	No	No, exception 2
Ice breaking tugs	Yes	No	No, exception 2
Stand-by vessels	Yes	No	No, exception 2
Safety vessels	Uncertain	No	No, exception 2
Firefighting vessels	Yes	No	No, exception 2
Chase & guard vessels	Uncertain	No	No, exception 2
Cable layers	Yes	No	No, lack of connection
Pipe layers	Yes	No	No, lack of connection
Inspection vessels	Yes	No	Yes
Survey vessels	Yes	No	Yes
Seismic vessels	Yes	No	Yes
Drilling support vessels	Yes	No	Yes
Diving support vessels	Yes	No	No, exception 2
Crane vessels	Yes	No	Yes
Installation vessels	Yes	No	Yes
Wind park installation vessels	Yes	No	No, lack of connection
Dredging vessels	Yes	No	No, lack of connection

5.5 Conclusions/Recommendations

Both the State Aid Guidelines and the division rules of bilateral tax treaties (Articles 7 and 8, as well as special offshore clauses) traditionally focus on maritime transport. In the various tonnage tax regimes of the EU member states, including the four research countries, since a number of years these regimes are opened/ extended also to (offshore) service vessels. Up till now this change in domestic tax regimes is not followed by a change in tax treaty policy of those states. From the background of Article 8 MTC, being the avoidance of multiple source state taxation in the case of internationally operating shipping enterprises, it seems justified to extend the residence taxation of Article 8 MTC and/or the exceptions to the offshore clauses also to those (offshore) service vessels, e.g. maintenance and survey vessels, that are normally operated for short periods in a number of jurisdictions and face the same multiple source state taxation as traditional transportation/supply vessels. By doing so any negative impact on the level playing field between domestic and foreign-service vessel operators, both active on the CS of the source country, can also be avoided.

6 Findings and recommendations

The State Aid Guidelines provide for the boundaries within which member states of the EU and the EEA may render support to the maritime transport sector in the form of e.g. a tonnage tax regime. The comparison between the tonnage tax regimes of Denmark, the Netherlands, Norway and the United Kingdom shows that the different regimes bear a close resemblance to each other. However, as the Guidelines do not discuss the application of tonnage tax regimes in great detail, the member states are, to a certain extent, free to give their own interpretation to their tonnage tax regime. Differences between the regimes are mainly found in the wide variety of conditions under which vessels are included into these regimes. Furthermore, the application of a profit split in a part allocable to transport activities and a part allocable to remaining activities for a wider range of vessels than dredging and tugging vessels is only by the Netherlands and Denmark, but in general not by Norway and the UK.

Since a couple of years the discussed tonnage tax regimes are also open to (offshore) service vessels. On

this point the regimes are rather different from each other. Every regime has a different way to categorize vessels. The Netherlands mentions the qualifying vessel types in the law while Denmark and the United Kingdom mainly focus on the qualification of vessels on the basis of their activity. In the United Kingdom's regime vessels engaged in offshore activities for a period exceeding thirty days are subject to ordinary corporation tax. An exception is made for offshore supply vessels, tugs, anchor-handling vessels and tankers. The Norwegian regime makes a distinction between ships in service and specialized vessels within the petroleum industry. The eligibility of these vessels is limited by the requirement that the vessel has a certain level of mobility. With regard to specialized vessels within the petroleum industry a concurrence with the subjection to Norwegian petroleum taxation might occur. The application of the tonnage tax regime to vessels generating income that is subject to the petroleum tax act is prohibited. However, an exemption applies for personnel- and supply vessels, tug vessels and other support vessels.

With regard to the Dutch and Norwegian tonnage tax regimes a clear relationship between the definitions in the tax treaties and the Nordic Tax Treaty and the tonnage tax regimes can be identified. The tonnage tax regimes of Denmark and the UK are less in line with the tax treaties and the Nordic Tax Treaty.

The Dutch and Danish (indirectly) tonnage tax regime apply a profit split for profit derived from transport activities and profit derived from other activities. The Norwegian regime does not even allow a company, applying the tonnage tax regime to carry out other, non-qualifying activities and allows only bareboat charters for offshore construction vessels working on the Norwegian Continental Shelf, effectively also creating a profit split. In the United Kingdom all profit derived from qualifying vessels falls within the scope of the tonnage tax regime.

The measures taken by the member states of the European Union are assessed by the Commission. However, the Commission has not always been consistent in its decisions on tonnage tax regimes. This might have caused some of the differences mentioned before.

Based on the decisions for the Norwegian, Dutch, Danish and Italian tonnage tax regime, as well as on the accepted extension of the UK regime, the exclusion of (offshore) service vessels from the tonnage tax regimes does not seem a viable alternative for the Commission. The application of a profit split basis has been proven to be arbitrary, unclear and administrative burdensome in practice. In our view, the Commission should, therefore, confirm that the Guidelines allow tonnage tax regimes for all (offshore) service vessels without a profit split system. Certain specific vessels, such as vessels for fishery can be explicitly excluded from the application of the Guidelines. The recent decision concerning the Italian tonnage tax regime has in our view paved the way for inclusion of service vessels in the scope of the State Aid Guidelines without applying a profit split, also for other vessels whose activities comply with the objectives of the State Aid Guidelines.

Up till now the extension of the tonnage tax regimes to service vessels has not been followed by a change in tax treaty policy of the states. From the background of Article 8 MTC, being the avoidance of multiple source state taxation in the case of internationally operating shipping enterprises, it seems justified to extend the residence taxation of Article 8 MTC and/or the exceptions to the offshore clauses also to those (offshore) service vessels. By doing so any negative impact on the level playing field between domestic and foreign-service vessel operators, both active on the CS of the source country, can also be avoided.