

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS  
ATTENTION INSURANCE DEPARTMENT**

**16 AUGUST 2006  
JTS/MAN**

## **UNITED STATES FREIGHT TAX LAW**

The Association has no expertise in US tax laws. This circular is intended as a brief summary of the key points relating to US Freight Tax Laws and a clarification of the Associations position should any fines be levied on Members for failure to file appropriate tax returns. The Association urges Members to obtain independent tax advice should they require assistance in filing their tax return or applying for an exemption.

The United States Reform Act of 1986 imposes on foreign corporations owning or operating a ship calling at any US port on or after January 1, 1987 tax on their US source gross transportation income ("USGTI"). Fifty percent of all transportation income attributable to transport which begins or ends in the USA will be considered US source gross transportation income and as such, will be taxed at a rate of four percent (i.e. two percent on the total income). Transportation income for the purposes of this tax includes bareboat, voyage and time charter hire, if the ship under charter transports cargo or passengers to or from the United States. It will also apply to income derived from carriage of passengers and cargo. The tax therefore applies to shipowners, charterers and pool participants.

### **Exemptions from US Tax**

- Many shipowners and operators will be able to claim an exemption from the tax either because the country in which they are organised has a bilateral income tax treaty with the United States or because they qualify for an exemption under section 883 of the US tax code. It is our understanding that a company will be eligible to claim an exemption from tax under section 883 if it is incorporated in a foreign country that provides a reciprocal exemption from tax on such income to US corporations (a "Qualified Foreign Country") and it satisfies one of the three stock ownership tests described below:
- More than fifty percent of the company stock, in terms of value, is beneficially owned by individuals resident in a Qualified Foreign Country. To qualify on this ground, a company must disclose the identity of the beneficial owner and its country of residence. Beneficial ownership is determined by "looking through" any intervening entities in the chain of ownership until the ultimate beneficial owner can be identified. In order to reside in a Qualified Foreign Country, an individual must be fully subject to tax in the country of his/her ordinary residence/place of business and have his/her tax home in a Qualified Foreign Country for at least 183 days in the relevant calendar year.
- The company's stock is primarily and regularly traded on an established securities market located in a Qualified Foreign Country.
- If the company is a Controlled Foreign Corporation within the meaning of the code.

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Determining whether an owner qualifies for an exemption may involve a construction of the tax laws of the country in which the owner/operator is domiciled, bilateral tax treaties or diplomatic notes exchanged with the United States.

### **Filing Requirements**

It is also our understanding that in order to qualify for exemption under section 883, a foreign corporation which operates on a calendar year basis should have filed a US Federal Income Tax Return (Form 1120F) claiming exemption no later than 15 June 2006. We believe the filing date will remain 15 June for future tax years and if the foreign corporation operates on a fiscal year basis, it must file the tax return by the fifteenth day of the sixth month following the end of their fiscal year. A request for a six month time extension of this deadline may have been made by filing an application for extension (IRS form 7004) by 15 June 2006 or by the fifteenth day of the sixth month following the end of their fiscal year if the company operates on a fiscal year basis.

### **The Association's Position**

Fines levied on Members for failure to file US tax returns will not be covered by the Association, in common with other International Group Clubs, as these will be treated as administrative matters distinct from the core insured liabilities of vessel operation. Moreover, the managers do not have the necessary expertise to provide tax advice to Members in respect of the application of these regulations.

As mentioned above we would encourage Members to obtain independent tax advice should they require assistance in filing their tax return or applying for an exemption.

J STOKOE

CLAIMS EXECUTIVE - North Insurance Management Limited

As Managers on behalf of the North of England P&I Association Limited