

Luxembourg*

Solutions for shipping companies Opportunities in Luxembourg

According to leading international competitiveness analyses, Luxembourg is ranked among the top of competitive countries for doing business. The main recognised advantages of Luxembourg are: its geographical location, its international and skilled labour force, its easy access to government bodies and a very attractive and stable tax framework. Luxembourg introduced its maritime legislation in 1990 to encourage the development of spin-off activities related to the maritime sector. It gained international recognition when Belgian owners transferred their fleet to Luxembourg and it still has its role to play today, as is demonstrated by some of the world's leading shipping companies who have decided to operate out of Luxembourg or locate some of their activities (such as financing and holding activities) in Luxembourg.

Luxembourg ship register

A ship should be registered in Luxembourg if it wishes to fly the Luxembourg flag. Depending on the circumstances, it may be registered in the "Registre public des bateaux de plaisance" or in the "Registre public maritime". Ships of at least 25 tons which are carrying out commercial shipping activities, qualify for registration in the "Registre public maritime". To qualify for full registration in this register, ships need to be majority owned by EU nationals or by commercial companies established in a EU Member State and need to be – for a significant part – managed from Luxembourg. Where majority ownership is not in the EU, the ship can still be registered and fly the Luxembourg flag if it is operated or chartered by a commercial company established in Luxembourg (bareboat-in registration).

Accreditation of shipping companies

Must be accredited before commencing activities in Luxembourg any person or legal entity, whether of Luxembourg or of foreign nationality, which carries on any of the following activities: the buying and selling, the chartering in and out or the management of seagoing vessels, and the financial and commercial operations that relate directly or indirectly to such activities.

The choice of legal form for a shipping company is free. The most common legal forms for shipping companies are the S.A. (société anonyme) and the S.à r.l. (société à responsabilité limitée). Accreditation entitles the company (or person) to benefit from the rules as provided by the Law of November 9, 1990 regarding the Luxembourg Shipping Register (as amended in 1994 and 2005) and its implementing RGDs (Règlement Grand Ducal).

Accreditation is flag neutral, i.e. it can be obtained regardless of the flag of the vessel.

Accreditation of ship management companies

To be accredited as a shipping company, accreditation of the shipping manager is compulsory. One can call upon the services of one of the accredited ship management companies which operate in Luxembourg and offer ship management services. Services include: crewing, technical support and advice i.a. relating to ISM/ISPS, insurance, wage administration and accounting.

Financing the acquisition of the vessel

For the financing of the ship, a tailor-made solution can be found in Luxembourg. Solutions include tax leveraged leasing solutions.

Luxembourg labour law and Social Security

Crewmembers of a vessel flying the Luxembourg flag are subject to Luxembourg labour law. From a benefit and welfare perspective, seafarers can benefit from the Luxembourg Social Security protection depending on the applicable EU regulation or bilateral/multilateral Social Security agreements. Where no Social Security agreements are in place, the Luxembourg law requires that a satisfactory level of Social Security benefits be guaranteed.

It should be noted that labour costs (i.e. taking into account the total package including Social Security contributions and taxes) are very competitive in Luxembourg compared to other countries in the EU.

Crewing requirements

The Luxembourg regime appears quite flexible as far as nationality and residence of the crewmembers are concerned. The only requirements are for the Captain to be EU National and even there, waivers are possible. There are no nationality or residence requirements for the rest of the crew but they should be STCW95 certified.

Luxembourg tax framework

Luxembourg shipping companies are subject to the general tax framework applicable to all commercial companies. They are also subject to the tax provisions provided in the laws and implementing RGDs relating to the Luxembourg Shipping Register. Consequently these companies can benefit from the large network of Double Tax Treaties that were signed with Luxembourg and can pay and receive dividends, interest and royalty in a tax efficient manner.

A Luxembourg entity operating a vessel is subject to Corporate Income Tax ("IRC") at a rate of 22.88% on its net taxable profits. Income from and capital invested in the operation and renting/leasing of vessels used in international traffic are not subject to municipal business tax.

A Net Worth Tax ("NWT") applies on the company's net asset value at January 1 of every year. However, this tax can, under conditions, be reduced by setting up a reserve in the company's accounts.

Any expenses incurred by the company that relate to the corporate purpose of the entity are generally allowed for tax deduction and can be offset against any positive income.

Losses can be carried forward indefinitely.

Some of the main Luxembourg tax incentives are the following:

- Vessels can be depreciated over their useful life with the option (under conditions) for the accelerated depreciated method that enables to depreciate the vessel based on
- 3 times the linear rate to be applied annually on the net book value over the useful life of the asset;
- Capital gains generated by accredited shipping companies on the disposal of a qualifying vessel may benefit from an unlimited tax deferral provided that the sale proceeds are fully reinvested within a certain timeframe in long term assets. In practice, depending on the reinvestment, this tax deferral may enable an informal exemption of the capital gains considering recurring reinvestments under article 54 of the Luxembourg Income Tax Law (LITL);
- Investment Tax Credits ("ITC") relating to the acquisition of qualifying vessels can be offset by the accredited shipping company against the Corporate Income Tax (IRC) liability during a period of 10 years. The ITC is twofold and includes the global ITC ("Bonification pour investissement global") – which provides for an annual 6% of tax credit on the first EUR 150,000 and an annual 2% of tax credit on the rest – and the extra-ITC ("Bonification pour investissement complémentaire") which provides for a 10% tax credit on the differential between year-end qualifying investments and the average of the five preceding years. Under conditions, the ITC can also be obtained for second hand vessels;
- Non-resident crewmembers working on board a vessel operated in international traffic can benefit from a lump-sum taxation if they are employed by an accredited shipping company, irrespective of whether such crewmembers are resident of a country with which Luxembourg has signed a Double Tax Treaty or not. The tax rate is 10% applied on a reduced taxable basis;
- Under conditions, the supply, chartering and hiring of the seagoing vessel can benefit from a VAT exemption. Where no exemption applies and the service is deemed to take place in Luxembourg, the low Luxembourg VAT rate applies. It should be noted that Luxembourg has the lowest VAT rate in the EU (standard VAT rate of 15%);
- It should be noted that the above tax rules apply regardless of the flag of the vessel.

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