

Changing Tides and Undercurrents!

It is not only the amount of times the tides have turned, it is also the speed at which they changed that has had many of us in the industry scrambling to provide solutions for Greek stakeholders. Coupled with this are all the political undercurrents, both local and on an EU level, that are further complicating matters. In the last six months, elements of articles are obsolete whilst the article is being drafted, let alone published. Same for this article! In between beginning and concluding this article, snap elections have been called, and Greece has a new Prime Minister, albeit an interim one. A positive note is that the new Prime Minister, Vasiliki Thanou, is actually Greece's first female Prime Minister. By the time the article is published, Greece should have a new government.

The truth of the matter is that the one constant in Greece over the last year has been the state of doubt. The uncertainty has been palpable, and this has led many Greek stakeholders to re-evaluate the way their affairs are managed. The ongoing legislative changes in Greece, the uncertainty as to how the legislation will be interpreted and implemented, together with the overall economic instability, have done little to stimulate the Greek economy.

Within the shipping industry we began to see the screws tighten as early as July 2013 when the so-called "voluntary contribution" of ship-owners to the State was agreed to with the then Prime Minister Mr. Antonios Samaras. True to form, by the time the legislation was tabled in Parliament at the end of 2013, the contribution became mandatory. Following intense talks between the Union of Greek Shipowners and the Greek Government, on the 1st October 2014 the Greek Parliament voted for an amendment to article 14 of Legislation 4223/2013, and the contribution became 'voluntary' once again; however it still remains a matter of substance over form.

The voluntary contribution boils down to a payment made by Greek shipowners/managers operating out of Greece in addition to the existing tax obligations arising from the taxation of ships flying the Greek or any foreign flag in the relevant jurisdiction. The ultimate goal was for the Greek shipping community to contribute some \$528m to the Greek budget between 2014 and 2017. Simultaneously, article 26 of Law 4110/2013 imposes a further tax on vessels registered under foreign flags that are managed by local or foreign companies established in Greece under the provisions of Article 25 of Law 27/1975. Law 4110/2013 requires Greece-based managers to pay the difference in tonnage tax fees paid in the country where a vessel is registered and that would be due had the same vessel been registered under the Greek flag.

However, industry stakeholders had other newly adopted regulations to contend with, with respect to other business interests they may have. As of the 1st January 2014, the Controlled Foreign Companies (CFC) Rules came into force in Greece which, in essence, are tax avoidance rules designed to combat the diversion by

resident taxpayers of income to companies they control, and which are typically resident in countries imposing low or no taxation.

Pursuant to these rules, the taxable income of a Greek tax resident could include the undistributed income of a foreign legal entity provided, among others, that he/she holds (severally or jointly with affiliated persons) shares directly or indirectly, voting or dividend rights in the capital of such foreign entity exceeding 50% and the latter entity is resident in a tax-free or low tax jurisdiction. In the latter case, such undistributed income will be subject to an additional 33% individual income tax.

As a general rule, EU entities fall outside the scope of Greek CFC rules unless the establishment or the financial activity of the legal entity meets conditions of an artificial arrangement or a series of artificial arrangements essentially created with the purpose of tax avoidance.

The requirements of artificial arrangements are in line with established case law of the Court of Justice of the EU. Therefore, if it is found that an entity's only purpose is a wholly artificial arrangement aimed at circumventing the application of the legislation of a Member State - in this case, Greece- the foreign entity can be characterised as a CFC, and its undistributed income would be considered as taxable (business) income of its Greek tax resident shareholder.

In parallel with the CFC Rules, on the 1st of January 2014, legislation regarding effective management of foreign legal entities was promulgated. Up until the 1st of January 2014, there was no concrete legislation governing the effective place of management principles and, consequently, assessment of tax residency of legal entities. In essence, the new rules provide for the relevant Greek authorities to treat non-Greek legal entities as Greek tax residents if, in the authority's opinion, the place of effective management is in Greece at any time during a particular fiscal year.

For the purposes of making such a determination, the Greek Income Tax Code states that the "place of effective management" is considered to be in Greece, based on certain facts and conditions, taking into consideration the following:

- (i) The place where the day-to-day management is carried out;
- (ii) The place where strategic decisions are made;
- (iii) The place where the annual General Meeting of shareholders and/or the Board of Directors takes place;
- (iv) The place of residence of the members of the Board of Directors;
- (v) The place where book and records are kept.

In addition to these elements, amongst other, the signatories to the legal entity's bank accounts and the residence of the majority shareholders may be taken into consideration when determining the effective place of management of the non-Greek legal entity.

It is well known that, for decades, Malta has been a jurisdiction of choice for the Greek shipping community, and the ongoing changes to the Greek legislation has made Malta all the more prominent, even outside the shipping industry. The truth of the matter is that Malta has worked for some time now at placing itself in a position where it is considered to be a financial hub, with a range of financial services that go beyond shipping. Today Malta's financial services industry includes many sectors such as aviation, corporate structures, i-gaming, funds, tax advisory, residency and citizenship, together with all the ancillary services. Whilst mention of the financial services industry does not necessarily bring to mind services such as residency, the truth of the matter is that each and every one of these sectors has an innate and intricate financial aspect that has become the driving force in opting for Malta. Furthermore, apart from the financial aspect at the core of many of these sectors, the fact of the matter has become that it is the sum of all these aspects that is the biggest attraction nowadays.

The uncertainty in Greece looks likely to continue, and we have witnessed first-hand how Greek stakeholders are biting the bullet and repositioning themselves. We no longer talk about simply incorporating companies in Malta as special purpose vehicles for owning vessels. We are now dealing with fully fledged setups with persons on the ground, and effective management of the entities in Malta. There has been much talk about whether Greek ship management companies will begin to seek pastures new to avoid the new tax implications brought about as a result of the bailout. If this truly becomes a reality, why should Malta be considered? The tax benefits are clear, not only for shipping companies, but also for fund administrators and companies trading in other sectors. A vast array of Double Tax Treaties are in place with many of the world's major economic States, adding an additional layer of security and confidence.

Yet Malta has gone further. It is all well and good to promote Malta as a safe country with a mild climate all the year round and a relatively low cost of living but we all know it takes a lot more to attract the brightest and finest to relocate. It is with this in mind that legislative incentives are being implemented in Malta. Reference to a 'holistic approach' has been used so often in various industries that it has lost its importance. However, the fact of the matter is that Malta has become such an attractive jurisdiction due to the holistic approach being taken in all industries. It is the sum of many Governmental policies and legislative enactments being developed over two decades, with one clear goal in mind that has led to this point.

The tonnage tax system applicable to vessels flying the Malta flag and owned by Maltese Merchant Shipping Organisations is an industry standard. Legislation applicable to the incorporation of Ship Management Companies is in place, and broader corporate tax legislation incentives have now been in effect for years. The

legislation is updated to meet industries' needs but, in essence, the tax mechanisms remain unchanged and are tried, tested and approved. Tax incentives extend beyond corporate tax, however, and include Value Added Tax (VAT) and Personal Income Tax benefits.

Pleasure yachts of certain sizes may benefit from substantially reduced VAT rates. Similarly, commercial yachts of certain sizes may benefit from considerable reductions on VAT charged on short term charters beginning in Malta.

From a personal income tax perspective, Citizenship and Residency programmes have been set up to complement corporate tax incentives. Ultimately, the goal is to entice companies and their people to relocate to Malta lock, stock and barrel. Granted, some people may only relocate for a few years, but the fact of the matter is that, for that period of time, those persons are subject to tax in Malta, and the effective place of management of the company they work for is Malta. Bearing in mind the legislative changes in Greece for CFCs and the effective place of management rules, these residency programmes take on an increased level of significance. There are various residency programmes to speak of but, just to mention two, I will make reference to the Highly Qualified Persons (HQP) Rules and the Global Residence Rules. Given the expansion and modernisation of Malta's economy, a conscious decision was made by the Government to attract knowledgeable and experienced personnel in industries such as the financial services sector, where expertise was either in short supply or lacking. This gave rise to the Highly Qualified Persons Rules aimed at attracting highly qualified persons to occupy "eligible office" with certain types of companies. "Eligible office" comprises employment in positions such as Actuarial Professional, Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, Chief Investment Officer, and Head of Investor Relations amongst others. In essence, individual income from a qualifying contract of employment in an "eligible office" is subject to tax at a flat rate of 15% as long as the requirements are satisfied.

On the other hand, the Global Residence Rules were implemented to allow an individual who has been granted special tax status in accordance with these Rules to be subject to a rate of tax of 15% on any income that is received in Malta from foreign sources.

When the effective rate of tax of a company can be brought down to 5% and the company's personnel has the potential of being subjected to a rate of tax of 15%, all within the bounds of EU legislation, the whole package becomes very attractive. It offers the much needed stability to those stakeholders who face uncertain economic times. It also becomes an attractive jurisdiction for those stakeholders attempting to tap the EU market. It becomes a cost effective, less bureaucratic yet well-regulated entry point into the EU. It is the package deal that Malta has to offer.