

Act no. 386 of 27 May 2005, as amended by Act no. 425 of 6 June 2005, Act no. 428 of 6 June 2005, Act no. 343 of 18 April 2007, Act no. 1235 of 24 October 2007 and Act no. 521 of 12 June 2009

## Taxation of Seafarers Act (Seafarer Taxation Act)

We Margrethe the second, by the grace of God Queen of Denmark hereby witness: Folketinget (The Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

### *Scope, etc.*

**1.-(1)** Income earned from working on board ships etc., is liable for taxation according to the general regulations of the tax legislation with the exemptions following from this Act.

**(2)** This Act shall apply correspondingly to taxation of income earned from working on board ships temporarily out of service due to repair work, temporary decommissioning etc. It is a condition that the person earning the income is covered by this Act immediately before the repair work or the temporary decommissioning etc., and that the conditions of employment were not solely entered into with the object of carrying out work on board a ship, which is out of service.

**(3)** Persons, who earn income from working on board a ship they own, or on ships they own a part of as joint owners or partners, are covered by this Act. The application of sections 5, 6, and 8 shall be on the condition that the owner's, the joint owner's or the partner's pay correspond to the pay given to employees with same seniority etc.

**(4)** Subsection (3) shall apply correspondingly to persons, with controlling influence over the shipping company owning the ship, where the said person carries out work, and thus has close links. Controlling influence shall mean ownership or command of voting rights as mentioned in section 2(2) of the "*ligningsloven*" (act on the assessment of income tax to the state). Close links shall mean persons as mentioned in section 16H(2), 3rd and 4th clauses.

**2.-(1)** For the purposes of this Act:

1. *Danish ship* shall mean: A ship, which is registered with home port in Denmark with a gross tonnage of 20 t or more, and which is used solely for commercial transportation of passengers or freight, for towage and as a salvage ship or as a cable-laying ship. A ship, which is registered with registered office on the Faeroe Islands, in Greenland or abroad with a gross tonnage of 20 t or more, and without crew is taken over to chartering by a Danish shipping company, shall be considered as a Danish ship. A ship, which is registered with registered office in Denmark, and without crew is taken over for chartering by a Faroese, Greenland or a foreign shipping company, shall not be considered as Danish.
2. *Foreign ship* shall mean: A ship with a gross tonnage of 20 t or more, used solely for commercial transportation of passengers or freight, for towage and as a salvage ship or as a cable-laying ship, and which is not considered to be Danish.
3. *Delimited trade* shall mean:

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- a) Trade or towage and salvage activities with ships, primarily sailing on Danish lakes, inland waterways and fjords.
- b) Use of ships in stationary business, including harbour boat trips and the like.
- c) Trade or towage and salvage activities with ships without means of self-propulsion.
- d) Regular services, where the sailing distance from port to port is less than 50 nautical miles.
- e) Other trade or towage and salvage activities, when the conditions are such that the individual in question has the opportunity to stay regularly at his/her habitual domicile.

(2) Subsection (1)(iii) a-c shall apply correspondingly to activities with cable-laying ships and stone-fishing vessels, including sand-pump dredgers.

*Tax deductions for seafarers*

**3.-(1)** Persons, who outside delimited trade earn income from working on board Danish or foreign ships may, in determining their income liable for taxation, deduct an amount of DKK 56,900. The same shall apply for work on board boulder-removal vessels, including suction dredging vessels, with means of self-propulsion and own cargo hold for transport of materials extracted from the sea bed with a gross tonnage of 20 t or more. If the person in question only earns income as mentioned in the 1st clause for part of the year, or for part-time employment, the deduction shall be proportionately reduced. Deduction shall be subject to the condition that terms of engagement for the person in question are equal to the conditions usually applying for seafarers.

(2) Subsection (1) shall apply correspondingly to income earned from work carried out on board ships and installations used in connection with the exploration and extraction of hydrocarbons outside Danish territorial seas and the Danish continental shelf area, and for work on board school and training ships, cf. the "*lov om maritime uddannelser*" (act on maritime education and training).

**4.-(1)** When deductions are made according to section 3, deductions according to sections 9(1), 9B-9D, and 13 of the "*ligningsloven*" (act on the assessment of income tax to the state) and according to section 49(1) of the "*pensionsbeskatningsloven*" (tax on pensions act) cannot be carried out at the same time.

(2) Persons, who may make deductions according to section 3, shall not be covered by section 9A(1)-(9) of the "*ligningsloven*" (act on the assessment of income tax to the state).

*Taxation on work on board a Danish ship registered in the Danish International Register of Shipping*

**5.-(1)** If a person, who is liable for taxation according to section 1 of the "*kildeskatteloven*" (act on taxation at source), has earned income from working on board a Danish ship, registered in the Danish International Register of Shipping and used for purposes, which could be covered by the Tonnage Tax Act (*tonnageskatteloven*), the total income tax shall be reduced by the amount, which proportionately falls on this income. The 1st clause shall apply correspondingly to an estate of a deceased person covered by section 1(2) of the Estate Tax Act (*dødsboskatteloven*). Bonus and redundancy payment etc., cf. section 7U of the "*ligningsloven*" (act on the assessment of income tax

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to the state), are covered by the 1st clause, when the benefit in question has a direct connection to work carried out on board ships mentioned in the 1st clause.

**(2)** Persons, who are liable for taxation according to section 2(2) of the "*kildeskatteloven*" (act on taxation at source) are not liable for taxation of the income earned from working on board a Danish ship, registered in the Danish International Register of Shipping and used for purposes, which could be covered by the Tonnage Tax Act. Subsection (1), 3rd clause shall apply correspondingly.

**(3)** Tax exemption according to subsections (1) and (2) is conditional on earned income and bonuses etc. being fixed taking into account the tax exemption.

**(4)** Persons, who may apply subsection (1), shall not be covered by section 9A(1)-(9) of the "*ligningsloven*" (act on the assessment of income tax to the state).

**5a.-(1)** Section 5 shall, irrespective of the provisions of the Tonnage Tax Act, apply correspondingly to work on board cable-laying vessels, cf. however subsection 2.

**(2)** During work on board cable-laying vessels within the EU/EEA, section 5 shall apply only in cases where the ship's activities in connection with maritime transport of cable drums, etc. during an income year measured in relation to the nautical miles navigated amount to at least 50 per cent of the ship's total activities. Nautical miles navigated during cable-laying activities and tasks in relation hereto shall not be considered maritime transport. It is a condition that the vessel is registered in an EU or EEA member state.

**6.-(1)** When working on board a ship used as a tow boat and salvage ship within the EU/EEA, section 5 shall only apply in cases, where the ship carries out activities constituting maritime transport for no less than 50 per cent of the time the ship is in service during an income year. It is a condition that the vessel has its registered office in an EU or EEA Member State.

**(2)** When applying subsection (1), waiting time is assimilated proportionately between the time tug boats and salvage ships are at sea, and the time spent on other activities.

**7.** When working on board a ship, which sails a regular passenger service between ports in EU Member States, section 5(2) shall only apply for persons, who are nationals or domiciled in an EU or EEA Member State.

***Taxation when working on board other ships***

**8.** Section 5 shall, regardless of the provisions of the Tonnage Tax Act (*tonnageskatteloven*), apply correspondingly, when working outside the EU/EEA on board boulder-removal vessels, including suction dredging as mentioned in section 10(1).

**9.-(1)** For persons liable for taxation according to section 2(2) of the "*kildeskatteloven*" (act on taxation at source), and who earn income as mentioned in section 43(1) of the "*kildeskatteloven*" (act on taxation at source) for work carried out on board a Danish ship outside delimited trade without being covered by section 5(2), the tax shall be determined as 30 per cent of the gross income. The same shall apply for persons liable for taxation according to section 2(2) of the

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"*kildeskatteloven*" (act on taxation at source), and without being covered by section 8 earn income from working on board boulder-removal vessels, including suction dredging, as mentioned in section 10(1).

(2) However, according to subsection (1), a person liable for taxation may opt to be taxed, as if said person was covered by section 2(1)(i) of the "*kildeskatteloven*" (act on taxation at source). The election shall be made no later than 1 May after the income year in question. The election may be reversed until and including 30 June in the second calendar year after the expiry of the income year.

(3) The tax, which according to subsections (1) and (2) shall be determined for persons, who are domiciled on the Faeroe Islands or in Greenland, shall accrue to the state treasuries of the Faeroe Islands and Greenland, respectively, except where the relevant person's wage income forms part of the reimbursement to the company under section 10. When taxation is elected according to subsection (2), the amount that shall accrue to the state treasuries of the Faeroe Islands and Greenland, respectively, shall be calculated as the part of the total Danish tax of the person in question that proportionately is paid from the income, which may be liable for taxation according to subsection (1).

*Other provisions*

**10.-(1)** Danish shipping companies, which carry out activities with boulder-removal vessels, including suction dredging, and which are registered with a registered office in Denmark with a gross tonnage of 20 t or more, or which are registered with a registered office in another EU/EEA Member State with a corresponding gross tonnage and where the crew has not been taken over for operation by a Danish shipping company, may after application receive reimbursement, cf. subsections (2) and (3) for persons, who carry out work on board a ship, and who are not covered by section 8. This shall also apply to shipping companies, which are liable for taxation according to section 2(1), a of the "*selskabsskatteloven*" (act on corporate income tax), or according to section 2(1)(iv) of the "*kildeskatteloven*" (act on taxation at source), when these companies are domiciled in an EU Member State.

(2) A condition for reimbursement shall be that the individual vessel shall have means of self-propulsion and its own cargo hold for transport of materials recovered from the sea bed, and that the vessel carries out sea transport activities no less than 50 per cent of the time it is in service.

(3) Reimbursement shall be given month for month or annually to the shipping company by an amount, which for each individual wage earner are determined as 40 per cent of the share of the basis for the labour market contribution as determined according to section 2 of the "*lov om arbejdsmarkedsbidrag*" (act on labour market contributions), which may be attributed to work carried out on board a vessel, which meets the conditions in subsections (1) and (2).

(4) Subsection (3) shall apply correspondingly for the persons mentioned in section 1(3). The reimbursement shall be given as 40 per cent of the average basis for reimbursement according to subsection (3) for wage-earners, who carry out work on board the vessel in question.

(5) Shipping companies that expect reimbursement according to subsections (1)-(4), shall keep separate accounts of the extent of the sea transport.

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(6) When adjusting reimbursements that have been paid in excess, section 7 of the *opkrævningslov* (Collection Act) shall apply correspondingly.

11. If tax-free net pay is paid out according to sections 5-8 and it becomes apparent that the basis for this does not exist, the employer alone shall be liable for the income tax and the contributions, which should have been paid according to the "*lov om arbejdsmarkedsbidrag*" (act on labour market contributions) and "*the lov om arbejdsmarkedets tillægspension*" (Act on labour market supplementary pension scheme - ATP). The income tax and the contributions mentioned in the 1st clause shall be determined on the basis of the gross earnings, forming the basis for the determination of the tax-free net pay, cf. section 5(3). The income taxes and contributions shall be considered as due on the date they would otherwise have been paid, if sections 5-8 had not been applied.

12. The Minister for Taxation may lay down more detailed regulations on the implementation and administration of this Act.

12a.-(1) Anyone who intentionally or by gross negligence give incorrect or misleading information for use when deciding on reimbursements under section 10 shall be liable to punishment by fine.

(2) The penalty may be increased to imprisonment for a term of up to one year and six months if the act has been made with the intention of acquiring reimbursements wrongfully unless stricter penalty is due according to section 289 of the Penal Code.

(3) Companies, etc. (legal entities) may be liable to punishment under the provisions of chapter 5 of the Penal Code.

(4) In regulations issued by the Minister for Taxation pursuant to the Act, punishment by fine may be determined for contraventions of the provisions of the regulations.

13. (Repealed)

*Transitional provisions*

14.-(1) The sailing distance according to section 2, no 3, d shall be fixed at 25 nautical miles when working in traffic on routes, where on the 23 February 2005 exemption was given according to the provisions in section 5(4) of the "*lov om særlige fradrag til sømænd*" (act on special deductions for seafarers etc.), cf. Consolidated Act no. 723 of 6 August 2001, as amended by section 11 of Act no. 394 of 28 May 2003.

(2) Subsection (1) shall not apply, if the navigation of a route has terminated after 23 February 2005.

15. If exemption has been granted to a ship no later than 23 February 2005 according to section 5(3) of the "*lov om særlige fradrag til sømænd*" (act on special deductions for seafarers) etc., cf. Consolidated Act no. 723 of 6 August 2001, as amended by section 11 of Act no. 394 of 28 May 2003, and the conditions in section 3(1) for making deductions are not met, the customs and tax

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authorities may, after application, allow seafarers, who carry out work on board the ship in question, to make deductions according to section 3(1). Authorisation shall be given, when the ship is still used for the purpose for which the exemption was granted, and the authorisation shall lapse, when this is no longer the case. If the authorisation has lapsed, a new authorisation cannot be granted.

**16.** Persons, who on the 23 February 2005 were not excluded from using section 9A (1)-(9) of the "*ligningsloven*" (act on the assessment of income tax to the state) cf. section 9A(11) of the "*ligningsloven*" (act on the assessment of income tax to the state), and who may make deductions according to section 3, may elect to continue to be covered by section 9A(1)-(9) of the "*ligningsloven*" (act on the assessment of income tax to the state). If deductions have been made according to section 3, the 1st clause shall no longer apply. When the 1st clause has been elected, deductions may no longer be carried out according to section 3.

*Entry into force and change of other legislation*

**17.-(1)** This Act shall enter into force on the day after notification in the Danish Law Gazette and shall be effective from 1 July 2005, cf. however subsection (2).

**(2)** Sections 3 and 4, 14-16 and 27 of this Act shall be effective from the 2006 income year.

**18.** This Act shall not apply to the Faeroe Islands and Greenland.

**19.** The "*lov om en arbejdsmarkedsfond*" (act on labour market fund), cf. Consolidated Act no. 694 of 20 August 2002, as most recently amended by section 1 of Act no. 468 of 9 June 2004, shall be amended as follows:

**1.** Section 8(3) shall be worded as follows:

»(3) Remuneration, which is covered by sections 5 and 8 of the Taxation of Seafarers Act (*lov om beskatning af søfolk*), shall not be included in the basis for contributions«.

**20.** The Estate Tax Act (*lov om beskatning ved dødsfald*), cf. Consolidated Act no. 827 of 22 September 2003, as subsequently amended by section 4 of Act no. 458 of 9 June 2004, shall be amended as follows:

**1.** Section 55(2), 1st clause shall be worded as follows:

»Final tax assessment according to section 13 may not be demanded on income as dealt with in section 2(5), and sections 48B, 65, 65A, and 65C of the "*kildeskatteloven*" (act on taxation at source), section 21(2) of the "*kulbrinteskatteloven*" (hydrocarbon tax act), and section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**2.** Section 56(2), 1st clause shall be worded as follows:

»Income referred to in section 2(5), and sections 48B, 65, 65A, and 65C of the "*kildeskatteloven*" (act on taxation at source), section 21(2) of the "*kulbrinteskatteloven*" (hydrocarbon tax act), and section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*), shall not be included in the calculation of the estate tax income«.

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**21.** The "*lov om opkrævning af indkomstskat samt kommunal og amtskommunal ejendomsværdiskat for personer m.v. (kildeskat)*" (act on income tax and municipal and county authority property tax for persons, etc. (taxation at source)), cf. Consolidated Act no. 678 of 12 August 2002, as most recently amended by section 4 of Act no. 468 of 9 June 2004, shall be amended as follows:

**1.** In *section 2(7)*, » section 48C(1) « shall be amended in two places to: » section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**2.** In *section 5B(3)*, »section 48C(1) « shall be amended to: »section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**3.** *Section 48C* shall be repealed.

**4.** *Section 48D* shall be repealed.

**22.** The "*lov om kommunal indkomstskat*" (act on municipal income tax), cf. Consolidated Act no. 199 of 24 March 2003, shall be amended as follows:

**1.** In *section 9(1), 3rd clause*, » the regulations of section 48C of this Act« shall be amended to: » section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**23.** The "*lov om påligningen af inkomst til staten*" ("*ligningsloven*") (act on income and property tax to the state), cf. Consolidated Act no. 995 of 7 October 2004, shall be amended as follows:

**1.** *Section 9A(11), 1st clause*, shall be worded as follows:

»Persons, who receive bonuses according to section 7, no. 15 or section 31(4) shall not be covered by subsections (1)-(9).«

**2.** In *section 33(6)*, » section 33C« shall be amended to » section 5 or section 8 of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**3.** In *section 33A(1), 3rd clause* »cf. section 33C« shall be amended to: » cf. the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**4.** *Section 33C* shall be repealed.

**24.** The "*lov om indkomstskat for personer m.v.*" (act on income tax and property tax on persons, etc.) cf. Consolidated Act no. 772 of 29 August 2003, as most recently amended by section 3 of Act no. 302 of 30 April 2004 shall be amended as follows:

**1.** In *section 10(5), 3rd clause*, » the regulations in section 48C of the "*kildeskatteloven*" (act on taxation at source)« shall be amended to: »section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**2.** *Section 13(5), 4th clause* shall be worded as follows:

» The provision shall not, however, apply where the tax has been reduced in accordance with the provision in section 33A of the "*ligningsloven*" (act on the assessment of income tax to the state), or in accordance to section 5 or 8 of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

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**25.** The "*skattekontrolloven*" (act on tax control), cf. Consolidated Act no. 869 of 12 August 2004, shall be amended as follows:

**1.** In *section 2(1), no. 2* »section 48C of the "*kildeskatteloven*" (act on taxation at source)« shall be amended to: »section 9(1) of the Taxation of Seafarers Act (*lov om beskatning af søfolk*)«.

**2.** In *Section 7(2), no. 6* »a Danish ship in foreign trade and trade in limited waters, respectively, cf. section 2 of the "*lov om særlige fradrag for sømænd m.v.*" (act on special deductions for seafarers, etc.)« shall be amended to: » a Danish ship in or outside delimited trade, respectively, cf. section 2 of the Taxation of Sailors Act (*lov om beskatning af søfolk*)«.

**26.** The Tax Administration Act (*lov om skattemyndighedernes organisation og opgaver m.v.* ("*skattestyrelsesloven*"))", cf. Consolidated Act no. 868 of 12 August 2004, shall be amended as follows:

**1.** In *section 21(1), 3rd clause* »seafarers etc., who sail foreign trade« shall be amended to »seafarers, who sail outside delimited trade«.

**27.** The "*lov om særlige fradrag til sømænd m.v.*" (act on special deductions for seafarers, etc.), cf. Consolidated Act no. 723 of 6 August 2001, shall be repealed.

**28.** Act no. 460 of 31 May 2000 on amendments to the Danish Merchant Shipping Act (*søloven*) and to various taxation acts. (Expansion of the Danish International Register of Shipping scheme and taxation of seafarers and aviation staff in international traffic etc.) as amended by section 3 of Act no. 270 of 8 May 2002, shall be amended as follows:

**1.** *Sections 2-7* shall be repealed.

*Amalienborg, 27 May 2005*

*Under Our Royal Hand and Seal*

*Margrethe R.*

/Kristian Jensen