Proposal to reduce the income tax burden on Canadian Seafarers

By Martin Leduc
December 15, 2006

The objective of this booklet is to provide further information and background toward the adoption of a tax system in Canada, which recognizes the importance of professional seafarers to our national social and economical well-being. As of December 2006, there is no program in Canada to achieve this.

The lack of tax relief for seafarers causes undue financial hardship on the family of seafarers working and training internationally. Comparatively, seafarers from most other nations, who meet certain criteria, are not subject to income taxes.

As a result, Canadian seafarers face a serious competitive disadvantage while training and working in the global market. It is the belief of this author that the creation of a simple system, transparent, and already established in other countries would be a huge step towards making the professional Canadian seafarer competitive in the global marine industry.

“ Whoever commands the sea, commands the trade, whoever commands the trade of the world, commands the riches of the world, and consequently the world itself. “

- **Sir Walter Raleigh**

Sir Walter Raleigh, or Sir Walter Ralegh (1552 or 1554 – 29 October 1618), is a famed English writer, poet, courtier and explorer. He was responsible for establishing the first English colony in the New World, on June 4, 1584, at Roanoke Island in present-day North Carolina.

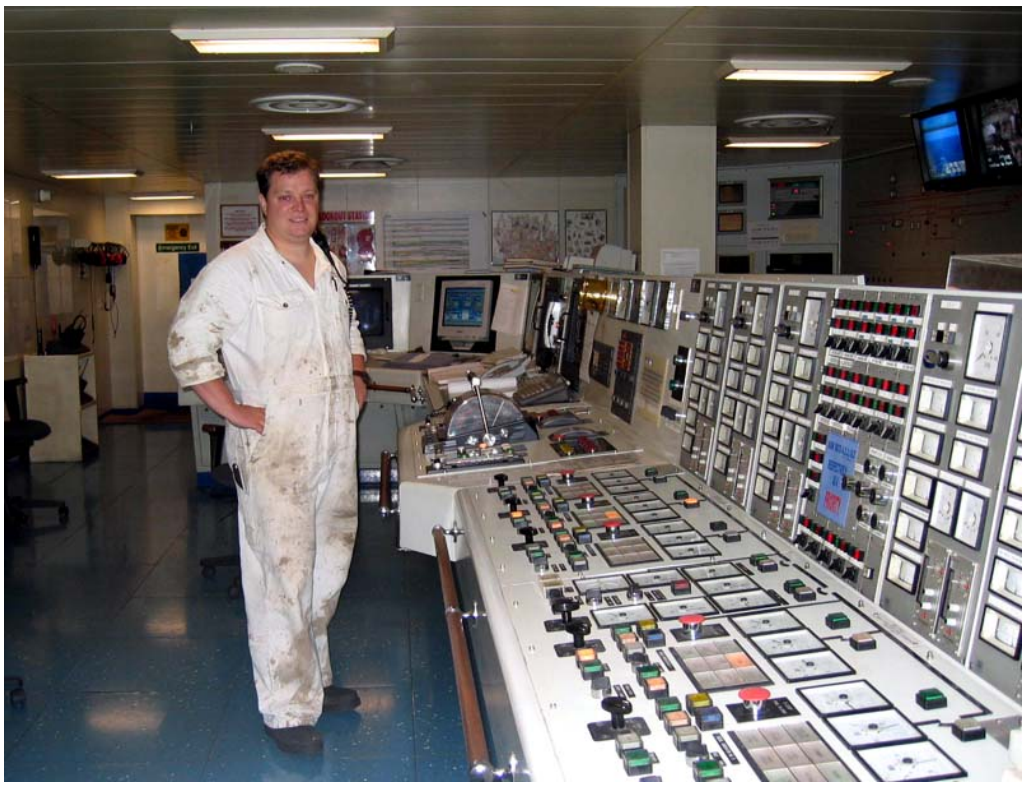
Table of Content

About the author…

Martin Leduc is a licensed Canadian Marine Engineering Officer on a Bahamian flagged, UK owned, US operated, internationally crewed passenger vessel trading in the Caribbean. He is part of a team responsible for the safe and economical operation of the 75,000 hp plant and auxiliary equipment onboard the ship.

In 1999, he created and continues to maintain Martin's Marine Engineering Page – www.dieselduck.ca, a web site promoting marine engineering excellence by offering resources, information and a place for professional seafarers to exchange ideas. The web site has over 700 visitors every day, most notably from Canada (40%).

He is an associate member of the Canadian Institute of Marine Engineering and resides with his spouse and young son in Nanaimo, British Columbia, Canada.



Section 1
Opinion Article

The Seafarer and the Taxman

Martin Leduc
Martin's Marine Engineering Page - www.dieselduck.net
June 8, 2004

It's ten in the evening; the control room is now quiet after a busy day of maintenance and repairs. The 80,000 tons ship gently rocks reminding you that you're at sea. Alone in the control room, overseeing four people on watch, and the five massive diesels generating 51,000 kW. They reverberate at your feet as it carries 4000 souls through the night. With this great responsibility, an engineer may feel a deserved sense of pride and accomplishment.

After all it wasn't an easy "road to travel" to get to this point, or easy being here! The long contract away from your family, the nomadic lifestyle, the never-ending learning curve, being a cadet; it is no wonder that report after report predicts shortages of shipboard officers. Nowhere is that more so, than in Canada, by all accounts, already short of trained experienced officers.

In this age of skill shortage, it is indeed an accomplishment for Canadian officers to compete in the global marketplace, where our skills as professional seafarers are honed alongside our international peers. Many countries have long realized the benefits of having an international pool of seafarers to draw from for their vital national trade interests. And many of those countries, from Asia to Europe, have adopted comprehensive policies protecting the human resources needed for their nation's survival in the global market.

When that officer in the control room of the ship gets relieved at midnight, it will most likely not be another Canadian officer. It could be a Swede, Phillipino, English, Ukrainian, Italian, or Argentinean – multinational crews are the reality in this world, where the "Standards of Training, Certification, and Watchkeeping for Seafarers" (STCW) have come into play. The idea is that no matter where officers are licensed they should all be able to equally perform their duties on a ship.

And generally speaking, the wages have begun to reflect unified certification standards. The expected competency for ship's officer and their remuneration is generally the same for a particular rank, regardless of the seafarer's nationality. And those wages are dictated by the global supply of professional seafarers.

This wage scale has taken into consideration that the majority of international professional seafarers do not pay income taxes in their home countries. Because of the low numbers of Canadian seafarers working internationally, we cannot really influence the market rate for wages, and therefore we must conform to the set wage scale.

As a licensed Marine Engineering Officer, working and living on a ship outside Canada, my income is subject to income taxes at the same level as if I was working and living in Canada, which means that my “take home” pay is at least 30% lower than most of my international counterparts. This creates a serious competitive disadvantage for Canadians, resulting in undue hardship on our seafaring professionals and their families.

Imagine performing your job alongside your peers yet taking home 30% less wages. Why would you? The realities are that when my wife and I sit down and talk about finances and plans for a house or family; the bottom-line is depressing. Financially, I would be better off being a fast food restaurant manager, than working as a certified Marine Engineering Officer, with years of training and experience. Doing so, I could take advantage of all the benefits of working within Canada: social programs, higher occupational standards, extended benefits, employment insurance, etc.

I believe that this obstacle is harmful to Canada’s future and that it is important to institute a tax scheme for Canadian seafarer that is inline with the majority of other nations. For example, seafarers from the United Kingdom who work on ships outside of their nation’s territory, for more than six month in a year, do not have to pay income tax on their wages earned aboard a ship.

Canada currently has a “similar” program and it is called the Overseas Employment Tax Credit. Although a few seafarers are currently taking advantage of the credit, the majority cannot meet the narrow criteria of the program. An adjustment of this tax credit program, or better yet, the creation of a new program similar to the UK’s, would go a long way in helping Canadian seafarers compete in a global marketplace, and assure our nation has a pool of trained, experienced seafarers to draw from.

Most people’s reaction to this idea is supportive, but overshadowed by apathy. After all, “death and taxes” are the only guarantees in life. In the absence of a united voice for professional Canadian seafarers working internationally, I have submitted my observations to Members of Parliament, and to the Finance Minister. If you are interested in the idea, you can contact me by email or through my website: Martin’s Marine Engineering Page – www.dieselduck.net. In the near future, I will be putting up an area with information about this campaign, and its status.

Section 2
Questions and Answers

Income tax and professional seafaring

Why do seafarers need special income tax considerations?

An elimination, or reduction, of income taxes for seafarers would allow Canadian seafarers, already respected in the seafaring community, to continue to work abroad without undue financial hardship to their families. No income taxes for professional seafarer's wages earned outside Canada's territorial water would bring Canadian Seafarers inline with many other nations' policies, such as the United Kingdom, Australia, Italy, Croatia, France, South Africa, Philippines and many more. This allowance would level the playing field for Canadian Seafarers, currently at a serious competitive disadvantage due to our heavy tax burden.

On the cruise ship I work on, I, and fellow Canadians, was working alongside other licensed staff from across the world. As officers, we are all license under the same guidelines set by international standards (the United Nations' International Maritime Organization sets these standards). All officers are qualified to perform their duties regardless of the nationality. In fact the only difference at the end of the day, was our individual spending power. As Canadian, my income earned outside Canada was taxed at the same level as if I was in Canada. This is much difference than my peers, who pay no taxes on their income earned as seafarers outside their nation's territory for a given period of time.

What's in it for Canadians?

Canada will gain on many fronts. For the future, Canada will have a vibrant, experienced professional workforce to draw from for its own maritime needs, crucial to our economic well-being. Lower taxes will make it more attractive for seafarers to work abroad on a consistent basis and bring the financial results into our economy. The financial attractiveness of a career at sea would increase the efficiency of, and interest in our existing maritime education institutions straining to find candidates. Making these institutions financially self reliant, relieving the Canadian taxpayer.

Seafarers already receive many benefits from being on a ship?

Seafarers perform their work on a ship away from their families and homes. They are provided with room and board, and limited recreation facilities. Due to the nature of a ship (size of cabins) and their close quarters, seafarers usually don't have many personal effects aboard and that is one of the many reasons for the need to maintain a residence, or "home port".

Working on ships is like a holiday, why should they need a tax break?

Working on a ship is not a holiday; time away from the ship is not a vacation either. These are misconception often associated with seafaring. For example, take twenty employees at random from your work place. Confine yourselves to a 3000 square foot of living area for three months without ever being more than 150' apart. Using this analogy, one begins to understand that life on ship presents many challenges before a single ounce of energy has been spent towards actual work. The work hours themselves are no picnic; 10-14 hour days often split into two or three blocks, without days off, for the length of the contract. That is why working on a ship is not a vacation, and time off the ship is spent much like a weekend or evenings providing a much needed break.

Why shouldn't seafarers pay their "fair share"?

It is completely reasonable to expect to pay our fair share, which is exactly what were after. Firstly, consider that seafarers spend more than half of the year physically outside our borders, yet that outside income flows into our economy through property taxes, GST, sales tax etc and general spending – a net addition to our nation's GDP. Also consider that maritime law requires employers to provide healthcare for seafarers and therefore healthcare is not a burden to Canadian taxpayers. Even with that in mind, citizens of BC must pay full healthcare premiums regardless of being out of the country for extended time periods. Seafarer working for foreign companies are also disqualified from social programs such has Employment Insurance.

You are asking for special treatment?

We are asking the people of Canada and the federal government to recognize the importance of the professional maritime community to Canada and its future. Canada relies heavily on the world trade made possible by shipping; and shipping is made possible by professional seafarers. Seafarers make many great and real sacrifices in carrying out their duties. Seafarers from Canada will make decisions, which put the interest of Canada first, reducing our need to rely on foreign assets. And not just for commerce, but for our national defence and our Canadian sovereignty.

Remember the GTS Katie; in the mid Atlantic, August 2000, Canadian forces commandeered the ship in order to free up its cargo of Canadian military vehicle worth over CDN$223 million. The equipment was "held hostage" because of payment issues between the charterer, crew and owners. The GTS Katie was a multipurpose Ro/Ro (Roll on Roll off – like a ferry) built for the Soviet Navy, the owner off the ship were located in Maryland, USA, the ship was registered in St Vincent and the crew was Croatian, Ukrainian and Russian.

A proposed course of action

How do Canadian seafarers deal with taxes now?

- One option for seafarers is to move to a foreign country and sever all ties to Canada. This is a popular option for Canada's youngest professionals who are "mobile" and welcome worldwide. The process of severing all ties to your home is quite extensive and long. Forcing professional mariners outside Canada would certainly put a strain on our future supply of seafarers. Current research indicates a worldwide shortage of maritime officers, and Canada already is not immune to that crisis.
- Another option for seafarers is to create an offshore corporation much like shipping companies already do. This option although complicated for the average sailor, is not uncommon. The taxation system in place is structured in a manner that results in no or much lower overall income taxes.
- One other option is to not declare your earned income. This option is unethical, and contravenes Canadian laws, but outside of Canada, Revenue Canada has little jurisdiction to collect data and therefore would be unable to exert effective sanctions.

Isn't there any tax scheme that already applies to seafarers?

Yes. There are many countries with income tax regime specifically tailored for seafarers. Most are identical in purpose and plainly stated: If a seafarer works outside their home country's territorial waters, earning wages on a ship, for more than half of the year, that income is not taxable by that country. Canada has no such regime. Some Canadian sailors, working in the oil and gas sectors (supply ships, tankers, support ships, etc.), do get relief from income taxes by taking advantage of Revenue Canada's Overseas Employment Tax Credit (OETC).

What is the Overseas Employment Tax Credit (OETC)?

The technical interpretation of the OETC is best described by Canada Custom and Revenue Agency's (CCRA) own publication – IT 497 R4. This publication basically states that if, in one tax year, you work in a certain field (i.e. Engineering), for a "Canadian" company, involved in certain industries (i.e. Oil Exploration), outside Canadian territory for more than six consecutive months, then you can have $80,000 of your $100,000 income not subjected to income taxes.

A marine engineering officer working for a Canadian placement agency on a foreign flagged ship supplying an oil-producing platform could, by definition, be entitled to the OETC.

Why not alter the OETC to include seafarers?

An alteration to the existing OETC may in fact the simplest to implement. A slight "tweaking" of the already existing program would most likely not require any parliamentary involvement. But, it is this author's belief that the OETC program was designed for "white collar" workers and alterations may create more confusion than necessary.

What alteration to the OETC is needed to accommodate tax concessions for Professional seafarers?

- According to CCRA's guide, one of the qualifying occupations for the OETC is "Engineer", therefore on a ship; only marine engineering officers should technically qualify for the credit. As explained further on this document, engineering officers make up only part of the ship's complement; there is also deck officer, cooks, deckhands, oilers etc.
- The definition of employer will have to be expanded to include ship owners/ manager/ crewing agent of non-Canadian origin.
- The length of time away from Canadian territory should be changed from six months consecutive, to total time. Most seafarers spent more than six months, in a year, physically away from their home, but rarely do they do it in one consecutive period.

Should there be a similar program to the OETC, but for professional seafarers?

Yes. The require changes to the OETC really are the core of the program, and doing so may not include all professional seafarers and may create more confusion. A purpose designed program, similar to the OETC, but specifically tailored for professional seafarers is the clearest way to achieve this goal.

About seafaring

What is a professional seafarer?

A professional seafarer is licensed or unlicensed person who earns wages while carrying out their responsibilities as part of a ship's crew.

What is meant by licensed and un-licensed?

The operation of a ship requires various skilled people who fall into two general categories: licensed, also know as Ship's Officers, and un-licensed, known as ratings. Officers who are held responsible for the safe operation of the machinery and manpower assigned to them. Ratings perform various shipboard tasks such as painting, cargo handling, cooking, cleaning, repairs and more. Officers and Ratings are further categorized into two departments on the ship, Deck and Engineering.

What is the Deck Department?

The deck department of a ship is responsible for the safe navigation, cargo (or mission) operations and general upkeep of the exterior structure of the ship. Ratings are known as seaman or deckhands and work under the guidance of the Deck officers who navigate the ship and answer to the Master – the senior deck officer also known as the Captain.

A typical cargo ship as seen in the port of Vancouver might have a crew of 17 or so. The Master or Captain is in charge of the ship at all times and in the deck department, there will be the a Chief Officer (head of navigation), a First and Second Mate. The Bosun answers to the deck officers and is the leader of the three seamen.
In the engine room, the Third, Second and First Engineers answer to the Chief Engineer. The Chief mechanic, the lead hand, and 2 wipers answer to the Engineering officers.
The Chief Cook reports to the Chief Officer, and usually has a steward answering to them.

What is the Engineering department?

The engineering department of a ship is responsible for the safe and efficient operation and repair of the onboard machinery used for propulsion, hotel and cargo operations - basically anything that has bolts or uses electricity. Ratings in this department are known as wipers, oilers, mechanics etc. they work under the supervision of the Engineering Officers who answer to the chief engineer who answers to the Master.

Engineers are a cross between Professional Engineers and heavy duty mechanic and are responsible for the operation and maintenance of the ship's mechanical, electrical, and electronic systems. Engineers, and seafarers in general, must do their work in a physically, sometimes violently changing environment, and at any time will be called in an emergency such as fighting an onboard fire or search and rescue operations.

Who oversees the licensing and certification of Canadian seafarers?

In Canada, professional seafarers are licensed by Transport Canada – Marine Safety, which is guided by international agreements reached under the International Maritime Organization, a division of the United Nations. As such, our licenses are recognized worldwide, and enable us to staff licensed positions on commercial vessels of any Nationality. Likewise, licensed seafarers from various nationalities have the same opportunities to compete for those positions. All ships are required by international law to be manned by a number of officers and crew who have proven their competence before a regulatory board.

Why do they need to go out of the country to work?

In order to achieve certain certifications, seafarers are required by Transport Canada, to complete a period of time performing specific tasks. These tasks can only be performed on ships trading internationally or on larger ships. Because Canada has very few deep-sea ships, time spent aboard Canadian Registered vessel usually involves coastal trading on smaller vessels with limited equipment, a valuable experience, but not one that conforms to international certification requirements. In some cases, a person *must* work on a foreign going vessel to advance their license, such as a Master Mariner (Captain). A person cannot command a Canadian Registered vessel unless they hold a Canadian Master Mariner License.

Further information…

Report - Canadian ship's crew shortage – Submission of the Canadian Merchant Guild to the International Commission on Shipping (ICONS) – Appendix #5

Report – International ship's crew shortage – OECD Maritime Transport Committee's Availability and Training of Seafarers

Information Bulletin – UK's Foreign Earning Deduction (FED) for Seafarer – Inland Revenue Help Sheet IR205 – Appendix #3

Information Bulletin – Canada's Overseas Employment Tax Credit (OETC) – CCRA IT-497R4 – Appendix #1

Research Paper – Statistic Canada report on the Evolution of the deep sea fleet that supports Canada's trade - # 54F002XIE

…Online

- UK's Inland Revenue service website http://www.hmrc.gov.uk/manuals/senew/SE70199.htm

- Martin Marine Engineering Page – www.dieselduck.ca/tax

Section 3
Creating Awareness

Martin L. Leduc

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January 23, 2004

Honourable David Anderson
970 Blanshard Street
Victoria, British Columbia, Canada
V8W 2H3

Dear Minister Anderson,

I am writing to you to seek your advice and help in a matter important to many professional Canadian seafarers, my family, and me. It is my objective to change the Canadian taxation scheme for professional seafarers to reflect the current global standard.

As a licensed Marine Engineering Officer, working and living on a ship outside Canada, my income is subject to income taxes at the same level as if I was working and living in Canada. This is much different than my peers, who pay no taxes on their income earned as seafarers outside their nation's territory. With a lightened tax burden, seafarers from nations other than Canada can compete for positions worldwide at a lower rate of pay. This creates a serious competitive disadvantage, resulting in undue hardship on our seafaring professionals and their families.

I believe that this competitive disadvantage is harmful to Canada's future and that it is important to institute a tax scheme for Canadian seafarer that is inline with other nations. For example, seafarers from the United Kingdom who work on ships outside of their nation's territory, for more than six month in a year, do not have to pay income tax on their wages earned aboard a ship.

Canada currently has a "similar" program and it is called the Overseas Employment Tax Credit. Although a few seafarers are currently taking advantage of the credit, the majority cannot meet the narrow criteria of the program. An adjustment of this tax credit program, or better yet, the creation of a new program like the UK's, would go a long way in helping Canadian seafarers compete in a global marketplace.

Seafarers working and training internationally will ensure that the Canadian fleet has enough well trained, experienced officers for the future. I have little idea on the procedure to follow for this grand undertaking; therefore your valuable insight would go a long way in achieving this goal for all Canadian seafarers. I realize that you are very busy, but I would like to meet with you, in person, to discuss this topic.

Included with this letter, are some questions and answer which I anticipate you might ask, should you have others, please feel free to contact me by mail, email or telephone. I have also included some informative bulletins from the CCRA, and the UK's Inland Revenue service describing the UK's approach to seafarer income. I anxiously await your reply.

Sincerely yours,

Martin Leduc

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April 5, 2004

Mr. Martin L. Leduc
103-241 Cook Street
Victoria, BC V8V 3X4

Dear Mr. Leduc:

RE: PROFESSIONAL SEAFARERS - TAX ISSUE

Thank you for the information package, proposing a change to Canadian tax law with respect to professional seafarers who work and live on ships outside Canada. I apologize for the considerable delay in responding.

You clearly spent a good deal of time preparing this proposal, and I believe that your idea warrants further consideration. Consequently, I have taken the liberty of forwarding the package to Finance Minister Goodale for his attention. A copy of my accompanying cover letter is enclosed for your information.

As you are a resident of The Hon. David Anderson's riding, I have asked the Minister to reply directly to you. Thanks again for sharing your idea to make Canada's tax scheme for professional seafarers more competitive.

Yours sincerely,

Gary Lunn, MP
GL/ah

Enclosure

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April 5, 2004

The Hon. Ralph Goodale, PC, MP
Minister of Finance
Room 207, Confederation Bldg.
House of Commons
Ottawa, ON K1A 0A6

Dear ~~Minister~~ Ralph:

RE: PROFESSIONAL SEAFARERS - TAX ISSUE

Enclosed is a proposal submitted to my office by Mr. Martin L. Leduc, a resident in The Hon. David Anderson's riding. Mr. Leduc proposes a change to Canadian tax law with respect to professional seafarers who work and live on ships outside Canada.

I believe Mr. Leduc's proposal package to be self-explanatory, and would appreciate your responding to him. As Mr. Leduc lives in the Victoria riding, I ask that you reply directly to him. Thank you for your attention to this matter.

Yours sincerely,

Gary Lunn, MP
GL/ah

Enclosures

Copy: Mr. Martin L. Leduc

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DR. KEITH MARTIN, M.D., M.P.
ESQUIMALT - JUAN DE FUCA

Victoria, BC
January 29, 2004

Mr. Martin Leduc
103 – 241 Cook Street
Victoria, BC V8V 3X4

Dear Mr. Leduc:

Thank you for your comprehensive letter. I must admit I wasn't aware of the issue and do not feel I have enough expertise to give you a competent answer. However, I will forward your letter to the Minister of Finance.

I will be interested in the Minister's answers and will send you a copy of his reply as soon as we receive it.

Best wishes,

Keith Martin

Dr. Keith Martin, M.P.
Esquimalt – Juan de Fuca

KM:am

Martin L. Leduc

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May 15, 2004

Hon. Jim Karygiannis, P.C., M.P.
Parliamentary Secretary to the Minister of Transport
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Hon. Jim Karygiannis,

I read with interest, your group's press release of April 22, 2004 (No. H018/04), found on the Transport Canada's website, about exploring avenues of attracting and retaining skilled labour in the transportation sector. I think it is a worthy venture and would like to kindly submit a proposal to modify the current seafarer tax scheme, which may interest the group. I hope I am not late and breaking too many protocols in submitting to you in person.

As a licensed Marine Engineering Officer, working and living on a ship outside Canada, my income is subject to income taxes at the same level as if I was working and living in Canada. This is much different than my multi-national peers working on the ship, who pay no taxes on their income earned as seafarers outside their nation's territory. With a lightened tax burden, seafarers from nations other than Canada can compete for positions worldwide at a lower rate of pay. This creates a serious competitive disadvantage, resulting in undue hardship on our seafaring professionals and their families.

I believe that this competitive disadvantage is harmful to Canada's future and that it is important to institute a tax scheme for Canadian seafarer that is inline with other nations. For example, seafarers from the United Kingdom who work on ships outside of their nation's territory, for more than six month in a year, do not have to pay income tax on their wages earned aboard a ship.

Canada currently has a "similar" program and it is called the Overseas Employment Tax Credit. Although a few seafarers are currently taking advantage of the credit, the majority cannot meet the narrow criteria of the program. An

adjustment of this tax credit program, or better yet, the creation of a new program like the UK's, would go a long way in helping Canadian seafarers compete in a global marketplace.

I imagine the scope of your explorations is to benefit Canada, and not seafarers in the global marketplace. But I would submit to you that training seafarers, officers in particular, is a long, drawn out process, which requires much foresight. The sport of Hockey can provide us an analogy: our marine industry in Canada is the NHL and that the "deep sea trade" is the "Farm Team". Many young professionals coming out of Memorial University, and in particular BCIT, head out to the "deep sea" market where they hone their skills, as there is no real avenue to do so in Canada until someone retires within our Canadian Fleet.

Seafarers working and training internationally will ensure that the Canadian fleet has enough well trained, experienced officers to draw from, for the future. It is my opinion that if it is a hardship to move up through the ranks, as it currently is, then young people will not be enticed to pursue the field at all. Obviously, putting great strain on our training institutes to warrant their existence, and choking Canada's future supply of experienced seafarers.

Included with this letter, are some questions and answers that I anticipate you might ask. Should you have others, please feel free to contact me by mail, email or telephone. I have also included some informative bulletins from the CCRA, and the UK's Inland Revenue service, the latter describing the UK's approach to seafarer income. A similar letter and these attachments have been submitted to my local Members of Parliament, Mr. Keith Martin and Mr. Gary Lunn, who in turn have submitted my proposal to the Honourable Ralph Goodale, Minister of Finance, who as of May 15, 2004, had not provided a response.

Sincerely yours,

Martin Leduc

Section 4
Quebec’s Efforts

Seafarers: Almost Tax Free income in Quebec

I was visiting with a Chief Engineer I had once worked under and he dropped a comment about a special tax situation for sailors filing income taxes in the province of Quebec. So I started digging and yes, there is such thing. After many calls to the Revenue Ministry and Transportation Ministry, I found out, that since 1986, a sailor working on a “international” voyage can claim a special tax status. Below you can read the Ministry’s own press release on the 2003-2004 Quebec Budget.

> “Tax holiday for sailors engaged in international freight transportation
>
> Individuals may deduct, in the calculation of their taxable income, an amount equal to 75% of their remuneration from an eligible ship owner. For 2003, this 25% reduction in assistance applies to the remuneration of individuals that is attributable to the period, following June 12, 2003, during which the individuals are engaged in international freight transportation and carry out their duties on a ship operated by an eligible ship owner.”

As progressive as it seems for sailors in Quebec, this tax relief is actually a step backwards from previous years, where all the international income earned as a sailor was 100% tax exempt. I was not able to find out much more about this particular piece of tax law, such as who promoted it or the likes, but regardless, it sets a precedent for other provinces, and especially for the federal government, that recognizing the special situation that sailors deserve, is not a solely foreign concept.

Below is the actual text from the Quebec Taxation Law as found through www.canlii.org.

> TITLE VII.6
>
> DEDUCTION TO SEAMEN ENGAGED IN THE INTERNATIONAL TRANSPORTATION OF FREIGHT
>
> CHAPTER I
>
> DEFINITIONS
>
> Definitions:
>
> 737.27. In this Title,
>
> “"eligible seaman"”;
>
> "eligible seaman" for a taxation year means a seaman in respect of whom a certificate was issued by the Minister of Transport certifying that the seaman was, in the year, employed by an eligible shipowner for the year, that the seaman carried out, in that year, substantially all the duties relating to the seaman’s

employment on a vessel engaged in international freight transportation and that the seaman was assigned to such a vessel for a period of at least 10 consecutive days beginning in the year or in a preceding taxation year;

“"eligible shipowner"”;

"eligible shipowner" for a taxation year means a shipowner who, in the year, is a person resident in Canada, a corporation that is a foreign affiliate of such a person or a partnership whose members, resident in Canada, including a corporation controlled by persons resident in Canada, are the owners of interests in that partnership having a fair market value in excess of 10% of the fair market value of all interests in the partnership;

“"salaries or wages"”;

"salaries or wages" means the income computed under Chapters I and II of Title II of Book III.

1997, c. 14, s. 108;2001, c. 51, s. 44.

CHAPTER II

DEDUCTION

Deduction.

737.28. An individual resident in Québec in a taxation year who encloses, with the fiscal return the individual is required to file under this Part for the year, a copy of the certificate issued by the Minister of Transport certifying that the individual was an eligible seaman for that taxation year may deduct, in computing the individual’s taxable income for the year, the aggregate of all amounts each of which is the amount of salaries or wages received by the individual in the year, in respect of a period determined in the certificate, from an eligible shipowner whose name appears on the certificate.

1997, c. 14, s. 108;2001, c. 51, s. 45.

Rules applicable.

737.28.1. For the purpose of computing the taxable income of an individual to whom section 737.28 applies, for a taxation year, the following rules apply:

(a) for the purpose of computing the deduction under section 725.2, the amount of the benefit that the individual is deemed to receive in the year, under any of sections 49 and 50 to 52.1, in respect of a security, or the transfer or any other disposition of the rights under the agreement referred to in section 48, and that

was included by the individual in computing the individual's income for the year, does not include the part of such an amount included in the amount determined in respect of the individual for the year under section 737.28;

(b) for the purpose of computing the deduction under section 725.3, the amount of the benefit that the individual is deemed to receive under section 49, by virtue of section 49.2, in respect of a share acquired by the individual after 22 May 1985 and that was included by the individual in computing the individual's income for the year, does not include the part of such an amount included in the amount determined in respect of the individual for the year under section 737.28.

2002, c. 40, s. 66.

The entire Law can be found at http://www.canlii.org/qc/laws/sta/i-3/20041104/part3.html

In April 2005, I reached the administrator of the program in the Quebec Ministry of Transport, from my conversation, I gather that he is really the sole person responsible for the decision of "who" is eligible and then issues a "visa". He was very informative and below is my summary of the program.

The individual person doesn't really have much footwork to do to claim this credit. The whole thing revolves around the issuance of a "seafarer's visa" which you allows the person to claim the tax credit on their Quebec Provincial Income Taxes. In Quebec the majority of taxes are paid at the provincial level, not federal, as it would be in, say BC.

The mechanics of the issuance of the visa goes like this. The Union (the Guild in Quebec) approaches the ship owner to request the Visa. The ship owner files paperwork about the ship, crew and the voyage to the Quebec Ministry of Transport (QMOT). QMOT then reviews the paperwork and issues a Visa to the company, to the ship, and to the individual seafarers. All the paperwork comes back to the company, and is distributed by the company to the seafarers.

The company can be any Canadian company or Agency. The ship must be register in any Quebec Port. The ship must do a 10 day voyage and the seafaring wages for international part of the voyage is then subject to the tax credit. The seafarer must be a Canadian citizen residing in the Province of Quebec.

Obviously it's not a major tax breaks, applicable to the majority of seafarers but it is Quebec's version of recognizing the importance of the Maritime Trade. In 2004, six ships were issued visas. Total sea time of 600 days was eligible. This means 2,110 days of "tax reduced income" for seafarers on those six ships.

The above information is my own opinion and should not be taken as law. I you feel you could be eligible for the above tax credit you can contact your Union rep (Guild), if you

have one, or the administrator of the program at the Quebec Ministry of Transport, his name and number I can provide.

Martin Leduc
May 10th, 2005
Martin's Marine Engineering Page – www.dieselduck.net

Section 5
Canada Custom and Revenue Agency clarifies some questions about the Overseas Employment Tax Credit

Martin L. Leduc

103, 241 Cook Street, Victoria, British Columbia, V8V 3X4, Canada
Phone 250 885 5304
Email: martin@martinleduc.com

Thursday, March 31, 2005

Correspondence Division
International Tax Services Office
Canada Revenue Agency
2204 Walkley Road
Ottawa, ON, K1A 1A8
Canada

Dear Sir / Madam,

The purpose of this letter is to request a written clarification of some queries I have concerning entitlement to the Overseas Employment Tax Credit and to see if I qualify for the credit. I have contacted the International Tax Office on March 30, 2005 and spoke with Ms. Janice, and this letter is to follow up on our conversation.

This is my situation: I am a licensed marine engineer. I work for a Canadian company, which provides marine engineers and expertise to ship owners; the company sends me to work in the technical department of a ship in the capacity of engineer. All my wages as an engineer are earned outside Canadian territory. I work for the same company all year, but may work on different ships or projects on a rotational basis, ie.14 weeks on 14 weeks off. My time away from the ship is spent at home in Canada where I am a permanent resident. Based on this information I believe, and confirmed to be correct by my phone conversation with your office, that I qualify for the OETC.

Your Interpretation Bulletin, IT-497R3 dated Feb 12, 1996 is a great source of information, but I would like clarification / confirmation of my views on the questions below:

1. In paragraph 6 of the bulletin's "Discussion and Interpretation" section the Qualifying activity refers to " b) a construction, installation, agricultural or engineering activity". I believe, as a licensed marine engineer working in that capacity on a ship, I clearly qualified – is this the case?

2. Some companies provide technical personnel / expertise to projects and/or companies exclusively involved in the "Oil and Gas sector", which satisfies other requirements of the "Qualifying Activity". But would a Canadian company, not entirely involved in the "Oil and Gas Sector", but still providing Marine Engineers and expertise to a ship owner, be considered as engineering activity?

3. In regards to Qualifying Period; I was not able to determine from my discussion with your staff, what the policy is regarding “reasonable periods of vacations or consultation”, as found in Paragraph 11. In my case I am away, physically, for a minimum of half the year (it is an industry standard to work one day on the ship, have one day off), my rest period is spent in Canada the remainder of the time.

   While on the ship, I am required to work a yearly minimum of 1780 hrs (10hrs/day, no time off while onboard), or roughly the equivalent of a person working on shore, for one full year, i.e. full time permanent position within the public service. Although periods of work onboard a ship vary in frequency and length, I believe that one period, up to four months, spent as time off in Canada would be reasonable, and should not jeopardize an individual’s entitlement to the OETC.

4. At the end of paragraph 20, there is a statement regarding the Department’s granting a blanket waiver for companies that have numerous employees who qualify for the OETC. In our phone conversation it is my understanding that no list of waivers exist. The reason I ask, I have been informed that some companies claim to have met the criteria, but in fact did not, leaving workers like me in a difficult position years later. Is there a list of employers that have a blanket waiver?

You can reach me for further information until early June, by phone at 250 885 5304 or by email at martin@dieselduck.net. I look forward to your reply, advice and comments.

Kind regards,

Martin Leduc

Canada Revenue Agency
Agence du revenu du Canada

September 21, 2005

Mr. Martin L. Leduc
103 – 241 Cook Street
Victoria, B.C., V8V 3X4

Your file / Votre référence

Our file / Notre référence

Dear Mr. Leduc:

Re: **Overseas Employment Tax Credit**

In your letter dated March 31, 2005, you requested information concerning the OETC. Please accept our apology in not responding to your letter in a timely manner.

The responses are based on the information you have provided. Since insufficient information was provided (i.e. actual employment duties, type of ship, activity of your employer) on which to base the responses, they are general in nature.

Your first question asked if you were qualified for the credit based on your working capacity as a marine engineer on a ship. The qualifying activity refers to the activity of your employer, not that of the employee. Your employer must carry on the qualifying activity outside of Canada or subcontract with a company that carries on the qualifying activities outside of Canada. If your employer is basically an employment agency, this would not be a qualifying activity carried on outside of Canada. If, as a licensed marine engineer, your employer requires you to carry out your duties on a cruise ship, the qualifying activity requirement imposed on your employer would not be met since this would not be an engineering project. In order to qualify for the credit, you must be an employee of the specified employer and be remunerated by that employer and not by the overseas party to the contract.

As mentioned in paragraph 11, whether a vacation period is considered reasonable would be based on the facts of each individual case.

If there is a list of companies for which the application for a reduction in payroll withholding is automatically waived, this tax services office does not have access to it. Your employer would have to make an application for a waiver for each particular employee with overseas employment.

Canada

Should you apply for the credit, ensure that all documentation pertaining to your overseas employment is retained since there is a probability that you will be asked for documentation that would include, but not be limited to, a copy of the contract between your employer and the party requiring the overseas qualifying activity, the contract between you and your employer and documentation of travel arrangements to support the time spent out of Canada.

I hope that this letter has satisfactorily answered your questions.

Yours truly,

Alice M Wiebe

Alice M Wiebe
International Audit
Verification and Enforcement Division

Telephone: (250) 363-6871
Fax: (250) 363-3000
Address: 1415 Vancouver St.
Victoria BC V8V 3W4

Toll free: 1-800-959-8281 (Individual)
1-800-959-5525 (Business)
Internet: www.ccra-adrc.gc.ca

Section 6
Comments from other concerned seafarers

The following are comments received through the "Tax Section" on Martin's Marine Engineering Page – www.dieselduck.ca website, regarding the taxation of Seafarers in Canada.

" I moved offshore (Uk) 8 years ago, precisely for that reason. Still there is no real reason for me to move back, due to my cutting my pay by 38%. Yes there are some new business in the offshore, which demand professional seafarers, but until there is some consideration made for our situation, sorry I'm not interested. Work offshore and visit Canada (in season) and pay no tax, or live there (freeze for 4 months+ apart from Vancouver), get benefits and lose almost 1/2 my salary is a no-brainer.

If the gov. of Canada realized there was a hidden brain drain of professionals, they may make some changes. Unfortunately it's not until some noise is made in Ottawa, or we just leave for greener pasture, that anything will happen.

Imagine all those potential professionals working offshore and all that potential income they make offshore which could be infused into our economy. Is that not enough of a driving factor?? No... of course not were expected to pay full tax, working for foreign companies, with no E.I. compensation etc, but yes you can get free health-care if your particular ailment is covered, and you don't mind the wait.

Don't mean to sound jaded, as I loved Canada as much as the next person, but enough is enough when trying to squeeze the offshore people."

- Brgds,
ex-canadian-seasonal-tourist
November 19, 2004

" The only way to allow Canadian seafarers to compete on international job market is to give them tax brake, like other countries do (best example - UK). Otherwise we are simply being put out of business. I have worked overseas for a few years, and have no doubt that globalization took place in marine industry in full force. Wages are based on assumption that you DO NOT have to pay tax. If you do, there goes big part of your income. I fail to understand the position of the Canadian Government regarding this issue. There are jobs out there, but we have to be able to compete."

Regards, Jack
October 10, 2004

" My advice to any Canadian with the capacity to earn any significant money is move. There are many ways out and you will always be a citizen of Canada in the way that counts. Start with getting an MCA equivalency on your licenses and find a way into a different country. Brazil is a good option Costa Rico is another.

-having traveled the world I will never go back (to Canada)"
December 12, 2004

" I hold the equivalent of 1st Engineer on Navy Ships, and hold a 2nd Class Power Engineering Civilian Certification. I have spent 31 years in the Navy. To take my certification and experiences to sea as a Professional Seafarer would be a cut in pay. I would prefer to land a position in some heating plant on shore, than spend more time in sub-standard living conditions for the same take home pay as someone home with the family every night at 5PM.

I think your web page conveys the need and the experiences that all Canadians, including the Government, know so little about. I know people who believe exactly what you were saying about Vacations at Sea, and nothing but recreational time. Well, if they believe that, why is there not a line-up to fill the positions at sea? Because its not a great environment, long high-stress hours away from home, separation from Family and Friends, the inability to socialize outside the company of shipmates. The lack of privacy, information (I read 3 month old newspapers when I was deployed away from Canada), freedom to take a break from the work, etc.

Under the present taxation conditions you describe, I would rather take a job ashore and be treated the same with the benefits, than go to sea, and be paying taxes on a home and property I never see, and yet, still continue to pay the same taxes as the rest of Canadians, home with their families."

Tom in the Maritimes
December 14, 2004

" I currently still hold a non resident status, and a seasonal home. But that will all change within the next 12 ~ 18 months, with me applying for Landed Immigrant Status (LIS) and obtaining a BC Drivers License. I must admit the prospect of continuing to work Offshore worries me somewhat, its bad enough now, with my salary in US $, but to then cough up a big lump for Ottawa , makes it down right scary !!

Is there a higher level to which we can go to, to try and change the tax regs, or even generate a new one ??

I have a wife, and 3 kids all born here. I pay all their medical benefits, but take non my self, having to pay for a private plan which costs an arm and a leg. I have just had a medical and chest X ray, all as a private patient here in Parksville. I pay full property taxes (no BC Homeowners grant for me), spend my hard earned dollars in all the local stores, and claim nothing back from Customs when I take new clothes etc out of the country.

I can see me having to pack in a job that earns me good money, that is all spent in Canada , to attempt to find one with a similar take home here in Canada , which will generate no new influx to the BC economy. Its not going to be easy.

I am sure I am not the only one in my position, and the $60 or 70K / annum that we bring in will, eventually, disappear. I may even consider taking my family away from Canada completely. The numbers all add up, and in this province alone a hundred guys like me adds up to a good chunk of cash flow, ... all coming in.

I have been at sea all my life, to end that way of life, all because of a tax law, seems an awful waste of time and effort. Nearly 30 years down the pan."

Best regards,
DC, Chief Engineer

" As of right now I am in South Korea currently working for a Canadian Shipping company that has its fingers in International Shipping. I am the only Canadian on the International payroll and it is really disturbing to know that all the Indian's, South Africans, Brits and Filipino's I sail with making more money than me because they were out of their country for 143 days that year.

I am struggling badly, and I am away from my family and friends, we work very hard and demand very little. We are Canadian; it's in our blood to be passive.

It disturbs me to hear people say that seafaring is easy work, and that we're all on holidays touring around seeing the world. I can't say I have ever seen the world while up to my elbows in sludge filled purifier bowls, or troubleshooting leaks in a SEWAGE vacuum pump, maybe they are referring to the time I got to see the Aleutian Islands, while repairing the auto tension on our mooring winches in –15 degree weather. Or did they mean the times when our ship was actually along side, and we were all chasing girls in the port like they see in the movies. Was that the easy life they were referring to?

Well I am sorry to inform them that these ships are propelled by extremely large heavy fuel burning engines, which cannot be maintained during our 3 week voyage across the pacific to bring them their mp3 players, and other useless gadgets. These engines have anywhere between 8 – 12 cylinders, and they all demand service. When can we do this? Once we make it to port naturally. But how long could pulling 1 piston out take? Well, if you have a team of about 4 men or women, about 6-8 hours should be sufficient.

Then we can go to shore and phone our loved ones right? Wrong. With the aid of modern cranes and high tech port facilities, we are usually in port for about 10 – 12 hours. Not a very long holiday is it, 2 – 3 hours to "see the world." But wait, there's more. You cant just come back to a ship 2 seconds before it sails, you are the engineer, or you are the navigator. Its not as if it's a car and you just turn the key, select drive and your off. We need an hour to prepare just the engines alone! Not only that, but all the auxiliary equipment associated with ships. Like steering gears for example. (Another Item we have to service and repair during our 8-hour stay in the lovely port of "not home with our wife.")

So in actual fact, we don't see the world, and we don't have an easy job, and lest you forget, after we finish our 10 - 12 hours work, we are still trapped on a steel ship in the middle of the ocean. Oh, and just one more thing about my case in particular. I am the only one on board speaking English when the work is over. I may as well be in solitary confinement.

Perhaps now you may have some idea as to the life we lead, and the things we deal with on even the calmest of calm days. And perhaps maybe you might understand that we are a little frustrated with the Canadian governments look at seafaring. I really hope they recognize that if this continues, there will be nobody left to do these jobs. And that this is a powerful enough problem to put an end to the BC ferry service and other east coast marine transport counterparts.

Funny, I think maybe they do already, because it seems to me the government is now privatizing the ferry corps. But they'll eventually be in a world of hurt as they have no staff, and I'll laugh that day, I really will. While I am working for Earls Restaurant, or Milestones, with my 4 year education in marine engineering, and my 4 years deep sea sailing experience."

K. A.
North Vancouver
September 2005

" I think what you doing are very important for all Canadian seafarer community. Full Ahead mate!!

I myself work on foreign flag ship, six weeks on six weeks off; and I get my wage only for time working on ship, so I have only half year income and I still have to pay taxes. Its pretty upsetting because together with me on the ship work people from all around the world (UK, New Zeeland, Philippines, et) and they all have a tax break from their governments.
I hope our government will hear from you and do something about it."

Best Regards,
- C/E
October 2005

"I've started my career as deck officer in 2001 for Desgagnes Marine. But the supposed tax exemptions we were allowed, were in fact a credit to help the company, not the seafarers. When the vessel sailed for international voyage and we were allowed tax credit, the salary would changes and we'd be paid less per hour for international voyages than for coastal trade. I guess it helps the company to be more competitive for international trade, but it doesn't change a dime for us. In fact, international voyage are often longer and requires less overtime, reducing considerably your wages compared to the coastal trade. Of course, this was in the contract between Canadian Merchant Marine Guild and Desgagnes, but again, isn't it an hidden company tax credit? I don't know if other company do the same. I am now working outside for deep sea sea time, but salary drop is unbelievable... I like working on ocean going vessel, but wages won't allow me to do it for very long, it's sad to say but that's the truth."

Marc-Andre
November 2005
(In regards to the piece written on Quebec's special tax status for seafarers.)

"As Systems Engineers, I operate and maintain the ROVs, and also do the Cable Engineering such as Repair Operations, Installations etc.

As I am a Canadian resident, and my wife does not wish to leave her Research Scientist job with the BC gov't, I find myself in the unenviable position of paying Canadian taxes, whilst my British colleagues get all of theirs back, if they are out of the UK for 6 months total.

Have any of the politicians you have contacted expressed any support or understanding of our situation, or is the best answer still to go non-resident?

It seems unfair that the Oil patch engineers can get reduced taxes when we cannot."

Best Regards, Tony
November 2005

Editor Note : My MP, David Anderson, has not expressed any interest - see above - as a matter of fact I had to pull teeth just to get a response. In my immediate area, Gary Lunn (PC), and Keith Martin (Lib) both have expressed support and interest, but their brief inquiries to the Finance Minister yielded no results.

" I think what you doing are very important for all Canadian seafarer community. Full Ahead mate!!
I myself work on foreign flag ship, six weeks on six weeks off; and I get my wage only for time working on ship, so I have only half year income and I still have to pay taxes. Its pretty upsetting because together with me on the ship work people from all around the world (UK, New Zeeland, Philippines, et) and they all have a tax break from their governments.
I hope our government will hear from you and do something about it."

Best Regards, Val, C/E
October 2005

"Hello Martin, the web site is really good. I read the article about "the seafarer and the tax man" and I am going to send a letter to my MP and hopefully the ball gets rolling. I do not have the Canadian Licence (Mexican Certificate of Competency) but I get pay the same as every body else and when tax period comes is a killer and because I don't have an employer with address in Canada I can not apply for a loan to buy a house."

Regards, Francisco, MarE
October 2005

" I completely appreciate your efforts in bringing this injustice to light. I work on a cruise ship, and it's not all glamour, it's hard work! I will send a letter, as you suggested, and hopefully many others will too. Thank you! "

Tricia
November 2005

" Site still looks great. I have shifted to a semi-sub offshore Brasil.. I can't believe we (seafarers) haven't banded together...rattled some sabers and approached Ottawa as a group to get something done. How about forming a society??

Lobbying is the only way....Since my world-wide adventures, and there was a few, but mostly work, I have had the opportunity to meet 100's of ex-pats living new lives abroad. It's a crying shame our Gov't can't make up some legislation from it's debt free pocket to give us a break, like virtually every other country in the world.

It's a real shame we all couldn't become Prime Minister, leave our son the largest shipping company on the great lakes, to get around that nasty "conflict of interest" potential. Then put a shipyard in Ontario back in service, build two new ships, keep a Canadian flag on their sterns for 6 months, before flagging them offshore, hiring foreign crew, and mothballing the shipyard. LEAD BY EXAMPLE.!!!..CANADIAN GOV'T. Too much back-scratching and back-handers in Ottawa. No wonder all the "floaters" feel justified in keeping their stash from deviant hands.

LETS GET SOME LEGISLATION IN OTTAWA!!! Lets get some grease in those wheels of legislation and get something going. I URGE ALL OF YOU WHO CAN TO MOVE AWAY AND VISIT THIS FINE COUNTRY WITH ALL YOUR TAX SAVINGS AS A SEASONAL TOURIST. IT IS THE ONLY WAY TO ACHIEVE ANY SAVING...DON'T WAIT ACT NOW. THE ONLY WAY THE GOVERNMENT WILL TAKE NOTICE IS WITH NUMBERS LEAVING OR MAKING NOISE...YOUR CHOICE!!! "

Enough said. Brgds, Bob R.
ex-can-seasonal-tourist

Hello again Bob,

Yes indeed it is an uphill battle, its a real shame that most people are driven to move away as it is easier than facing an up hill battle to trying to promote a vital part of our future to the general public.

I find that seafarers in general will just deal with what they have in front of them. The "greater good" concepts are not always easy one to champion and creating a society is a great idea, but participation and/or funding is always an issue. I was hoping that the Canadian Institute of Marine Engineering would provide a good vehicle for promotion of a more political agenda, but like I said before it is sometimes difficult for many people to prioritize one topic when so many need reform.

In any case, we keep the word going around and hopefully over time a concerted effort will develop.

All the best to you in Brazil, be safe. - Martin Leduc

" Hi Martin I am ex Navy and now work offshore as a rig mechanic for a UK company and all my co workers (UK, South African, Philipinos, and Indians) get the tax break and I don't I didn't know that there were people fighting the evil tax man but i'll drop a note to my member of parliament and see if it helps as I live on the east coast and don't want to leave the country just yet but the Gov't makes it hard for us to stay when almost any country will take us in just for the money we bring into the country. all the best in this endeavour and maybe the people in Ottawa will listen someday."

Regards, Doug

" I am Happy Paul Martin is no longer Prime Minister, however I am still repulsed at the way our present Government is treating Canadian Merchant Mariners. We are being robbed of our local jobs, and while we are away at sea the government is dipping into our bank accounts, robbing us again. The laws that make this possible are obviously flawed, and by not taking immediate action, the government is robbing us one more time-of our human rights. This behavior is corrupt and is probably not legal after all. Please continue to do the work you are doing for the future of the industry. I will support your cause in any way I can."

Sincerely, Tracy F. Second Officer-Foreign Going

Tracy recommends Googling out "CSL ship fires Canadians, hires cheaper Ukrainian crew" by Rheal Seguin of the Canadian National newspaper Globe and Mail, April 2004. Thanks Tracy, indeed a good article - Martin Leduc

" I did send in a letter to the Finance Minister and also the CBC asking the Finance Minister on the show, why Canada does not have any tax incentives for foreign going seafarers, but no reply. I think our numbers are small and we have no organization which can take up for us, so we are left to fend for ourselves."

Capt H. S., Toronto

" How can the unions and gov help in Canada when the companies only want to create a shortage of highly skilled Canadian workers and bring in someone they can pay 1/12 the wage. If my living expense was the same as F.O.C sailors then I would work for the same wage but when a Fed Ex driver is getting 27$ an hour I think an engineer is worth double."

Dave T. Ontario

" I just had a quick peak around your web site. I can't agree more with you. I am a single 25 year old, a First Officer on a private UK registered yacht. I am holding UK licenses as they are recognized in the yachting industry. I am only beginning my investigation into possible solutions. So far I am looking into becoming a UK resident then applying for the Seafarers Tax. I of course don't want to distance myself from Canada. If you have any suggestions, advice or if I could send an email to help you with your cause, please let me know."

Pete

Section 7
Timeline of Events

Timeline of events on Seafarer Tax File

January 26, 2004	Packages sent on, to David Anderson, Keith Martin, MP – Independent, Gary Lunn, MP – Conservative Consisted of one letter, one Q&A, Inland Tax bulletin, and CCRA 497.
January 26, 2004	Spoke to Ian at the international Tax Office, 1 800 267 5177, helpful in confirming that I can't easily collect UI, but could probably operate as a self employed kind a guy. Possible avenue for tax relief to be investigated. He also has no knowledge of CCRA having any special circumstances on seafarers. He also warned that companies taking advantage of the OETC might get audited later even if they say to their employees that they are ok to apply credit.
Feb 05, 2004	Answer from Keith Martin. He sent letter and info to Finance Minister Ralph Goodale.
April 15, 2004	Received letter of Gary Lunn. He sent info to Ralph Goodale, and ask David Anderson to reply to me.
April 16, 2003	Email to Martin and Lunn to thank them for their help and asked for suggestion
May 10 2004	Letter from Ralph Goodale's Office acknowledging receipt of letter form MPs.
May 15, 2004	Letter to Hon. Jim Karygiannis, P.C., M.P. Parliamentary Secretary to the Minister of Transport after finding press release of "stakeholder meetings" to assure supply of professionals to the transport sector re: http://www.tc.gc.ca/mediaroom/releases/nat/2004/04-h018e.htm
May 20, 2004	Left copy of "stuff" at PMTC on Bulletin Board, and with CIMarE VI Branch President - Norm Blatchford.
June 10, 2004	Submitted article to "Maritime Magazine" and "Stand By"

Dec 1st, 2004	Uploaded with new website big section on taxes, accessible from the front page of the site. Tweaking of web page followed and continues. Along with posting of received comments.
Nov. 18, 2004	Re- Submitted article to Stand By, Ian interested and ask to forward copy to Dave Simpson, National Chair CIMarE - I did by email.
Nov. 22nd, 2004	Email sent to Keith Martin and Gary Lunn to follow up. Sent another letter to David Anderson regarding Bill C15 and asked for a follow up on Tax Issues. Consisted of one new letter and the old letter, one Q&A, Inland Tax bulletin, and CCRA 497.
Dec. 05th, 2004	Phone Quebec government to investigate Tax Holiday for Cdn in international voyages. Yes its true, got all info from Revenue ministry. Must follow up on Minister of Transport.
March 7 2005	Received acknowledgement and apology for late reply from David Anderson.
March 24 2005	Phone OETC international tax office in Ottawa requesting clarification for engineers on any ship to qualify. They approve over the phone.
April 05 2005	Sent letter requesting clarification of OETC credit to CCRA in Ottawa.
April 20 2005	Received confirmation that Ralph Goodale (finance Minister) policy Advisor, Mike Woodllat has received my correspondence from David Anderson.
Sept. 8th 2005	Called Foreign Tax Office in Ottawa, no sign of reply or letter in response. Got a name and a fax number then went to David Anderson to get the OETC Inquiry letter re-faxed to the foreign tax office. Also went over some things with his staff, who said they would resend my query to the finance minister and request a bit more in response.
Sept 21, 2005	Received response from CCRA re OETC, and posted online. Not favorable.
April 2006	Sent newly elected MP for Victoria (NDP Savoie) full package, but no response.

June 09, 2006	Sent new MP Jean Crowder (NDP MP Nanaimo - Duncan) Package. Plus concerns over Neptune and Maersk Defender.
August 2006	Jean Crowder replies and suggests a meeting for September before returning to Ottawa. At sea, can't make it, new move etc.
Nov 30 2006	Sent follow up on Jean Crowders offer for a meeting. Suggest December 2006.
Dec 12 2006	Jean Crowder's office schedules an appointment to discuss issue on Dec 19th 2006.
Dec 14 2006	Full file assembled into backgrounder and pdf'd for easy navigation and distribution.

NO.: **IT-497R4** DATE: May 14, 2004

SUBJECT: INCOME TAX ACT
Overseas Employment Tax Credit

REFERENCE: Section 122.3 of the *Income Tax Act* (the "Act") (also sections 114 and 126 of the Act and sections 3400 and 6000 of the *Income Tax Regulations* (the "Regulations"))

At the Canada Revenue Agency (CRA), we issue income tax interpretation bulletins (ITs) in order to provide technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, ITs are used primarily by our staff, tax specialists, and other individuals who have an interest in tax matters. For those readers who prefer a less technical explanation of the law, we offer other publications, such as tax guides and pamphlets.

While the comments in a particular paragraph in an IT may relate to provisions of the law in force at the time they were made, such comments are not a substitute for the law. The reader should, therefore, consider such comments in light of the relevant provisions of the law in force for the particular taxation year being considered, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made.

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If you have any comments regarding matters discussed in an IT, please send them to:

Income Tax Rulings Directorate
Policy and Planning Branch
Canada Revenue Agency
Ottawa ON K1A 0L5

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Contents

Application

This bulletin cancels and replaces Interpretation Bulletin IT-497R3, dated February 12, 1996. The effective date of a particular legislative provision discussed in the bulletin may be indicated in the *Discussion and Interpretation* section of the bulletin. However, where the bulletin is silent with respect to the effective date of a particular provision, such date can be obtained from the legislation itself. Unless otherwise noted, all statutory references throughout the bulletin are to the Act.

Summary

This bulletin deals with the overseas employment tax credit (OETC). An individual who is resident in Canada may be entitled to claim this credit for qualifying income from overseas employment. The OETC effectively eliminates 80% of the Canadian income tax on the first $100,000 of salary, wages and other remuneration earned from such employment. To qualify for the OETC, an individual must:

(a) be employed by a specified employer (generally, a resident of Canada), other than for the performance of

services under a prescribed international development assistance program of the Government of Canada;

(b) be employed in connection with a contract under which the specified employer carried on business outside Canada on a resource, construction, installation, agricultural, engineering or prescribed activity (or for the purpose of obtaining such a contract); and

(c) have performed all or substantially all the employment duties (done in connection with a contract described in (b) above) outside Canada.

The conditions described in (a) to (c) above must exist for a period of more than six consecutive months

- within the year,
- beginning in the year and ending in a subsequent year, or
- ending in the year and that began in a previous year.

This period is referred to as the qualifying period.

The bulletin explains various terms and conditions relating to the OETC. It also provides details of the calculation required to determine the OETC and gives an example of this calculation.

Discussion and Interpretation

General

¶ 1. The OETC is available to individuals who are resident or deemed resident in Canada for any part of a taxation year. The current version of IT-221, *Determination of an Individual's Residence Status,* describes circumstances in which an individual is considered to continue to be resident in Canada after having physically departed from Canada. That bulletin also discusses deemed residents of Canada.

¶ 2. An individual described in ¶ 1 who has

- earned qualifying income in a taxation year throughout a qualifying period while employed by a specified employer; and
- performed all or substantially all the duties of employment outside Canada with respect to a qualifying activity of the employer

may, under section 122.3, deduct an OETC from the tax otherwise payable for the year. The terms qualifying income, qualifying activity, qualifying period and specified employer, as well as the OETC calculation, are explained below.

Qualifying Income

¶ 3. Qualifying income of an individual for OETC purposes is the employment income (see ¶s 4-5) earned in a qualifying period (see ¶s 9-12) while the individual was employed throughout that period by a specified employer (see ¶s 13-16). Furthermore, all or substantially all of the individual's employment duties must be performed outside Canada:

- in connection with a contract under which the employer carried on business outside Canada (see ¶ 15) with respect to a qualifying activity as discussed in ¶s 6-8, or
- for the purpose of obtaining a contract for the specified employer to undertake a qualifying activity.

The fact that the employment is performed by an employee in connection with two or more separate contracts of the specified employer does not, in itself, affect eligibility to claim the OETC.

The "all or substantially all" test referred to above is considered to be met if 90% of the employment duties are performed outside Canada. The duties performed by an individual outside Canada during a qualifying period in connection with a qualifying activity of a specified employer (qualifying duties) are compared to all of the duties that the individual performed for that employer during that same period. The determination as to whether the "all or substantially all" test has been met is a question of fact that can only be determined after reviewing all the circumstances of a particular situation. However, generally, it will be made by comparing the actual time an individual spent performing the qualifying duties to the total time spent performing all duties during that same period. When the aggregate of the employment duties performed outside Canada in connection with ineligible activities and those performed in Canada in connection with any activity represent more than 10% of all the employment duties, the individual will not meet the "all or substantially all" test.

¶ 4. For the purpose of section 122.3, qualifying income earned by an individual employee during a qualifying period includes salary, wages and other remuneration, including gratuities, received from that employment for the qualifying period. It also includes all or a reasonable proportion of any taxable benefit or other amount required under section 6 to be included in income that can be considered to be received or enjoyed by the individual for that same period from, or as a consequence of, that same employment. Benefits under section 7 are similarly included. This type of income is reduced by all or a reasonable proportion of any applicable amount described in subsections 8(1) to (13) inclusive that can reasonably be considered to be deductible in calculating income during that same period from that same employment.

¶ 5. Individuals are not eligible for a deduction from tax under section 122.3 in respect of self-employed income. In addition, as per subsection 122.3(1.1), the OETC is not available in respect of an individual's employment income if all of the following conditions apply:

(a) the employer carries on a business of providing services that does not employ throughout the year more than 5 full-time employees;

(b) the individual

(i) does not deal at arm's length with the employer;

(ii) is a specified shareholder (as defined in subsection 248(1)) of the employer; or

(iii) where the employer is a partnership, does not deal at arm's length with a member of the partnership, or is a specified shareholder of a member of the partnership; and

(c) but for the existence of the employer, the individual would reasonably be regarded as being an employee of a person or partnership that is not a specified employer.

Generally, a specified shareholder of a corporation in a taxation year is a person who owns, directly or indirectly, at any time in the year, 10% or more of the issued shares of any class of the capital stock of the corporation or of a related corporation. For a discussion of when a corporation is related to another corporation and the meaning of the term "arm's length," please see the current version of IT-419, *Meaning of Arm's Length.*

Example

Mr. X is about to receive an offer to work overseas from a corporation (NRco) that does not meet the definition of specified employer because it is not resident in Canada. As a result, Mr. X incorporates a small service corporation resident in Canada (Canco) of which he is both an employee and a specified shareholder. Canco will be carrying on business outside Canada in a qualifying activity and will do so by providing the services of Mr. X to NRco. However, even if Mr. X were to perform all or substantially all of the employment duties outside Canada for more than six consecutive months, he would not be eligible to claim the OETC if it would have been reasonable to regard him as an employee of NRco but for the existence of Canco.

Note: Finance Canada's News Release 2004-014 dated February 27, 2004 announced certain draft technical amendments to the Act. It is proposed that subsection 122.3(1.1) be amended to provide that an individual will be denied the OETC if, any time in the qualifying period,

- *the services of the individual are provided to a corporation, partnership or trust with which the employer does not deal at arm's length, and*
- *less than 10% of the fair market value of all the issued shares of the corporation or all interests in the partnership or trust, as the case may be, are held by persons resident in Canada.*

In addition, subsection 122.3(1) will be revised to indicate that the term "qualifying period" in that subsection also applies to subsection 122.3(1.1). These amendments, if passed as proposed, will apply to taxation years that begin after these changes are enacted into law.

Qualifying Activity

¶ 6. For OETC purposes, a qualifying activity refers to the qualifying activity of the specified employer and not that of the employee. A qualifying activity includes:

(a) the exploration for or the exploitation of petroleum, natural gas, minerals or similar resources;

(b) a construction, installation, agricultural or engineering activity; or

(c) any prescribed activity. As per section 6000 of the Regulations, an activity performed under contract with the United Nations is a prescribed activity.

¶ 7. As long as all or substantially all of the duties performed by the employee are in connection with a contract under which the specified employer carries on a business outside Canada with respect to a qualifying activity, the employee would qualify for the OETC provided that the other conditions referred to in section 122.3 are met. For example, if all of these conditions are met, the following employees of a specified employer carrying on a qualifying activity would qualify for the OETC:

(a) instructors or administrative staff providing supporting services to fellow employees;

(b) staff who train the personnel of the foreign customer; and

(c) staff providing computer hardware and software services.

¶ 8. Ordinarily, the specified employer will itself directly carry on the qualifying activities described in ¶ 6(a) to (c), that entitle employees to claim the OETC. However, assuming all of the other requirements of section 122.3 are met, the OETC is also available to employees of a specified employer that carries on business outside Canada in other than a qualifying activity. Often referred to as a sub-contractor, such a specified employer would be one who has a contract or subcontract to provide its services through its employees to another person in respect of a qualifying activity carried on by that person outside Canada, or in respect of such a qualifying activity which that person has subcontracted to a third party. For example, assume that a specified employer (A Ltd.) has contracted to carry on business outside Canada by providing data processing services to a non-resident company (B Ltd.) whose only business is the exploration for natural gas. Assuming the other requirements of section 122.3 are met, the employees of A Ltd. providing the data processing services would qualify for the OETC, since their employment is in connection with a contract under which the specified employer carried on business outside Canada with respect to qualifying activities.

Qualifying Period

¶ 9. A qualifying period, for OETC purposes, means a period of more than six consecutive months that began in the year or a previous year. The qualifying period must include part of the taxation year for which the OETC claim is made. In this context, six consecutive months means either six entire months named on a calendar or a period starting from a given day in one month and ending on the day before the corresponding day of the sixth month. For example, if the starting date for the six consecutive months was December 14, 2002, the minimum qualifying period of more

than six consecutive months, would run from December 14, 2002 to June 14, 2003 (i.e., six months plus one day).

¶ 10. As previously stated, all or substantially all of an employee's duties throughout a qualifying period must be performed outside Canada. This may consist of different periods of time spent by an individual in one or more locations anywhere outside Canada, including the land and territorial waters of a foreign country, in international waters or Antarctica. See section 255 for a definition of "Canada" and the current version of IT-494, *Hire of Ships and Aircraft From Non-Residents*, for a discussion of this definition.

¶ 11. An individual's entitlement to the OETC will not be denied simply because the person was not a resident or deemed resident of Canada throughout the qualifying period. As noted in ¶ 1 above, it is sufficient that the individual be a resident or deemed resident for any part of the taxation year. In addition, an individual's entitlement will not necessarily be denied because the individual was not actually outside Canada or at the work location(s) outside Canada for the entire qualifying period. During a period of absence from a work location outside Canada, an employee may take vacation time, consult with the specified employer in Canada or perform duties of employment in Canada and still remain eligible for the OETC, provided that throughout the qualifying period substantially all of the employment duties, as referred to in ¶ 3, are performed outside Canada.

¶ 12. However, if an individual is employed on an "on demand" basis for only certain periods in the year with no commitment for indeterminate employment and is paid only for those periods, that individual would usually be considered to commence and cease employment at the beginning and end of each such period. Accordingly, such an employee would not qualify for the OETC unless one of the periods of employment that commenced in the year or a previous year, and ended in the particular year, exceeded six consecutive months.

Specified Employer

¶ 13. A specified employer, for OETC purposes, is described in subsection 122.3(2) as:

(a) a person resident in Canada (see ¶ 14);

(b) a partnership in which persons resident in Canada or corporations controlled by persons resident in Canada own more than 10% of the aggregate fair market value of all interests in the partnership; or

(c) a corporation that is a foreign affiliate (as defined in subsection 95(1)) of a person resident in Canada.

See ¶ 16 regarding certain services an individual performs for which no OETC may be claimed on the employment income received.

¶ 14. Subject to subsection 250(5), a specified employer that is a corporation is generally considered to be a resident of Canada if:

(a) its central management and control are located in Canada; or

(b) it falls within the criteria set out in subsection 250(4) which deems a corporation to be resident in Canada throughout a taxation year.

For further information on the residency of a corporation, see the current version of IT-391, *Status of Corporations*.

¶ 15. As indicated in ¶s 3 and 7, one of the requirements that must be met is that the specified employer carries on business outside Canada with respect to a qualifying activity (see ¶s 6-8). While the determination of the place where a particular business is carried on necessarily depends upon all of the relevant facts of a situation, such place is generally where the operations in substance take place. See the current version of IT-270, *Foreign Tax Credit*, for factors that may be considered in the determination of where particular types of businesses are carried on.

Paragraph 13 of the Federal Court of Appeal case *Timmins v. The Queen*, 99 DTC 5494, [1999] 2 C.T.C. 133, states that "Although the word 'business' when used in the Act must envisage an activity capable of giving rise to profits, it does not require that this activity be undertaken or carried on for the 'predominant' purpose of earning a profit." Therefore, even where an entity's overall purpose is not for profit, the entity may still carry out certain activities that can be said to be business activities. If these activities are carried out regularly over a period of time, then the entity may be considered to carry on business with respect to those activities. Consequently, in situations where some of the activities carried out by a specified employer are considered to be business activities while others are not, it is possible for a specified employer to carry on business with respect to the former type of activities depending on the facts of the situation.

Although the Government of Canada or a provincial or municipal government is considered to be a specified employer, employment income from that source generally does not qualify for the purposes of section 122.3, because a body politic or government would not usually carry on business outside Canada under a contract.

¶ 16. A person who is employed for the performance of services under a prescribed international development assistance program of the Government of Canada may not claim the OETC on the employment income received from that source. Such programs are prescribed in section 3400 of the Regulations to be international development assistance programs of the Canadian International Development Agency (CIDA) that are financed with funds (other than loan assistance funds) which are provided under External Affairs Vote 30a, *Appropriation Act No. 3, 1977-78*, or another vote providing for such financing. Section 3400 of the Regulations applies even if CIDA provides only partial funding for the project.

Option to Claim Foreign Tax Credit Under Subsection 126(1)

¶ 17. The tax credits provided under section 122.3 (OETC) and subsection 126(1) (foreign tax credit for foreign non-business income) are optional. A taxpayer may claim one or the other, or both. However, to the extent that a portion of an employee's qualifying foreign employment income is used to calculate an OETC, it may not be used to determine a foreign tax credit (see the current version of IT-270, *Foreign Tax Credit*). An employee may choose to claim a foreign tax credit, for example, where the OETC would be rendered ineffective by virtue of the application of the alternative minimum tax under section 127.5.

Authorized Form and Reduced Withholding of Tax at Source

¶ 18. Form T626, *Overseas Employment Tax Credit,* should be completed and filed with the T1 return of the employee claiming the OETC. The employer is also required to complete a portion of this form. An application may be made for reduced withholding of income tax at source if a taxpayer will be eligible for the OETC. To apply, a letter indicating that the employee and the specified employer will be able to meet all the qualifying criteria in section 122.3, along with supporting documentation (such as a copy of the contract for overseas employment), should be forwarded to the International Tax Section of your local tax services office (TSO). If your local TSO does not have such a section, to find out where to send your request please visit our Web page at http://www.cra-arc.gc.ca/contact/tso/international-e.html or contact the International Tax Services Office at:

952-3741 (Ottawa area);

1-800-267-5177 (Canada and the United States); and

(613) 952-3741 (outside Canada and the United States – collect calls are accepted).

When an employer has numerous employees on international assignment who will qualify for the OETC, the CRA will consider granting a blanket waiver to cover the reduction in withholdings at source. Even though such a waiver may be granted to an employer, it does not mean that the CRA will automatically accept the validity of a claim for an OETC filed with an employee's T1 return on form T626.

OETC Calculation

¶ 19. Expressed as a formula, the amount that can be deducted under section 122.3 as an OETC is:

$$\frac{\text{The lesser of limitation A and B}}{\text{Adjusted income for the taxation year (see ¶ 20)}} \times \text{Tax otherwise payable for the year (see ¶ 21)}$$

where limitation:

A = $\dfrac{\text{the number of days in that portion of the qualifying period that is in the year and on which the individual was resident in Canada}}{365} \times \$80{,}000$

B = 80% of the individual's qualifying income (see ¶ 3) that is reasonably attributable to duties performed on the days referred to in A above

Therefore, the OETC provides an annual tax reduction for a maximum of $100,000 of overseas employment income (i.e., qualifying income) earned in a full year (i.e., a qualifying period of 12 months) of overseas employment (see ¶s 10-12). The $80,000 base amount in "A" above represents a ceiling for a one-year period which is prorated if the employee is overseas for less than the full year or is not a resident or deemed resident of Canada throughout the entire qualifying period. An analysis of the formula components and an example of the OETC calculation is found in ¶s 20 to 22.

Adjusted Income for the Taxation Year

¶ 20. For the purposes of the OETC calculation, as described in ¶ 19, the adjusted income for the taxation year for an individual who is resident in Canada throughout the year is the amount, if any, by which the individual's income for the year exceeds the total of:

(a) the amounts deducted in computing the individual's taxable income for the year under:

- paragraph 111(1)(*b*) in respect of net capital losses of other years that are being claimed in the current year; and
- section 110.6 in respect of the capital gains deduction; and

(b) the amounts deductible (see note 1 below) in computing the individual's taxable income for the year under:

- paragraph 110(1)(*d*.2) equal to 1/2 (see note 2 below) of the amount included in income under paragraph 35(1)(*d*) in respect of a prospector's or grubstaker's shares, unless the amount included in income is exempt from tax in Canada by reason of one of Canada's tax treaties;
- paragraph 110(1)(*d*.3) equal to 1/2 (see note 2 below) of the amount included in calculating income under subsection 147(10.4) with respect to employer shares received as part of a withdrawal from a deferred profit sharing plan;
- paragraph 110(1)(*f*) which provides a deduction for, among other things, amounts included in income for social assistance payments and workers' compensation benefits, as well as for amounts that are required to be included in income but are exempt from tax in Canada because of a tax convention or treaty;

- paragraph 110(1)(*g*) for adult basic education tuition assistance received under certain programs, and
- paragraph 110(1)(*j*) for the amount of a benefit included in income as a result of an individual receiving a home relocation loan (as defined in subsection 248(1)) because of an employment relocation (also known as an employee home relocation loan).

Note 1: Amounts referred to in (b) above include amounts that are eligible for deduction in the year to reduce a taxpayer's taxable income, even if the deduction is not actually taken or claimed in the year.

Note 2: The rate is:

- 1/3 after February 27, 2000 and before October 18, 2000, and
- 1/4 before February 28, 2000.

The adjusted income of an individual who is resident in Canada throughout only part of a taxation year and is non-resident for the rest of the year will include the amount determined under paragraph 114(*a*) for the individual for that year. Generally, this amount equals the individual's total income for the year calculated on the basis that for the part of the year that the individual was not resident in Canada, only amounts of income or loss included in computing taxable income earned in Canada under paragraphs 115(1)(*a*) to (*c*) are included in calculating the individual's income for the year. This amount is then reduced by the total of the amounts listed in (a) and (b) above.

Tax Otherwise Payable for the Year

¶ 21. As defined in subsection 122.3(2), tax otherwise payable under this Part for the year is the amount that would be the tax payable under Part I of the Act for the year before

(a) adding the amount of tax on:
- income not earned in a province (under subsection 120(1)); or
- split income (under subsection 120.4(2)); or

(b) deducting the amount:
- deemed to have been paid on account of an individual's Part I tax (under subsections 120(2) and 120(2.2));
- for OETC (under subsection 122.3(1));
- for minimum tax carryover (under section 120.2);
- for dividend tax credit (under section 121);
- for foreign tax credit (under section 126);
- for logging tax deduction, political contribution tax credit or investment tax credit (under section 127); or
- for labour-sponsored funds tax credit (under section 127.4).

Example of an OETC Calculation

¶ 22. Assume an individual resident in Canada during 2002:

(a) is employed in the year for 73 days, beginning on October 20, 2002, by a specified employer who carries on business outside Canada in a qualifying activity. Substantially all of the individual's employment duties in connection with the employer's qualifying activity are performed outside Canada;

(b) continues to be so employed until April 30, 2003;

(c) earns qualifying income of $22,000 in 2002 that is reasonably attributable to the 73 days referred to in (a);

(d) calculates adjusted income for 2002 to be $64,000 under ¶ 20; and

(e) calculates tax otherwise payable for 2002 to be $14,000 under ¶ 21 .

Using the formula described in ¶ 19, the individual's OETC is determined as follows:

(1) Determine the lesser of limitation A and B:

$$A = \frac{(a)}{365} \times \$80{,}000 = \frac{73}{365} \times \$80{,}000 = \$16{,}000$$

$$B = 80\% \text{ of (c)} = \frac{80}{100} \times \$22{,}000 = \$17{,}600$$

(2) The OETC is:

$$\frac{\$16{,}000}{(d)} \times (e) \qquad \frac{\$16{,}000}{\$64{,}000} \times \$14{,}000 = \$3{,}500$$

In this example, because the individual's qualifying period exceeded six months at the time the individual's 2002 tax return was required to be filed, the tax credit of $3,500 may be deducted in calculating 2002 Part I tax payable. However, when an individual begins the performance of employment duties described in (a) above after October 31 in a particular year, the necessary qualifying period of more than six months would not be satisfied when, as is the case for most individuals, the individual's return of income for that year is required to be filed by April 30 of the immediately following year. As a result, a tax credit under section 122.3 for qualifying income earned during the period of that year after October 31 cannot be claimed at the time such return is required to be filed unless it can be established that the individual will be performing the employment duties for a period of more than six consecutive months. The individual can establish this fact by, for example, filing with the return a letter from the employer certifying that the individual will be performing those duties for a period of more than six consecutive months (see ¶s 9-12).

Explanation of Changes

Introduction

The purpose of the *Explanation of Changes* is to give the reasons for the revisions to an interpretation bulletin. It outlines revisions that we have made as a result of changes to the law, as well as changes reflecting new or revised interpretation.

Reasons for Revisions

This bulletin has been revised to reflect the decisions of the Federal Court of Appeal in *Rooke v. The Queen*, 2002 DTC 7442, 2002 CarswellNat 2776, and *Timmins v. The Queen,* 99 DTC 5494, [1999] 2 C.T.C. 133. It has also been changed to include amendments to subsection 122.3 enacted by S.C. 1997, c. 25, s. 31; S.C. 2000, c. 19, s. 31; S.C. 2001, c.17, s. 106; and S.C. 2002, c. 9, s. 37. References to the prescribed activity in section 6000 of the Regulations enacted by P.C. 1995-1723, SOR/95-498 have also been added to the bulletin.

Legislative Changes and Others

The Summary and ¶s 2, 3, 10-12 and 22 have been revised to reflect the decision of the Federal Court of Appeals in *Rooke v. The Queen* (citation as indicated above).

In ¶ 3, comments concerning the "all or substantially" test have been added.

¶ 5 has been modified to reflect the introduction of subsection 122.3(1.1) which provides that the OETC is not available for overseas employment income received from certain employers. Proposed legislative changes to that provision announced on December 20, 2002 by the Department of Finance are indicated in italics at the end of the paragraph.

¶ 6(c) was revised to include a description of the prescribed activity.

The calendar years referred to in ¶s 9 and 22 have been updated to reflect a more current year.

A reference to the source of the definition of Canada and to an interpretation bulletin that discusses this definition has been added to ¶ 10.

In ¶ 13(c), the reference to the provision in the Act defining the term foreign affiliate has been modified to reflect the restructuring of definitions in subsection 95(1). A reference to ¶ 16 was added to the end of ¶ 13.

In ¶ 14, a reference to subsection 250(5) was added in order to be more technically precise.

Comments in ¶ 15 on carrying on business outside Canada have been revised in order to be more consistent with those found in the current version of IT-270, *Foreign Tax Credit*, and to reflect the decision of the Federal Court of Appeal in *Timmins v. The Queen* (citation as indicated above).

Former ¶s 17 and 18 were deleted as they contained outdated information.

Former ¶s 19 to 24 have been renumbered as ¶s 17 to 22, respectively. Cross-referencing in other paragraphs has been revised to reflect this renumbering.

¶ 18 (former ¶ 20) has been changed to indicate the current procedure for submitting a request for reduced withholding of tax at source.

¶ 20 (former ¶ 22) has been revised to reflect recent amendments to paragraph 122.3(1)(*e*) and to section 114 (referred to in paragraph 122.3(1)(*e*)), as well as to delete outdated information.

¶ 21 (former ¶ 23) has been modified to remove various taxes and tax credits that are no longer included in the calculation and to add those that affect the calculation due to recent amendments in the law.

Throughout the bulletin, we have made minor changes for clarification and readability purposes.

Canada Customs and Revenue Agency | Agence des douanes et du revenu du Canada

OVERSEAS EMPLOYMENT TAX CREDIT
(for 2002 and subsequent years)

Use this form to claim the overseas employment tax credit.
Your employer has to complete Part 1 of this form before you can complete Part 2 on the reverse side.
Enter the year to which the credit applies in the applicable box. If your employment period covers more than one year, complete a separate form for each year. Attach a completed copy of this form to your return.
Claiming this tax credit may result in you having to pay minimum tax. To determine if minimum tax applies to you, complete Form T691, *Alternative Minimum Tax*.
For more information, see Interpretation Bulletin IT-497, *Overseas Employment Tax Credit*.

Tax year

Part 1 – Employer certification

Complete this part to certify the employment conditions of the employee identified below as they relate to the employment that qualifies for the overseas employment tax credit.
Complete this part only if the employment income qualifies. It may not if you are in the business of providing services and you employed five or less full-time employees throughout the year. If this is your situation, see subsection 122.3(1.1) of the *Income Tax Act*.

Employee's name | Social insurance number

A. Did this employee work for you **throughout** a period **of more than six consecutive months** that began before the end of the year and included any part of the year indicated **above**? **Yes** ☐ **No** ☐

If YES, please indicate the period of employment (referred to as the **qualifying period**): from Y M D to Y M D

B. Throughout the qualifying period, did this employee perform services **other than** under the international development assistance program of the Canadian International Development Agency (CIDA)? **Yes** ☐ **No** ☐

C. Throughout the qualifying period, did the employee perform **at least 90%** of his or her employment duties **outside Canada** in connection with a contract (or for the purpose of obtaining a contract) under which you carried on a business outside Canada conducting one of the following activities? **Yes** ☐ **No** ☐
If YES, check the applicable box:

☐ the exploration for or exploitation of petroleum, natural gas, minerals, or other similar resources;

☐ any construction, installation, agricultural, or engineering activity;

☐ any activity performed under contract with the United Nations (UN);
or
☐ any activity performed to obtain a contract on your behalf to undertake any of the above activities.

Provide the name of the country where the activities were performed and a brief description of the project: _____

D. Throughout the qualifying period, were you an employer who belonged to one of the following categories? **Yes** ☐ **No** ☐
If YES, check the applicable box:

☐ a person or a corporation resident in Canada;

☐ a partnership in which persons resident in Canada, or corporations controlled by persons resident in Canada own interests that exceed 10% of the fair market value of all interests in the partnership; or

☐ a corporation that is a foreign affiliate of a person resident in Canada.

Employer's name | Employer's account number | Name of the tax services office that processed a tax waiver for this credit (if one was requested)

I, _____ (Name of authorized officer in block letters), am an authorized signing officer of the entreprise. I certify that the information given on this form is, to the best of my knowledge, correct and complete.

Date | Signature of authorized officer | ( ) Telephone number

Part 2 – Overseas employment tax credit calculation

Complete this part **only** if your employer answered YES to questions A to D in Part 1.

Limit based on period of employment

Number of days in the qualifying period (referred to in question A of Part 1) that are in the tax year identified on the front of this form and during which you were a resident of Canada for tax purposes **6770** **1**

Enter the number of days from line 1 above and do the following calculation: _____ × $80,000 / 365 = ... **E**

Limit based on employment income

Employment income for the period referred to on line 1 (included on lines 101 and 104 of your return) **2**

Employment deductions related to amount on line 2 (see note below):

Annual union or professional dues (included on line 212 of your return) **3**

Registered pension plan contributions (included on line 207 of your return) . . . . . + **4**

Other employment expenses (included on line 229 of your return) (please specify) _____ . . . . . + **5**

Add lines 3 to 5 . . . . . = ▶ – **6**

Line 2 minus line 6 . . . . . **6772** = **7**

Note: Some of these employment deductions may not only relate to the amount on line 2. If so, multiply the deductions by the number of days used in calculating the amount on line E. Then divide the result by 365.

Enter the amount from line 7 . . . _____ × 80% = ... **F**

Calculation of the allowable tax credit

Net income for the year (from line 236 of your return) **8**

Employee home relocation loan deduction (from line 248 of your return) **9**

Amount for security options deductible under paragraph 110(1)(d.2) or (d.3) of the *Income Tax Act* (included on line 249 of your return) . . . . . + **10**

Net capital losses of other years (from line 253 of your return) . . . . . + **11**

Capital gains deduction (from line 254 of your return) . . . . . + **12**

Deductions from lines 250 and 256 of your return . . . . . + **13**

Add lines 9 through 13 . . . . . = ▶ **6773** – **14**

Line 8 minus line 14 . . . . . = **G**

Amount from line 8 of Schedule 1, *Federal Tax* **15**

Non-refundable tax credits from line 350 of your Schedule 1 . . . . . – **16**

Line 15 minus line 16 . . . . . = **H**

Enter the amount from line E or line F, whichever is **less** . . . . . _____ × Amount from line H _____ . . . = ... **6774** **•17**

Divide by the amount from line G . . .

Enter the amount from line 17, on line 426 of your Schedule 1.

This amount may also be used to calculate a provincial or territorial overseas employment tax credit on your provincial or territorial Form 428.

Printed in Canada

Foreign Earnings Deduction: Seafarers

This Help Sheet helps you decide if you qualify for Foreign Earnings Deduction. If you do, it enables you to calculate your qualifying period and the deduction to be entered in box 1.37 of the Employment Pages of your Tax Return.

You can qualify for the Foreign Earnings Deduction as a seafarer if:

- you perform all your duties on a ship, **or**
- you perform most of your duties on a ship, and the other duties are incidental to the duties on the ship.

The word 'ship' is not defined in tax law, but 'offshore installations' used in the offshore oil and gas industry are specifically identified and are not regarded as 'ships' for the purposes of the Foreign Earnings Deduction. The following list of 'offshore installations' is given as a guide only:

- fixed production platforms
- floating production platforms
- floating storage units
- floating production storage and offloading vessels (FPSOs)
- mobile offshore drilling units (drillships, semi-submersibles and jack-ups)
- flotels.

If you work on an offshore installation anywhere in the world, you are not regarded as a 'seafarer' for the purposes of the Foreign Earnings Deduction and so cannot claim the Deduction.

The employment duties of a seafarer are regarded as being performed outside the UK if they are carried out on a vessel that is engaged on a voyage or part voyage which begins or ends outside the UK. For this purpose, the UK sector of the North Sea is treated as part of the UK. If you had more than one employment in the qualifying period, you may only claim Foreign Earnings Deduction for those in which you performed duties outside the UK.

A 'qualifying period' is made up mainly of days when you are absent from the UK. You are absent from the UK on a particular day if you are outside the UK at midnight at the end of that day. Non-work days spent outside the UK may be counted as days of absence. A return visit to the UK can also count towards the 'qualifying period' if:

- no single return visit lasts for more than 183 consecutive days, **and**
- the total number of intervening days you have spent in the UK is not more than one-half of the total number of days from your first day abroad to the last day of the period you spent abroad after that return visit.

Intervening days in the UK may only be counted if they occur between periods of absence. You cannot, for example, make a claim for a period of 365 days which consists of 183 days abroad followed by 182 days in the UK.

The Working Sheet on page 3 will show you if you have a 'qualifying period' of 365 days or more. Follow the steps set out below showing you how to complete the Working Sheet.

HOW TO COMPLETE THE WORKING SHEET

Step 1 Enter in column A the dates you left the UK.

Step 2 Enter in column B the dates you returned to the UK.

Step 3 Work out columns C and D.

Step 4 Is any entry in column D greater than 183? If 'YES', go to Step 5. Otherwise, go to Step 6.

Step 5 Treat the rows in the table above the entry in column D as a separate table. Rule off and start again. Treat the rows below the entry as a new table. Apply Steps 6 to 10 to each 'separate table'.

Step 6 Work out columns E, F, G and H.

Step 7 If there are any 'YES' entries in column H go to Step 8. If there are no 'YES' entries in column H, look at the last number in column E. If that number is 365 or more, you have a qualifying period of 365 days or more which runs from the date in column A at the start of your table to the last date in column B. If the number is less than 365, no Foreign Earnings Deduction is due. Ignore Steps 8, 9 and 10.

Step 8 Are there any 'NO' entries above the first 'YES'? If there are, go to Step 9. If not, restart the table two rows lower and continue as if you have a new table (for example, if you arrived at this point with a table starting at A1, ignore rows 1 and 2 and start again at A3, and so on). Go back to Step 6.

Step 9 Go to the last 'NO' entry above the first 'YES' in column H. Look at the number in column E on the same row. If the number is less than 365, go to Step 10. If the number is 365 or more, you have a qualifying period for the Foreign Earnings Deduction running from the start of your table to the date in column B in the row you have been looking at in this step. To see whether there are any further qualifying periods, go to Step 10.

Step10 Restart the table two rows lower and continue as if you have a new table (for example, if you arrived at this point with a table starting at A1, ignore rows 1 and 2 and start again at A3, and so on). Go back to Step 6.

Finally, look at all the qualifying periods you have worked out using Steps 6 to 10. (They may overlap.) Enter in box 1.37 the total of the amounts received during the year ended 5 April 2003 which:

- were from an employment where you worked wholly or partly overseas, **and**
- were earned during the qualifying period(s) calculated, **minus**
- **a**ny amounts earned from non-seafarer duties including earnings for periods spent working on offshore installations, **and**
- any superannuation contributions, allowable expenses, and capital allowances deductible from the amounts earned during the qualifying period.

MORE THAN ONE EMPLOYMENT

If you had more than one employment during the qualifying period, and the employments were with the same employer, or with employers who were associated with each other, the Foreign Earnings Deduction may be restricted. If you think this may apply to you, ask your Inland Revenue office or tax adviser for help before completing box 1.37.

RECORDS

You should retain your discharge book and all other documents which support your claim. Do not send them with your Tax Return, but you may be asked to provide them at a later date.

For the Employment Pages

Working Sheet for box 1.37

	A	B	C	D	E	F	G	H	
	Date of departure	Date of return	Days out of UK	Days in UK	Running total of all days	Column E x 1/2	Running total of UK days	Is Column G greater than Column F? YES/NO	
1	/ /								1
2		/ /	B2 *minus* A1		C2				2
3	/ /			A3 *minus* B2	D3 + E2		D3		3
4		/ /	B4 *minus* A3		C4 + E3	E4 x 1/2		G3 > F4?	4
5	/ /			A5 *minus* B4	D5 + E4		D5 + G3		5
6		/ /	B6 *minus* A5		C6 + E5	E6 x 1/2		G5 > F6?	6
7	/ /			A7 *minus* B6	D7 + E6		D7 + G5		7
8		/ /	B8 *minus* A7		C8 + E7	E8 x 1/2		G7 > F8?	8
9	/ /			A9 *minus* B8	D9 + E8		D9 + G7		9
10		/ /	B10 *minus* A9		C10 + E9	E10 x 1/2		G9 > F10?	10
11	/ /			A11 *minus* B10	D11 + E10		D11 + G9		11
12		/ /	B12 *minus* A11		C12 + E11	E12 x 1/2		G11 > F12?	12
13	/ /			A13 *minus* B12	D13 + E12		D13 + G11		13
14		/ /	B14 *minus* A13		C14 + E13	E14 x 1/2		G13 > F14?	14
15	/ /			A15 *minus* B14	D15 + E14		D15 + G13		15
16		/ /	B16 *minus* A15		C16 + E15	E16 x 1/2		G15 > F16?	16
17	/ /			A17 *minus* B16	D17 + E16		D17 + G15		17
18		/ /	B18 *minus* A17		C18 + E17	E18 x 1/2		G17 > F18?	18
19	/ /			A19 *minus* B18	D19 + E18		D19 + G17		19
20		/ /	B20 *minus* A19		C20 + E19	E20 x 1/2		G19 > F20?	20

These notes are for guidance only, and reflect the position at the time of writing. They do not affect any rights of appeal.

Res. 1
(Rev.1)

GOING TO WORK ABROAD?

A guide to Irish income tax liability based on some commonly asked questions

Prepared by Residence Section

January 2002

Revenue

CONTENTS

Chapter 1

Introduction

1.1. What is the purpose of this leaflet?

The purpose of this leaflet is to answer some of the income tax questions commonly asked by Irish individuals going to work abroad. It deals mainly with the tax treatment of employment income and does not get involved with other sources of income to any great extent. While every effort has been made to ensure the accuracy of the information contained in this leaflet it is not a legal document and responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on the information it contains.

As the tax treatment of your employment income will depend on your residence status, **chapter 2** will help you to determine whether you are **resident** or **non-resident** for Irish tax purposes in any particular tax year while you are abroad.

Having established your residence position you can then refer to **chapter 3** for those questions which a resident individual going abroad on a temporary basis might have or you can refer to **chapter 4** for those questions which an individual going abroad on a long term or permanent basis might have.

It is assumed for the purpose of this leaflet that you are both ordinarily resident and domiciled in Ireland at the time you leave to go abroad. The meaning of '**ordinary residence**' and '**domicile**' for taxation purposes is also explained in chapter 2.

1.2. If all my questions are not answered in this leaflet where can I get further nformation?

Should you require information of a general tax nature please contact your local tax office (addresses and telephone numbers for which are listed at Appendix B). Additional information leaflets are available on Revenue's web site at www.revenue.ie/leaflets.htm or from our Forms & Leaflets service, Tel. (01) 8780100.

Chapter 2

Explanation of the terms "Residence", "Ordinary Residence" and "Domicile"

2.1. What is a tax year?

With effect from 1 January 2002 and for subsequent years the Irish tax system will change to a calendar year of assessment i.e. the tax year will run from 1 January to the following 31 December. Previously, up to 5 April 2001, the tax year ran from 6 April to the following 5 April. To facilitate this changeover it was necessary to have a short tax "year" beginning on 6 April 2001 and ending on 31 December 2001.

2.2. How do I know if I am resident in Ireland for a tax year?

Your **residence** status for Irish tax purposes is determined by the number of days you are present in Ireland during a given tax year. You will therefore be **resident** in Ireland for a particular tax year in **either** of the following circumstances *(but see question 2.3 for special arrangements for residence purposes applying in the short tax "year" ending 31 December 2001 and for the following tax year ending 31 December 2002)*:

- if you spend 183 days or more in Ireland for any purpose in the tax year in question;

  or

- if you spend 280 days or more in Ireland for any purpose over a period of two consecutive tax years you will be regarded as resident in Ireland for the second tax year. For example, if you spend 140 days here in year 1 and 150 days here in year 2 you will be resident in Ireland for year 2.
  (However, you can spend up to 30 days in total in Ireland in either tax year and this test will not apply to make you resident even though the combined total of days spent in Ireland over the two tax years may be 280 or more. For example, if you spend 365 days in Ireland in year 1 and only 14 days here in year 2, thereby giving a combined total presence of 379 days, you will not be regarded as resident for year 2 under this test.)

A 'day' for residence purposes is one on which you are present in Ireland at midnight.

2.3. What are the special arrangements for residence purposes which will apply for the short tax "year" ending 31 December 2001 and for the following calendar year of assessment ending 31 December 2002?

The residence tests for the short tax "year" ending 31 December 2001 are as follows.

You will be regarded as resident in Ireland in the short tax "year" of assessment 2001 if you spend: -

- ***135 days*** or more in Ireland, for any purpose, between 6 April 2001 and 31 December 2001;

Or

- ***244 days*** or more in Ireland combining the number of days spent in Ireland in that "year" (6 April 2001 to 31 December 2001) together with the number of days spent in Ireland in the preceding tax year 2000/2001 (6 April 2000 to 5 April 2001). However, this test will not apply to make you resident if you spend ***22 days*** or less here in the short "year" of assessment (6 April 2001 to 31 December 2001) or ***30 days*** or less here in the 2000/2001 tax year.

The residence tests for the calendar year of assessment ending 31 December 2002 are as follows.

You will be regarded as resident in Ireland in the year of assessment 2002 if you spend: -

- ***183 days*** or more in Ireland, for any purpose, between 1 January 2002 and 31 December 2002;

  Or

- ***244 days*** or more in Ireland combining the number of days spent in Ireland in that year (1 January 2002 to 31 December 2002) together with the number of days spent in Ireland in the preceding short tax "year" of assessment 2001 (6 April 2001 to 31 December 2001). However, this test will not apply to make you resident if you spend ***30 days*** or less here in the year of assessment 2002 or if you spend ***22 days*** or less here in the short "year" of assessment 2001.

2.4. What is Ordinary Residence?

The term **ordinary residence** as distinct from **residence** refers to an individual's pattern of residence over a number of tax years. If you have been resident in Ireland (see 2.2. and 2.3. above) for three consecutive tax years you are regarded as ordinarily resident from the beginning of the fourth tax year. Conversely, you will cease to be ordinarily resident in Ireland having been non resident for three consecutive tax years. With the exception of certain types of income (see third row of the table in question 2.6), an individual who is non resident for a particular tax year but who is ordinarily resident is effectively regarded as being resident for that year.

2.5. What Is Domicile?

Domicile is a concept of general law. It may be broadly interpreted as meaning residence in a particular country with the intention of residing permanently in that country. Every individual acquires a domicile of origin at birth. An Irish domicile of origin will remain with an individual until such time as a new domicile of choice is acquired. However before that domicile of origin can be shed there has to be clear evidence that the individual has demonstrated a positive intention of permanent residence in the new country and has abandoned the idea of ever returning to live in Ireland. An individual's domicile status can influence the extent to which foreign sourced income is taxable in Ireland (please see the

table in the following question). If you consider that you are non domiciled in Ireland and you require further information regarding your tax treatment please contact Residence Section.

2.6. How do the concepts of residence, ordinary residence and domicile affect my tax treatment?

The following table outlines how certain combinations of the above concepts influence the extent of your liability to Irish income tax.

Your residence, ordinary residence and domicile status.	Extent of your liability to Irish tax (see note 1).
Resident, ordinarily resident and Irish domiciled.	Taxable on all Irish and foreign sourced income in full.
Not resident, ordinarily resident and Irish domiciled.	Taxable on all Irish and foreign sourced income in full. However income from the following sources is exempt from tax: • income from a trade, profession, office or employment, all the duties of which are exercised outside Ireland (but see question 4.2); and • other foreign income, e.g. investment income, provided that it does not exceed €3,810 in the tax year in which it is earned (£2,220 for the short tax "year" ending 31 December 2001).
Not resident, ordinarily resident and not Irish domiciled.	Taxable on Irish sourced income in full and taxable on remittances of foreign sourced income (see note 2). However income from the following sources is exempt from tax: • income from a trade, profession, office or employment, all the duties of which are exercised outside Ireland (but see question 4.2); and • other foreign income, e.g. investment income, provided that it does not exceed €3,810 in the tax year in which it is earned (£2,220 for the short tax "year" ending 31 December 2001).
Resident and ordinarily resident but not Irish domiciled	Taxable on Irish sourced income in full and taxable on remittances of foreign sourced income, (see note 2).
Resident and domiciled but not ordinarily resident	Taxable on Irish sourced income in full and taxable on remittances of foreign sourced income, (see note 2).
Not resident, not ordinarily resident and not Irish domiciled.	Taxable on Irish sourced income in full (but see question 4.1) and taxable on foreign sourced income in respect of a trade, profession or employment exercised in Ireland, (see note 2).

Note 1. While the above table outlines your income tax treatment under Irish domestic legislation, you should be aware that the provisions of a **double taxation agreement** will generally take precedence over domestic legislative provisions and may result in a different tax treatment in certain circumstances.

Note 2. The remittance basis of assessment applies to foreign sourced income (excluding UK sourced income). It provides that for any tax year during which you are not Irish domiciled, or if you are an Irish citizen who is not ordinarily resident in Ireland, you will only be taxable to the extent that you bring that income into Ireland.

Chapter 3

Going to work abroad temporarily and remaining resident for Irish tax purposes.

3.1. I am going to work abroad but will remain resident for Irish tax purposes. How will my employment income be treated?

For any tax year that you are resident you will be liable to Irish income tax on your total income from all sources including any income from a foreign employment.

3.2. Will I be entitled to full tax credits?

As you are resident for tax purposes you will be entitled to full tax credits as set out in the explanatory leaflet No. IT.1 which is available from any tax office or from the Revenue website www.revenue.ie/leaflets.htm.

3.3. What happens if my income is also taxable abroad?

If tax is charged in a country with which Ireland has a double taxation agreement you will be given relief as specified in the relevant *agreement*. This is normally provided by either **exempting** the income from tax in one of the countries or by **crediting** the foreign tax paid against your Irish tax liability on the same income. If you are going to a country with which Ireland does not have a *double taxation agreement* you will be liable to Irish tax on your foreign income net of foreign tax paid. (Please see Appendix A for a list of those countries with which Ireland currently has *double taxation agreements*.)

3.4. Am I entitled to any additional allowances/reliefs as an Irish resident working abroad?

Yes, for any tax year that you are resident in Ireland, you may be entitled to **one** of the following additional reliefs:

- **Foreign Earnings Deduction**
  Please see questions 3.5 to 3.11;

  or
- **Trans-Border Workers Relief**
  Please see questions 3.12 to 3.15;

  or
- **Seafarers Additional Allowance**
  Please see questions 3.16 to 3.18.

FOREIGN EARNINGS DEDUCTION

3.5. What is the foreign earnings deduction?

This is a relief available to "*resident*" individuals. It provides for a deduction, from the income of an employment which is exercised abroad, subject to a maximum claim of €31,750 in any tax year *(for the short "year" of assessment ending 31 December 2001, the maximum deduction is reduced to £18,500)*. It is calculated by reference to the time spent working abroad. It is available as an alternative to the *trans-border workers relief* and the *seafarers allowance* described in the following paragraphs. Days spent working in the UK or days spent working in another country on behalf of a UK employer are **not** counted as qualifying days for the purpose of the relief. This relief will no longer apply after 31 December 2003.

3.6. How do I qualify for the foreign earnings deduction?

To qualify for the foreign earnings deduction the income must not have benefited from *split year treatment* (see questions 4.3 and 4.8) or the remittance basis of assessment (see note 2 at question 2.6) and each of the following conditions needs to be satisfied:

- those days spent abroad must be part of a continuous absence of 11 days or more and be substantially devoted to the performance of the duties of your employment, and
- the period you spend abroad must amount to 90 days or more in the tax year in question *(67 days or more for the short tax "year" ending 31 December 2001)* **or** 90 days or more over a continuous period of 12 months straddling two tax years.

3.7. What is a day for the purpose of this relief?

A '*day*' is one on which an individual is not present in Ireland during any part of that day (i.e. from midnight to midnight). Prior to 26 January 2001 the day of an individual's departure from Ireland was concessionally counted as a qualifying day even though the individual would have been present in Ireland for part of that day. This treatment applied on the basis that the day of departure would have been followed by a period of at least 10 days continuous absence. With effect from 26 January 2001 this concessional treatment no longer applies and the individual must be absent from Ireland for the entire day in order for it to be counted as a qualifying day.

3.8. Who can avail of the foreign earnings deduction?

It is available to all employees and to directors of companies who carry on a trade or profession, **excluding:**

- employees paid out of the public revenue of the State, e.g. civil servants, Gardai and members of the Defence Forces, and
- employees of a board, authority or other similar body established by or under statute.

3.9. How is the foreign earnings deduction calculated?

To calculate the deduction, firstly add together the number of days you have spent abroad exercising the duties of an employment, ignoring any period which amounts to less than 11 consecutive days. These days, which must amount to at least 90 (67 for the short tax "year" ending 31 December 2001), are known as qualifying days. The total number of days is then divided by 365 (270 for the short tax "year" ending 31 December 2001) to give a fraction which is multiplied by your income* from any employment in the year. The result of this calculation is known as the **specified amount**. If you have more than one foreign employment with qualifying days separate calculations are required in respect of each employment and the deduction (specified amount) cannot exceed the income from any of those employments.

** Income for the purposes of calculating the deduction is to be net of superannuation contributions and exclusive of any benefits-in-kind, severance payments, preferential loans, amounts in respect of restrictive covenants and amounts arising from the exercise of share options.*

The following examples illustrate how the deduction is calculated. Under the tax credit system which operates from 6 April 2001, tax is calculated at the appropriate rates on gross pay less the foreign earnings deduction, superannuation contributions and contributions to a **Revenue approved** Permanent Health Scheme to arrive at gross tax. Gross tax is then reduced by the tax credits to arrive at net tax payable, (please see leaflet IT.1).

Example 1 - (All periods are spent abroad working for one employer and are in the same tax year)

*John, a single individual who is **resident** spent two separate 40 day periods working in France. He also spent one 35 day period working in Germany and a period of 60 days working in the UK. His total employment earnings for the year amounts to €90,000. The 60 days spent working in the UK are ignored in calculating the qualifying days but the income from the employment exercised in the UK is included in the employment earnings.*

$$\frac{(40+40+35) \times €90{,}000}{365}$$

Specified amount = €28,356.16

Total employment earnings	€90,000.00
Less deduction	€28,356.16
Taxable Income	€61,643.84

Example 2 – (There is only one employer and the periods spent abroad straddle two tax years)

Anne, a single individual earning €90,000 per annum worked abroad for a period exceeding 90 days spread over two consecutive years. She spent 40 days working in France and 35 days working in Germany during the first tax year. She spent another 40 days working in Italy during the next tax year. While all of the periods fell within a continuous period of 12 months, the total days in one or both of the tax years is less than 90. In such cases the deduction is apportioned between the two tax years and is calculated as follows.

Year 1 calculation: $\frac{(40+35) \times €90{,}000 \text{ (Year 1 income)}}{365}$

Specified amount = €18,493.15

Year 2 calculation: $\frac{40 \times €90{,}000 \text{ (Year 2 income)}}{365}$

Specified amount = €9,863.01

Example 3 – (All periods are spent working abroad in the same tax year but for two different employers and the specified amount for one of the employments exceeds the amount of income earned from that employment)

Mary spent 50 days working in France for Company A early in a tax year. Having changed employment in June, Mary subsequently spent 80 days working in Austria for Company B. Her foreign earnings for the year are:

Salary from Company A	€6,000
Salary from Company B	€60,000
Total salary	€66,000

The foreign earnings deduction is calculated as follows:

Employment with Company A $\frac{50 \times €66{,}000}{365}$

Specified amount = €9,041.09

Employment with Company B $\frac{80 \times €66{,}000}{365}$

Specified amount = €14,465.75

*As the **specified amount** in respect of the employment with Company A results in an amount that exceeds the income from that employment, the deduction is limited to the amount of the income i.e. €6,000. The total deduction for the year is therefore €20,465.75.*

Example 4 – (the deduction is restricted to €31,750)

Peter spent 122 days working in the United States. His employment earnings for the year amounted to €100,000. The foreign earnings deduction is calculated as follows.

$$\frac{\textbf{122 x €100,000}}{\textbf{365}}$$

Specified amount = €33,424.65

*As the **specified amount** exceeds the limit which can be claimed in any one tax year **the claim is restricted to €31,750.***

3.10. Can an individual who is employed as a seafarer qualify for the deduction?

Yes, provided that the conditions outlined at question 3.6 are satisfied a seafarer can avail of the foreign earnings deduction. Additionally, for the purposes of arriving at his/her total number of qualifying days, a seafarer can count those days spent on board a sea-going ship in a United Kingdom port which are part of an international voyage to or from a port outside Ireland or the United Kingdom. A sea-going ship for this purpose means a ship, other than a fishing vessel, which is registered in the shipping register of a European Member State and is used solely for the purposes of carrying passengers or cargo for reward. As an alternative to claiming the foreign earnings deduction a seafarer can avail of the special seafarers allowance (see questions 3.16 to 3.18).

3.11. How and when do I claim the deduction?

The deduction is claimed at the end of the tax year when making your annual return of income for that year. When making a claim you should also include the following:

- a statement from your employer indicating your dates of departure from and return to Ireland and the location at which the duties of the employment were exercised while abroad; and
- tax form P.60 (certificate of earnings and tax deducted) if you were working for an Irish employer.

TRANS-BORDER WORKERS RELIEF

3.12. What is the trans-border workers relief?

This arrangement is designed to give income tax relief to individuals who are resident in Ireland but who commute daily or weekly to their place of work abroad and who pay tax in the other country on the income from that employment. Subject to meeting the conditions outlined at question 3.13 an individual can have his/her income tax liability for a particular tax year reduced to what is known as the **specified amount**. In simple terms, the effect of this relieving measure is that Irish tax will only arise where the individual has other income

separate to the income from the foreign employment *(qualifying employment)* and will ensure that he/she will not pay any additional tax on employment income which is taxed abroad. The relief is available as an alternative to the foreign earnings deduction and the seafarers allowance.

3.13. How do I qualify for Trans-Border Workers relief?

To qualify for the relief the income must not have benefited from split year treatment (see questions 4.3 and 4.8), the remittance basis of assessment (see note 2 at question 2.6) or have been paid by a company to one of its proprietary directors or to the spouse of one of its proprietary directors and each of the following conditions needs to be satisfied:

- the duties of the employment must be exercised wholly in a country with which Ireland has a double taxation agreement. *(Please see Appendix A for a list of those countries with which Ireland currently has double taxation agreements).* In determining whether the duties of a qualifying employment are performed wholly in the other country, any duties performed in Ireland which are merely incidental to the performance of the duties abroad will be regarded as having been performed in the other country. Normally any number of days up to a maximum of 30 in a tax year will be regarded as incidental days;
- the office or employment must be held for a continuous period of at least 13 weeks in the tax year (for the short "year" of assessment ending on 31 December 2001, the qualifying office or employment must be held for a continuous period of not less than 10 weeks);
- the income from that employment must be subject to tax in the other country and must not be exempt or relieved from tax in that country;
- the foreign tax due on the income must have actually been paid to the relevant authorities and must not be repaid or be eligible to be repaid; and
- for every week during which an individual works abroad he or she must be present in Ireland for at least one day in that week (As is the case for the rules of residence, an individual is regarded as being present in Ireland for a day if he/she is present in the country at midnight).

3.14. How is the relief (specified amount) arrived at?

- Calculate the income tax which would be payable for a tax year under normal rules (please see leaflet IT.1), excluding credit for any foreign tax paid; and
- Reduce this amount in the proportion which your total income (excluding the income from the qualifying employment) bears to total income (including the income from the foreign employment). This can best be expressed by way of the following formula:

$$\frac{\text{Total tax liability under normal Irish rules}}{\text{Total Income}} \times \text{Total income excluding income from the qualifying foreign employment}$$

Please see the following examples.

EXAMPLE 1

Peter is a single person resident in Ireland for the 2002 tax year. He is employed in Northern Ireland and will have earned the equivalent of €60,000 by the end of the year. He will also have earned €20,000 in rental income in the year.

(a) Calculate income tax liability under normal rules:

Income		
Foreign employment income		€60,000
Irish rental income		€20,000
Total Income		€80,000
Tax		
28,000 @ 20%		€5,600
52,000 @ 42%		€21,840
Gross tax		€27,440
Less tax credits		
Single person credit		€1,520
Employee credit		€660
Total tax credits		€2,180
Net tax	(€27,440 - €2,180)	€25,260

(b) Calculate the specified amount:

$$\frac{€25,260 \times €20,000}{€80,000}$$

= €6,315 tax payable

(If there was no rental income the specified amount would be zero)

EXAMPLE 2

Tom and Patricia are a married couple resident in Ireland for the 2002 tax year. Tom is employed in Northern Ireland and will have earned the equivalent of €50,000 by the end of the year. Patricia is employed in Ireland and will have earned €25,000 by the end of the year.

(a) Calculate income tax liability under normal rules:

Income		
Tom's income from his foreign employment		€50,000
Patricia's income from her Irish employment		€25,000
Total Income		€75,000
Tax		
€56,000 @ 20%		€11,200
€19,000 @ 42%		€7,980
Gross tax		€19,180
Less tax credits		
Married person credit		€3,040
Employee credit		€1,320
Total credits		€4,360
Net tax	(€19,180 - €4,360)	€14,820

(b) Calculate the specified amount:

$$\frac{€14,820 \times €25,000}{€75,000}$$

= €4,940 tax payable

3.15. How and when do I claim the relief?

As the income from the foreign employment remains assessable to Irish tax the relief can be claimed at the end of the tax year when making your annual return of income. You should also include evidence of foreign tax paid with your claim.

SEAFARERS ADDITIONAL TAX DEDUCTION

3.16. What is this relief?

This is an amount which an individual can deduct against his/her seafaring earnings when calculating his/her taxable income. The amount of the deduction is currently €6,350 (for the short tax "year" ending 31 December 2001, the amount of relief is limited to £3,700) and is available as an alternative to either the *foreign earnings deduction* or the *trans-border workers relief* mentioned in the previous paragraphs. It cannot be set against any other income of the individual or against the income of his or her spouse. It is additional to the normal allowances outlined in leaflet IT.1. It does not however apply to public sector employees.

3.17. How do I qualify for the deduction?

To qualify for the deduction the income must not have benefited from *split year treatment* (see questions 4.3 and 4.8) or the remittance basis of assessment (see note 2 at question 2.6) and each of the following conditions needs to be satisfied:

- you must be absent from Ireland for at least 169* days in the tax year (for the short tax "year" ending 31 December 2001 you must be absent from Ireland for at least 125* days) for the purposes of performing the duties of the employment (*to be absent from Ireland for a day means not being present in the country at midnight of that day*);
- the employment must be performed wholly on board a sea-going ship in the course of an international voyage. A sea going ship for this purpose means a ship, other than a fishing vessel, which is registered in the shipping register of a European Member State and is used solely for the purposes of carrying passengers or cargo for reward, and
- the voyage must begin or end in a port outside Ireland. A rig or a platform situated in **any** maritime area is regarded as a port outside Ireland for the purposes of the relief.

* Section 30, Finance Act, 2001 provides that the Minister may by order reduce the minimum absence requirement from 125 days and 169 days to 119 days and 161 days respectively. At the time of going to print such an order has not been made.

3.18. How and when do I claim the deduction?

A claim is made at the end of the tax year to your local tax office when making your annual return of income. You should also include a statement from your employer giving details of the voyage(s) and the number of days, with dates, you were absent from Ireland.

Chapter 4

Going to work abroad on a long term or permanent basis and becoming non-resident for Irish tax purposes.

4.1. If I am non resident for a particular tax year, how is my employment income treated for Irish tax purposes?

For any tax year during which you are non resident your employment income will be exempt from Irish tax provided that all the duties of your employment, are exercised abroad. The income of Government employees e.g. civil servants, Gardai and members of the Defence Forces, will however remain chargeable to Irish tax regardless of their residence status or where the duties of their employment are exercised.

4.2. I will be working abroad for an Irish employer who will need me to return to Ireland from time to time. How will these return visits affect my tax treatment?

If an inconsequential number of days are spent working in Ireland and are merely incidental to your foreign duties of employment those days will not affect your exemption from Irish tax. Normally any number of days up to a maximum of 30 in a tax year will be regarded as incidental days.

4.3. I am being posted to work abroad by my Irish employer. How will my employment income be treated for tax purposes in the year that I leave?

If you are resident during the tax year you leave and you will be non resident for the following tax year you will be deemed to be non resident from the date of your departure. This means that your employment income will be exempt from Irish tax from that date. In order to avail of this arrangement (*known as split year treatment*) it is necessary that you satisfy your local tax office of your intention **not** to be resident in Ireland for the tax year following your departure. In this regard a statement from your employer or a copy of your contract of employment indicating the length of time you intend to spend working abroad should be submitted in support of your claim. The tax office will then issue what is known as a PAYE exclusion order to your employer authorising him/her not to deduct tax from your salary. An exclusion order will operate from the date of your departure and will be effective for as long as you remain non resident and the duties of your employment continue to be exercised abroad. Although you will be deemed non resident from the date of your departure you are nevertheless due full personal tax credits for the complete tax year. In those circumstances you may be entitled to a tax adjustment, taking into account the unused portion of your tax credits (see question 4.5).

4.4. Can my employer continue to deduct PRSI from my salary if an exclusion order is put in place?

Once authorised not to deduct tax under the PAYE system your employer will no longer be able to deduct P.R.S.I. You may nevertheless continue to be insurable in Ireland. In such cases it will be necessary for you to remit PRSI directly to the Department of Social Community and Family Affairs. For convenience, a copy of the exclusion order will be sent directly to that Department's PRSI Special Collection Section, Social Welfare Services Office, Cork Road, Waterford. Tel. 051 356000, email spc@eircom.net. This will enable that Department to take up the matter either with you directly or with your employer.

4.5. I am going abroad and have not used up my full tax credits for the tax year in which I leave. How do I claim a refund of tax paid?

You can claim a refund of tax paid by supplying the following details to your local tax office:

- a completed claim form P50 (available from your local tax office or from our website www.revenue.ie/forms.htm);
- your P45 (available from your employer) if you are leaving your existing employment);
- a completed return of income form 11 (also available from your local tax office or from our website); and
- a statement to the effect that you are going to live abroad permanently or in such circumstances that you will not be resident in Ireland for at least the following tax year.

4.6. How will sources of foreign income other than employment income be treated when I am non resident?

For any tax year during which you are non resident but remain ordinarily resident (see questions 2.2 and 2.4) your foreign sourced income (excluding income from an employment, a trade or profession, the duties of which are not exercised in Ireland) will remain chargeable to Irish tax unless such income does not exceed €3,810 for that tax year. If the income exceeds €3,810 the total amount (not just the excess over €3,810) becomes taxable. During the short tax "year" ending 31 December 2001 tax will arise on foreign income if it exceeds £2,220. However for any tax year that you are resident in a country with which Ireland has concluded an agreement for the avoidance of double taxation this income may be exempt from Irish tax under the provisions of that agreement.

4.7. I intend to let my home while I am abroad. Will I have a liability to Irish tax on the rental income?

Regardless of your residence status you will have a liability to tax on the rent you receive from letting your home. For details as to how such tax should be paid please contact your local tax office.

4.8. When I come back to live in Ireland how will my employment income be treated in the year of my return?

If you are resident in the tax year during which you return to Ireland and you intend to be resident for the following tax year, employment income earned before the date of your return will not be taxable (this arrangement is known as *split year treatment*).

As a resident for the tax year of your return to Ireland you will be entitled to personal tax credits for the full tax year.

You will be regarded as being resident in Ireland for a tax year if you satisfy either of the residence tests outlined at question 2.2. Should you not satisfy either of these tests you can, if you wish, elect to be resident for the tax year of your return. A condition of making an election is that you must establish to the satisfaction of your local tax office that you will be resident here for the following tax year under either of the tests outlined at question 2.2. You should be aware that once an election is made it cannot subsequently be cancelled.

If you are non resident for this tax year you will be taxable on earnings from an employment, the duties of which are exercised in Ireland. As a non resident you may be entitled to a proportion of tax credits and reliefs. This proportion is determined by the relationship between your income for the tax year which is subject to Irish tax and your income from all other sources which is not subject to Irish tax.

4.9. While I was abroad I saved some of my employment earnings. How are these savings treated for tax purposes when I return?

If the savings were from employment income earned in a tax year(s) during which you were non resident those savings will not be taxable when you bring them home with you on your return.

Appendix A

Double Taxation Treaties entered into by Ireland

Ireland currently has comprehensive double taxation agreements in force with 40 countries. The agreements generally cover income tax, corporation tax and capital gains tax (direct taxes). The following is a list of those agreements:

Australia	India	Poland
Austria	Italy	Portugal
Belgium	Israel	Romania
Bulgaria *	Japan	Russia
Canada	Korea (Rep of)	Slovak Republic
China	Latvia	South Africa
Cyprus	Lithuania	Spain
Czech Republic	Luxembourg	Sweden
Denmark	Malaysia	Switzerland
Estonia	Mexico	United Kingdom
Finland	Netherlands	United States
France	New Zealand	Zambia
Germany	Norway	
Hungary	Pakistan	

A number of new treaties are in the course of being negotiated with Croatia, Egypt, Iceland, Singapore, Slovenia, Turkey and Ukraine. Also, existing treaties are being re-negotiated with Canada and France. Copies of existing Double Taxation Agreements are available on the Revenue web site www.revenue.ie/fra_pubs.htm.

* The Bulgarian treaty will not come into effect for income tax and capital gains tax purposes until 1 January 2003. It is effective for corporation tax purposes from 1 January 2002.

Appendix B

List of Tax Offices

Inspector of Taxes Dublin Area

Central Revenue Information Office
Cathedral Street, Off Upper O'Connell Street, Dublin 1
(Personal Callers only)

Central Telephone Information Office
Telephone Service 353 1 878 0000

Taxes Central Registration Office
Arus Brugha, 9/15 Upper O'Connell Street, Dublin 1
Telephone: 353 1 865 5000
E-mail: tccro@revenue.ie

Tallaght Revenue Information Office
Level 2, The Square, Tallaght, Dublin 24
(*Personal Callers only)*

Revenue Forms & Leaflets Service
Telephone Service 353 1 878 0100

Dublin PAYE No. 1 & PAYE No. 4,
Arus Brugha, 9/15 Upper O'Connell Street, Dublin 1
Telephone: 353 1 865 5000
E-mail:paye1@revenue.ie
& paye4@revenue.ie
(Employees)

Dublin PAYE No. 2 & PAYE No. 3,
85/93, Lower Mount Street, Dublin 2
Telephone: 353 1 647 4000
E-mail:paye2@revenue.ie
&paye3@revenue.ie
(Employees)

Dublin Tax District
1A Lower Grand Canal St, Dublin 2
Telephone: 353 1 647 4000
E-mail: dubittax@revenue.ie
(Self Employed Individuals/Trusts)

Dublin Corporation Tax District
Lansdowne House, Lansdowne Road, Dublin 4
Telephone: 353 1 631 6700
E-mail: dubcttax@revenue.ie
(Companies)

Dublin Directors District
Lansdowne House, Lansdowne Road, Dublin 4
Telephone: 353 1 631 6700
E-mail: dubdirs@revenue.ie
(Company Directors)

Inspector of Taxes Provincial Districts

Athlone Tax District
Government Offices, Pearse Street, Athlone, Co. Westmeath
Telephone: 353 902 21800
E-mail: athIntax@revenue.ie

Castlebar Tax District
Michael Davitt House, Castlebar, Co. Mayo
Telephone: 353 94 37000
E-mail: mayotax@revenue.ie

Cork Tax District
Government Offices, Sullivan's Quay, Cork
Telephone: 353 21 496 6077
E-mail: corkpaye@revenue.ie

Dundalk Tax District
Earl House, Earl Street, Dundalk
Telephone: 353 42 935 3700
E-mail: louthtax@revenue.ie

Galway Tax District
Hibernian House, Eyre Square, Galway
Telephone: 353 91 536000
E-mail: galwaytax@revenue.ie

Kilkenny Tax District
Government Offices, Hebron Road, Kilkenny
Telephone: 353 56 75300
E-mail: kilkentax@revenue.ie

Letterkenny Tax District
High Road, Letterkenny, Co. Donegal
Telephone: 353 74 694009
E-mail: donegtax@revenue.ie

Limerick Tax District
River House, Charlotte Quay, Limerick
Telephone: 353 61 212700
E-mail: limtax@revenue.ie

Sligo Tax District
Government Offices, Cranmore Road, Sligo
Telephone: 353 71 48600
E-mail: sligotax@revenue.ie

Thurles Tax District
Government Offices, Stradavoher, Thurles, Co. Tipperary
Telephone: 353 504 28700
E-mail: tipptax@revenue.ie

Tralee Tax District
Government Offices, Spa Road, Tralee, Co. Kerry
Telephone: 353 66 7183100
E-mail: kerrytax@revenue.ie

Waterford Tax District
Government Offices, The Glen, Waterford
Telephone: 353 51 317200
E-mail: wfordtax@revenue.ie

Wexford Tax District
Government Offices, Anne Street, Wexford
Telephone: 353 53 63300
E-mail: wxfordtax@revenue.ie

SUBMISSION

of the

CANADIAN MERCHANT SERVICE GUILD

to the

INTERNATIONAL COMMISSION ON SHIPPING (ICONS)

The Canadian Merchant Service Guild (C.M.S.G.) was originally established by an Act of Parliament in 1919 essentially to unite fraternally Canadian seamen and also initially to provide those seamen, as well as their dependants, with insurance protection. In 1980 the Guild was re-incorporated by Act of Parliament. Its present day objectives are to promote the social, economic, cultural, educational and material interests of its members.

Through some forty collective agreements, the Guild represents the vast majority of Masters, Mates, Pilots, and Engineers across the Canadian-flag Shipping Industry. Its 3000 members are largely employed in the private sector, but membership also includes ships' officers employed by federal government departments, one of which is the Canadian Coast Guard.

The Guild has been an active affiliate of the ITF since 1968. The ITF has already submitted a detailed submission to ICONS, which the Guild wholeheartedly endorses.

SUMMARY

A sustainable Shipping Industry will be crucial for trade and commerce in the increasingly globalized world economy. However, the operation of substandard shipping with substandard crews serves to exacerbate the challenges the Shipping Industry faces with respect to an ageing fleet and a critical shortage of qualified seafarers.

The use of substandard ships creates competitive distortions amongst flags and amongst ship owners/operators; it undermines crew training and upgrading, and distorts the functioning of the maritime labour market; is detrimental to safety at sea and the marine environment; and it distorts investment. Most alarming of all are the deplorable consequences for human and trade union rights that too frequently arise in the operation of such ships.

The Shipping Industry operates within an international regulatory framework. However, numerous strategies have been devised whereby operators of substandard ships are able to easily evade that framework, sometimes with government sanction.

Concerted action by the industry is urgently needed to meet the threats posed by substandard shipping. Seafarers and shipowners will want to act in unison, sometimes jointly, and governments will be called upon for a renewed commitment and willingness for resolute action if substandard shipping is to be eliminated. THE STAKES ARE HIGH!

INTRODUCTION

The Canadian Merchant Service Guild is vitally interested in the work of the International Commission on Shipping (ICONS), and especially as it relates to the human dimensions of the Shipping Industry.

The Guild agrees with the Commission that elimination of substandard shipping will require an innovative and determined approach by the international industry. It is also felt that any such strategy or related institutional arrangements, needs to be based on an holistic approach that accounts for economic interests, and encompasses human factors alongside environmental considerations. These three elements, while distinctive in certain regards, are at the same time inter-linked and together inter-act in ways that bear importantly on the broader question of the long-term future and viability of the Shipping Industry. Most importantly, however, that strategy at the same time also needs to be cognizant of two key issues -- an ageing fleet and a critical shortage of qualified crews.

Undoubtedly national administrations, ideally working in close conjunction with seafarer and shipowner organizations, will be pursuing the question of substandard shipping. However, given that there are imposing international complexities and inter-relationships involved, effective action will in certain respects need to transcend national boundaries.

This is a fact which highlights the vital nature of the leadership role to be played by organizations such as the Intergovernmental Maritime Organization (IMO) and the International Labour Organization (ILO). Indeed, the existence of those agencies and their activities can be explained by the exceptional nature of ownership, operation and crewing in the Shipping Industry and the practical limitations on national administrations to exert significant control and discipline over the industry.

Canada has played an historically important role in the work of these international agencies. It has been vigorous in embracing and applying IMO and ILO Conventions and implementing other initiatives such as those concerning port state control; as a consequence, some of the more flagrant malpractices, and the exploitation and abuse of seafarers noted so comprehensively by the ITF in its submission to ICONS do not generally arise within the Canadian-flag jurisdiction or in the operation of the Canadian-flag fleet where our members are employed.

Nevertheless, because of our long association with international standard-setting and conversancy with training and manning issues, along with our familiarity with the unacceptable conditions that many of our fraternal brothers and sisters must work under, the Guild makes this submission to provide the Commission with another perspective on the issues and challenges before it, and hopefully, some useful ideas.

COMPETITIVE ENVIRONMENT

The annals of maritime commerce suggest that flag-of-convenience ships all too often are sub-standard and pose serious threats to the safety of life at sea and to the environment. Moreover, the tax havens, the possibility of cheap but substandard crewing arrangements, and the likelihood of minimal enforcement of standards that are some of the features offered by convenience registries serve to threaten the sustainability of the industry as a whole.

In spite of the international regulatory regime noted above, there are a number of flag states which do not follow its rules or apply them vigorously, thereby giving ships flying their flag an unfair competitive edge.

The existence of flags-of-convenience registries and the use of substandard ships and substandard crews, along with strategies of shippers and their political influence in government circles combine to put the Canadian-flag fleet under constant competitive pressure. Even the cabotage regime within which the Canadian-flag fleet operates permits the use of foreign-flag, foreign-crewed ships under the so-called waiver system. As a result, there have been no new-buildings for the Canadian-flag fleet in some 15 years and, as critical, potential investment into a much discussed Canadian-flag deep sea fleet continues to be undermined, as are needed measures for aggressive recruitment into the industry and investment in human resources more generally.

In respect to the above-noted waiver system, while recognizing it as a necessary component of Canada`s coasting trade laws, it is the Guild`s view that the process and guidelines for deciding on whether to approve waivers must not be dominated by the notion of commercial necessity; this is an argument too often allowed as an excuse for circumventing the essential purpose of the coasting trade law itself.

The Guild fully recognizes the importance of the industry being viable and competitive, and indeed has championed that cause in various fora, including Parliamentary Committees examining the industry`s future. Towards that end, in recent years the Canadian Shipping Industry has witnessed a degree of industry re-structuring, investments in modification and modernization of ships, and a large decrease in the number of ships in the fleet as well as in employment levels. It is notable that these changes were achieved with virtually no labour-management conflict.

In the Guild`s view and experience, the quality of labour-management relations and associated institutional arrangements, and especially the resulting stability of labour and predictability of labour costs are critical to successful ship operations. Many positive outcomes including competitive viability are associated with a progressive labour relations climate, and perhaps most notable are the benefits accruing to the industry`s clients--shippers who are able to rely on uninterrupted, safe, and economic transport of their product.

HUMAN RESOURCE CHALLENGE

In Canada, as across the world, the Maritime Industry will be facing critical shortages of qualified crews. The strategic importance that a skilled workforce, their ability to adapt, and the quality of their commitment to seafaring as a career have for the effectiveness of the industry`s operations is beyond dispute.

A number of forces--such as the availability of new and sophisticated ship-board technology, sweeping changes to regulatory training, and the pursuit of enhanced safety and the operational health of the industry--are putting a premium on crew skills and the adoption of a training and safety culture in the industry. These pressures are occurring amidst manning reductions and a lessened interest in seafaring as a career due to negative perceptions of the industry and competitive conditions and opportunities in shore-based industries.

The Guild draws attention, as does the ITF, to the importance of employment continuity and stability for seafarers in any training, recruitment or career path initiatives as well as those for instituting a safety culture on board ships. Work needs to be done in this matter, through collective bargaining and trade union activity or, in its absence, measures to bring about greater possible adherence to ILO Convention 145 and Recommendation 139, instruments having to do with employment of seafarers.

Marine training has been a subject of much review and consideration in Canada, and especially such questions as funding, institutional arrangements, standards of certification, and matching training supply with industry`s needs. Importantly, seafarer organizations and shipowners have jointly, along with government, been involved in initiatives respecting some of those issue-areas.

Particular note is made of the Guild`s active involvement in an intensive study of the industry`s human resources, carried out several years ago. Through the development of age profiles, retirement rates and training needs projections, that study confirmed looming crew shortages and especially of qualified senior deck and engineering officers; called for a recruitment strategy and standards to ensure entrants possess appropriate aptitudes, urged measures be adopted to project a positive image for the industry; and identified the need for cooperation and coordination, and a policy environment in which the industry can flourish and provide potential entrants with some assurance that they can enjoy stable employment and reasonable career opportunities. This latter point would seem to have relevance to international-level initiatives dealing with the emerging critical shortages of crews.

A key outcome of that study was the initiation of a process respecting the possible establishment of a National Marine Training Council. Essentially that Council would have sought to mobilize a national effort respecting marine training through cooperation and harmonization amongst all parties involved, and by the pursuit of strategic objectives of which the following are of particular note: establish channels for effective liaison and coordination of activities of the stakeholders; promotion of seafaring as a career; fostering of an industry training culture and career development programs; and serving as a forum for stakeholders, industry-wide.

The concept received considerable support from stakeholders, however, due to the fact that sufficiently broad support from the industry itself has not been forthcoming, the proposal still remains unfulfilled.

ROLE OF GOVERNMENTS

The Guild makes its comments and observations about "the governmental role" in the context of a firm conviction that reliance on self-regulation has no part to play in the eradication of substandard shipping/substandard crews.

From our review of developments at both the national and international levels, the Guild is of the opinion that governments, on whom international action is dependent, need to show more enthusiasm and commitment for dealing with substandard shipping and in applying internationally-set standards. If such concerted action were to evolve, the Guild believes that due stimulus would emerge for fleet renewal and for initiatives or investments into training and upskilling that will be called for.

It is recognized that there can be genuine difficulties to be experienced by flag states in ratifying internationally agreed Conventions, such as those encountered in Canada because of the division of federal-provincial responsibilities, or in applying measures to comply with those instruments. However the lack of wide-based compliance with key instruments seems more a question of political will than one of failure of the current international regulatory framework itself.

At the international level, the Guild sees the regulatory regime of the IMO and the ILO, supported by port state control initiatives as generally adequate; however, several comments are offered with respect to ILO Convention 147. That Convention is about the human side of shipping, seeking in a broad sense, improved safety of navigation and advancement of seafarer`s interests in the fields of health and safety, working conditions and trade union rights.

It is noted that the ILO`s interest in substandard ships and their adverse implications for crews dates back to 1933 when, at a session of the ILO`s Joint Maritime Commission there was considerable discussion over concerns about re-flagging of ships to non-traditional registries. The emerging increased use of flags-of-convenience alongside crew size reductions and questionable ship management practices continued to exert pressures for international action against substandard ships and the consequent adverse implications for conditions of work, shipboard life and safety; ultimately Convention 147 was adopted in l976.

Since then, continuing attention has been devoted by the ILO to the promotion of more widespread ratification of the instrument. These efforts included the convening of a Meeting of Experts in l989 to draw up a set of practical guidelines intended to assist in the uniform implementation of this complex Convention and which could serve as an adjunct to national laws on procedures to be followed by ship inspectors, including those working within port state control systems. In this regard, the Guild would underline the importance of port state inspections paying due and concerted regard to the human elements involved.

It is also suggested that the ILO, in seeking to foster ratification and compliance with its maritime instruments and notably Convention 147, might consider ways to further the practice of tripartism in the face of an increasingly unregulated (maritime) labour market, a practice which, incidentally, has been a hallmark of the ILO`s maritime activities from the start.

CLOSING POINTS

While this submission has already touched on a number of issues identified by ICONS as needing examination, further specific commentary on several of them would seem in order.

On the matter of possible establishment of an international enforcement mechanism, one of the key determinants will be whether "users of shipping" buy into the notion of eliminating the use of sub-standard ships and thereby, effectively undermine their reason for existence. Addressing that determinant will be an imposing task and will call for a strong governmental presence.

As an initial step, consideration might be given to establishment of a joint seafarer-shipowner advisory and information agency respecting substandard shipping and crews, one that would draw on input world-wide and whose authoritative outputs would serve for both advocacy and monitoring purposes. As one of its specific endeavours, the agency could identify substandard registries and substandard classification societies. Its work would give rise to greater transparency and coordination on this matter; it could also be of potential benefit to flag states needing assistance to implement minimum standards and follow "best practices", and as to the malpractices to discourage.

On the question of how the financial and welfare interests of the crew could be more effectively protected, the Guild`s simple response is that this end can likely best be achieved through the extension of trade union organization and collective bargaining rights where they do not already exist, and through determined government action to ensure compliance with internationally-agreed social and labour instruments. Part of the approach here may be to seek ways to ensure a broader understanding of the institutions and practices of collective bargaining in the Shipping Industry.

And lastly, on the theme of the need for an innovative approach, the Guild has had a particular experience it believes might be of interest to ICONS.

The Guild has referred on several occasions in this submission, to its view that consensus-building and joint labour-management approaches offer significant potential for discussion, clarification and resolution of issues facing the industry. Following is a brief overview of a unique Canadian initiative in which the Guild played a lead role and which, under the right circumstances, might offer some of the elements of a framework for any international-level initiative/strategy respecting substandard ships and crews.

Recognizing that a number of human resource issue areas a) were shared in common, b) did not lend themselves to resolution at the bargaining table, nor c) could not be adequately addressed through unilateral action, the Guild and several other seafarer organizations along with a grouping of Canadian-flag shipowners in the early 1990`s concluded that the industry needed an innovative process and forum to deal effectively with certain human resource issues such as training and upgrading, health and safety, and adaptation to technological and structural change.

As a result, a joint body known as the Council of Maritime Affairs (COMA) was established and had as its broad objectives the achievement of a comprehensive, broad-based understanding of the human resource issue areas impacting on ships crews and ship operators; addressing such issues in a structured and consensual manner; undertaking initiatives in training; ensuring an effective forum and process for effective industry input into legislation/policy measures that bear upon the industry; and promoting the development and adoption of maritime policy which fosters viable career prospects for Canadian seafarers and investment in fleet renewal.

Many significant issues were in fact addressed by COMA and successes registered on a number of fronts, the most important of which was that its operations opened up a process for new dimensions of dialogue and participation for the Shipping Industry in the consultative agenda of the government and its agencies and even with the commercial sector of the Canadian economy. This was important because typically government consultations respecting our industry were being targeted specifically for seafarers on the one hand, or for shipowners; the introduction of a joint industry approach under COMA forced new thinking by the government about its consultation strategy and process in the face of a unified industry-level position and voice. We would underline this last point; should joint seafarer-shipowner arrangements emerge as a result of the work of ICONS, new attitudes and arrangements for consultation by the IMO, ILO and others will be called for.

While initially facilitated by government, COMA was totally independent from it. COMA is not presently in operation, due in the main to changes that have been taking place within shipowner organizations. It was a unique initiative, both in the Canadian transportation sector and across the World Shipping Industry.

CONCLUSIONS

Whatever strategy emerges for addressing the competitive distortions and malpractices associated with substandard shipping, it will need to meet the overall tests of increased sustainability for the industry and competitive viability, improved life and safety at sea and for the environment, and establish a fair "playing field" for responsible operators.

Ultimately, regulatory responsibility for ship safety is that of the flag state. Flag states must accept that they are both key player and stakeholder in the operations and future directions of the Shipping Industry, and act responsibly to minimize the use of substandard shipping and crews. Shippers too, must eventually need to come to the realization that it is in their long-term interests to support such efforts.

With an ageing workforce the industry faces a replacement problem that will be especially problematic at the senior certification levels. The challenge will be one of how to attract and retain sufficient numbers of highly trained, qualified, and motivated personnel in the context of a changing demographic environment and an unfavourable image of the industry and life at sea. The challenge in Canada, at least, is double-edged as training involves not only academic achievement, but requires sea service, access to which is becoming a growing problem in light of the economic uncertainties which much of the industry faces.

The Guild is convinced that a supportive policy framework for the industry at both the national and international level will be crucial to any training, recruitment or other human resource measures, as it will be for investment to replace an ageing fleet. Such objectives would, it is felt, also benefit from partnership and consensus-building, jointly undertaken by seafarers and shipowners.

The World`s Shipping Industry is by any measure, a global industry. It clearly benefits from the regulatory framework and activities of the ILO and IMO, as it does from actions on the part of individual member states to deal with the excesses associated with the use of substandard shipping. While the industry glaringly stands out in stark, favourable comparison with other industries that have embraced globalization in terms of the consideration, if any, given to "human" aspects, there is clearly more serious work to be done. Hence, the vital nature of ICONS` work.

RECOMMENDATIONS

The Canadian Merchant Service Guild endorses the conclusions presented by the ITF in its submission to ICONS and the unified set of recommendations which embrace the varied and complex issues involved in dealing with substandard shipping. Several of those points warrant reiteration in the context of this submission.

- Flag states must meet all their international obligations.
- A "genuine link" must exist between the ownership of a vessel and the flag it flies.
- A port state detention should result in the imposition of appropriate punitive fines and delay of unloading until remedial action has been taken and the vessel found to be in full compliance with international requirements.
- The port state control system must pay more attention to the human dimensions involved and rigorously enforce applicable instruments.
- Codes of best practice or voluntary initiatives and agreements should complement regulatory frameworks and other policy instruments RATHER THAN SEEK TO REPLACE THEM.
- Seafarers must be considered as valued professionals, afforded suitable employment security and continuous training and be adequately protected from unfair commercial pressures.
- Free and fair competition must be underpinned by a set of norms which prevent inadequate manning levels, unfair or substandard employment policies and practices, and the avoidance of training by shipowners/operators.

Respectfully submitted,

M. R. Sjoquist
National President

July 28th, 2000

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(Annex 1)

ANNEX

This submission to the International Commission on Shipping has been prepared by John Fuchs.

His extensive background in the maritime labour field is particularly relevant to the work of the Commission;

- Industrial Relations Specialist for the Shipping Industry, Canada Department of Labour, 1968-1990
- Coordinator of project on "Strategic Factors in Industrial Relations in the Shipping Industry", International Institute for Labour Studies, I.L.O., 1971-1976
- Research Director, Federal Mediation and Conciliation Service, Canada, 1976-1990
- Government delegate and Head of delegation, ILO Maritime Conferences, 1970-1987
- Government expert, and Chairman, 1989 tripartite ILO meeting of Experts on guidelines for inspection of labour conditions on board ship
- Shipowner delegate, 1991 session of the Joint Maritime Commission (ILO), and to the 1994 I.L.O. Maritime Preparatory Conference
- Seafarer delegate, 1996 I.L.O. Maritime Conference
- Chairman of the Steering Committee, 1992 Study of Human Resources in the Canadian Marine Transportation Industry
- Executive Director, Council of Maritime Affairs

Mr. Fuchs now serves as an international maritime labour consultant

Fellowships

HOUBLON-NORMAN/ GEORGE FELLOWSHIPS

Applications are invited for Houblon-Norman/George Research Fellowships tenable at the Bank of England during the academic year 2005/2006. Appointments will be for full-time research on an economic or financial topic of the candidate's choice, preferably one that could be studied with particular advantage at the Bank of England. The length of any appointment will be by agreement with successful applicants, but will not normally be less than one month, nor longer than one year.

Senior Fellowships will be awarded to distinguished research workers who have established a reputation in their field.

Fellowships will also be available for younger post-doctoral or equivalent applicants, and for these, preference will be shown to British and other EU Nationals. The award will normally be related to academic salary scales.

Application forms (to be returned no later than 26 November 2004) and details are available from http://www.bankofengland.co.uk/houblonnormanfund or Ms Jay Begum, Bank of England, Threadneedle Street, London EC2R 8AH. E-mail: jay.begum@bankofengland.co.uk

International Property

How Government policy is sinking Australia's shipping industry
by News Weekly
Printed in Issue:6 May, 2000

Foreign-owned shipping companies, generously subsidised by their governments, have made substantial inroads into Australia's coastal shipping trade, due to Canberra's unwillingness to support the Australian shipping industry.

Overseas shipping companies - already dominant in Australia's $100 billion export and import trade - have expanded their share of Australia's coastal shipping trade in recent years, as restrictions on their operations have been reduced, on the recommendation of the Productivity Commission, with the support of the Federal Government.

The reduced cost of shipping services has been the justification for the entry of overseas ships into the coastal trade. The lower cost of operation of international ships is due to economies of scale, heavy subsidies offered to shipping companies overseas and low labor costs from Third World countries.

In contrast to Australia, where shipping companies receive little or no government support, most European countries offer generous subsidies to their shipping industries.

Other countries comparable in size to Australia offer extremely generous incentives, according to the OECD survey of fiscal support measures for shipping.

Canada, for example, offers accelerated depreciation of 33 per cent for vessels built and registered in Canada, effectively allowing ships to be written off in three years.

According to the OECD survey, the United Kingdom, offers very favourable breaks for UK shipping companies such as P&O. These include a "writing down allowance" amounting to 25 per cent of the ship's declining balance. Additionally, ship construction or repair is zero-rated for Britain's goods and services tax, the VAT.

British seafarers are eligible for generous foreign earnings concessions, which allow 100 per cent deduction for UK residents who work abroad for a qualifying period of a year. Other assistance is available through the Home Shipbuilding Credit Guarantee Scheme, subsidies for 20 per cent of the cost of economy airfares for crews joining or leaving ships overseas (beyond Western Europe), government supported training of seafarers, and other assistance.

The United States also offers a range of incentives to its shipping companies, including generous depreciation allowances, together with construction incentives, and subsidised wages for seafarers, representing the difference between foreign wage rates, insurance, maintenance and repair costs in the US.

Other European countries offer very generous incentives for their shipping companies. Denmark offers depreciation at up to 30 per cent of purchase price of ships. Danish

shipping companies offer low-interest loans to finance shipping purchase, or a 9 per cent up-front subsidy for ships from Danish shipyards. Seafarer training is subsidised as part of the national education system.

Sweden offers its shipping companies a 30 per cent depreciation on launching of ships, and a five year life for depreciation purposes. Additionally, it offers a special seafarers' tax rate, which is lower than the general income tax rate, and offers a refund of crew income tax to operators of Swedish flag ships in the international trade.

Land-locked Switzerland offers Swiss shipping companies generous depreciation allowances, and tax relief on dividends distributed to investment companies. It also offers a government guarantee on up to 85 per cent of the purchase price of ships.

One of the most aggressive countries in the Asia-Pacific region is South Korea, which has substantially expanded its shipping fleet over recent years. It offers generous tax provisions for Korean ship operators, reduced tax rates for Korean seafarers, loans of up to 80 per cent on the purchase or construction of vessels from the Korea Development Bank, and up to 90 per cent from the Bank of Korea Foreign Exchange Holding Fund.

Developing countries with significant ocean fleets frequently offer government support for their shipping industries, as well as access to low crew costs. Turkey offers a maximum 25 per cent depreciation per annum, and Turkish seafarers' salaries are taxed at just 10 per cent while working in international waters.

Turkey also offers low-interest loans of up to 50 per cent of the total loan value for roll-on, roll-off vessels. Australia is one of the few OECD countries to offer little or no assistance to its domestic shipping industry.

The consequence is that most of Australia's imports and exports are carried by overseas-owned operators, leading to billions of dollars in freight costs being paid overseas every year. This, in turn, contributes to the soaring deficit in Australia's balance of payments, and the growing foreign debt.

Submissions from Australian shipowners, to at least create a level playing field with overseas operators, have been ignored by Canberra.