

WELFARE BENEFITS

Major new services and benefits are under way following a review of seafarer welfare needs **page 9**



THE CLASS OF 2008

Nautilus officials have been busy visiting UK colleges to meet the new intake of trainees **pages 28-29**



PIRACY RISK AGREED

A top-level deal has been reached to reflect the serious risks of piracy off Somalia **page 48**



Telegraph

the journal of

NAUTILUS UK
the union for maritime professionals

Volume 41 ★ Number 11 ★ November 2008 ★ £2.50

WHEN IS A SHIP NOT A SHIP? WHEN THE REVENUE SAYS SO

Storm of protest at HMRC bid to 'move the goal posts' on eligibility to seafarers' tax concessions

GOVERNMENT ministers are facing a mounting barrage of protests against moves to further restrict the entitlement to seafarers' income tax concessions.

Nautilus UK has staged a major lobbying exercise in a bid to overturn new HM Revenue & Customs rules that would prevent many more seafarers in the offshore sector from benefiting from the measure.

And last month there were signs that the united industry campaign being run by the Union with the Chamber of Shipping and the RMT is forcing HMRC to retreat — with financial secretary Stephen Timms offering some important assurances on the plans.

The controversial moves to expand the list of vessels not defined as a 'ship' under the Seafarers' Earning Deduction rules have been raised in the House of Commons — with questions to ministers and two Parliamentary motions tabled in protest at the restrictions.

As the Telegraph went to press, more than 1,000 people had signed a Downing Street petition calling for the government to rethink the changes. Nautilus is urging all members to support this, and put pressure on their MPs to sign the Early Day Motions.

The campaign was also highlighted on the BBC TV Politics Show last month, with Nautilus officials and members being interviewed to explain the potential devastating impact of the changes.

Nautilus deputy general secretary Peter McEwen raised the



Members serving on the Sealion Shipping dive support vessel *Toisa Pegasus* were interviewed by BBC TV for a Politics Show feature about the potentially devastating impact of the changes to the Seafarers' Earning Deduction qualifying rules **PICTURE: DEREK SANDS**

issue with shipping minister Jim Fitzpatrick at a Parliamentary reception, and during what he described as a 'positive' joint shipping industry meeting with opposition transport and treasury ministers.

"The response to the latest Revenue attempts to move the goal posts has been overwhelming, and it is clearly time for the government to stop all the messing around and ensure that SED

is allowed to meet its aim of encouraging the employment and training of British maritime professionals," said Mr McEwen.

He said the Treasury and the tax authorities have consistently failed to appreciate the reasons why the measures were introduced in the first place.

"Even worse, they have made repeated attempts to disqualify increasingly larger numbers of seafarers from eligibility for the

concessions — flying in the face of the Appeal Court and the House of Commons transport committee," he added.

"The latest debacle shows once again that it is time for the confusion and anomalies created by the current system to be eliminated, and for ministers to ensure that SED complies with the purposes for which it was created — safeguarding the supply of British seafarers."

Mr McEwen said the inde-

pendent Alexander Report on the tonnage tax had, back in 1999, called for urgent action to end the anomalies that prevent all seafarers from benefiting from the concessions.

And in the same year, the all-party Parliamentary transport committee had recommended that the government act 'as a matter of urgency' to end what it described as the 'absurd' situation surrounding eligibility to SED.

"It is now nine years since these reports called for urgent action, and it is therefore high time that the Treasury introduced a coherent policy that supports the government's wider policy objectives of promoting the training and employment of British seafarers in all sectors of the industry," Mr McEwen added.

Mark Brownrigg, director-general of the Chamber of Shipping, said the HMRC guidance threatened to cause 'a serious crewing crisis in the offshore sector among companies operating worldwide'.

And Bob Crow, general secretary of the RMT union, added: "The industry needs more pressure on jobs like a hole in the head, so it is urgent that every side of the industry works together to sort this one out."

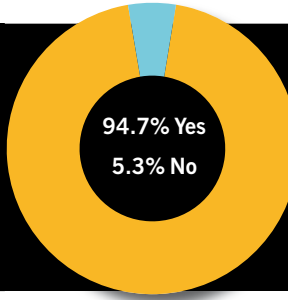
Orkney and Shetland MP Alistair Carmichael said the financial secretary had given assurances that 'most people who currently benefit from seafarers earning deduction will continue to do so' and that HMRC's interpretations of the special commissioner's decision should be done in such a way to have the smallest possible impact.

"Most importantly of all," Mr Carmichael added, 'seafarers working in the North Sea can continue to file tax returns as they have previously been doing and there should be no question of any changes which might be made being backdated.'

★ **More reports — see centre pages**

Have your say: online

Last month's poll asked: **should seafarers have the right to sign off ships bound for high-risk piracy areas?** As the Telegraph went to press, the poll showed a clear result:



This month, we want your views on the seafarer tax row (see front and centre pages):

Do you think the Treasury should change the SED rules so that seafarers in all sectors can benefit from the concessions?

Vote now, on www.nautilusuk.org

Disappointed that more special rules have been made up for seafarers

I SEE yet again the Inland Revenue is making up special rules for seamen who work in the oil industry. I work on a DP drilling rig and am required to be fully STCW 95 compliant to do my job legally, as it is a ship. I have been an engineer at sea for many years now. I was told by

the Inland Revenue that they had special rules for us, ie no tax break, unlike Sweden and other countries, and I now read that they may be going to penalise dive ships.

Is the Union going to do anything about this? I enquired a few years ago to the then oil industry rep, and was told to get in touch with the Inland Revenue as they knew more!

If the Union was on the ball, they would have been in discussions about this as they seem to be about about most other things. I am very disappointed to say the least.

P. MACKAY
mem no 180935

What's on your mind?

Tell your colleagues in Nautilus UK — and the wider world of shipping — through a letter to the **Telegraph**. Keep to a limit of 300 words if you can — though longer contributions will be considered.

- You may use a pen name or just your membership number if you don't want to be identified — say so in an accompanying note — but you must let the **Telegraph** have your name, address and membership number.
- Send your letter to the editor, **Telegraph**, Nautilus UK, 750-760 High Road, Leytonstone, London E11 3BB, or use head office fax 020 8530 1015, or email telegraph@nautilusuk.org

Genuine case for those to benefit

WITH reference to the bulletin Changes to Seafarers' Earnings Deduction (SED) recently sent out by Nautilus to its members, I would like to make the following comments:

We (the Union and its members) have to fight these plans to exclude even more seafarers from being able to claim SED, using all resources and means available to us.

I would not have thought that a government department (ministers or civil servants) would have the authority to re-define what is and what is not a ship, acting alone and without changing legislation in parliament.

Surely we can challenge their authority to act unilaterally in this reckless manner (the fact that they are considering doing it retrospectively and without any notice), without first going to parliament.

Surely we can challenge in the courts what constitutes the definition of a ship under existing law.

The view from Muirhead



We should encourage the government to concentrate rather on what constitutes a 'seafarer', than what constitutes a 'ship'.

By doing so, bona-fide seafarers should be entitled to claim SED regardless of what type of vessel they serve on — that is real seafarers certified to STCW 95, holding Certificates of Competency in the Merchant Navy, or other appropriate qualifications which prove they are real seafarers.

The issue of Seamen's Discharge books to all and sundry (dive superintendents, divers, ROV pilots, riggers, surveyors,

offshore managers etc, etc — the list is almost endless) is an absolute disgrace and should be stopped immediately, and all non-genuine Merchant Navy people holding them, should have them recalled and confiscated.

These people almost always earn far more than any genuine marine crew on the vessel. This is where the real problem lies, and the Inland Revenue are losing millions of pounds as a result, and hence trying to claw it back from real seafarers.

CHRIS RYAN
Master Mariner
mem no 151011

Dear Chancellor...

IN RESPONSE to the recent letter from Nautilus and the article in the Telegraph, I have sent the attached letter to Gordon Brown and members of the press, and also my local MP:

I have recently heard through Nautilus UK that your government is trying to reduce the number of vessels on which seafarers can claim for seafarers' earnings deductions.

I have understood ever since I started as a cadet with Andrew Weir shipping in 2001 that, through the SMART funding and tonnage tax reductions, it was this government's policy to try and increase the number of vessels registered under the UK flag and increase the number of British seafarers. I also understand that this has all come about due to the government realising that the demise of the Merchant Navy was liable to cause big strategic problems.

So far, this government has increased the number of cadets going through to be trained each year, and has increased the number of vessels that are on the UK register. If it were not for the government putting these policies into place, I would not have a job and would not be living in my own house with my wife and son.

Now the shipping industry is becoming very paperwork orientated, due to ISM and other legislation, making it more of a desk job and less appealing than before. Also the conditions of work are not as attractive as they used to be, due to the short

visits and the fact that most merchant ships are now dry ships. Cadets and other crew members often find themselves onboard for maybe months at a time with no way of getting off the ship or any form of social outlook. Furthermore, where the bar on a ship was a place for the whole crew to get together in off duty moments, now they tend to stay in their cabins watching DVDs or reading, resulting in loneliness and a lack of team spirit. Obviously no one wants to see people drinking so that they are not fit to do their job, but the bars could sell low alcohol beers.

The shipping industry did have three positives, that would attract new and young people to it, but these are reducing.

While over the years our leave ratios have improved, the idea that you go away on a ship and get paid more than someone of equal professionalism and education in their field who works ashore, is slowly becoming less true. Prime example of this is my brother and I; Anthony works on the Thames barrier doing flood map planning, and I work away on ships for Gulf Offshore on the Angolan coast. This year he got a pay rise that put him £4,000 better paid than I am.

The third thing that will attract someone is the fact that we can claim back our income tax when out of the country for 183 days or more, this as I said earlier is being cut back by your government.

As far as I can see, this

contradicts what your government has been trying to do since it got into power. If this tax is removed, then the attraction to go to sea will reduce even more, and shipping companies will have less to attract young people to do this job.

If you were a 16-year-old who was making a choice between going to university or going to sea, and you were told that if you go to sea you will earn less than your peers, you will miss birthdays and Christmas and for months on end you will be imprisoned on a ship, would you choose to go to sea? But with the deductions in income tax it immediately puts the wages up as every year you will get a lump sum, which in turn attracts people to a career at sea.

If this is a way of attempting to stop shore personnel from abusing the system, why does the government not just make all people applying for the deductions prove they have a contract with a shipping company or agency and proof of CoC? If this is an attempt to get more money for the country through tax, then surely you are barking up the wrong tree as seafarers in this country are a small minority.

So to conclude, I and probably a lot of us, can see your strategic problem getting worse, not better, as the job has not got much to attract people to it without the seafarers' earnings deductions.

ALEX HAMMOND

Abuse of discharge books is the issue

HAVING read over the proposals for change within the seafarers FED scheme, would it make any sense that those seafarers that are signed on to the crew agreement and given a Crew Reference Number (Ship's OLB), and a statement of their position regarding the manning of the ship, are those entitled to the benefit — providing that they fulfil all other aspects of the claim?

I am totally in agreement with member 185910 with regard to their question relating to the issue of British discharge books. The crew aboard ship is exactly that: the crew who are required to man the ship in compliance

with the safe manning document. I could very well be wrong, but have yet to come across a SMD with the requirement for a diver or ROV operator to be signed on to ensure the everyday running of the ship is carried out safely.

Perhaps there is a diver or some other seabed monitor out there who can enlighten us as to why they require British discharge books?

Maybe Nautilus UK can check the membership records and let us bona fide seafarers know how many divers, ROV technicians etc they have details of. I don't think it will be very many... mem no 186710

This decision leaves me in turmoil

AS A seafarer working in the offshore sector, worldwide, I am in turmoil as to the implications to my family life as regards this severe threat to my livelihood and lifestyle.

Having qualified for SED for 14 years now, to suddenly face tax bills — even backdated to Jan 08 — I am lost for words. Obviously, we'll not get any sympathy from the general public, but hey, they don't do our particular job along with its risks and regime.

My wife is a low earner (by definition) and I cannot see how we could avoid becoming bankrupted, repossessed, therefore homeless, all in our

mid 50s, with no time to recover before finally trying to retire (if ever). I can see the decimation of the shipping industry in this move by the government.

Thinking back and comparing it with the demise of our industry in the late 70s into the early 80s, at that time I was forced to take shore employment.

It devastated my career back then, seeing me ashore for 12 years but then returning to sea for the last 16 years when times had changed.

This is the biggest test of strength for the Union. I will, like many others, be watching to see how it is handled and how my dues/fees are utilised.

Again we see another panic action from this government, along with a quick fix as regards trying to generate money to the Exchequer. Needless to say, many could possibly be claiming benefits long term after any potentially devastating effects that could render them unable to continue work at sea for whatever reason or circumstance.

Hopefully there will be some positive resolve and withdrawal of such untoward measures by this government, but in these economic times, they are blinkered to the plight they are causing.

CARL JEAPES
mem no 147714

MARINE TAX SERVICES (CARDIFF) LTD

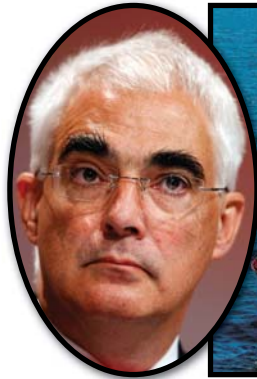
- complete service for mariners
- run by certificated ex-officer
- qualified accountants always available
- computerised 100% claims and forecast projection
- will writing service available

26 High Street, Barry CF62 7EB, South Glamorgan, UK
Tel. Barry (01448) 739953
MARINETAX@YAHOO.COM
Established 1974

Making the case for seafarer tax

nautilus at work

CHANCELLOR of the Exchequer Alistair Darling, right, is facing a united shipping industry campaign to safeguard the special income tax rules that were brought in to protect the supply of skilled UK seafarers



Tax on one vessel, but possibly not on another? The Chancellor has been urged to clear up the confusion

PICTURES: ANDREW WARD (LEFT) BLENHEIMER WARD

I recognise that there is a strategic case for measures to encourage shipping companies to draw their crews from seamen in the UK

Norman Lamont Chancellor in 1991, announcing the '183-day' income tax rules

BRITISH seafarers have been covered by special tax rules for several decades — reflecting the fact that their job takes them out of the country for significant periods, that they work in one of the world's most competitive labour markets, and that there is a requirement for a supply of seafarers for strategic defence needs.

For a long time, seafarers were covered by the income tax concessions that were available to all members of the public who worked overseas for substantial amounts of a tax year.

But that all changed in 1984, when the government radically revised the provisions governing entitlement to the concessions.

This move was roundly condemned by the shipping industry, and after four years of lobbying by maritime unions and the owners, the 1988 Finance Act introduced an amendment that enabled many more seafarers to be eligible for the 100% deductions.

Three years later — following a series of problems in securing sufficient UK ships and seafarers to transport military equipment to the Gulf after Iraq invaded Kuwait — the 1991 Finance Act brought in further improvements to the tax rules for seafarers, effectively doubling the period (to 183 days) that seafarers were able to spend in the UK.

Announcing the decision in the House of Commons, the then Chancellor — Norman Lamont — stated: 'The Gulf hostilities have reminded us of the important contribution which our Merchant Navy can make to our defence. I recognise that there is a strategic case for measures to encourage shipping companies to draw their crews from seamen in the UK who would be willing and able to serve in time of war.'

The new '183-day rule' was warmly welcomed by all sides of the industry as a useful measure that would help to safeguard the employment and training of British seafarers and bring the UK seafarer tax regime into line with most other major maritime nations.

However, it soon became clear that the Inland Revenue was allowing the abuse of the rules by some non-seafarers working onboard certain types of vessel or installation.

In an attempt to address these problems, the Inland Revenue introduced new guidance on eligibility following the 1998 Finance Act.

The issues at stake revolved around the definition of the world's 'seafarers' and 'ship' under the income tax rules.

The word 'seafarer' is given a special meaning for Foreign Earnings Deduction purposes. 'Employment as a seafarer' is defined as: 'Employment consisting of the performance of duties on a ship (or of such duties and others incidental to them).'

'Ship' does not have a statutory definition. In consequence, a working definition has been derived from case law involving merchant shipping legislation. The situation was less than clear, and so in 1998 the Inland Revenue acted to clarify the meaning of 'ship' as used in the FED rules.

The definition takes no account of the job that a 'seafarer' does nor of any maritime qualifications that they have. So, if someone works on a 'ship' they are classed as a 'seafarer' for SED purposes. But if a seafarer works on a floating structure that is not accepted as a 'ship', then they are excluded from the 'seafarer' rules — even if they have marine qualifications and perform the duties of a mariner.

The general principles applied in determining if a

ship is a 'ship' for the tax rules include that it must be:

1. capable of navigation
2. used in navigation, and
3. navigation is more than incidental to its function

'More than incidental' means navigation that is not regular and not limited to adjustments that maintain a drilling location. Movement from a port or site of refit to a drilling location will not be regarded as incidental.)

In March 1998 the law was clarified so that anything that fell within the definition of an 'offshore installation' could not be classed as a 'ship' for FED purposes — even if it satisfies the general conditions set out above. The ruling excluded such things as:

- fixed production platforms
- floating production platforms

- mobile offshore drilling units
- flots

The Revenue also argued that the following are not offshore installations and may be accepted as 'ships' for FED purposes if they satisfy the general conditions:

- heavy lifting vessels
- diving support vessels
- shuttle tankers
- well-service vessels
- dredgers
- survey vessels
- pipe-laying barges

These stricter rules were challenged in an Appeal Court case in 2001, which overturned a High Court judgement that three men who worked on the jack-up rigs Santa Fe Magellan and Santa Fe Monarch were not entitled to the seafarers' tax concessions as the rigs were not considered to be ships.

In giving the Appeal Court decision, Mr Justice Carnwarth said the rigs 'undoubtedly fulfilled' the key characteristics of the dictionary definition of 'ships' — being both large and seagoing.

Following the judgement, the Union wrote to Treasury ministers to request that the government implement changes to the FED system to reflect the ruling and to recompense those members on similar vessels who had been denied the tax concessions.

Sadly, the Treasury did not follow this course. Indeed, since that judgement the Inland Revenue and now HMRC have pursued an even more hardline approach to the interpretation of the rules.

Treasury officials sought to argue that the FED arrangements had been introduced to provide support for the use of UK crew on strategically useful UK-owned ships — a move that Nautilus has challenged through a judicial review.

Indeed, this Union argued, the measures were specifically aimed at encouraging the recruitment and retention of seafarers. The sector in which they serve should be immaterial, not least because of the mobility of labour within a highly globalised and diverse international industry.

However, the clampdown continued — with HMRC introducing a stricter interpretation of the qualifying periods — a move that Nautilus has challenged through a judicial review.

And now the latest controversy has developed as a result of new guidance issued by HMRC in response to a Special Commissioners' ruling earlier this year. Nautilus is calling for an end to the constant moving of the goal posts, and is urging ministers to act to ensure that the rules do what they were always intended to do — protect the recruitment and retention of all British seafarers...

WHAT YOU CAN DO TO SUPPORT THE CAMPAIGN...

NAUTILUS UK is urging members from all sectors to join the campaign against HM Revenue & Customs' plans to move the goalposts on the seafarers' income tax (SED) rules.

Members are urged to use the information on these pages to write — in their own words — to their MPs, seeking political support on the issue.

Ask your MP to sign the special Early Day Motion on SED — EDM 2197 — which highlights concern at HMRC's move to reclassify certain seagoing vessels supporting the North Sea oil and gas industry as offshore installations, condensing the financial hardship this will cause, and calls on the government to clarify its position on the SED as it affects the oil and gas industry as a matter of urgency.

Members are also invited to sign a special Downing Street petition: <http://petitions.pm.gov.uk/MerchantSED/>

It reads: 'We the undersigned petition the Prime Minister to reverse the HMRC Seafarers' Earnings Deduction income tax decision, in order to protect the Merchant Navy and British shipping.'

We, the undersigned, petition the government to reverse the HMRC decision in relation to claims submitted under Seafarers' Earnings Deduction income tax concessions. This decision and its retrospective application to SED claims will have a devastating impact on the British Merchant Navy, the United Kingdom offshore industry, offshore sectors around the world and more importantly the

personal lives of the thousands of families involved. We seafarers believe the decision to be fundamentally wrong. We have had a concession that was given to protect our position as seafarers of an island nation removed, a concession given so we are there, should we be required again in times of sovereign need. We have been heavily penalised in times of global economic crisis. We carry your trade, we facilitate your communications and energy sectors, we support your industry, we supply your armed services and we risk our lives to do so.

Thousands have sacrificed their lives without official recognition.

We are considered the most professional in the world. We are the British Merchant Navy.'

WHAT GOES ON IN THE REST OF EU

JUST about every other European country offers some form of seafarer tax relief. And many go even further than the UK, making seafarers exempt from national insurance and other social costs.

The 2005 European Registers Study noted that support for crew costs is 'the economically most important measure' in most European Economic Area member states — and all the measures have to be approved as compatible with the European Commission's state aid guidelines for maritime transport.

Among the major European countries operating schemes to offset crew costs are:

- Belgium: tax and social security exemptions
- Denmark: reduced rates of income tax
- Finland: income tax refunds and reduced rates of social security contributions
- France: all social charges for seafarers reimbursed to employers
- Germany: tax-free bonuses for seafarers and 40% refunds to owners
- Greece: reduced rates of tax and social security contributions
- Ireland: special income tax allowances for seafarers and social cost refunds to owners
- Italy: full exemption of social contributions and no income tax requirements for seafarers on IIR second register ships
- Lithuania: zero income tax for seafarers
- Netherlands: taxes and social contributions not payable for personnel on Dutch-flagged ships if operating company is based in the country
- Norway (EEA member): tax refunds and concessions for Norwegian-resident seafarers
- Portugal: no income tax or social contributions for seafarers on Portuguese second register ships
- Spain: reduced rates of tax and social costs for seafarers on second register ships

Ruling on semi-sub caused clampdown

THE TOUGH new approach to Seafarers' Earnings Deduction has been taken by HM Revenue & Customs in response to the outcome of an appeal to the tax authorities late last year.

Five seafarers who worked onboard the semi-submersible Pride South America off the coast of Brazil took their claims for entitlement to the concession to the HMRC Commissioners.

The case centred on the issue of whether the vessel could be classed as a ship or an offshore installation whilst conducting well workover operations in the Campos Basin — one of the largest deepwater oilfields in the world.

The men served as master/ISM coordinator, master/DPO, chief mate, chief electrician, second officer and second mate.

Built in 1987, Pride South America is a 12,314gt self-propelled, dynamically positioned, semi-submersible vessel, originally designed as an offshore drilling unit.

During the periods of the appeal, Pride South America operated as a workover/support vessel, and the hearing was told that the vessel frequently had to move to conduct different operations — with the work history showing 18 movements in 2002-3, 24 in 2003-4 and 26 in 2004-5.

Work included platform refurbishment and installation of subsea manifolds, subsea Xmas tree installation and recovery, and workover jobs such as cleaning seabed flow lines and Xmas trees of hydrates and similar substances.

The Commissioner was told that it was wrong to class the Pride South America as an offshore installation — thus disqualifying the seafarers from SED — because it was acting as a service vessel and was not used while standing or stationed in relevant



The semi-submersible Pride South America, which was at the heart of the latest ruling

waters, nor engaged in the exploitation of minerals resources.

However, the Revenue argued that the vessel was being used as an integral part of mineral exploitation and that in order to be 'stationed' a vessel does not have to be totally static (Pride South America had been kept in position by dynamic positioning when work was being carried out).

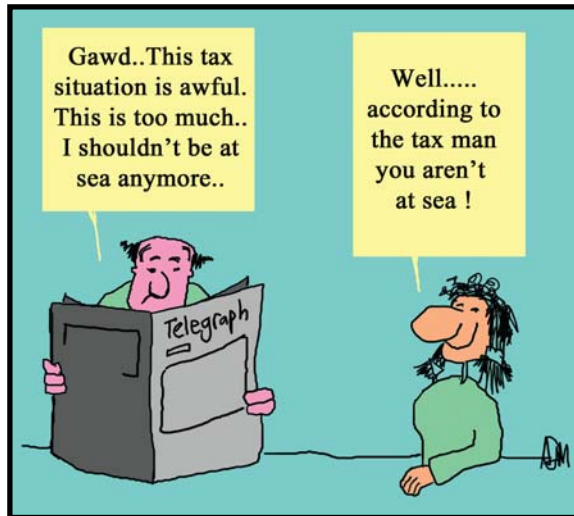
This argument was accepted by the Special Commissioner, Theodore Wallace, who concluded that 'Pride South America was used for the exploitation of mineral resources, notwithstanding that the wells were killed or

shut down while it was being used'. He also ruled that when the vessel was dynamically positioned, it could be classed as being 'stationed'.

And, in dismissing the appeals, he added: 'While the logic of applying health and safety legislation to persons employed on offshore structures in British waters or the Continental Shelf is clear, the logic of denying foreign earnings deduction to seafarers working on offshore structures in the North Atlantic is not apparent. However, while I have considerable sympathy with the appellants, my duty is to interpret the law as enacted.'

Gawd.. This tax situation is awful. This is too much.. I shouldn't be at sea anymore..

Well..... according to the tax man you aren't at sea !



CARTOON: ANDREW WARD