

## PRC Tax Regimes and Time-Charter Hire Payments

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This alert is intended for non-PRC owners and charterers who may or have time-chartered vessels to PRC entities.

There are two PRC tax regimes that levy taxes against hire payments made by PRC time-charterers, the Enterprise Income Tax ("EIT") and the Business Tax ("BT"). Previously, hire payments made to foreign (non-PRC) entities had enjoyed the benefit of certain long-standing exemptions from these PRC tax regimes. However, these exemptions were removed in recent years following the introduction of new laws and regulations in relation to EIT and BT.

Unfortunately, a recent flurry of enquiries suggests that these changes have not yet become common knowledge within the shipping community; which might leave some owners inadequately protected by the terms of any time-charter negotiated.

It is therefore strongly suggested that any non-PRC entity should acquaint themselves with the operation of these tax regimes before time-chartering a vessel to PRC entities, noting inter alia that:

- (a) both regimes impose a duty on the PRC charterer to withhold tax from each tranche of hire paid (which might together amount to 15% of the hire paid);
- (b) the consequences of a PRC charterer failing to withhold tax, or failing to account to the PRC tax bureau for the same, may lead to sanctions being imposed upon the PRC charterer and the owner (as the tax-payer); and
- (c) aside from the imposition of fines for late payment, the available sanctions include enforcement measures that allow for recovery of unpaid tax from any payments of hire by another PRC charterer to the owner.

Further, if under the charterparty the tax liability falls to the charterers, the owners should be careful to ensure that the mechanism by which this is addressed operates so that: (i) the owner

receives the agreed amount of hire (without deduction for the tax levied); (ii) the charterer accounts to the tax bureau for the tax levied; (iii) it will not be considered to amount to tax evasion; and (iv) the owner has the benefit of an indemnity from the charterer.

Whilst we are able to advise clients on the drafting or interpretation of charter-party terms in relation to these tax regimes, this alert is not intended to be and should not be construed in any way as providing tax advice. However, we are able to assist in obtaining tax advice for clients.

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