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By PwC Deutschland | 07. September 2011

Supplementary amount on change to tonnage tax is trading income

The Supreme Tax Court has dismissed a claim by a retiring partner that his supplementary tonnage tax charge due be privileged as a form of capital gain on disposal of his partnership share.

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Germany operates a tonnage tax system for ships sailing in international waters. The system is optional, but the option may only be exercised when the ship is commissioned or at ten-year intervals thereafter. Changeover-abuse is discouraged by establishing the excess of book value over the market value of the assets at the time of changeover to be carried forward as a “supplementary amount” until the entitlement to the tonnage tax regime is lost. This occurs on disposal of the ship or on its withdrawal from international routes, on the cessation of operations, or – in proportion – on the retirement of a partner from a shipping partnership. Once one of these events occurs, the supplementary amount is added to the current trading income of the taxpayer

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A former member of a shipping partnership has just lost a case before the Supreme Tax Court on his claim that the supplementary amount falling to taxation on his retirement be seen as a (tax privileged) capital gain. He based his argument on the contention that the tax liability was triggered by his retirement; therefore it was directly connected with the disposal of his partnership share. The Supreme Tax Court, however, chose to follow its previous case law in holding that the income in question was trading income falling to normal scale rate taxation. It made the point that the supplementary amount had been established the time of the change in tax status of the partnership. It was thus linked thereto and retained its status of trading income, not least because the trading losses leading to the build-up of intangibles had already been deducted by the taxpayer as such. The amount was based on the historical fact of the hidden reserves at the time of the changeover; the deferral of the tax charge did not change the nature of the income.

Supreme Tax Court judgment IV R 42/10 of July 9, 2011, published on September 7

Schlagwörter

capital gain, tonnage, trading income