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Tonnage tax hidden reserve taxable in Germany on retirement of Belgian partner

The Supreme Tax Court has held the tonnage tax hidden reserve of a shipping partnership to be taxable in Germany on the withdrawal of a Belgian partner from the partnership.

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Shipping lines opting for tonnage tax must establish the hidden reserves inherent in their assets directly serving the purposes of international traffic. The reserves are the difference between book and market value and are to be established for each asset in the year of the option. A reserve is to be released back to income if the asset ceases to be mainly used for international shipping operations (in this case the release is spread over five years), on disposal of the asset or (in proportion to the ownership rights) on the withdrawal of a shareholder or partner from the entity. A Belgian partner sold her share in a German shipping line partnership taking advantage of the tonnage tax rules. The tax office saw the release of the hidden reserve as taxable business income of the German partnership, whilst the Belgian partner maintained that it was a capital gain on the sale of an investment (the partnership share), taxable in Belgium.

The Supreme Tax Court has now held that although the partnership ranks as an entity under the double tax treaty, its tax attributes follow national law. As a German entity it is a transparent vehicle for German taxation and a contrary classification in Belgium is irrelevant. The release of the hidden reserves in the present case was occasioned by the sale of the partnership share. If it ranked as current income, it was German permanent establishment income of the Belgian partner. If it was a capital gain, it arose from moveable assets held in a German permanent establishment, again taxable in Germany under the tax treaty. Since the effect in Germany was identical, it was unnecessary for the court to distinguish between the two concepts.

Supreme Tax Court judgment I R 67/12 of November 13, 2013 published on December 11

Schlagwörter

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