By PwC Deutschland | 08. Januar 2014

No tonnage tax for short-term operations

The Supreme Tax Court has held that an option to tax international shipping operations on the basis of the net registered tonnage operated depends on the intention to operate for at least a year after putting the ship into service (commissioning). A gain on the sale of a ship prior to commissioning is not an ancillary transaction to the tonnage tax operations of her replacement, even if the sale proceeds are used to finance the new vessel.

The (optional) German tonnage tax rules set the taxable income from operating ships on international routes from Germany at a fixed amount per day of operations calculated from the net registered tonnage of the ship. (1 NRT is 100 ft^3 – 2.83 m^3 – of available passenger and cargo space.) The Supreme Tax Court has held that this option is only available to those intending to operate the ship long-term. It derives this view from the ten-year period during which the option cannot be revoked and from the one-year period following the commissioning of the ship during which it must be exercised. In consequence it refused the option to a company which had sold its one ship before putting her into commission at the builders' yard in Poland to sail her to Germany, where the buyer took possession before renaming and reregistering her. Her single voyage whilst in the company's ownership lasted two days and her only cargo was an empty container.

The main purpose of the company in claiming the option was to avoid taxing the gain on sale as business income. It maintained that the sale was ancillary to the operation of the ship on international shipping routes and therefore fell within the ambit of the tonnage tax. This argument collapsed with the court's finding that a sale of the ship before, or within one year after, commissioning could be generally taken as indicating only a short-term operating intention. One the other hand, a sale after the ship had been in commission for over a year could generally be seen as indicating an original intention of long-term use. The company then attempted to argue that part of the proceeds of sale had been used two years later to make a down payment on another vessel. The sale was thus ancillary to the (later) tonnage tax operations of the new vessel. The court rejected this argument, too. Tonnage tax was by vessel, not by fleet, and each vessel had to qualify on her own merits. Typically, the sale of a vessel was the final step in her operational cycle, so a gain would be part of the results of that cycle and would fall under the taxation regime of, in this case, ordinary business income.

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