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Trade tax deduction for shipping in international waters independent of term of operation

The Supreme Tax Court has held the 80% deduction from income chargeable to trade tax from shipping operations in international waters to be available regardless of a short or long term intention to continue the operation. If, however, the ship had already been sold prior to commissioning, the capital gain is not derived from an international operation and is chargeable to trade tax in full.

A partnership purchased a merchant ship with the intention of selling her to an investment fund, once the fund had been set up. In the meantime it operated the ship on charter in international waters. Its claim to compute its taxable income on tonnage tax principles was rejected for lack of any intention to operate the ship in international waters over the longer term and the tax office also rejected the partnership's claim for an 80% deduction from the income chargeable to trade tax for the same reason. This stance was based on the reference in the trade tax provision to the tonnage tax provision of the Income Tax Act.

The Supreme Tax Court has upheld the tax office' refusal to allow the partnership to compute its income on tonnage tax principles – as these presuppose an intent to operate the ship in international waters in the long term – but has allowed the partnership the benefit of the 80% trade tax deduction. This relief is intended to remove income from foreign operations from the trade tax base and corresponds to the elimination of foreign permanent establishment income from the taxable income earned ashore. Accordingly, it is independent of the intended term of operation and remains available in the present case where the international operation was merely a temporary measure to make use of the ship whilst the intended purchaser, the investment fund, was still being established. However, the reference in the Trade Tax Act to the tonnage tax computation in the Income Tax Act was relevant, as it meant that the gain on sale of the ship could not be regarded as ancillary to the international operation. Rather, the sale had originally been intended as the main purpose of buying the ship in the first place and must be seen separately from the temporary, "stop gap" international operation. The gain was thus to be charged to trade tax in full.

The court also drew attention to the provision in the Trade Tax Act requiring privileged international operations to be recorded separately where these were not the sole activity of the accounting unit. This provision had no meaning in the present case, where it was only necessary to isolate the gain from a single transaction, the sale of the ship, from the international operating result.

Supreme Tax Court judgment IV R 45/11 of September 26, 2013 published on January 8, 2014

Schlagwörter

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