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By PwC Deutschland | 13. August 2014

Pre-tonnage tax gains fully chargeable to trade tax

The Supreme Tax Court has held on a literal interpretation of the statute that an unrealised exchange gain on opting for tonnage tax does not qualify for the trade tax privilege for shipping income when realised.

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A one boat shipping line financed its ship with a foreign currency loan. On commissioning, the line opted for tonnage tax. This option excluded taxation of prior gains and tax recognition of prior losses. As required by the Income Tax Act, the line noted the unrealised exchange gain on the loan from the appreciation of the euro on exercise of the option on a memorandum account. This gain then fell to taxation when either the line was closed, tonnage tax ceased, or the liability was settled.

The line repaid the loan some years later, accepted that the gain should now be charged to corporation tax, but argued for an 80% trade tax exemption. Its basis was the provision in the Trade Tax Act declaring (regularly taxed) income of international shipping to have been 80% earned outside German territorial waters and thus beyond the scope of trade tax.

The Supreme Tax Court has now rejected the company's case. The exchange gain had not been earned through an international shipping operation and did not qualify for the trade tax exemption. The court also rejected a "substance over form" argument to the effect that the gain when realised would have qualified for relief but for the tonnage tax option as irrelevant in the face of a clearly worded statute. Tonnage tax was a simplified taxing formula and certain inequities must inevitably ensue.

Supreme Tax Court judgment IV R 10/11 of June 26, 2014 published on August 13

Schlagwörter

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