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Ship charter trade tax privilege only if charterer mans ship himself

The Supreme Tax Court has held that the 80% trade tax exemption for shipping in international waters only applies to income from ship charters if the claimant has equipped and manned the ship himself.

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Profits earned in foreign permanent establishments are exempt from trade tax. Under a specific provision in the Trade Tax Act, 80% of the profits earned from shipping operations in international waters are deemed to have been earned in foreign permanent establishments. Accordingly, they are exempt. This exemption also applies to profits from ship charters, provided the charter is for a fully fitted-out and manned vessel. The Supreme Tax Court has now, however, held that it does not apply where equipment or crew are provided by another party. Thus it could not be claimed by a former shipping line that had sub-let a ship that it had received fully manned on a charter from the owners.

The Supreme Tax Court arrived at this decision largely through analogy with the tonnage tax provisions of the Income Tax Act. These carry the same restriction, but also make clear that the legislative intentionally distinguished between the different forms of ship's charter. The analogy is justified by the references in the Trade Tax Act to the Income Tax Act. The effect is that the trade tax privilege can only be granted on ship charters to a single claimant apart from the actual operator. Income from bare-boat charters or, as in this case, from intermediaries who merely act as agents or brokers, is therefore chargeable to trade tax in full.

Supreme Tax Court judgment I R 40/15 of December 14, 2015 published on May 11, 2016

Schlagwörter

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