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By PwC Deutschland | 28. August 2024

Tonnage tax: Management of ship to be carried out almost exclusively in Germany

The task of operating merchant ships encompasses all transactions and legal acts, such as supplying the ships with fuels and equipment. The Supreme Tax Court decided that to benefit from the tonnage tax system the technical and commercial management of merchant ships must be carried out almost exclusively in Germany.

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Background

The German tonnage tax regime offers shipping companies fixed and low taxation on the profits from their international operations. Specifically, it allows shipping lines to determine their taxable income from the operations of their ships in international waterways on an almost invariably favorable formula based on the number of days at sea and the net register tonnage. The option is exercised by ship at ten-yearly intervals, the first opportunity being the year in which the ship is put into service.

The parties were in dispute as to how the term “managing seagoing vessels” (*Bereederung*) in Section 5a Income Tax Act (ITA) should be interpreted. Section 5a (1) provides that for business enterprises with management in Germany*„(…) the profit, insofar as it is attributable to the operation of merchant ships in international traffic, shall be determined at the irrevocable request of the taxpayer on the basis of the tonnage managed in his business, if the management of these merchant ships is carried out in Germany*“.

The plaintiff was a German GmbH & Co. KG (limited partnership with no natural person bearing unlimited liability). In 2002, the plaintiff concluded a contract with G GmbH for the management of its merchant ship (management contract). G GmbH was a subsidiary of L Ltd. based in W on the Isle of Wight. G GmbH, for its part, had concluded a “Technical Management Agreement” with M Ltd. who was also based in W. G GmbH also concluded "Manning Agreements" with S Ltd. based in the Turks Islands and a with a Romanian company. In addition, brokerage agreements were concluded with two other companies in the Netherlands and Norway.

Following an external audit, the tax office concluded that the plaintiff's profit from the operation of its merchant ship for the year in dispute was not to be determined in accordance with § 5a ITA, as the management of the seagoing vessel had not been carried out almost exclusively in Germany, as required in Section 5a ITA. The appeal before the Tax Court of Lower Saxony was rejected.

Decision

The Supreme Tax Court agreed with the decision of the lower tax court and dismissed the appeal as unfounded.

The term “management of a merchant ship” within the meaning of Section 5a (1) sentence 1 ITA refers to the running and handling of ship operations in technical, commercial and personnel terms and thus the management of ship operations.

The place where the management is carried out is where the relevant (management) decisions are made, and their execution or implementation is monitored.

Section 5a (1) sentence 1 ITA requires that the management of the merchant ships is carried out almost exclusively in Germany. Whether this is the case must be decided through an overall assessment of the objective circumstances of the individual case.

The activities in the areas of technical management, chartering and manning of the merchant ship with a

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captain and ship's officers are regularly of particular importance. Thus, it would lead to the conclusion that the management is not carried out almost exclusively in Germany if one of these areas of activity that are important for the management of merchant ships is not carried out entirely, predominantly or in significant parts in Germany.

Source:

Supreme Tax Court, decision of 6 June 2024 (IV R 15/21) – published on 22 August 2024.

Schlagwörter

shipping line, tonnage tax