Downloaded from Blogs on 08.11.2026 19:27

By PwC Deutschland | 10 April 2024

Contribution for general partner not part of trading profit if attributable to periods after dissolution of partnership

In a most recent decision, the Supreme Tax Court held that profits from special compensation for the general partner of a limited partnership pursuant to Section 5a (4a) sentence 3 Income Tax Act attributable to the period following the cessation of the commercial and promotional activity of a partnership are not part of the trading profit subject to trade tax.

Downloaded from Blogs on 08.11.2026 19:27

Background

Germany operates a tonnage tax system for ships sailing in international waters. The system is optional, but the option may only be exercised when the ship is commissioned or at ten-year intervals thereafter. The (optional) tonnage tax rules set the taxable income from operating ships on international routes from Germany at a fixed (flat rate) amount per day of operations calculated from the net registered tonnage of the ship in accordance with Section 5a (1) Income Tax Act (ITA). Changeover-abuse is discouraged by establishing the excess of book value over the market value of the assets at the time of changeover to be carried forward as a "difference amount" until the entitlement to the tonnage tax regime is lost. This occurs on disposal of the ship or on its withdrawal from international routes, on the **cessation of operations** (as in the case of dispute), or – in proportion – on the retirement of a partner from a shipping partnership. Once one of these events occurs, the supplementary amount is added to the current trading income of the taxpayer.

Section 7 sentence 1 Trade Tax Act (TTA) defines in general the trading profit subject to trade tax as „*the profit from the business under the rules of the Income Tax Act or of the Corporation Tax Act for the period of assessment*". Sentence 3 states that „*the profit computed under Section 5a Income Tax Act (the tonnage tax) including the difference amounts according to Section 5a (4, 4a) ….**rank** as the trading profit under sentence 1*".

Case of dispute

The question to be answered by the courts was whether the remuneration of the general partner of a limited shipping partnership (KG) for the assumption of full and unlimited liability (referred to as special compensation – "*Sondervergütung*") is part of the notional trading profit within the meaning of § 7 sentence 3 alternative 1 TTA insofar as it is attributable to the period after the company had ceased its commercial activities.

The limited partnership (KG) declared a trading profit as calculated in accordance with Section 5a (1) ITA plus the special compensation paid to the general partner following Section 5a (4a) sentence 3 ITA. The compensation to the plaintiff (a GmbH as general partner) for assuming full liability was included only pro rata for the period prior to the transfer of the ship (January to April). The tax office, however, added the liability remuneration in its entirety to the trading profit subject to trade tax.

Decision

The profit from special compensation attributable to the period following the cessation of the commercial activity is not part of the trading income of the KG and thus not subject to trade tax. The KG's trade tax liability ended with the sale and transfer of its only ship in April 2016. At this point in time, the KG had definitively suspended its advertising activities. As it did not carry out any further business activities after the sale of the ship, there is no evidence and proof that it had taken up a new business.

The objective of taxation is the existence of a business operation. Section 7 sentence 3 TTA does not

Downloaded from Blogs on 08.11.2026 19:27

automatically imply the presence of a business, but rather presupposes that a business **exists** - as is the rule when determining the trading profit subject to trade tax.

Furthermore, the issue in the case of dispute is not one of profits being made in the course of the termination or dissolution of the business, but rather deals with the special consideration for the general partner which is attributable to a period following the suspension of the commercial activity of the shipping partnership.

In its judgment, the Supreme Tax Court also looked into more detail at the **historical background of Section 5a** paragraphs 4 and 4a ITA. 2018 saw a change in the case law of theSupreme Tax Court regarding the inclusion of the above difference amounts (between book value and the market value) in Section 5a (4) ITA): The court held those amounts not to be part of the notional trading profit subject to trade tax. The legislator subsequently amended Sec 7 sentence 3 TTA in 2019 specifically to include the "difference amounts“ and the amounts mentioned in Section 5a (4a) ITA (special compensation) to be added to the trading profit with retroactive effect as of 2008. The explicit reference to the additions pursuant to Section 5a (4) and (4a) ITA was meant to ensure that these - as had been the case prior to the change in case law - are included in the trading profit in full.

The Supreme Tax Court went on to say that - with regard to the tonnage taxation - Section 7 sentence 3 contains a **notional definition** of the trading profit („*The profit determined in accordance with section 5a ITA, including the additions in accordance with section 5a (4) and (4a) ITA,* **shall rank** *as trading profit under sentence 1*“). In the opinion of the Supreme Tax Court, there is no indication in the explanatory memorandum to the law as amended to indicate that the legislator intended Section 7 sentence 3 TTA to also accept a notional (and not the physical) existence of a business operation.

Reference:

Supreme Tax Court, judgment of 22 February 2024 (IV R 14/21), published on 4 April 2024.

Keywords

Limited Liability Company, compensation payment