

By PwC Deutschland | 13 May 2025

Tonnage tax option only available if intended to operate the ship long-term

In a most recent decision, the Supreme Tax Court upheld the tax office's refusal to allow a 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. Furthermore, the court decided that the determination of profits by tonnage for a subsequent year requires that specific requirements laid down in section 5a (1) sentence 1 and (2) of the Income Tax Act as to time and deadlines are met.

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-year intervals, the first opportunity being the year in which the ship is put into service and takes effect from the beginning of that year.

On 9 September 2008, the plaintiff (a limited partnership) acquired the cargo ship "MS A". The ship was delivered on 28 October 2008. On 12 December 2008, the plaintiff sold the ship within the group to offer it as part of a mutual fund. The ship was transferred on 10 September 2009. On 5 May 2009, the plaintiff acquired another ship ("MS X"), which it took over on 15 May 2009 and has been using since then. Both ships were registered in the German shipping register. The ships were managed in Germany and sailed under a foreign flag.

On 19 December 2008, the plaintiff submitted a request for the tonnage taxation for the years of dispute (2008 and 2009). The tax office took the view that the tonnage tax option was not available for the ship "MS A". Section 5a Income Tax Act (ITA) requires the intention of the taxpayer to operate the ship as a merchant ship in the long term. However, the short-term sale of the ship demonstrated that long-term use had not been intended from the outset.

The lower tax court had granted the appeal only for 2008 as the statute of limitations had already expired. With regard to 2009, the challenged assessment of the tax office was held to be legitimate because Section 5a ITA presupposes the intention to operate merchant ships on a long-term basis.

Decision

The Supreme Tax Court 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. Furthermore, the court decided that the determination of profits by tonnage for a subsequent year requires that the specific requirements in section 5a (1) sentence 1 and (2) of the Income Tax Act as to time and deadlines are met and that the choice to compute its taxable income on tonnage tax principles was exercised in the first year on the basis of an available option.

The following requirements for determining taxable income based on tonnage must be met in total and in accordance with Section 5a (1) sentence 1 and (2) ITA:

- Operation of a merchant ship in international traffic
- Management of the merchant ship in Germany

- Presence of a business with management in Germany
- The requirements under Sections 4 (1), 5 (1) ITA (dealing with the computation of profit, e. g., bookkeeping under commercial law to be reconciled with deviating valuations as provided for in the tax acts) must be met
- Submission of an irrevocable application for tonnage taxation.

The option to apply for Section 5a ITA only exists if all requirements are met for the first year, i.e. for the year in which profits are first determined on the tonnage. In a subsequent year - such as the year of dispute – it is required that the requirements specified in § 5a (1) sentence 1 and (2) ITA are met this year.

Another key requirement is the intention to operate the merchant ship in the long term. Here, the Supreme Tax Court has the following comments: With the introduction of Section 5a ITA as a steering role and which has the characteristics of a subsidy, the legislator sought to secure and strengthen the shipping location of Germany. The flat-rate calculation of profits based on tonnage effectively reduces the tax burden on entrepreneurs but requires a long-term commitment of the active shipping business to Germany as a business location.

The fact that the profit for cargo ship "MS A" was determined under the tonnage in a final profit assessment notice for the first year (here: for the time-barred year 2008) does not prevent the long-term test for the subsequent year (2009).

Source:

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Keywords

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