

Tax Basics

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Current development in tax law

The Annual Tax Law 2009 has introduced an additional tax class combination “IV Factor/IV Factor” from the year 2010 which makes it possible for employed spouses that at least the tax-relief amounts to which they are entitled are taken into account.

The economic stimulus packages passed by the Federal German Government in the wake of the global financial and economic crisis include a large number of promotional measures, e. g. in the fields of investment financing, guarantees, export guarantees and measures to encourage innovation.

Furthermore, the degressive depreciation has been re-introduced for movable assets acquired after 01.01.2009 and prior to 31.12.2010 and the possibilities for special depreciation allowances have been expanded.

In the field of income tax the starting rate has been lowered to 14 % with retroactive effect from 01.01.2009 and the basic tax-free amount has been raised to EUR 7,834. This relief is augmented by the lump sum savers’ tax-free amount of EUR 801 that has been valid since 2009 and the special expenses deduction amount of EUR 36. As the top rates of taxation have remained unchanged, the starting values have been adjusted to the increase in the basic tax-free amount, so that from 01.01.2009 the following top rates of taxation and starting values apply:

Taxable income according to:

	Basic Tax Table	Splitting Table
42.0 %	from EUR 52,552	105,104
45.0 % ¹⁾	from EUR 250,401	500,801

¹⁾ from 1st January 2007 on the basis of the so-called “Wealth Tax”

On 29th March 2010, the Federal Ministry of Finance submitted a ministerial draft with regard to the Annual Tax Law 2010 that contains a large number of individual measures relating to different topics. Numerous standards have been changed or newly introduced by the Annual Tax Law 2010 and the basic tax-free amount has been raised to EUR 8,004.

Income tax

The legislators had already introduced the so-called “Wealth Tax” in 2007. This relates to an increase in the top rate of taxation from 42 % to 45 %. From 2008 it also applies to income from trade or business; thus also to earnings from ship’s shares.

All one-ship companies of the Hansa Mare fleet have opted for the tonnage tax, so that all the companies are taxed in accordance with § 5a EStG [Income Tax Law].

Lump sum determination of net income according to § 5a EStG (tonnage tax)

As long ago as 1999, with the Ocean Shipping Adaptation Law the Federal German government introduced the regulation § 5a EStG (tonnage tax) for ocean-going ships that operate in international trades.

The so-called tonnage tax replaces the comparison of business assets that is otherwise usual in the case of one-ship companies for taxation purposes. It offers companies with their company management in Germany which operate merchant ships in international trades and manage them from Germany the possibility of electing to carry out a lump sum determination of net income in accordance with § 5a EStG instead of determining net income in accordance with § 4 Sect. 1 or § 5 EStG. For ships that are registered in the German register of shipping, the lump sum net income from operation of the ship – including any earnings from the sale of the vessel – is assessed on the basis of the ship size (net tonnage) if a corresponding application is filed by the equity investment company. The investor is then taxed as before at the individual rate of income tax. Special business expenses of the shareholder (e.g. interest for external financing, travelling expenses) are not taken into account under the tonnage tax.

The hidden reserves existing at the time of switching over the method of calculating net income from the normal method to the tonnage tax system must be transferred to a tax-neutral differential amount (“tonnage tax reserve”). The differential amount must be dissolved at the latest when the ship is sold and is subject to the normal personal rate of tax; however within the framework of the tonnage tax system the actual profit made on the sale of the ship remains tax-free.

Besides the differential amount for the ship, in some cases a differential amount had to be formed for any foreign-currency liabilities if the exchange rate prevailing at the date of the balance sheet was lower than the rate applied for tax valuation purposes at the time of switching over to the tonnage tax. The differential amount for foreign-currency liabilities must be successively dissolved in parallel with the redemption payments made in each year and tax must be paid by the shareholders on the amount of the dissolution on top of the tonnage-based net income.

For the one-ship companies, exercising the option for the tonnage tax system entails being bound to this type of lump sum determination of net income for 10 years, but it does not involve a 10-year ban on selling the ship. The application for the determination of net income according to § 5a EStG can only be filed in the year when the ship enters service. This means that any profits earned before the ship enters service are not taxed; losses incurred during this period can be neither compensated nor netted.

According to the tonnage tax introductory order of the Federal Ministry of Finance (BMF) from the year 2002, if the company opts for the tonnage tax then the regulations of §§ 4 and 5 EStG for determining taxable income must be applied in calculating the overall net income. This being so, the intention to achieve profits is also proven for the ships of the Hansa Mare fleet under the tonnage tax.

Depreciation in accordance with § 7 Sect. 2 EStG

The basis of assessment for depreciation is the acquisition cost of the ship after deduction of the scrap value. Incidental acquisition costs also form part of the acquisition cost. The preliminary expense or start-up expenditure of the one-ship company thus count as part of the incidental acquisition cost that is to be capitalised (letter of the BMF dated 20.10.2003).

According to the current German AfA tables for depreciation for wear and tear, newbuildings are written off across-the-board over 12 years (8.33 % p.a.). An alternative to the linear depreciation method is to apply degressive depreciation in accordance with § 7 Sect. 2 EStG for ships delivered up to the year 2000. In this way it was possible to deduct three times the linear depreciation (max. 30 % p.a.). The standard in each case was the actual book value of the ship.

Tax reduction in accordance with § 35 EStG

According to § 35 EStG, trade tax in the amount of 3.8 times the underlying tentative tax amount incurred and paid after taking account of any existing loss carryforwards under trade tax at the level of the company can always be credited to the personal income tax of the shareholder, if and insofar as the personal income tax derives from business income. When calculating the amount of the tax reduction, any tonnage-based net income according to § 5a Sect. 1 EStG that is included in the business income is not taken into account, whereas the dissolution of the differential amounts “ship” and/or “foreign currency liabilities” are taken into consideration. The amount of the reduction is determined uniformly and separately within the framework of the assessment of tax for the company and then allocated to the shareholders.

Trade tax

Being business enterprises, the one-ship companies of the Hansa Mare fleet are liable to trade tax. The basis for determining the trade tax on earnings is the lump sum net income calculated according to § 5a EStG. Since the tax assessment period 2008, trade tax is no longer deductible as a business expense. However, § 35 EStG can be applied to the trade tax that has been incurred and paid.

On 13th December 2007, the Federal Fiscal Court passed a judgement with regard to trade tax which makes the net income deriving from the dissolution of the differential amount due to the sale of the ship liable to trade tax. In a letter of the Federal Ministry of Finance (BMF) dated 31st October 2008, the fiscal administration confirmed its opinion with regard to the obligation to pay trade tax on net income from the dissolution of differential amounts. Since the assessment year 2008 the dissolution amounts are assessed for trade tax and the 80 % tax reduction according to § 9 No. 3 GewStG is no longer granted. This has occasioned the formation of a trade tax liability reserve at the one-ship companies of the Hansa Mare fleet, which will be utilised in full at the time of selling the ship and of the associated dissolution of the differential amounts.

Inheritance tax and gift tax

After the German Federal Supreme Constitutional Court determined in the year 2007 that the applied system of taxing inheritances was not compatible with the requirements of the principle of equality deriving from the German Basic Law, on 27th November and 5th December 2008 respectively the Bundestag and Bundesrat passed the amending statute of the inheritance tax law with effect from 1st January 2009. In the meantime the inheritance tax reform has been updated by the Growth Acceleration Law dated 22nd December 2009. As regards the valuation, in particular of business assets, the new law provides for the tax values to be more closely oriented to the market value (“fair market value”). The assets of a Schiffahrtsgesellschaft mbH & Co. KG consist of business assets, so that when individual limited partners’ shares are transferred through inheritance or as a gift, according to § 109 of the Valuation Law the value is determined at the fair market value as of the date of the transfer.

According to § 11 Sect. 2 of the Valuation Law, the fair market value is initially determined on the basis of sales between outside third parties that were transacted in the past year prior to the transfer of the shares. Insofar as this is not possible or leads to obviously incorrect results, a simplified capitalised earnings value method should be applied in which the asset value (fair market value of all assets less all liabilities and other liability items) forms the lower limit.

The inheritance tax reform law envisages two different models for preferential treatment for business assets:

- If the total wages bill does not fall below a total of 400 % of the starting wages bill within five years after the shares are transferred, the business assets existing at the time of taxation remain in the company for five years (attachment ruling) and on the day on which the

shares are transferred the business does not consist to an extent of more than 50 % of so-called administrative assets, the “regular exemption” is applied under which a deduction of 85 % is granted from the basis of assessment.

- Complete exemption from tax can be achieved by continuing operation for seven years. During this time an accumulated total wages bill of at least 700 % must be complied with. Furthermore, the administrative assets must not exceed 10 % of the business assets.

The choice between the two taxation options must be taken by the taxpayer and is irrevocable until the tax assessment has achieved legal force. If the taxpayer does not file an application for complete exemption from tax (exemption option), then the regular exemption is applied in the amount of 85 % of the assets that enjoy this tax privilege.

The administrative assets of the one-ship companies of the Hansa Mare fleet currently amount to less than 10 % of the business assets.

Within the holding periods, the dividend payments must not exceed the sum total of contributions to capital and prorated net income by more than EUR 150,000, as otherwise the above-named tax benefits may be forfeited. In the case of overwithdrawals (subject to examination at the end of the holding period) the retrospective taxation is limited to the value of the overwithdrawals.

If the equity share is sold/abandoned in the meantime, this leads to the loss of the exemption pro rata temporis. However, tax does not need to be paid with retroactive effect insofar as the proceeds of the sale are re-invested within six months in other assets of the same kind that also enjoy this tax privilege.

Furthermore, it must be noted that these exemption measures are only applicable to directly registered limited partners. In the opinion of the fiscal administration (decree of the Ministry of Finance of Baden-Wuerttemberg dated 27th June 2005), trustee shares are not treated as equity shares in business companies, with the consequence that when trustee shares are transferred, these are taxed on the basis of the fair market value without the above-named tax benefits.

The personal tax-free allowances and rates of taxation have been changed as follows:

Personal tax-free allowances in tax class I:

	hitherto	new
Spouses	EUR 307,000	EUR 500,000
Children	EUR 205,000	EUR 400,000
Grandchildren	EUR 51,200	EUR 200,000
Other persons in tax class I	EUR 51,200	EUR 100,000

In the tax classes II and III, the personal tax-free allowances change from EUR 10,300 (II) and EUR 5,200 (III) to a uniform EUR 20,000. Registered non-marital permanent partners are treated in the same way as spouses in respect of the tax-free allowance of EUR 500,000 as well with regard to the personal exemption by way of statutory pensions or social security benefits of EUR 256,000, but they remain in tax class III. According to the new legal position, the following value limits and rates of taxation apply from now on:

Value of the taxable acquisition in EUR up to and including	Rates of taxation by classes		
	I	II	III
75,000	7 %	15 %	30 %
300,000	11 %	20 %	30 %
600,000	15 %	25 %	30 %
6,000,000	19 %	30 %	30 %
13,000,000	23 %	35 %	50 %
26,000,000	27 %	40 %	50 %
over 26,000,000	30 %	43 %	50 %