



CORIT Advisory prevails in principled Transfer Pricing dispute

CORIT dispute resolution and transfer pricing specialists have prevailed in a principled transfer pricing matter on behalf of a client in the shipping industry. CORIT took over the case from a big 4 firm in 2019, which resulted in a complete rewrite and resubmission of the original appeal before the Danish Tax Tribunal. On 5th April 2024 the Danish Tax Tribunal decided in favor of the company and found our argumentation convincing.

The case concerned the fiscal years 2011-2013 and involves group companies in three different jurisdictions. The companies had different functional profiles, one being the vessel owner, one functioning as a manning/crew company and one as the global principal of the group. The operational setup as well as the transfer pricing setup was structured such that the manning/crew company chartered a vessel from the vessel owner on bareboat charter terms, staffed the vessel and chartered the fully equipped vessel to the principal on time charter terms. This type of set-up is traditionally used in the offshore and shipping industry and for that matter the case may be of greater significance.

The Danish Tax Authorities argued that the vessel owner neither possessed (sufficient) competences to manage the risks nor control of the risks related to the ownership of the vessel. Further, it was argued, that the Danish principal possessed the competences to control - and did in fact control - these risks and accordingly a portion of the charter fee received by the vessel owner should be allocated to the Danish principal for tax purposes. Therefore, a new transaction between the Danish principal and the vessel owner (allocating charter fee received by the vessel owner) was deemed to exist.

The Danish National Tax Tribunal ruled in favor of the taxpayer. It should be noted, that since the taxpayer had provided the Danish Tax Authorities with sufficient transfer pricing documentation, the burden of proof rested with the Danish Tax Authorities. Consequently, the Danish Tax

Authorities were to demonstrate that the controlled transactions were not carried out in accordance with the arm's length principle, if a transfer pricing adjustment - in the form of an income increase - should be made. This burden of proof was not met.

Although transfer pricing cases, as a general rule, are very fact dependent, the following take-aways of a more general nature, can be derived from the decision:

- In the view of the Danish Tax Tribunal, the new sections on "accurately delineation of the actual transaction" in the 2017 version of the OECD TPG *expands* the Danish Tax Authority's opportunity to assess the overall circumstances when defining the controlled transactions that have been carried out and the possibility to move income from one group company to another.
- If a taxpayer has provided sufficient transfer pricing documentation and the arm's length test was therefore made on basis of the actual IC agreements, accounts etc., a potential transfer pricing adjustment must be based on the transactions already recognized and documented. This may limit the Danish Tax Authorities' access to determine new transactions that did not legally exist.
- If the company is the formal legal and economic owner of an asset this would in the view of the Danish Tax Tribunal result in the company also being considered the rightful recipient of income relating to such asset.

