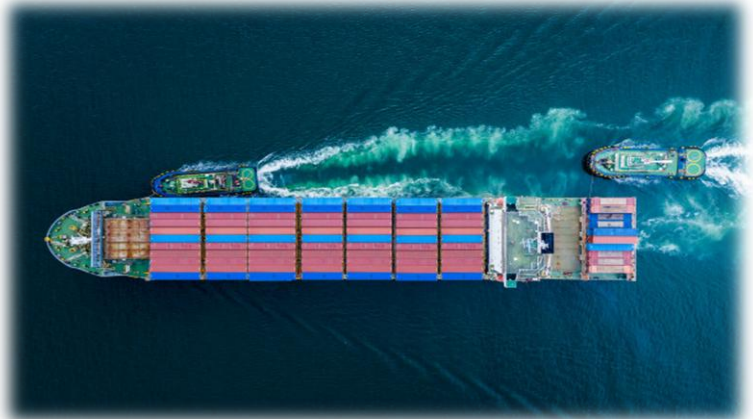


NEWSLETTER

SOLIDARITY CONTRIBUTION ON MARITIME DIVIDENDS HELD UNLAWFUL

A recent Decision (no. 7242/2018) of the First - Instance Administrative Court of Athens, published in Athens Bar Law Digest, held that the so-called “Solidarity Contribution” of Art. 29 of Law 3986/2011 had been unlawfully levied on dividends from operation of a foreign – flagged vessel managed by a foreign company set up in Greece under Art 25 of Law 27/1975. The Court considered that the imposition of a Solidarity Contribution on such incomes from maritime operations ran afoul of the provisions of Articles 2, 26 of Law 27/1975 which exempts from taxation all profits of a shareholder or partner of a shipowing company of a foreign – flagged vessel managed by a Law 27/1975 (known as Law 89) office in Greece, directly or through a holding company.

Historically, the Solidarity Contribution was introduced in 2011 with a view to confronting the very bad fiscal condition of the country and battling the soaring public debt of Greece. The Solidarity Contribution burdens the total net income of individual taxpayers over a threshold of 12,000 Euro. According to the prevailing view, adopted by the Council of the State (highest administrative Court) in its Decision no 2563/2015 in plenary session and by the Legal Counselling body in its Opinion no. 130/2017, the Solidarity Contribution is not a tax on the income but instead a distinct tax (special monetary contribution) which uses the taxpayer’s income as a basis of computation. Recently, the Council of State in its Decision no. 2465/2018 left some room for support of the view that the Solidarity Contribution is a true tax on the income, based on argumentation that, although at the time of its introduction it was characterized as “special” and “extraordinary” it has been maintained in the following tax years, it is currently valid and is envisaged to be valid in future tax years, and in 2013 it was incorporated in the newly – promulgated Income Tax Code (Law 4172/2013) which regulates income taxation.



Based on the prevailing interpretation, the Tax Authorities normally levy the Solidarity Contribution on all net income of an individual taxpayer (with the exception of certain cases of unemployed or incapacitated individuals), including dividends from maritime activities. This was the case at bar in the First-Instance Administrative Court, although practically, almost all shipowners have accepted the Solidarity Contribution.

Decision no. 7242/2018 was issued by a lower Court and is expected to be vigorously rebutted by the Tax Authorities, through an appeal to a higher Court, probably reaching the Council of the State. Having said that, Decision no. 7242/2018 is the only one so far, to the best of our knowledge, to acknowledge the unlawfulness of the Solidarity Contribution on maritime dividends. Therefore, the result of the litigation is expected with great interest.

It should be noted that, although Decision no. 7242/2018 deals with the case of a foreign – flagged vessel owned by a foreign company with Greek individuals as ultimate beneficiaries, the same result should be applied in the case of a Greek – flagged vessel owned by a foreign or Greek shipowing company, based on the provisions of Article 2 of Law 27/1975 which treat these cases equally.

Finally, the Court stressed, although it did not hold the Solidarity Contribution on maritime incomes as unconstitutional, that the fundamental provisions of Law 27/1975 enjoy supremacy over other laws according to Article 107 of the Greek Constitution. The Court also stressed the importance of these provisions for the national economy, through the attraction and establishment of maritime operations to Greece.

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