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JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT (SAC)

of 15 December 2025
(Case No. II FSK 785/22)
[avoidance of double taxation; taxation of seafarers' income]
Presiding judge: SAC Judge Tomasz Kolanowski (rapporteur)
SAC Judges: Jan Rudowski, Beata Cieloch, Anna Dumas, Jerzy Płusa, Hieronim Sęk, Tomasz Zborzyński

THESIS

The method for avoiding double taxation referred to in Article 22(1) of the Convention between the Republic of Poland and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Warsaw on 9 September 2009 (Journal of Laws of 2010, No. 134, item 899), as amended by the Protocol of 5 July 2012 (Journal of Laws of 2013, item 680), applies to the income of seafarers referred to in Article 14(3) of that Convention, regardless of the manner in which a contracting state waives taxation of such income.

The Supreme Administrative Court, composed of Presiding SAC Judge Jan Rudowski, SAC Judges : Beata Cieloch, Anna Dumas, Tomasz Kolanowski (rapporteur), Jerzy Płusa, Hieronim Sęk and Tomasz Zborzyński, judicial assistant Wojciech Zagórski as Court Clerk, after hearing on 15 December 2025 in the Financial Chamber the cassation appeal lodged by the Director of the Tax Administration Chamber in Gdańsk against the judgment of the Regional Administrative Court in Gdańsk of 5 April 2022 (Case No. I SA/Gd 1599/21), in the case brought by B.S. and K.S. against the decision of the Director of the Tax Administration Chamber in Gdańsk of 29 September 2021 [...] concerning personal income tax for the year 2016:

1. dismisses the cassation appeal
2. orders the Director of the Tax Administration Chamber in Gdańsk to pay B.S. and K.S. the amount of PLN 4,050 [...] as reimbursement of the costs of the cassation proceedings.

From the following reasoning:

1. BACKGROUND OF THE CASE

1.1. Course of the proceedings

The subject of the cassation appeal is the judgment of the Regional Administrative Court in Gdańsk of 5 April 2022 (Case No. I SA/Gd 1599/21), by which the court of first instance annulled the decision of the Director of the Tax Administration Chamber in Gdańsk of 29 September 2021 that had been issued in the case concerning B.S. and K.S. with respect to personal income tax for the year 2016.

The court of first instance first discussed the provisions concerning the tax abatement referred to in Article 27g of the Act of 26 July 1991 on Personal Income Tax (Journal of Laws of 2012, item 361, as amended; hereinafter the "PIT Act"). It then cited Article 14(3) of the Convention between the Republic of Poland and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Warsaw on 9 September 2009 (Journal of Laws of 2010, No. 134, item 899), as amended by the Protocol of 5 July 2012 (Journal of Laws of 2013, item 680; hereinafter the "Convention").

Next, the court presented an interpretation according to which the phrase "may be taxed" used in that provision means that the state in which the taxpayer performs work does not have the exclusive right to tax such income. Referring to the judgment of the Supreme Administrative Court of 31 May 2011 (Case No. II FSK 1759/10; the judgments cited in the reasoning are available in the Central Database of Administrative Court Judgments at orzeczenia.nsa.gov.pl), the court held that subjecting the remuneration of Polish seafarers to tax liability in Norway while Norway simultaneously applies a tax exemption to seafarers' remuneration (regardless of their residence) does not, in principle, exclude the possibility of taxing such income in Poland. Accordingly, the income of a person residing in Poland referred to in Article 14(3) of the Convention may be taxed both in Norway and in the state of residence, i.e. Poland (cf. the judgment of the Supreme Administrative Court of 2 December 2015 [Case No. II FSK 2406/15], published in the Central Database of Administrative Court Judgments).

The court then cited Article 22(1)(a)–(d) of the Convention, which regulates the methods for avoiding double taxation. Without conducting a broader analysis of Article 14(3) of the Convention, the court agreed with the Appellants as to its applicability in the case and, consequently, as to their entitlement to benefit from the tax abatement under domestic law in conjunction with Article 22(1)(d) and Article 14(3) of the Convention.

The court considered the key issue for resolving the case to be whether Article 14(3) of the Convention applied in light of the interpretation of the term "a ship operated in international traffic by an enterprise having its place of effective

management in Norway", and specifically whether the entity T. could be regarded as operating the ship on which the Appellant worked in 2016.

The court annulled the tax authority's decision and ordered that this issue be examined.

1.2. Cassation appeal and response to the cassation appeal

In the cassation appeal, the authority alleged:

I. infringement of the following procedural provisions that substantially affected the outcome of the case:

a) Article 145 § 1(1)(a) and (c), Article 134 § 1 and Article 151 of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Journal of Laws of 2024, item 935, as amended; hereinafter the "LPAC"), by allowing the complaint and annulling the decision of the appellate authority, although the authority's decision was not affected by any of the defects indicated by the Court and, in particular, did not violate the substantive or procedural provisions referred to in the reasoning of the judgment

b) Article 145 § 1(1)(c) LPAC in conjunction with Articles 121, 122, 191 and 187 of the Act of 29 August 1997 – the Tax Ordinance (Journal of Laws of 2021, item 1540, as amended; hereinafter the "Tax Ordinance"), through an incorrect assessment of the evidentiary proceedings conducted by the authority and an erroneous legal assessment of the facts established by the authorities, and by concluding that the authorities had violated Articles 122, 187, 191 and 121 § 1 of the Tax Ordinance by making a selective and arbitrary assessment of the evidence and by failing to make a comprehensive assessment of all evidence gathered in the case, which also constituted a breach of the principle of conducting proceedings in a manner that inspires confidence in public authorities; whereas the authorities correctly assessed the evidence gathered in the case and properly evaluated it legally by concluding that the Convention could not apply in the case due to the taxpayer's income from employment aboard a ship not being taxed in Norway, which rendered unnecessary any broader interpretation of the entity operating the ship beyond that which was adopted in the contested decision of the authority

c) Articles 141 § 4 and 133 § 1 of the LPAC, through defective reasoning of the judgment consisting in the Court's omission of the authority's arguments concerning the lack of grounds for applying the Convention and in making an improper assessment of the evidence, particularly by completely disregarding evidence in the case file comprising explanations provided by the Norwegian tax administration, which excluded the taxation in Norway of income earned by the taxpayer from employment aboard a ship. According to the authority, those explanations had the status of an official document. The Court also failed to consider, in the context of

applying the provisions of the Convention, the circumstance that the taxpayer's income from employment aboard the ship had not been taxed.

II. infringement of substantive law through erroneous interpretation and improper application:

a) Article 145 § 1(1)(a) LPAC in conjunction with Article 14(3), Article 3(1)(f) and Article 22(1)(b) and (d) of the Convention, through their incorrect interpretation and, consequently, improper application, by concluding that:

- the authority refrained from interpreting those provisions with regard to the entity operating the ship and nevertheless refused to apply them in the present case
- the applicability of the Convention to seafarers' income is not determined by the ship's flag (more broadly, ownership), the issue of "tax liability" in Norway or the place of registration, but rather by the place of effective management of the ship, provided that the ship is operated in maritime transport

whereas, since the income of seafarers working aboard ships not registered in the NIS or NOR registers is not subject to tax liability in Norway, the conditions set out in Article 22(1) of the Convention are not fulfilled. That provision applies exclusively to seafarers working aboard ships registered in the NIS, because only their income is subject to tax liability in Norway, while it is simultaneously exempt from taxation under Norwegian domestic law, especially since Article 22(1)(d) of the Convention directly refers to Norwegian domestic law governing income taxation.

b) Article 145 § 1(1)(a) LPAC in conjunction with Article 14(3) and Article 22(1)(b) and (d) of the Convention through incorrect interpretation, which consequently led to a violation of Article 27g(1) and (2) in conjunction with Article 27(9) and (9a) of the PIT Act, by concluding that the applicability of the Convention is determined not by the existence of tax liability, but by the place of effective management of the ship, whereas double taxation and the application of the Convention can only arise where the taxpayer's income is taxable both in Poland and in Norway; in the present case, however, the explanations of the Norwegian tax administration indicate that no tax liability arose in Norway in connection with the taxpayer's employment aboard the ship.

The administrative authority requested that the contested judgment be set aside in its entirety and that the complaint be dismissed or, alternatively, that the contested judgment be set aside in its entirety and the case remitted to the court of first instance for reconsideration. The authority also requested that evidence be admitted that would confirm the absence of the Appellants' tax liability in Norway.

In response to the cassation appeal, counsel for the Appellants requested that it be dismissed and that the costs of the cassation proceedings be awarded.

1.3. Legal question

By an order of 19 February 2025 (Case No. II FSK 785/22), the Supreme Administrative Court, acting pursuant to Article 187 § 1 of the LPAC, decided to refer the following legal issue raising serious doubts to a panel of seven judges of the Supreme Administrative Court for resolution:

"Under the wording used in Article 14(3) of the Convention between the Republic of Poland and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Warsaw on 9 September 2009 (Journal of Laws of 2010, No. 134, item 899), as amended by the Protocol of 5 July 2012 (Journal of Laws of 2013, item 680), which provides that 'remuneration derived in respect of an employment exercised aboard a ship operated in international traffic by an enterprise of a Contracting State may be taxed in that State', does the method for avoiding double taxation in Poland referred to in Article 22(1)(a)–(d) of that Convention apply where a resident of Poland who derives such income is not, under the domestic law of Norway, subject to tax liability in Norway in respect of that income?"

2. REASONING OF THE ORDER REFERRING THE LEGAL QUESTION FOR EXAMINATION BY A PANEL OF SEVEN JUDGES PURSUANT TO ARTICLE 187 § 1 OF THE LPAC

2.1. Divergence in the case law of administrative courts

When examining the cassation appeal, the Supreme Administrative Court found that the key issue for resolving the present case concerned interpretative doubts as to whether the mechanism for avoiding double taxation set out in Article 22(1)(a)–(d) of the Convention applies at all to income referred to in Article 14(3) of the Convention in a situation where the person deriving such income from employment exercised aboard a ship (a seafarer) is a Polish tax resident and, under the domestic law of Norway, is not subject to tax liability in that state with respect to such income.

This constitutes the fundamental legal issue upon which depends the possibility of applying, first, the provisions of the Convention and, subsequently, the domestic provisions concerning tax abatement. Only after resolving this issue is it possible to examine the status of the Norwegian enterprise employing the Appellant as an operator of a seagoing vessel.

The court of first instance held that the aforementioned provisions of the Convention were applicable because, pursuant to Article 22(1)(d) thereof, the Appellant, as a resident of Poland, derived income which, in accordance with the Convention, may be taxed in Norway; however, under Norwegian domestic law, such income is

exempt from taxation. However, in the interpretation and application of the provisions identified in the operative part of the order, two divergent lines of case law have emerged within the jurisprudence of the administrative courts, including that of the Supreme Administrative Court itself.

2.2. Position according to which the Convention does not apply to seafarers working aboard a ship not registered in Norwegian registers

In the judgment of the Supreme Administrative Court of 22 March 2022 (Case No. II FSK 689/21; published in the Central Database of Administrative Court Judgments), which is representative of the first line of case law, it was held that the information provided by the Norwegian tax administration, together with an analysis of Norwegian tax law, demonstrated that a seafarer's income earned in 2014 from employment aboard a ship which is not registered in Norway (NIS or NOR) was not subject to limited tax liability in Norway.

Since the disputed income was not subject to limited tax liability in Norway, the provisions of the Polish–Norwegian double taxation convention concerning the avoidance of double taxation did not apply in the case. In other words, where a taxpayer's income is taxable only in one country (Poland), there are no grounds whatsoever for alleging possible double taxation.

As the Appellant seafarer performed his work outside Norway and was not a Norwegian resident, then, according to the information provided by the Norwegian tax administration, Norwegian taxes were neither required to be applied nor actually applied to his remuneration. He was not subject to limited tax liability in Norway in respect of income earned from work performed aboard a ship flying the flag of the Bahamas. This circumstance excluded the possibility of Norway taxing the income of a natural person (a seafarer) derived from work aboard that ship. Consequently, Articles 14(3) and 22(1)(b) and (d) of the Convention did not apply to the Appellant seafarer's income.

2.3. Position according to which the Convention applies to seafarers working aboard a ship not registered in Norwegian registers

Conversely, in the judgment of the Supreme Administrative Court of 16 November 2022 (Case No. II FSK 419/22; published in the Central Database of Administrative Court Judgments), which is representative of the second line of case law, it was held that account must be taken of the regulation specifically addressed to seafarers in Article 14(3) of the Convention.

It was noted that, in the case under consideration, the Appellant seafarer was not a resident of Norway and was subject to unlimited tax liability in Poland. By virtue of the Protocol signed in Oslo on 5 July 2012, the contracting states (Poland

and Norway) amended the Convention. The Supreme Administrative Court stated that the interpretation of Articles 14(3) and 22(1)(d) of the Convention, as amended in 2012, was crucial. The Court indicated that the amendment to Article 14(3) of the Convention made it possible to tax the remuneration of Polish seafarers earned from employment exercised aboard a ship operated in international traffic by a Norwegian enterprise.

That provision does not require the ship to be registered in a Norwegian register. Norwegian domestic law shows that Norway has not made use of this possibility. However, under Article 14(3) of the Convention, Norway may do so at any time.

A consequence of the amendments introduced to Article 14(3) of the Convention was the addition of letter (d) to Article 22(1) of the Convention, concerning a Polish resident whose income may be taxed in Norway under the Convention, but which is exempt from taxation under Norwegian domestic law.

3. POSITION OF THE PROSECUTOR OF THE NATIONAL PUBLIC PROSECUTOR'S OFFICE

In a submission dated 30 September 2025, the Prosecutor of the National Public Prosecutor's Office requested the adoption of the following resolution:

"Under the wording used in Article 14(3) of the Convention between the Republic of Poland and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Warsaw on 9 September 2009 (Journal of Laws of 2010, No. 134, item 899), as amended by the Protocol of 5 July 2012 (Journal of Laws of 2013, item 680), which provides that 'remuneration derived in respect of employment exercised aboard a ship operated in international traffic by an enterprise of a Contracting State may be taxed in that State', where a resident of Poland who derives such income is not, under Norwegian domestic law, subject to tax liability in Norway in respect of that income, the method for avoiding double taxation in Poland referred to in Article 22(1)(a)–(d) of that Convention does not apply."

4. POSITION OF THE ADMINISTRATIVE AUTHORITY

In a position submitted on 2 September 2025, the authority critically assessed the application of double taxation agreements. It stated that such agreements do not take precedence over statutes in their application. With regard to the issue covered by the legal question, the authority conducted its own interpretation of Norwegian law and concluded that the scope of that provision of the Convention extends

only to those seafarers who perform work aboard ships registered in the Norwegian International Ship Register (NIS).

Furthermore, in a submission dated 27 September 2025, the authority indicated, inter alia, that no agreement on avoiding double taxation can constitute "an autonomous basis for taxing income in any state that is party to such agreement, nor can it impose a tax liability, i.e. taxation of income in that state, if such liability does not arise under the tax law regulations of that state."

The authority referred to Article 4a of the PIT Act, which provides that the scope of the unlimited tax liability applicable to Polish residents may be "modified" by double taxation agreements (and not vice versa). According to the authority:

"In order to tax income in a given state, there must exist a legal basis for doing so in the internal tax law of that state (a statutory provision imposing tax liability). Therefore, only the existence in the tax provisions of a given state of tax liability with respect to specific income (which, as a rule, constitutes the basis for taxing such income in that state) provides grounds for applying the provisions of a double taxation agreement in that respect (if such an agreement has been concluded)."

The authority further stated that the question of whether the source state exercises its right to tax income (in this case, income from work aboard a seagoing vessel) is determined by the tax law regulations in force in Norway. Those regulations, however, do not subject the income of Polish seafarers to tax liability, except for income earned by seafarers working aboard ships registered in the NIS.

5. POSITION OF THE APPELLANTS

The Appellants responded to the authority's submission by stating that the authority's assertions distort the very basis for concluding double taxation agreements and that the "theories" presented by the authority undermine the purpose of applying the provisions of such agreements.

At the same time, counsel for the Appellants requested that evidence be admitted and examined in the form of documents attached to the submission. These documents consisted of interministerial correspondence (between the Ministry of Finance and the Ministry of Infrastructure, as well as between the Ministry of Finance and the Norwegian Shipowners' Association). This correspondence indicated the motives guiding the Ministry of Finance, in consultation with the Norwegian side, when amending the Convention. It follows from the correspondence that the purpose of the amendment was to equalise the situation of all seafarers employed by Norwegian shipowners by introducing the proportional credit method and enabling them to benefit from tax abatement.

6. ON THE APPLICATION OF ARTICLE 187 § 3 OF THE LPAC AND THE ASSUMPTION OF JURISDICTION BY A PANEL OF SEVEN JUDGES

It is necessary to explain the grounds on which the Supreme Administrative Court, sitting as a panel of seven judges and acting pursuant to Article 187 § 3 of the LPAC by the order issued at the hearing on 9 June 2025, did not adopt a resolution but instead assumed jurisdiction over the present case for examination.

The Court stated that the divergence in case law identified in the order of 19 February 2025 did not result from administrative courts adopting different interpretations of the relevant regulation, but rather reflected differing factual circumstances that determined the ultimate outcome of applying that regulation through subsumption to the various factual circumstances of individual cases, as explained in greater detail in the following parts of the reasoning.

At the same time, bearing in mind the legal significance of the issue for the practice of applying the law – correctly identified in the order referring the matter to a panel of seven judges of the Supreme Administrative Court – and considering the need to preserve the uniformity and consistency of the case law of the Polish administrative courts within the scope of the issue concerned, the Court found it justified to assume jurisdiction over the present case pursuant to Article 187 § 3 of the LPAC.

7. SUPPLEMENTARY POSITIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

7.1. Position of the Minister of Finance and Economy

In the opinion of the Minister of Finance and Economy dated 19 November 2025, the position according to which the application of the agreement on avoiding double taxation concluded between Poland and Norway depends on whether the taxpayer, being a Polish tax resident, was subject to limited tax liability in Norway finds no support either in the applicable legal provisions or in the international practice of applying and interpreting the provisions of double taxation agreements.

In the case of seafarers earning income from work aboard a ship operated in international traffic by an enterprise having its place of effective management in Norway, under the legal framework applicable to income earned up to 31 December 2020, which is the subject of the present case, the relevant tax rule is Article 14(3) in conjunction with Article 22(1)(a) and (d) of the Polish–Norwegian Convention.

Article 14(3) of the Convention applies where the following conditions are met in the factual circumstances of the case:

– the income is derived from employment exercised aboard a seagoing vessel;
– the vessel is operated in international traffic (according to the definition of international traffic in Article 3(1)(g) of the Convention);
– the vessel is operated by a Norwegian enterprise.

If, pursuant to Article 14(3) of the Convention, a seafarer's income may be taxed in Norway, double taxation is avoided in Poland by means of the primary method, namely the exemption with progression method referred to in Article 22(1)(a) and (c) of the Convention.

However, pursuant to Article 22(1)(d) of the Convention, notwithstanding the provisions of letter (a), double taxation is avoided by applying the credit method referred to in letter (b) of that paragraph where a person residing or established in Poland derives income which may be taxed in Norway under the Convention, but which is exempt from taxation under Norwegian domestic law. This means that where Norway, despite having the right to do so, does not impose tax on the income of a Polish tax resident (because such income is exempt from tax under Norwegian domestic law), Poland is obliged to change the method of avoiding double taxation to the ordinary credit method.

At no stage in determining the rules for taxing Polish tax residents earning income in Norway does the Polish–Norwegian Convention require it to be established whether the taxpayer was subject to limited tax liability abroad.

The Minister of Finance and Economy pointed out that the situation of competing tax liabilities in two states was also discussed, from the perspective of justifying the application of methods for avoiding double taxation provided for in treaties, in paragraph 37 of the Commentary to Articles 23A and 23B of the OECD Model Convention (hereinafter the "OECD MC"). However, the Commentary to the OECD MC does not indicate that such a situation constitutes a condition for applying a double taxation agreement.

In legal scholarship, there is likewise no argument that a taxpayer's being subject to limited tax liability in the other state is a necessary condition for applying a double taxation agreement. The Minister cited theses reaching the opposite conclusion, namely that the application of methods for avoiding double taxation is not dependent on the other state actually exercising its right to taxation provided for in a treaty.

In the opinion of the Minister of Finance and Economy, the interpretation of the term "exempt from tax" referred to in Article 22(1)(d) of the Convention should primarily take into account the purpose and context of that provision. Its purpose is to prevent situations of double non-taxation under the Convention. The scope of that provision should encompass all situations in which income is not taxed in Norway. The term "exempt from tax" used in Article 22(1)(d) of the Convention, as applicable to income earned up to 31 December 2020, should therefore be

interpreted in light of the purpose of that provision and within the context arising from the Convention, i.e. taking into account the various forms of non-taxation provided for under Norwegian law, and not merely the narrow understanding of the term "tax exemption" that may be adopted under Polish tax law.

The Minister also stated that the position expressed in the General Interpretation of the Minister of Development and Finance of 31 October 2016 concerning the application of the relief referred to in Article 27g of the PIT Act to seafarers residing in Poland and deriving income from employment aboard ships operated in international traffic within the meaning of double taxation avoidance agreements remains valid. According to that interpretation, the payment of tax abroad is not a necessary condition for the application of a method for eliminating double taxation and, consequently, for the application of the relevant agreement on avoiding double taxation from which such method derives. Therefore, the non-payment of tax abroad cannot, in itself, constitute grounds for refusing to apply a double taxation agreement.

The Vienna Convention on the Law of Treaties, concluded in Vienna on 23 May 1969 (Journal of Laws of 1990, No. 74, item 439; hereinafter the "VCLT"), provides in Articles 31 and 32 for the possibility of referring to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of the general rule of interpretation described above, or to determine the meaning where such interpretation leaves the meaning ambiguous or obscure, or leads to a result that is manifestly absurd or unreasonable. This additionally confirms the necessity of understanding the term "exempt from tax" in the context of international tax law, and therefore more broadly than under the domestic law of a given state.

Finally, the Minister of Finance and Economy pointed out that the ruling in the present case will have fundamental significance for the application of all double taxation agreements to which Poland is a party. In every case where Poland has a binding agreement with another state, doubts could arise as to whether the application of that agreement depends on the taxpayer being subject to limited tax liability in the other state.

According to the Minister of Finance and Economy, such a situation should be regarded as highly undesirable, as it would create uncertainty for both taxpayers and tax authorities regarding the law in Poland.

7.2. Position of the administrative authority

In its submission of 3 December 2025, the authority, referring to the case under consideration, stated that the evidence examined by the Regional Administrative Court in Gdańsk unequivocally demonstrated that there was no conflict between

unlimited tax liability (in Poland) and limited or unlimited tax liability (in Norway), and therefore the Convention did not apply to the case at all.

Since Norway excludes the possibility of taxing the income earned by the Appellant aboard a ship managed by a Norwegian entity (personnel management), neither the Polish tax administration nor any other authorities or persons may impose upon that state a change in its position in this regard.

The possibility (right) to tax income must result from the binding legal provisions in a given state. Any attempt to interfere with Norwegian tax legislation is not only impermissible but, above all, impossible to carry out. According to the authority, the Regional Administrative Court in Gdańsk completely disregarded the fact that the Convention (or any other double taxation agreement) does not constitute an autonomous basis for taxing income in a state that is party to such an agreement. In order to tax income in a given state, there must exist a legal basis in that state's tax legislation (a statutory provision imposing tax liability).

The reasoning of the decision of the Director of the Tax Administration Chamber in Gdańsk of 29 September 2021 demonstrated that Norwegian tax provisions prevent the taxation of a Polish seafarer working aboard a ship that does not fly the Norwegian flag (i.e. not registered in the NIS or the NOR).

The vessel "N." flew the flag of the Bahamas, and therefore, according to the explanations provided by the Norwegian administration, the Appellant's income from work aboard that vessel could not be taxed in Norway. Consequently, Article 14(3) of the Convention (or any other provision of the Convention) did not apply to such income. Accordingly, the authority argued that the view expressed in the contested judgment, which required the identification of the "enterprise" referred to in that provision, was unfounded.

The aforementioned Article 14(3) of the Convention merely sets out a general conflict-of-laws rule, indicating which state (Poland or Norway) has priority in taxing income derived from work aboard a seagoing vessel where tax liability in respect of that income arises in both states.

Therefore, no additional meaning should be attributed to the wording in that provision that refers to the place of effective management of the enterprise. According to the authority, this wording merely serves as a kind of "connecting factor" for identifying the state entitled to taxation of income, which does not at all mean that the source state will actually exercise that right. This is evidenced, inter alia, by the phrase "may be taxed" in Article 14(3) of the Convention. Whether the source state exercises its right to taxation (here, of income from work aboard a seagoing vessel) is determined by the applicable tax law (in force in Norway).

Whether T. constitutes the enterprise operating the vessel in international traffic within the meaning of Article 14(3) of the Convention, or whether another

enterprise (not identified during the proceedings) should be regarded as such, is irrelevant and immaterial for the resolution of the case.

Had the Appellant performed work aboard a ship registered in Norway, then – despite the absence of an actual tax payment – he would have been entitled to benefit from tax abatement, because the substantive exemption of such income in Norway excludes the obligation to pay tax, but does not eliminate tax liability in that state.

This fact is crucial for the possibility of benefiting from tax abatement in Poland.

7.3. Concluding position of the Appellants

In their submission of 8 December 2025, the Appellants stated that the Convention is intended to prevent double taxation but does not itself determine whether income is subject to taxation in a given state. In light of the excessively formalistic interpretations adopted by the Polish tax authorities, which – according to the Appellants – depart from the purpose of the Protocol amending the Convention, the authorities should clarify the meaning of the following concepts:

1. the arising of tax liability in Norway
2. the exemption of a particular category of persons from taxation of their income.

It is necessary to clarify the understanding of the concept of exemption from taxation in Norway and the manner in which that concept should be interpreted consistently with the purpose of the Protocol. Norway agreed to amend the method for avoiding double taxation in Poland on condition that Poland apply a tax relief mechanism resulting in the effective non-taxation in Poland of income earned aboard ships managed by Norwegian enterprises.

The Supreme Administrative Court, sitting as a panel of seven judges, considered as follows.

8. LEGAL FRAMEWORK

Act of 26 July 1991 on Personal Income Tax (Journal of Laws of 2015, item 2032):

Article 3(1)

Natural persons who have their place of residence within the territory of the Republic of Poland shall be subject to tax liability on their entire income (revenues), regardless of the location of the sources of such revenues (unlimited tax liability).

Article 3(1a)

A person shall be deemed to have their place of residence within the territory of the Republic of Poland if that person:

1. has within the territory of the Republic of Poland a centre of personal or economic interests (centre of vital interests) or
2. stays within the territory of the Republic of Poland for more than 183 days in a tax year.

ARTICLE 27(1)

Subject to Articles 29–30f, income tax shall be levied on the tax base according to the following tax scale: [...].

ARTICLE 27(8)

Where a taxpayer referred to in Article 3(1), in addition to income subject to taxation pursuant to paragraph 1, also earned income from activities performed outside the territory of the Republic of Poland or from sources of revenue located outside the territory of the Republic of Poland, which is exempt from tax under double taxation agreements or other international agreements, the tax shall be determined as follows:

1. the income exempt from tax shall be added to the income subject to income tax, and tax shall be calculated on the aggregate amount of such income according to the scale specified in paragraph 1
2. the percentage rate of tax to the aggregate amount of income thus calculated shall be determined
3. the percentage rate determined pursuant to point 2 shall be applied to the income subject to income tax.

ARTICLE 27(9)

Where a taxpayer referred to in Article 3(1) also derives income from activities performed outside the territory of the Republic of Poland or from sources of revenue located outside the territory of the Republic of Poland, and the applicable double taxation agreement does not provide for the application of the method specified in para. 8, or where the Republic of Poland has not concluded a double taxation agreement with the state in which the income is earned, such income shall be combined with income from sources located within the territory of the Republic of Poland. In such a case, the amount of income tax paid in the foreign state shall be deducted from the tax calculated on the aggregate amount of income. However, such deduction may not exceed the part of the tax calculated before the deduction which proportionally corresponds to the income earned in the foreign state.

ARTICLE 27(9A)

Where a taxpayer referred to in Article 3(1) derives income exclusively from activities performed outside the territory of the Republic of Poland or from sources of revenue located outside the territory of the Republic of Poland, which is not exempt from tax under double taxation agreements, or where the Republic of Poland has not concluded a double taxation agreement with the state in which the income is earned, the rules set out in para. 9 shall apply accordingly.

ARTICLE 27G [TAX ABATEMENT]

ARTICLE 27G(1)

A taxpayer subject to the tax liability referred to in Article 3(1), settling tax in accordance with the principles set out in Article 27(9) or (9a), in respect of income earned outside the territory of the Republic of Poland during the tax year:

1. from the sources referred to in Articles 12(1), 13 or 14 or
2. from property rights in the scope of copyrights and related rights within the meaning of separate regulations, arising from artistic, literary, scientific, educational or journalistic activity performed outside the territory of the Republic of Poland, excluding income (revenue) derived from the use or disposal of such rights, shall have the right to deduct from the income tax calculated in accordance with Article 27, reduced by the amount of the contribution referred to in Article 27b, an amount calculated in accordance with para. 2.

ARTICLE 27G(2)

The deductible amount shall constitute the difference between the tax calculated in accordance with Article 27(9) or (9a) and the amount of tax calculated on the income from the sources referred to in para. 1 by applying to such income the rules set out in Article 27(8).

ARTICLE 27G(3)

The deduction shall not apply where the income from the sources referred to in para. 1 was earned in countries or territories listed in the regulation issued pursuant to Article 25a(6).

ARTICLE 27G(4)

Paragraphs 1–3 shall apply accordingly to the tax calculated pursuant to Article 30c.

Convention between the Republic of Poland and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and the Protocol thereto, signed in Warsaw on 9 September 2009 (Journal of Laws 2010 No. 134, item 899; version in force from 2 April 2013)

ARTICLE 3(1)(G)

For the purposes of this Convention, unless the context otherwise requires:

[...]

(g) the term "international traffic" means any transport by a ship or aircraft, except where the ship or aircraft is operated solely between places situated within a Contracting State.

ARTICLE 3(2)

As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that

time under the law of that State for the purposes of the taxes to which the Convention applies, with any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 14(3)

Notwithstanding the preceding provisions of this Article, remuneration derived from employment exercised aboard a ship operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 22(1)

In the case of Poland, double taxation shall be avoided as follows:

(a) Where a resident of Poland derives income which, in accordance with the provisions of this Convention, may be taxed in Norway, Poland shall exempt such income from tax, subject to the provisions of subparagraph (b) of this paragraph.

(b) Where a resident of Poland derives income or capital gains which may be taxed in Norway, in accordance with the provisions of Articles 10, 11, 12, 13 or para. 7 of Article 20 of this Convention, Poland shall allow as a deduction from the tax on the income or capital gains of that person an amount equal to the tax paid in Norway. However, such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income or capital gains derived from Norway.

(c) Where, in accordance with any provision of this Convention, income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income or capital gains of such resident, take into account the exempted income.

(d) Notwithstanding the provisions of subparagraph (a), double taxation shall be avoided by applying the credit method referred to in subparagraph (b) of this paragraph where a resident of Poland derives income which may be taxed in Norway, in accordance with the provisions of this Convention, but which, under the domestic law of Norway, is exempt from tax.

9. WITH RESPECT TO THE GROUNDS OF THE CASSATION APPEAL

9.1. Preliminary remarks

In view of the case being referred for examination by a panel of seven judges of the Supreme Administrative Court, it became necessary to address the grounds raised in the authority's cassation appeal. These grounds determine the scope of review in cassation proceedings. The cassation appeal contains allegations of violations of both procedural law and substantive law. In such circumstances, procedural

objections are, as a rule, examined first. Typically, such objections concern defects in the establishment of the facts of the case, which makes it appropriate to consider them before allegations concerning substantive law.

However, the specific nature of the present case requires that the allegations concerning substantive law be discussed and addressed first. This is because the scope of any evidentiary proceedings, as well as the determination of whether the Appellant's income is subject to taxation in Poland, depends on the interpretation of the Convention and the Polish tax statute.

Before assessing the grounds of the cassation appeal, it should be noted that a position in the case was submitted by an authority that is not a party to the proceedings, namely the Minister of Finance and Economy. The Supreme Administrative Court observes that although the newly introduced Article 106 § 3a of the Law on Proceedings before Administrative Courts authorises an administrative court only to request a position from an authority that is not a party to the proceedings, it should be accepted that this competence also includes taking into account such a position where it is submitted to the court on that authority's own initiative. Such a situation occurred in the present case. On this basis, in resolving the disputed issues arising in the proceedings, the Supreme Administrative Court took into consideration the arguments presented by the Minister of Finance and Economy, who, pursuant to Article 11(1)(1) of the Act of 16 November 2016 on the National Revenue Administration (Journal of Laws of 2025, item 1131, as amended), is an authority of the National Revenue Administration (KAS). Under that Act (Article 12), the minister competent for public finance coordinates and cooperates in shaping state policy within the scope of KAS tasks. In order to ensure the efficient and effective performance of KAS tasks, the minister competent for public finance coordinates their implementation and supervises KAS organisational units, and in particular may:

- request information, materials, explanations and documents regarding the performance of tasks by KAS organisational units
- commission analyses within a specified scope.

(ARTICLE 12C(1)(1) AND (2) OF THE ACT)

The Minister's position is particularly desirable in cases involving serious legal doubts concerning the application of tax law, especially in matters falling within the Minister's competence regarding cooperation in the drafting of double taxation agreements concluded by Poland, as discussed below.

At this point, it should be emphasised that the view presented by the Minister in the present case remains, in essential respects, contrary to the position adopted by the tax authority.

9.2. Application of the Convention to the income of Polish seafarers

At the outset, it was necessary to determine whether the Convention, and in particular Article 14(3) thereof, applies to a Polish seafarer deriving income from employment aboard a seagoing vessel operated in international traffic by a Norwegian enterprise, where the vessel is not registered in a Norwegian register. In its position, the authority clearly emphasised that there was no need in the present case to determine the entity operating the vessel in international traffic. According to the authority, the taxpayer neither paid tax in Norway nor was subject there to limited tax liability. By contrast, in the view of the Appellants and the Minister of Finance and Economy – a view shared by the Supreme Administrative Court – neither being subject to limited tax liability in Norway nor the actual payment of tax in Norway constitutes a necessary condition for the application of the Convention.

It should be recalled that in 2012 the Convention was amended through revisions to Article 14 and Article 22(1). This amendment was significant insofar as it altered the rules governing the taxation of seafarers working aboard vessels connected with Norway. Prior to the amendment, the Convention applied to income earned by seafarers aboard ships registered in the NIS and NOR. However, as follows from the explanatory memorandum to the bill introducing the amendments to the Convention, the practice of shipowners registering vessels under low-cost flags gave rise to difficulties concerning the taxation of seafarers earning income aboard ships not registered in Norway.

(Parliamentary print No. 818 of the 7th term of the Sejm, available at https://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=818)

Accordingly, Article 14(3) of the Convention was amended so as to cover income earned by seafarers aboard seagoing vessels operated in international traffic by enterprises having their seat in Norway. This did not alter the legal situation of seafarers earning income from work aboard ships registered in Norway, because Norwegian domestic law exempts such income from taxation.

As regards the remaining category of seafarers satisfying the conditions set out in Article 14(3) of the Convention and not working aboard ships registered in Norway, Article 22 of the Convention was also amended in order to exempt their income from taxation by changing the applicable method for avoiding double taxation. As a consequence, the so-called tax abatement regulated in the Polish Personal Income Tax Act became applicable to their income.

The Supreme Administrative Court held that the Minister of Finance and Economy was correct in stating that, for the application of a double taxation agreement, an actual conflict between unlimited and limited tax liability (that is, the actual simultaneous taxation of the same income in both countries) is not required.

The crucial condition for applying a double taxation agreement is the potential for taxation of a given person in both states, arising from their respective domestic tax laws. Such a situation exists in the present case. There is a general conflict between taxation in the state where the source of income is located (income from work aboard a vessel operated by a Norwegian enterprise) and taxation in the state of tax residence (Poland) – in other words, a residence–source conflict.

The Minister of Finance and Economy presented views from legal scholarship indicating that they do not support the proposition that being subject to limited tax liability in another state is a necessary condition for the application of a double taxation agreement. On the contrary, it emphasised that the relevant condition is the potential for taxation in the source state (by referring to the views expressed by K. Vogel in E. Reimer, A. Rust, K. Vogel, *On Double Taxation Conventions*, 4th ed., 2015, pp. 1587 and 1596 as well as H. Litwińczuk, *International Tax Law*, Warsaw 2020, pp. 367–368 and 372).

It should be noted, however, that in the present case such source taxation resulting from limited tax liability may potentially arise, because the provisions of the Convention allow Norway to tax such income. The consequence of this is the establishment of a conflict-of-laws rule that will apply if Norway decides to exercise its right to tax such income.

The Minister of Finance and Economy also correctly referred to the OECD MC. The Supreme Administrative Court merely observed that Articles 23A and 23B apply to numerous factual situations described in the Commentary that depart from the general principles to which the authority limits itself in its position.

9.3. Consequences of the amendment to the Convention for the Taxation of Seafarers' Income

The explanatory memorandum to the bill ratifying the Protocol amending the Convention stated that:

"The subject of the amendment is the deletion of the second sentence of Article 14(3) of the Convention. This provision, contained in the Convention concluded between Poland and Norway on 9 September 2009, provides for the taxation of seafarers employed aboard ships registered in the Norwegian International Ship Register (NIS) exclusively in their state of residence. The purpose of the Protocol is to introduce into the Convention the general principles of taxation for this group of taxpayers (provided for in the first sentence of Article 14(3)), which, in the case

of Polish residents employed aboard Norwegian seagoing vessels, due to exemptions existing under Polish and Norwegian domestic law, will result in the exclusion of this occupational group from taxation."

To summarise, as a result of the amendment to the Convention:

The provision specifically concerning seafarers working aboard ships registered in the Norwegian ship register was removed.

A general rule was introduced, resulting from the amended first sentence of Article 14(3) of the Convention, according to which income earned by seafarers from employment aboard a seagoing vessel operated in international traffic by a Norwegian enterprise is taxable in Norway; this is the provision that determines the applicability of the Convention.

The place of registration of vessels became irrelevant for the application of the Convention.

Following the amendment and the application of the general rule under Article 14(3) of the Convention, seafarers working aboard ships registered in Norway still do not pay tax because their income from such employment benefits from an exemption from taxation under Norwegian law. By contrast, Norway does not tax the remuneration of seafarers working aboard Norwegian-operated ships not registered there (such income is exempted from taxation).

As a consequence of introducing the exemption-with-progression method, Poland is not precluded under the Convention from taxing income earned in Norway that is not effectively taxed in the source state. This also applies where the Polish resident simultaneously earns no other income from sources located in Poland.

To summarise this part of the analysis, it may be stated that the Convention applies to the income of two categories of Polish seafarers: those working aboard ships registered in the Norwegian register and those working on other ships operated in international traffic by Norwegian enterprises.

The first group is subject to taxation in Norway; however, the tax at the source amounts to "0", as they benefit from an exemption on their income. As regards the second group, the Norwegian tax provisions do not apply to their income at all. Consequently, such income could potentially be taxed in Poland; however, the tax abatement applies to them because the Convention changed the method for eliminating double taxation and, as a result, the tax abatement under the Polish PIT Act applies to such income.

As was correctly noted in the explanatory memorandum to the draft act ratifying the Protocol, the Convention itself does not lead to double non-taxation of seafarers' income. This results from the domestic laws of the contracting states – parties to the Convention – through the exemption from taxation granted to one group of seafarers (in Norway) and the abatement granted to the other group (in Poland).

Accordingly, the legal and tax situation of seafarers has become dependent on the domestic law of the contracting states: in the first case, on the exemption provided under Norwegian law, and in the second case, on the application of the tax abatement under Polish law. Therefore, any change resulting in the taxation of such income did not require an amendment to the Convention and depended solely on domestic legislation. It must be clearly emphasised that, contrary to the authority's assertions, the Convention did not create any tax exemption, since such exemptions resulted from the domestic legislation of the contracting states. The correctness of such an interpretation of the Convention is also confirmed by the circumstances surrounding the conclusion of the Protocol amending the Convention.

Since double taxation agreements are international treaties, they are subject to the rules of interpretation set out in the Vienna Convention on the Law of Treaties ("VCLT"). Furthermore, agreements based on the OECD MC usually contain a provision (based on Article 3(2) of the OECD MC) stating that, unless the context otherwise requires, any term not defined in the OECD MC shall have the meaning that it has under the law of the state applying the OECD MC for the purposes of the taxes to which it applies. At the same time, the meaning arising from the tax legislation of that state takes precedence over the meaning given to it by other provisions of national law. This means that priority should be given to the meanings assigned by the treaty itself. If a particular term is not defined in a specific double taxation agreement, recourse should be had to the meaning assigned by the tax law of the contracting state, only where the context does not otherwise require. It is therefore not desirable to define such provisions by reference to their ordinary meaning using dictionary definitions.

As provided by the general rule of interpretation set out in Article 31(1) of the VCLT, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. The VCLT provides that, for the purpose of interpreting a treaty, the context includes the text, its preamble and annexes, any agreement relating to the treaty made between all the parties in connection with the treaty and any instrument made by one or more parties in connection with the treaty and accepted by the other parties as being related to the treaty. Together with the context, account shall also be taken of any subsequent agreement between the parties regarding the interpretation of the treaty or its application, any subsequent practice in the application of the treaty establishing the agreement of the parties regarding its interpretation and any relevant rules of international law applicable in the relations between the parties. A special meaning shall be given to a term if it is established that such was the intention of the parties. Article 32 of the VCLT, in turn, provides that recourse may be had to supplementary means of interpretation, including the preparatory

work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31 (a) leaves the meaning ambiguous or obscure or (b) leads to a result which is manifestly absurd or unreasonable.

It must be emphasised that the normative amendment to the Convention was significant. Accepting the authority's position would mean that no change whatsoever occurred in the legal situation of Polish seafarers, despite the fact that the wording of the provisions was amended and the amendment was extensively discussed in the explanatory memorandum to the ratifying statute, in the General Interpretation of the Minister of Finance and in the current position of the Minister of Finance and Economy.

That authority (the minister competent for public finance matters) participates in the conclusion of double taxation agreements pursuant to § 2 et seq. of the Regulation of the Council of Ministers of 28 August 2000 on the implementation of certain provisions of the Act on International Agreements, issued on the basis of the Act of 14 April 2000 on International Agreements (Journal of Laws No. 39, item 443; see in this respect K. Dybiec, "Negotiation of Double Taxation Agreements", in I. Mirek, T. Nowak (eds), *Financial Law after the Political Transformation: International and European Tax Law*, Łódź 2013, pp. 358–367).

Similarly, the materials submitted by the Appellants, consisting of correspondence between Norwegian shipowners and the Minister of Finance, confirm the correctness of the above interpretation of the Convention.

On the basis of the available materials related to the amendment of the Convention, it may therefore be concluded that the intention behind the amendment was to create a legal framework under which the remuneration of a Polish seafarer might not be subject to taxation at all. Naturally, this applies where the remuneration was earned in connection with employment exercised aboard a ship operated in international traffic by a Norwegian enterprise.

An issue that must also be determined is the condition specified in Article 22(1)(d) of the Convention for applying the amended method of eliminating double taxation, namely the exemption of seafarers' employment income in Norway. The above considerations concerning the amendment of the Convention remain relevant in this respect. Additionally, it may be noted that, in the absence of a definition of the term "exempt from tax" under the international agreement, the intention of the contracting parties is of particular importance and, as indicated above, that the intention was to eliminate the taxation of remuneration earned by seafarers employed by a Norwegian enterprise in connection with employment aboard a ship operated in international traffic.

In this context, the term "exempt" refers to income in respect of which Norway refrains from levying tax. Such a conclusion also follows from an analysis of the English-language version of the Convention, which is decisive in this respect pursuant to the provisions of the Convention itself and Article 33(1) and (2) of the Vienna Convention on the Law of Treaties. Specifically, Article 22(1)(d) of the Convention uses the phrase "exempt from tax". In English-language legal scholarship, the concept of "tax exemption" is attributed a broad meaning. By way of example, J. W. Martin points out that it may be understood narrowly – as an explicit statutory exclusion from the scope of taxation – as well as broadly, in the economic sense, as the avoidance of a financial burden ("The 'tax exemption' may be used in the narrow sense of an explicit exclusion from the scope of a tax or in the broad economic sense of omission from a levy" – J. W. Martin, *The Social Aspects of Tax Exemption, The Annals of the American Academy of Political and Social Science*, 1936, Vol. 183, *Government Finance in the Modern Economy*, pp. 48 et seq.).

In the American legal system, the origins of the institution of tax exemption are associated with both the taxation of Native Americans and issues concerning the division of taxing powers between state and federal authorities with respect to American citizens (see in this regard F. J. Goodnow, "The Nature of Tax Exemptions", *Columbia Law Review* 1913, Vol. 13, No. 2, pp. 104–120; G. E. Putnam, "Income Tax Exemption", *The Bulletin of the National Tax Association*, 1920, Vol. 6, No. 3, pp. 75 et seq.; regarding this terminology, see also M. Wołowiec, "Discretionary Nature of the Tax Authority's Decision in the Matter of the Tax Write-Offs", *Bulletin of the Association of Graduates and Friends of the Faculty of Law of the Catholic University of Lublin* 2022/19, p. 350).

The Minister of Finance also addressed the disputed issue in the General Interpretation of 31 October 2016, which points to the possibility of applying the tax abatement where seafarers derive income from work performed aboard a ship and have not paid tax abroad (*Official Journal of the Ministry of Development and Finance*, 2016.12 of 4 November 2016).

The Minister expressly disagreed with the thesis that paying tax in the other state constitutes the overriding prerequisite for applying the proportional credit method. "No element of the structure of this method provides that the payment of tax is a qualifying condition for its application. Failure to pay tax in the source state merely means that, when applying the proportional credit method, the taxpayer is unable to deduct foreign tax because no tax burden has in fact been incurred. In order for the conventional method of avoiding double taxation to apply, it is sufficient that the convention grants the source state the possibility to tax such income."

This view should be shared and treated as a general principle. Nevertheless, the multiplicity of agreements and factual situations, including those related to the MLI

Convention (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting), requires that each factual and legal situation be examined carefully. It must also be borne in mind that the interpretation concerns seafarers who are Polish tax residents.

In conclusion, the Minister stated that "the right to the relief referred to in Article 27g of the Act shall be available to a seafarer who performs work aboard a seagoing vessel operated in international traffic by an enterprise of Norway. Fulfilment of the conditions specified in Article 14(3) of the Convention will result in the applicability of the provisions of that Convention, and consequently also the relief referred to in Article 27g of the Act."

Applying the above to the present case, it should be noted that it is essential to determine whether the information obtained from the Norwegian tax administration demonstrates that the Appellant earned remuneration in connection with employment exercised aboard a seagoing vessel operated in international traffic by a Norwegian enterprise. In such circumstances, the income should potentially be taxable in Norway. Meanwhile, the Norwegian authorities indicate that, since the Appellant performs work outside Norway and is not a Norwegian resident, he is not subject to taxation in Norway. This merely means that, despite having such a possibility, Norway has chosen not to tax that income.

The Supreme Administrative Court states that the burden rests on the taxpayer to demonstrate that he satisfies the conditions for his income to be recognised as exempt under the Convention. Where doubts arise as to whether the taxpayer is entitled to benefit from the proportional credit method, the tax authority may examine this issue in tax proceedings, during which it is entitled to contact to the Norwegian tax administration in order to verify the information that was submitted.

Accordingly, in the proceedings to be conducted anew by the tax authorities, it will be necessary to determine whether the taxpayer derived income while working aboard a seagoing vessel operated by a Norwegian enterprise in international traffic.

10. A VESSEL OPERATED BY A NORWEGIAN ENTERPRISE IN INTERNATIONAL TRAFFIC WITHIN THE MEANING OF THE CONVENTION

The Supreme Administrative Court observes that, for the resolution of the present dispute, it is necessary to determine the meanings of *the entity operating the vessel* and of *international traffic*. When re-examining the case, the authorities shall take into account the interpretation of these concepts presented in this judgment.

As correctly explained in the judgment of the Regional Administrative Court in Gdańsk of 5 November 2025 (Case No. I SA/Gd 631/25; published in the Central

Database of Administrative Court Judgments), "the place of effective/actual management of the enterprise operating the vessel is, in other words, the place from which key decisions concerning the activity of a given entity are taken, for example in the field of crewing the vessel. Enterprises operating vessels, due to the number of vessels and the competencies of personnel, divide vessel management into ownership management (seat of the company's management board) – general management; technical vessel management – technical management; and operational vessel management – operational management. Management consists in the operational exploitation of the vessel, whereas technical management does not affect the day-to-day operation of the vessel."

The Court continued: "In international transport, due to the multiplicity of entities operating the vessel, it is necessary to narrow the meaning of this term. [... R]egardless of the terminology that may be applied to an entity operating a vessel without owning it (shipping company, ship's operator, etc.), what is important is whether such an entity exercises operational control over the vessel, i.e. whether it decides on the essential elements of the vessel's operation, these elements being decisions, from the carrier's perspective, concerning the acceptance of cargo and approval of the route of carriage. By contrast, [...] issues such as whether a given entity is responsible for the vessel's safety, its technical condition or the completion of the crew and provision of services to the crew, are of secondary importance."

Attention should also be drawn to the issue of time chartering (Article 188 of the Maritime Code) and the content of the charterparty agreement. "The charterer determines both merely and fundamentally the manner in which the vessel is to be employed. While the owner or shipowner retains possession of the vessel (exercised by the vessel's master), matters relating to carriage often remain exclusively within the charterer's discretion. In the case of a short-term charter, where the charterparty specifies the type of cargo to be carried and the area of operation (routes of carriage), the charterer generally cannot be regarded as the entity operating the vessel. However, in the case of a long-term charter, this cannot be excluded (C. Łuczywek, D. Pyć, I. Zużewicz-Wiewiórowska – authors of the commentary to Article 188 of the Maritime Code, WKP 2022, available at lex.pl, provide the example of a vessel chartered for 25 years), where the clauses of the charterparty grant the charterer freedom in disposing of the vessel. In such circumstances, the charterer may be regarded as the entity operating the vessel."

If the powers of the Norwegian entity (T.) are limited to matters of technical operation and crew services, it cannot be ruled out that another entity is in fact the operator of the vessel. On the other hand, if the scope of those powers corresponds to the above-described definition of vessel operation, then that entity should be

regarded as one of the operators of the vessel. It is essential, however, that the vessel be operated in international traffic.

As regards the issue addressed in this reasoning – defining the concept of international traffic – the Court shares the view of the Minister of Finance and Economy that this concept should be interpreted in accordance with the definition in the relevant double taxation agreements, including the agreement with Norway. In the present case, however, there is no dispute that the Appellant worked aboard a vessel operated in international traffic; therefore, there are no grounds for further consideration of this issue.

11. REMAINING GROUNDS OF THE CASSATION APPEAL

In the principal part of its reasoning, the Supreme Administrative Court addressed the issue of interpreting the provisions that may apply in the case concerning the taxation of seafarers' income under substantive law, particularly the provisions of the Convention (the wording of which that was applicable to the period at issue).

The Supreme Administrative Court interpreted those provisions and also indicated the course of action to be followed by the authorities, as determined precisely by that interpretation. In the present case, the interpretation of the provisions determines the scope of the evidentiary proceedings required, insofar as there are grounds for challenging the annual tax settlement submitted by the Appellants.

In this context, the grounds of the cassation appeal alleging violations of procedural law must be regarded as unfounded. Their wording and formulation moreover indicate that the Director of the Tax Administration Chamber in Gdańsk also made their effectiveness dependent upon the validity of the allegations concerning violations of substantive law. In the individual grounds, the Director referred to the proper assessment of the evidence collected in the case and to the authorities' "correct legal assessment thereof through the finding that the Convention could not apply in the case due to the lack of taxation in Norway of the taxpayer's income derived from employed work aboard a vessel".

Likewise, the alleged infringement of Articles 141 § 4 and 133 § 1 of the Law on Proceedings before Administrative Courts was said to consist in the "defective reasoning of the judgment manifested by the Court's omission of the authority's arguments concerning the absence of grounds for applying the Convention". The Supreme Administrative Court held that the reasoning of the contested judgment contains all the elements required under Article 141 § 4 of the Law on Proceedings before Administrative Courts. A court's failure to address every argument raised during the proceedings does not constitute a violation of that provision. Such an obligation concerns only those arguments whose omission could affect the substance

of the ruling. The Regional Administrative Court in Gdańsk addressed all material issues, including the correctness of applying the Convention.

Accordingly, in light of the unfounded nature of the allegations concerning violations of substantive law, the allegations concerning violations of procedural law likewise proved unfounded.

CONCLUSION

When re-examining the case, the authority shall comply with the guidance given in the reasoning of this judgment. In particular, it shall definitively determine by which enterprise operating the vessel in international traffic the Appellant was employed. Depending on that determination, the authority shall either apply the Convention and the Personal Income Tax Act, conclude that another double taxation agreement applies or determine that the Appellant derived income in a country with which Poland has not concluded such an agreement. In making these determinations, the authority shall rely on the findings and legal conclusions set out in the present reasoning.

In view of the foregoing, the Supreme Administrative Court, pursuant to Article 184 of the Law on Proceedings before Administrative Courts, dismissed the cassation appeal. The costs of the cassation proceedings were awarded pursuant to Article 204(2) in conjunction with Article 205 § 2 of the Law on Proceedings before Administrative Courts, in conjunction with § 14(1)(2)(a) and § 14(1)(1)(c) of the Regulation of the Minister of Justice of 22 October 2015 on fees for the activities of legal advisers (Journal of Laws of 2023, item 1935, as amended).

BOOK REVIEWS