

## **New Taxation Rules for Flight and Ship Crews in Germany? Or a Long Way to Status Quo.**

### **Abstract in English of my Article published in the magazine "Deutsches Steuerrecht"<sup>1</sup>**

von

Rüdiger Urbahns<sup>2</sup>

Under German tax law, domestic taxable income within the meaning of the limited income tax liability ("beschränkte Steuerpflicht") is income from employment that is or has been carried out or was utilized in Germany.

For decades this required physical exercise of the work in German territory to become insofar taxable with the salary. So workers living abroad with "German" employer but no tax residency in Germany have been taxable with their salaries only insofar as the work was rendered within German territory.

COVID changes this and more and more mobile workers or home office simplification rules – such as between Luxemburg and Germany – were introduced and required a change which become effective in 2024.

The addition to the law is worded as follows:

***"The employment is also deemed to be carried out or utilized domestically if the activity is carried out in the taxable person's country of residence or in one or more other countries and if an agreement to avoid double taxation or an intergovernmental agreement has been concluded which assigns taxation rights to Germany for this activity carried out in the country of residence or any other state."***

Especially shipping crews working for German shipping companies (and taxation rights are granted to Germany under a rule similar to Article 15 (3) OECD MC) on German flagged ships would have been accidentally hit by this new rule if the German legislator had not clarified this situation as follows:

**"Sentence 2 above does not apply to Germany in accordance with sentence 2 assigned taxation rights with regard to income from employment carried out on board a ship in international traffic."**

In essence this addition to the law is keeping the status quo for shipping crews: They are taxable with their salary in Germany only insofar – i.e. partly - as their work has been performed while the ship was in territorial waters of Germany or the high seas (if the ship

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<sup>2</sup> M.I.Tax, Diplom-Finanzwirt Rüdiger Urbahns, Steuerberater in Hamburg ([www.sturbahns.de](http://www.sturbahns.de)).

runs under German flag) or if the ship was in territorial waters of Germany (if the ship runs under a none German flag).

Flight crews are not mentioned but for them a special rule applied anyhow since 2007 if they worked for a "German" airline.

You are right, this sounds difficult as an additional fiction was added to the law and an exemption from the fiction. I have provided the background of this new rule and a first analysis of the new law for flight and ship crews in my article "**Ergänzung des § 49 Abs. 1 Nr. 4 Buchst. a EStG durch das Wachstumchancengesetz – Aus der Sicht des im Inland beschränkt steuerpflichtigen Bordpersonals von Schiffen und Flugzeugen, DStR 2024, Seite 1171.**"