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Contractual agreement cannot limit a taxpayer’s duty to supply information

The Supreme Tax Court has held that the duty of a taxpayer to supply information on the affairs of others is a public duty that cannot be restricted by a contractual agreement with the owner of the information concerned.

A Luxembourg company offered an internet auction service. Much of the work on the website was, however, done by the company's fellow subsidiary in Germany. In this respect, the German company had access to information on the personal data of sellers and buyers, but was bound by contract not to disclose it to third parties. This was to enable the Luxembourg principal to comply with strict local requirements for data privacy. The tax back-duty investigators of Lower Saxony requested the Germany service provider for the names, pseudonyms and addresses and details of the transactions concluded by all sellers in Lower Saxony with an annual turnover of over €17,500. Their authority for this request was a provision in the Tax Management Act requiring third parties to supply on request information on other taxpayers to which they have access, provided the supply does not put them under an unreasonable burden and provided the tax authorities have no other reasonable means of obtaining the details needed. There is also a limitation preventing random trawls.

The company refused to comply with the request on the grounds that it had no rights to the information held on behalf of the Luxembourg company on servers in the USA and India. It also referred to its contractual duty to maintain confidentiality. This was interpreted by the lower tax court as inability to supply the information required. Accordingly, the lower court did not investigate the company's actual access to the information.

The Supreme Tax Court has now rejected the lower court's position. The duty to supply all available information on a valid request of the tax authorities was a public duty of citizenship that could not be excluded by contract with another party. Once furnished to the tax office, the information would fall under the tax secrecy rules; thus there was no need to fear repercussions in the market place. Fear of dissatisfaction of business partners now faced with the consequences of the discovery of their evasion was not an issue worthy of legal privilege. It appeared to the court that the company necessarily had access to the information as a prerequisite for its services. That the information was held on servers abroad was irrelevant; what mattered was the access from Germany. The court also rejected the argument of the company, that the tax authorities could obtain the information for themselves by running their own "crawler" on the auction website. Minutely collating information gathered item-by-item was not an acceptable alternative to properly scheduled information in the form requested. However the court, at this point, did not go into the question of unreasonable extra work for the company. On the other hand it did state that the tax authorities must have valid grounds for suspecting wide scale evasion going beyond a general assumption that many taxpayers will not declare income if the risk of discovery is low. As against this, it also stated, though, that the turnover limit of €17,500, equivalent to the VAT exemption limit for small businesses, was evidence that the tax authorities were not seeking information in unreasonable, or unnecessary, quantities.

Supreme Tax Court judgment II R 15/12 of May 16, 2013, published on July 10

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