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By PwC Deutschland | 06. Februar 2020

No correction of incorrect income tax assessment in the event of correct declaration of a capital gain by the taxpayer

The Supreme Tax Court held in its ruling of 10 December 2019 (IX R 23/18) that a final tax assessment can no longer be corrected by the tax office under Section 129 of the German Tax Code (“GTC” - obvious errors while issuing administrative acts) if the incorrect assessment of a capital gain whisch was correctly declared by the taxpayer under 17 of the German Income Tax Act was not based on a mere "mechanical error".

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Background

In his electronically submitted income tax return, the taxpayer correctly declared a gain from the sale of shares in a limited company under Section 17 ITA and submitted all relevant documents to the tax office. The official in charge of the assessment at the tax office examined the declared profit and treated the assessment as a "case for intensive examination" in accordance with the relevant internal procedures. “Cases for intensive examination” are not only subject to the signing off by a superior official, but also to an examination by the "quality assurance office". During the further processing of the plaintiff's income tax return an incorrect value was entered by an official of the tax office giving rise to an excessive tax refund for the plaintiff.

Judgment

Neither in the course of the assessment procedure, nor in the examination by the quality assurance office, nor in the signing off at the level of the head of department ("6-eyes principle") was the incorrect entry noticed. Only in the course of a subsequent tax audit was the error in the assessment recognised and the income tax assessment corrected in accordance with Section 129 sentence 1 GTC. The tax court took the view that the tax office was entitled to correct the erroneous income tax assessment. The Supreme Tax Court took a different view and ruled in favour of the taxpayer.

Section 129 sentence 1 GTC only permits the correction of spelling mistakes, arithmetical errors and similar obvious mistakes (so-called “mechanical errors”), which are undetected when an administrative act is issued. Section 129 GTC did not apply where the responsible official made a factual or legal error or failed to clarify the facts sufficiently. The details of transaction at issue were examined and processed by at least two tax authority officials. That excluded the existence of a mere mechanical error and thus the ability to correct the assessment under Section 129 GTC.

Source:

Judgment of 10 December 2019 (IX R 23/18) published on 6 February 2020

Schlagwörter

General Tax Code, assessment procedures, correction of assessments, mechanical errors