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By PwC Deutschland | 19. August 2022

No tax evasion if tax office has access to electronic wage tax certificates

According to a recent ruling of the Münster Tax Court there is no tax evasion if the taxpayer on the one hand had failed to submit tax returns, but the tax office nevertheless has all the necessary information by means of the automated electronic wage tax certificates.

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Background

The appellants in the case were a married couple assessed together for income tax. Since initially only the husband received income from employment up to and including 2008, the tax office had filed the case as assessment upon application. This gives the employee, who is not already required to file an income tax return for other reasons, the opportunity to do so voluntarily in order to claim tax-reducing expenses outside the income tax procedure. However, there is an obligation for income tax assessment once both spouses earn income from employment.

From 2009, the wife also received income from employment. The appellants' income tax (wage tax) was deducted according to tax classes III and V. The electronic wage tax certificate - which sums up all relevant income and social security and statutory health insurance contributions by both employer and employee – of both were recorded in the tax office's data processing program under the appellants' tax ID number.

Since the case was still earmarked as assessment upon application, the tax office initially did not request the appellants to submit income tax returns and the spouses did not file any returns. After the tax office realized that the requirements for a mandatory assessment were met, it issued assessment notices in 2018 for 2009 and 2010 (the years of dispute). The appellants appealed against the assessments for 2009 and 2010 on the basis that these years were statute barred. In contrast, the tax office held that the statute of limitation was suspended because of completed tax evasion as the appellants had willfully avoided filing income tax returns.

Decision of the Muenster Tax Court

The Münster Tax Court upheld the action and ruled in favor of the appellants. At the time the tax assessments were issued (in 2018), the four-year limitation period had indeed expired as regards the years in dispute. The period was not extended to ten and respectively five years (as provided for in cases of tax fraud and tax evasion), since from an objective point of view there was neither tax fraud nor negligent tax evasion.

According to Sec. 370(1) Number 2 Fiscal Code tax evasion is if a person fails to inform the revenue authorities of facts that are relevant for tax purposes when obliged to do so. In the opinion of the tax court this implies that the tax authorities are not aware of the tax-relevant facts. From this follows that a taxpayer cannot "leave the tax authorities unaware" in a case where it has all the essential information needed for a tax assessment. The fact that the tax office, for whatever reason, did not use these data to determine whether a compulsory assessment should be made, does not change this conclusion.

The tax court went on to say, that – in the case of dispute - it is a question of the taxpayer cooperating in tax matters and such obligations are not protected by Section 370 Fiscal Code.

Source:

Münster Tax Court, decision of 24 June 2022 (4 K 135/19 E); the appeal is pending before the Supreme Tax Court under Case No. VI R 14/22.

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Schlagwörter

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