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Supreme Tax Court: Solidarity surcharge for years 2020 and 2021 still constitutional

The Supreme Tax Court has ruled that the solidarity surcharge for 2020 and 2021 is constitutional. According to the court, the federal government has conclusively demonstrated that there still is an increased financial demand for the sake of preserving the welfare state principle as provided in the German Basic Law.

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Background

The suit against the solidarity surcharge now before the Supreme Tax Court was launched by a couple from Bavaria with the help of the German Taxpayers' Association. The dispute is whether the tax office was right to reject the application of the plaintiffs for a reduction of their advance payments for the solidarity surcharge from 1 January 2020 to €0 on grounds that the levy was unconstitutional. The Nuremberg Tax Court had dismissed the claim in the first instance (case: 3 K 1098/19) but granted the appeal to the Supreme Tax Court due to the fundamental importance of the matter. The lower tax court as court of first instance did not share the constitutional concerns of the plaintiffs

Today’s decision of the Supreme Tax Court

The Supreme Tax Court, in its judgement published today, found that the solidarity surcharge was not yet unconstitutional for years 2020 and 2021. In these years it was a permissible supplementary levy; in the judges' opinion, there was no need to refer the matter to the Federal Constitutional Court. The graduation of the solidarity surcharge is justified in view of the need to preserve the principle of the welfare state under Basic Law.

There was still a financial need of the federal government in the years 2020 and 2021 due to the impacts and ramifications caused by the erstwhile reunification of both East and West Germany.

Additional financial demand of the federal government resulting from a challenge of generations, such as the reunification, can last for a very long period and is not unusual and must, therefore, be recognized in the situation at hand. This challenging time in case of the solidarity surcharge is still running and has not yet come to an end, even 26 or 27 years after its introduction. An overall time span of altogether 30 years was discussed by the court.

In the case of taxes which, like income tax and thus also the solidarity surcharge, are based on the taxpayer's ability to pay, it is permissible to take social aspects into account. Accordingly, the legislator is free, for example, to exempt lower-income taxpayers from the levy and restrict the surcharge to taxpayers with high income brackets.

Source:

Supreme Tax Court, decision of 17 January 2023 (IX R 15/20), published on 30 January 2023.

Schlagwörter

solidarity surcharge