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By PwC Deutschland | 12. Februar 2024

Death of business owner does not prevent tax audit for prior years

The Tax Court of the State of Hesse has dismissed an action brought by two sons who, as heirs, did not continue the business of their deceased father. A tax audit was announced for several prior years. The heirs objected in an appeal before the tax court. To no avail. In fact, they must tolerate and comply with the tax audit, the tax court says in a 2023 decision published in January 2024.

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Background

Section 193 (1) Fiscal Code explains in more detail the permissibility of an external tax audit specifically with respect to taxpayers who**operate a business** or agricultural and forestry undertaking or who are self-employed, and of specific types of taxpayers within the meaning of Section 147a Fiscal Code (addressing, among others, taxpayers who (…) can exercise a controlling or decisive influence, directly or indirectly, over the financial and the business affairs of a company resident in a third-country).

The action in the case of dispute was brought by two sons who were the co-heirs following the death of their father. The father had run a construction company until his death and the business was not continued by the sons. The tax office nevertheless decided to conduct a tax audit covering previous years. The sons believe that a tax audit could only take place as long as the owner himself was able to provide information on the business activities and given that the business still existed. A tax audit after the death of the business owner would therefore not be permissible.

Decision

The tax court of the state of Hesse dismissed the complaint as unfounded. A tax audit may be carried out for past tax periods even if the proprietor of the business has died and the business is not continued by the heirs. All tax obligations arising from the business are transferred to the heirs upon the death of their father as the sole proprietor of the firm.

Review of previous years is the rule

According to Section 193 (1) of the German Fiscal Code, an external audit is permitted for taxpayers who maintain a business. This is a necessary measure for reasons of equality to be able to check the correctness of the accounts of traders and, therefore, the amount of tax which was calculated and paid by them.

It is in the nature of a tax audit to usually examine and check past years. Section 193 (1) Fiscal Code must be interpreted only in such a way that the business must have existed during the period of review. A subsequent closure of the business is not relevant, as - in the event of succession - all rights and obligations are transferred to the heir(s).

Heirs must tolerate external audits

An external audit must therefore also be tolerated by those who have never managed the business themselves. Possible complications that certain information could not be provided, or documents not submitted should not be taken into account when considering the admissibility of an external audit. These latter are matters which are of relevance only in subsequent tax proceedings and on questions of evidence. It is also not relevant whether any appeals or court proceedings with respect to earlier tax periods are still pending, as each year must be considered and judged on its own merits.

Note: An appeal to the Supreme Tax Court was not allowed by the Hesse tax court. - Meanwhile, the

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plaintiffs have submitted a complaint relating to non-admission before the Supreme Tax Court (pending under case no. X B 73/23).

Source:

Tax Court of Hesse, judgement of 10 May 2023 (case ref. 8 K 816/20); as published in the court's press release of 31 January 2024.

Schlagwörter

Business heirs, tax audit