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By PwC Deutschland | 16. April 2024

Estimate of taxable income if deficient cash register is used to calculate revenues

In a recent ruling the Supreme Tax Court continued to develop its case law on the application of the principles of proportionality and protection of legitimate expectations in the case of estimates by the tax authorities. A full estimate that completely ignores the taxpayer's own profit and loss calculation is only permissible if the deficiencies identified are serious.

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Background

In the case of dispute, the services of a restaurant operator were to a large extent settled through cash payments (cash takings). For this purpose, he used a very low-tech and simple electronic cash register, which had already been developed in the 1980s. The tax office considered the plaintiff's records not to be in an orderly state and made a full estimate of the total revenues. This led to a fourfold increase of the originally declared turnover.

The Tax Court of Lower Saxony engaged an independent expert to examine the cash register. The specialist found that a certain internal meter of the cash register, which is intended to ensure that there are no gaps in the daily printouts, could be changed by entering the corresponding codes. However, such a change could become necessary during repairs of the cash register. The tax court therefore considered the cash register to be prone to manipulations and therefore unsuitable for tax purposes. It thus confirmed the tax office's full estimate of the revenues.

Decision

It is true that the cash register used by the plaintiff was obviously susceptible to manipulation. In principle, this constituted a deficiency of great importance, which gave the tax office the right to make an assessment.

However, knowledge of the vulnerability of such old cash register models to tampering had only grown over time. Therefore, in application of the principle of proportionality, taxpayers should be granted protection of legitimate expectations under certain conditions (which are explained in more detail in the judgment). The significance of the shortcomings and the potential possibility of a manipulation is then less than under normal circumstances and can even be completely eliminated if additional evidence is provided.

Reference:

Supreme Tax Court, judgment of 28 November 2023 (X R 3/22), published on 11 April 2024

Schlagwörter

electronic cash register, minimum taxable income