

By PwC Deutschland | 10. Juni 2024

# No obligation to use the special electronic mailbox for law firm prior to August 2022

**In a recently published decision, the Supreme Tax Court held that a law firm in the legal form of a limited liability company (GmbH) acting as representative of the claimant was not obliged to use the mandatory electronic legal communication system when submitting an appeal to the tax authorities before 1 August 2022.**

## Background

In January 2022, the plaintiff, who was represented by a law firm (*Rechtsanwaltsgesellschaft mbH*), filed an action by fax with the tax court (Tax Court of Berlin-Brandenburg) against a notice of liability. The law firm acted through an authorized signatory who was admitted as a lawyer, tax law specialist and tax consultant. The tax court dismissed the complaint as inadmissible, as a lawyer since 1 January 2022 was obliged to use the electronic legal communication system (special electronic mailbox) in accordance with Section 52d of the Code of Procedure of Fiscal Courts (*Finanzgerichtsordnung - FGO*). The appeal submitted by the authorized representative did not comply with this prerequisite.

## Legal background

The Code of Procedure of Fiscal Courts (*Finanzgerichtsordnung - FGO*) states in Sec. 52d sentence 1 that „*preparatory pleadings and their supporting materials as well as applications and statements to be made in writing that are submitted by a lawyer, by an authority or by a legal entity under public law, including the associations formed by it to fulfill its public duties, must be transmitted as an electronic document*“. According to sentence 2, „*The same applies to persons authorized to act as representatives under this Act for whom a secure transmission path pursuant to Section 52a (4) sentence 1 no. 2 is available*“.

Section 31a (1) of the Federal Code for Lawyers (BRAO) specifies that the Federal Bar Association sets up a ready-to-receive special electronic legal mailbox (*besonderes elektronisches Anwaltspostfach*) for each *member* listed in the Central Register. The current version of Section 31a (1) sentence 1 BRAO, which has been amended effective 1 August 2022 no longer refers to the “member” entered in the Central Register, but rather to a “*natural person*”. The same applies to for professional practice companies as stated in Section 31b (1) BRAO.

## Decision

The Supreme Tax Court set aside the decision of the court of first instance and referred the matter back for further hearings and a final decision. The action had been wrongly dismissed as inadmissible. The *Rechtsanwaltsgesellschaft mbH* was not yet obliged to use electronic legal communication pursuant to Section 52d sentence 2 FGO at the time the action was filed, because a special electronic lawyer's mailbox pursuant to Section 31b para. 1 BRAO (new version) was set up for use by such companies only from 1 August 2022.

There is also no requirement to use the electronic legal communication before 1 August 2022 when looking at Section 52d sentence 1 FGO. The wording of this provision covers, among other things, pleadings submitted by a lawyer, an authority, or a legal entity under public law. Law firms within the meaning of Section 59c (1) BRAO (old version) are not covered by the wording of Section 52d sentence 1 FGO. Furthermore, an obligation to use the electronic mail system did not exist because the *Rechtsanwaltsgesellschaft mbH* acted through a lawyer as its representative and not directly by itself.

## Reference:

Supreme Tax Court, judgment of 16 January 2024 (VII R 34/22), published on 6 June 2024; press release No. 25/24.

### **Schlagwörter**

electronic data, telecommunications