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By PwC Deutschland | 08. Juli 2024

# No access to tax files to check possible claim for damages against third parties

**The access to tax files after the taxation proceedings have been carried out is not permitted if the taxpayer wishes to pursue non-tax-related purposes, such as the examination of a claim for damages against the tax advisor. In its decision the Supreme Tax Court noted that this does not affect the right to information on the processing of personal data in accordance with the General Data Protection Regulation.**

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## Background

The tax office had assessed income tax against the plaintiffs for 2015. The plaintiffs later applied for access to their income tax files to check whether their tax advisor had provided correct information on their tax situation. The tax office refused and further denied the subsequent request to provide information on the processing of personal data in accordance with Art. 15 para. 1 and 3 of the General Data Protection Regulation (GDPR) by inspecting the tax file. The Tax Court of Lower Saxony disagreed with the tax office and held that the request be granted and to comply with the right for information under data protection law.

## Decision

The Supreme Tax Court overturned the decision of the lower tax court as regards the request for access to the files and dismissed the action in this respect. The plaintiffs had applied to inspect the files only after the income tax assessment had been carried out. This follows from the „right to be heard“ under Section 91 of the Fiscal Code (*Abgabenordnung*): „***Before** an administrative act affecting the rights of a participant may be issued, he should be given the opportunity to comment on the facts relevant to the decision*“.

The tax office was further not obliged to support the plaintiffs by subsequently inspecting the files. Such matters concern purposes outside of the tax proceedings.

The tax office nevertheless must disclose specifically **which** personal data concerning the plaintiffs had been processed in accordance with Art. 15 GDPR. There were no statutory grounds for the denial; in particular, no tax secrecy concerning the tax advisor had to be respected. However, the **right to information under data protection law** is **not equivalent to a right for inspection and/or review** of tax files. The right to receive copies pursuant to Art. 15 para. 3 GDPR generally only refers to the personal data itself and not to documents. The situation is different in exceptional cases, namely if the taxpayer demonstrates that it is essential to send copies of documents to effectively pursue data protection claims.

Finally, the Supreme Tax Court notes that - as regards the keeping of tax files -there are no statutory retention requirements for the tax authorities. A right to information on personal data contained in those files is not excluded under Art. 23 para. 1 letter i GDPR in conjunction with Section 32c para. 1 no. 3 letter a Fiscal Code.

## Source:

Supreme Tax Court, decision of 7 May 2024 (IX R 21/22.) - published on 4 July 2024.

## Schlagwörter

Data Protection, Personal data