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By PwC Deutschland | 26. August 2024

Interest rate levied on suspension of payments unconstitutional?

The Supreme Tax Court believes that interest of 0.5 percent per month levied in the event of suspensions of payment is unconstitutional. This interest is charged if an appeal against a tax assessment is unsuccessful, and the tax office therefore no longer grants a stay of execution. The Federal Constitutional Court is now asked to deal with the preliminary request and provide its final opinion.

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In a decision of 8 July 2021 on two joint cases the Constitutional Court decided that interest incurred on late payment of taxes (back taxes) and the interest paid for tax refunds pursuant to Sections 233a and 238(1) sentence 1 of the German Fiscal Code is not in line with the German Constitution insofar as the interest rate is set at 0.5% per month and for interest periods from 1 January 2014 (see **blog post of 18 August 2021**).

As the taxpayer's action was not successful in the case of dispute, the tax office subsequently assessed suspension interest of half a percent for each of the 78 months. The plaintiff did not agree with this and appealed before the Münster Tax Court.

Unlike the Münster Fiscal Court who had no constitutional doubts as to the rate of interest, the Supreme Tax Court took a different view.

At least during a sustained period of structurally low interest rates, the statutory interest rate of 6 percent per year is clearly excessive and not necessary to absorb the liquidity advantage that can typically be achieved through a deferred suspended payment.

Furthermore, taxpayers who incur interest because they have not (yet) paid the tax following the suspension and taxpayers who have to pay interest on arrears because their tax assessment has resulted in a difference (balance) between *„the final tax assessed and the tax assessed or paid up to the beginning of the period of interest"* and who therefore only have to pay the tax owed from the outset at a later date are treated unequally.

Since 1 January 2019, late payment interest has only been calculated at an interest rate of 0.15 percent for each month, i.e., 1.8 % p.a. This differentiation (spread) in interest rates seems also not justified under constitutional law.

The Federal Ministry of Finance made it clear at the time that the above-mentioned decision of the Federal Constitutional Court only affected interest on tax refunds and back payments. The former interest rate of 0.5 percent per month or six percent per year remained in place for deferral, evasion, and suspension interest. This might now change, at least as far as suspension interest is concerned.

Source:

Supreme Tax Court, decision of 8 May 2024 (VIII R 9/23) - published on 22 August 2024.

Schlagwörter

statutory interest rate, suspension of payment