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By PwC Deutschland | 17. April 2025

No constitutional concerns regarding late-payment penalties due to the rise in interest rates since the Russian invasion of Ukraine

In a most recent decision in relation to a request to suspend a tax payment, the Supreme Tax Court confirmed the constitutionality of the rate of the late- payment penalties because of the rise in interest rates that began with the start of the war in Ukraine. According to the Court, at least since March 2022, there are no longer any serious doubts about the constitutionality of the statutory regulation on the amount of late-payment surcharges.

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Background

Section 240 (1) Sentence 1 Fiscal Code states that “a late-payment penalty of 1 percent of the rounded tax amount in arrears shall be payable for each month of default where a tax is not paid by the end of the due date”.

In the underlying case, the tax office took the view that late-payment surcharges had been incurred for the period from March to December 2022 because the applicant had not paid the income tax in time. The applicant contested this in summary proceedings and applied for suspension of payment (AdV) of the penalty charges. The application was successful before the court of first instance. The tax court granted a stay of execution on the grounds that in the past, several Senates of the Supreme Tax Court had declared serious doubts on the constitutionality of the amount of the late-payment penalty in comparable cases.

Decision

In the ensuing complaint proceedings, the Supreme Tax Court took a different view as regards the period from March 2022.

The Federal Constitutional Court decided that the previous statutory regulation on the amount of *interest on arrears* (according to Section 238 Fiscal Code) of 0.5% per month / 6% per year was unconstitutional due to the ongoing **phase of low interest rates from 2014** and was no longer applicable from 2018.

However, it could be left open as to whether this should be applied to *late-payment penalties*. The significant and **rapid rise in interest rates**, which began with the start of the Russian war of aggression against Ukraine, put an end to the significant period of low interest rates in previous years. The rise in interest rates has continued to this day. As a result, the rate of the late-payment penalties can no longer be regarded as unrealistic.

Nonetheless, the tax office's appeal against the suspension of payment was not successful. The authorities had agreed to grant the suspension retroactively from the due date provided that reasonable security was produced. As this security was ultimately provided - albeit with a delay of several months - (i. e. through the entry of the land charge in the land register in favor of the tax office) the Supreme Tax Court did not consider it

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justified to refuse suspension of payment on the grounds of the delay. Therefore, and in retrospect, late- payment penalties should not have been incurred.

Source:

Supreme Tax Court decision of 21 March 2025 X B 21/25 (AdV) – published on 10 April 2025.

Schlagwörter

penalty surcharge, tax interest