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By PwC Deutschland | 23. Mai 2025

Competence of Central Customs Office after merger

In a recent decision, the Supreme Tax Court has given its opinion on the territorial jurisdiction (competence) of German central customs authorities as regards electricity and energy tax relief applications and commented on the point in time when a change of jurisdiction in accordance with Section 26 Fiscal Code is possible. Competence of the customs authority is only transferred in the event of a change in circumstances and if the previously competent tax authority has already started processing the specific administrative procedure.

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Background

In essence, **Section 26 Fiscal Code** (Transfer of jurisdiction) provides that „*where local jurisdiction (competence) is transferred from one revenue authority to another due to a change in the circumstances establishing such jurisdiction, the transfer of jurisdiction shall occur as soon as one of the two revenue authorities becomes aware of this. The hitherto responsible revenue authority may continue with administrative proceedings where this serves to ensure that the proceedings are carried out simply and appropriately while protecting the interests of the participants, and provided that the newly responsible revenue authority agrees"*.

In the **case of dispute**, the plaintiff, which uses electricity and energy products and who had three permanent establishments (C, B and D) at different locations in 2018, applied for tax relief for a fourth permanent establishment (G), of which it had become legal successor in 2019 by way of merger. In contrast to the other three permanent establishments, however, it did not submit the applications for its new permanent establishment at the end of 2019 to the General Customs Office (GCO) at its registered seat but rather to the GCO previously responsible for G, who - in 2018 - was still operating separately and independent from the plaintiff. Following a preliminary review of the applications, the latter GCO considered itself not to be responsible and forwarded the applications to the GCO at the applicant's registered seat which did not receive the applications until February 2020. At this time the tax relief for the fourth permanent establishment was statute barred (the statute of limitation had already expired). The competent customs office denied the applications because they were received late. The lower tax court rejected the appeal.

Decision

The Supreme Tax Court held that the plaintiff was not entitled to the requested relief from electricity and energy tax due to the expiry of the statutory limitation period. The question of which main customs office is responsible for relief under the Electricity Tax Act and the Energy Tax Act generally depends on the registered place of business of the company. This registered place may change before tax relief is granted. However, according to Section 26 Fiscal Code, local area jurisdiction is only transferred if the previously responsible tax authority has already started processing the

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specific administrative procedure. The mere examination of local jurisdiction is not sufficient. If no tax authority has taken any action, there is no need to clarify the change of jurisdiction. Instead, the competent authority then begins processing the case immediately.

According to the relevant implementation regulations, the main customs office from whose district the person in question operates its business is responsible for applications for electricity and energy tax relief. For the purposes of electricity and energy tax law, a company is generally operated at its registered office.

These national provisions are not in breach of the **principle of proportionality under EU law**. Under national law, the need to submit applications for relief to the competent authority does not go beyond what is necessary to ensure the correct and simple application of such relief since only the competent GCO is able to carry out all necessary checks, including on the spot if necessary.

In the decision of *Shell Deutschland Oil* of 22 December 2022 **C-553/21** (para. 31 et seq.) the ECJ emphasized the difference between the application period and the assessment period. Recognizing the period for assessment, the ECJ stated that it is not apparent that the admission of a belated application for tax exemption or reduction made within the statutory assessment period would be incompatible with the principle of legal certainty.

Source:

Supreme Tax Court decision of 19 December 2024 VII R 23/22 - published on 22 May 2025.

Schlagwörter

competent authority, customs, tax relief