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By PwC Deutschland | 03. Juni 2025

No constitutional concerns regarding late payment penalties

According to a most recent decision of the Supreme Tax Court, there are still no constitutional concerns regarding the statutory amount of the late payment penalty as provided in Section 240 (1) sentence 1 Fiscal Code, also for periods after 31 December 2018 (follow-up to the decision of the Supreme Tax Court of 23 August 2023 – case: X R 30/21). In the opinion of the court, the compatibility with EU law is also beyond doubt.

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The **lower tax court** had previously dismissed the claim as unfounded. With reference to various decisions of the Supreme Tax Court, the lower tax court was of the opinion that the decision of the **Federal Constitutional Court** (decision of 8 July 2021 - **1 BvR 2237/14, 1 BvR 2422/17**) **on the constitutionality of the amount of statutory interest** (interest on back taxes and tax refunds) could not be applied to the late payment penalties.

The plaintiff had argued that the (partial) imposition of late payment penalties was inadmissible under constitutional law because the principles set out by the Federal Constitutional Court in the decision of 8 July 2021, according to which interest is incompatible with Article 3 (1) of the Basic Law, should also be applied to late payment penalties.

The **Supreme Tax Court** has now once again **confirmed the constitutionality of Section 240 Fiscal Code** for periods after 18 December 2018 which were at dispute in the present case.

There is also **no violation of fundamental EU principals**. In this context, the Supreme Tax Court refers, among other things, to the reasons given in the ECJ judgment *Network One Distribution* of 5 December 2024 (case ref. **C-506/23**) where the ECJ held, i. a., that such a penalty provided for by national law is not, in principle, incompatible with EU law.

There is also **no violation of Art. 6 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR). The sanction as a late payment penalty is not to be viewed as a “criminal offense” within the meaning of Art. 6 para. 2 ECHR. Based on these principles, the late payment penalty provided for in Section 240 Fiscal Code does not fall within the scope of criminal law.

Source:

Supreme Tax Court decision of 19 February 2025 XI R 18/23 - published on 30 May 2025.

Schlagwörter

penalty surcharge