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By PwC Deutschland | 14. Juli 2025

Subsequent amendment of tax assessment notice based on electronically transmitted data

In a most recently published decision, the Supreme Tax Court held that a tax assessment can be corrected at any time if electronically transmitted data is sent to the tax office. It does not make a difference if the content of the data was already known to the tax office.

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Background

Section 175b (1) Fiscal Code provides that “a tax assessment notice shall be cancelled or amended if data transmitted to revenue authorities by notifying entities in accordance with section 93c were not accounted for or were accounted for incorrectly”.

Section 93c Fiscal Code complements the aforementioned provision and contains the procedural provisions that apply uniformly to all electronic data transmission obligations of third parties.

In the **case of dispute**, the plaintiffs had submitted a correct tax return. They had also declared their pension income accurately. However, the tax office issued an income tax assessment in April 2019 that did not include the pension income. Later, the tax office was informed of the amount of the pension income electronically through a data transfer from the pension insurance provider (statutory pension insurance institution). It then amended the income tax assessment in December 2020 and included the pension income as taxable income which the plaintiffs believed to be incorrect. The tax court of first instance had rejected the appeal.

The plaintiffs claimed that the final income tax assessment should not have been amended under Section 175b Fiscal Code. The income provided in the pension notification was consistent with the plaintiffs' declaration in their tax return and the tax office had processed this data correctly once it was available. However, the assessment was final and binding and thus could not be amended to the disadvantage of the plaintiffs.

Decision

The Supreme Tax Court confirmed the decision of the lower tax court and dismissed the appeal of the plaintiffs.

An amendment pursuant to Section 175b (1) Fiscal Code is also permissible if the data in accordance with Section 93c Fiscal Code was not yet available at the time the initial assessment notice was issued but was for the first time transmitted to the tax authority only later.

The tax office that intends to make an amendment in accordance with Section 175b (1) Fiscal Code just needs to check whether the "transmitted data within the meaning of Section 93c Fiscal Code was not or not correctly taken into account in the tax assessment” at the time the amendment should be made. This requirement is also met if the data in question was transmitted to the tax office for the first time after the initial assessment was issued. No restrictions to the contrary can be inferred from the wording of the statutory provision, the Supreme Tax Court says.

In the analogous world, the amendment of a tax assessment once issued - both in favor of and with adverse effect for the taxpayer - was only possible if special conditions were met, e.g. tax assessments issued subject to review or if new facts or evidence are

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subsequently found. These conditions were not met in the case of dispute since the tax office had disregarded the pension in the original tax assessment despite full knowledge of the facts.

The fact that the tax office issued the notice of amendment one and a half years after the pension payment notification was submitted does not make it an illegal act. Section 175b Fiscal Code does not contain a deadline for the correction of the tax assessment.

According to Section 175b Fiscal Code, a tax assessment can be amended if data is transmitted to the tax office that was previously not considered or not taken into account correctly. This regulation does not contain any further restrictive requirements. Therefore, an amendment based on Section 175b Fiscal Code is mandatory if the tax office or the taxpayer has previously made an error. In the case of dispute, this was favorable for the tax office, but the reverse would also apply for the taxpayer.

Source:

Supreme Tax Court decision of 27 November 2024 X R 25/22- published on 10 July 2025.

Schlagwörter

electronic data, tax assessment