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By PwC Deutschland | 25. August 2025

Interim decision on the extended limitation period for assessments in case of tax evasion

An interim decision pursuant to Section 99 (2) of the Code of Procedure of Fiscal Courts (Finanzgerichtsordnung - FGO) with regard to the extended assessment period (statute of limitations) pursuant to Section 169(2) sentence 2 alternative 1 of the German Fiscal Code for tax evasion is not permissible if there are no findings regarding the reason for and amount of the respective tax claim and thus on the objective and subjective facts of a criminal offence.

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Section 169 (2) sentence 2 Fiscal Code provides that the period for assessment shall be ten years where taxes have been evaded and five years where they have been recklessly understated.

The question of the admissibility of an interim judgment: The court may decide in advance on a factual or a legal issue relevant to the decision by means of an interim judgment if this is appropriate and neither the plaintiff nor the defendant objects. Pursuant to Section 99 (2) FGO, an interim judgment may only be used to decide on preliminary issues that would definitely have to be decided in a final judgment. Accordingly, only those preliminary questions are relevant to the decision if it is otherwise not possible to finally decide on the asserted legal restriction (infringement of rights).

Background and summary of the judgment:

In brief, the proceedings before the tax courts concerns payment of inheritance tax. The plaintiff is the sole heir of his wife who died in February 2007. Shortly before her death, the wife had transferred securities to a life insurance policy taken out jointly with her husband. The plaintiff did not report the transfer of the securities to the joint life insurance policy to the tax office.

In the case of tax evasion, the assessment period is ten years. This presupposes that the objective and subjective elements of tax evasion pursuant to Section 370 Fiscal Code are met. This is the case if the taxpayer has evaded taxes or obtained unjustified tax advantages for himself or another person. The amount of tax evaded is determined by comparing the actual tax that was actually underpaidwith the tax that would have been payable if truthful information had been provided or if the taxpayer had acted in a dutiful manner. The review of the subjective facts also requires determination of the basis and the amount of the tax claim. The tax court of Nuremberg had not made these assessments and nonetheless issued an interim judgment - this was not correct, the Supreme Tax Court said and overturned the tax court's interim judgment.

In the opinion of the Supreme Tax Court, the tax court of first instance approved the extended assessment period without providing any information as to the basis and amount of the respective inheritance tax claims. With the annulment of the interim judgment, the legal proceedings are now back at a stage that existed prior to the interim judgment. The Supreme Tax Court saw no need to formally refer the case back to the Nuremberg Tax Court. For the reasons stated above, the request for annulment of the contested inheritance tax assessment was not to be decided in the present proceedings and had to be rejected.

Note: Even unaware co-heirs are affected

Should an heir become aware before or after the inheritance that the deceased's taxes were assessed too low, he is also obliged in this case, pursuant to S**ection 153 (1) sentence 2 Fiscal Code**, to correct the testator's (invalid) income tax return. Failure to do so constitutes tax evasion for which the assessment period with regard to the underpaid

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tax is extended to ten years. **But**, as the Supreme Tax Court pointed out in an earlier decision VIII R 32/15 of 29 August 2017, this also applies to co-heirs who have neither committed tax evasion themselves nor were aware of it. In the case of universal succession (**Section 45 para. 1 sentence 1 Fiscal Code**) the debts and receivables arising from the tax debtor-creditor relationship shall pass to the legal successor.

Section 153 (1) Fiscal Code: „*Where a taxpayer subsequently realizes before the period for assessment has elapsed that a return submitted by him or for him is incorrect or incomplete, he shall be obliged to indicate such without undue delay, and to effect the necessary corrections. This obligation shall also concern the taxpayer's universal successor and the persons acting for the universal successor or the taxpayer (…)*."

Source:

Supreme Tax Court decision of 9 April 2025 II R 39/21 - published on 21 August 2025.

Schlagwörter

correction of assessments, limitation period