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By PwC Deutschland | 05. September 2025

Assessment of fees for advance ruling provided uniformly to several applicants

In a recently published judgment, the Supreme Tax Court decided that only one fee for processing a binding information (advance ruling) may be charged to several applicants if the information is provided to the applicants in a uniform manner and on the same subject.

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Background

According to Section 89 (3) Fiscal Code "a fee shall be charged for processing requests for advance rulings (…). In cases where a single advance ruling is issued that applies to multiple applicants, only one fee shall be charged; in such cases, all applicants are jointly liable for the fee. The fee shall be payable by the applicant within one month following notification that the fee has been set. The tax authority may delay its decision on an application until the fee has been paid".

The eight plaintiffs each held shares in a holding company and were planning a corporate restructure. They jointly asked the tax office for an advance ruling. The tax office provided eight identical pieces of information (with the same content) and issued eight notifications of charges, each about the maximum statutory fee. The plaintiffs, on the other hand, believed the maximum fee had not been incurred eight times, but only once. The tax court of first instance shared this opinion and granted the appeal.

Decision

The subsequent appeal of the tax office was rejected. The Supreme Tax Court considered the requirements of Section 89 (3) sentence 2 Fiscal Code to be met. This provision states that only one fee is to be charged if the advance ruling is provided uniformly to several applicants. In this case, all applicants are jointly and severally liable for the fee. According to the Supreme Tax Court, the tax office had, from the plaintiffs' point of view, complied without restriction with their joint application to obtain uniform and binding ruling. The fact that it had sent each plaintiff a corresponding notice had no bearing that only one piece of binding information had been provided in the matter.

The Supreme Tax Court also made clear that the scope of application of Section 89 (3) sentence 2 Fiscal Code is not limited to the cases specified in Section 1 (2) of the Tax Information Regulation, in which binding information can only be requested jointly by all parties involved.

By introducing Section 89 (3) sentence 2 Fiscal Code in 2016, the legislator responded to the case law of the Supreme Tax Court which had previously assumed that, in principle, an information fee had to be set for each of several applicants even if their applications related to the same matter.

Source:

Supreme Tax Court decision of 3 July 2025 IV R 6/23 - published on 4 September 2025.

Schlagwörter

tax rulings