By PwC Deutschland | 19. September 2025

Retention requirements also for commercial or business letters and digital documents

In a recent judgment, the Supreme Tax Court decided that tax-relevant emails are generally subject to retention requirements as commercial and business correspondence and may be requested by the tax authorities during an external audit. This also applies to digital documentation on group transfer pricing, the Supreme Tax Court said.

Case of dispute

The plaintiff, a limited liability company, had refused to hand over its entire data archive. It agreed to submit tax-related emails as requested but did not want to disclose all of its electronic correspondence, including messages not related to tax matters. In particular, the tax authorities had requested the plaintiff to present all (including digital) documents relating to the preparation, conclusion, and implementation of an agreement with a group company (“the agreement”), as well as the disclosure of documents documenting internal transfer prices. In addition, they requested a complete journal of correspondence in electronic form on a machine-readable data carrier.

Decision

The Supreme Tax Court dismissed the plaintiff's appeal mainly as unfounded.

Section 147 (1) Fiscal Code regarding the retention of documents provides that, i. a., the following documents shall be retained and kept in good order:

2. the trade or business letters received,

3. reproductions of trade or business letters sent.

In this context the Supreme Tax Court first of all held that (digital) documents relating to intra-group transfer pricing are "other documents" pursuant to Section 147 (1) no. 5 Fiscal Code.

Now, one might say: "Applying the law made easy" (as to the definition and scope of "other“ documents)? Certainly not. The second half-sentence in Section 147 (1) no. 5 sheds light on the matter, the Supreme Tax Court said. It states that the retention requirement also applies to "*other documents, **insofar as** they are of relevance for taxation*“.

The Supreme Tax Court went on to say that the tax authorities may, in principle, request emails “en bloc.” In this specific case, the Supreme Tax Court therefore considers the specification of the request with reference to the “Agreement” to be sufficient. The tax audit does not have to specify terms or specific restrictions of the search.

However,the tax authorities **are not permitted** to request a so-called master journal, which would still have to be prepared and would also contain information on emails that are not relevant for tax purposes.

Trading companies must not only retain incoming and outgoing invoices but also all correspondence relating to their business operations insofar as it concerns the preparation, execution, or reversal of a commercial transaction within the meaning of Sections 343 and 344 of the German Commercial Code (HGB). The format is not

important; telexes, telegrams, and, in particular, emails are also subject to retention requirements. This applies insofar as the email itself - and not just its attachment - contains information relevant to accounting; otherwise, the attachment must be retained in any case.

Emails must also be retained if they include procedures or transactions that are relevant for transfer pricing documentation and thus are “significant for taxation.”

The request for information also takes sufficient account of the protection of personal data because data access will not take place outside the taxpayer's sphere - for example, by storing it on a mobile laptop - but only on the plaintiff's business premises or the premises of the tax authorities.

In the case in question, the Supreme Tax Court also considered the tax audit's request for submission to be proportionatebecause the tax audit left it for the plaintiff to decide which emails or data to present in each individual case.

The plaintiff's argument that it would be unreasonable and too time-consuming and costly to produce the requested emails does not prevent the request from being proportionate as it has not been substantiated further.

Source:

Supreme Tax Court decision of 30 April 2025 XI R 15/23 - published on 18 September 2025.

Schlagwörter

digital data, retention requirement