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By PwC Deutschland | 14. November 2025

Three-day delivery presumption invalidated in case of structural failure of postal services

If, within the three-day period, no mail is delivered on two days as scheduled and if, on the third day, only the mail from the first day on which no mail service took place is delivered, the three-day delivery presumption of notification under Section 122(2) no. 1 of the German Fiscal Code is automatically invalidated. This was decided by the Supreme Tax Court in a most recently published judgment.

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Background

Pursuant to Section 122 (2) No. 1 Fiscal Code, a written administrative actwhich is sent by post shall be deemed as being effectively and validly delivered on the third day after dispatch if mailed to an address within Germany. With this provision, the legislator intended to simplify the procedure and, as far as possible, avoid disputes about the exact time of receipt of the mail.

The tax office rejected the plaintiff's appeal by formal decision of 28 January 2022 (a Friday). In the letter of complaint, which was received by the tax court of first instance (the Münster Tax Court) on 3 March 2022, the plaintiff stated that the decision of the tax office had been received by his authorized representative on 3 February 2022 (a Thursday). The postal service provider used by the tax office does not deliver mail to the representative's office address on Saturdays. The latter argued that the presumption of notification did not apply because the mail had not been delivered on 29 January or on 30 January 2022. In fact, the tax office's decision on the appeal had not been received by his tax advisor until 3 February 2022.

The ensuing appeal before the Münster Tax Court was rejected. The plaintiff had failed to establish reasonable doubts as to the legal presumption of notification. A different receipt note, such as the file mark (i. e. the decision of the appeal registered as received) of the representative's office was not sufficient proof for this purpose. Considering a delivery rate of 95.5% by the postal service provider between the date of posting and the second working day following the date of posting, it was insufficient evidence to the tax court to (generally) assume this to be an atypical situation despite two non-delivery days (Saturday and Sunday).

Decision

The Supreme Tax Court took a different view and upheld the appeal. The decision of the lower court was overturned and referred to the tax court of first instance for further hearing and decision. This is what the Supreme Tax Court had to say:

If the taxpayer does not dispute receipt of the document at all but rather claims nothaving received it within the three-day period laid down in Section 122 (2) no. 1 Fiscal Code, he must substantiate his claim as far as possible in accordance with the established case law of the Supreme Tax Court.

In the present case, however, the particular circumstances give rise to considerable doubt as to whether the typical course of events, namely that the administrative decision had been received by the addressee within three days of being posted, had actually occurred. The Supreme Tax Court concluded that the plaintiff has raised legitimate doubts about the receipt of the decision on the appeal within the three-day period as specified in Section 122 (2) no. 1 Fiscal Code.

In the industrial park where the attorney's office is located, the postal service provider regularly delivered mail only from Tuesday to Friday. Only mail intended for “Saturday delivery” was, as an exception, delivered on the following Monday by way of standard delivery.

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In the present case, it cannot therefore be ruled out that the appeal decision posted by the tax office on Friday was indeed not received by the plaintiff's legal representative until the following Monday because Saturday and Sunday were non-delivery days in the industrial park and Monday - the last day of the deadline - was not a regular delivery day. Rather, on Monday, the last day of the three-day period, only the “Saturday mail” and thus the mail from the first working day following the day of the posting (Friday) was delivered.

Source:

Supreme Tax Court judgment VI R 6/23 of 29 July 2025 published on 13 November 2025.

Schlagwörter

delivery documentation, postal delivery