By PwC Deutschland | 20. Juli 2026

No liability for participation in tax evasion

In a recent judgment, the Supreme Tax Court decided that a participant in tax evasion - here: as assistant - cannot be held liable through a notice of liability. The exception from the exemption from liability as provided in Section 191 (5) Sentence 2 of the General Tax Code in cases where the tax assessed is statute-barred applies only to those who have personally committed tax evasion or tax fraud.

I. A brief glance at the legal framework

Section 191 (5) Sentences 1 No. 2 and Sentence 2 of the General Tax Code (GTC):

A notice of liability may no longer be issued insofar as the tax assessed against the tax debtor is statute-barred or the tax debt has been waived (**Sentence 1 No. 2**). This shall not apply where the liability arises because the person owing the liability has committed tax evasion or has received, held or sold property obtained by tax evasion (**Sentence 2**).

Professional, violent or organized smuggling:- Section 373 (1) General Tax Code states that “whoever evades import or export duties on a commercial basis or who illegally imports, exports or transports goods on a commercial basis in contravention of monopoly regulations shall be subject to imprisonment for a period of six months to 10 years. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine”.

II. Background and facts of the case

Any person who commits tax evasion or tax fraud, or participates in such an act, is liable for the shortfall in taxes and for the tax benefits wrongfully granted as well as the accrued interest; Section 191 (1) Sentence 1 GTC. A liability notice may no longer be issued if the tax assessed against the taxpayer is statute-barred or if the tax has been waived. This does not apply if the liable person himself or herself has committed tax evasion or tax fraud. The latter was the subject of the legal dispute in the case at hand.

The plaintiff had been convicted of aiding and abetting commercial smuggling (Section 373 (1) GTC) and was later held liable for the shortfall of import duties. The imports in question had been exported by a GmbH in 2009. The company provided incorrect information regarding the sellers and the customs values of the goods. However, the period between the imports in 2009 and the liability notices issued in December 2019 had become statute-barred in the meantime. Therefore, the question arose whether a notice of liability could still be issued in light of Section 191 (5) Sentence 2 GTC which specifies the tax liability for the person liable; here the plaintiff had only participated in tax evasion.

III. Decision

The Supreme Tax Court found that the exception to the principle of accessory liability provided for in Section 191 (5) Sentence 2 GTC does not apply to a liable party who merely participated in tax evasion. This act alone is not sufficient to override the effect of the statute of limitations on payments under Section 191 (5) Sentence 2 GTC because it is an exception provision that must be interpreted narrowly. Furthermore, when looking at the meaning and purpose of the provision, the active perpetration of tax evasion or tax fraud is not automatically equivalent to aiding and abetting such an offense unless this is expressly provided for by law, the Supreme Tax Curt said.

The current decision was based on an earlier version of the law. Under current circumstances, the issue decided would no longer arise because the statute of limitations has been raised to 10 years.

Source:

Supreme Tax Court, judgment of 21 April 2026 (VII R 18/24) published on 16 July 2026.

Schlagwörter

Tax evasion, fraudulent, full tax liability