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Assessment of late filing penalty in cases of VAT refund

In a recently published decision, the Supreme Tax Court held that, when determining a late filing penalty as part of a discretionary measure of the tax authorities pursuant to Section 152 (1) Sentence 1 of the General Tax Code, the frequency of missed deadlines must be taken into account even in cases of refunds.

The issue in dispute was the assessment of a penalty following the late filing of a VAT return. The plaintiff had filed his 2020 annual VAT return on 30 January 2023. The filing resulted in a VAT refund. The tax office subsequently assessed a late filing penalty in its notice of 27 March 2023 because the filing deadline had already passed. The plaintiff objected. He argued that the imposition of a late filing penalty was not warranted since no additional tax had been owed. The tax court of first instance did not agree and dismissed the appeal. The Supreme Tax Court followed suit and dismissed the plaintiff's appeal.

First, a look at the legal landscape:

Section 152 (1) Sentence 1 of the General Tax Code (GTC) as referred to in the decision is fundamentally clear and easily understood even when considered by itself ("*Any person who fails to comply with the requirement to file a tax return, or who fails to do so on time, may be charged a late-filing penalty*"). The late filing of a tax return may be penalized by the authorities; this is a discretionary matter. Thus, a late filing penalty must be assessed for the 2020 tax period if a tax return was not filed within 20 months after the end of the calendar year or within 20 months after the tax assessment date. However, this does not apply, among other things, if the tax is assessed at €0 or a negative amount (…).

In its decision, the **Supreme Tax Court** states that, although it was not yet clear from the notice from 27 March 2023 whether the tax office had exercised its power of discretion given that the subject of the judicial review was the notice regarding the appeal decision and that the tax office still would have been able to provide additional discretionary considerations as part of its appeal decision. The decision to impose a late filing surcharge should not be regarded as a one that "can be issued only as a nondiscretionary and legally binding decision" and may not be reinterpreted as a discretionary administrative act because Section 152 (1) GTC permits the assessment of a late-filing penalty also as a discretionary decision.

Conclusion of the court: In light of the objective of the late filing penalty, the tax office was entitled to take into account, in particular, the fact that the plaintiff had repeatedly failed to meet the deadline for filing his annual VAT return. When determining the amount of the penalty within the scope of the so-called discretionary power under Section 152 (1) Sentence 1 GTC the frequency and duration of the missed deadlines must be considered, even in cases of refunds.

Source: Supreme Tax Court, judgment of 7 May 2026 (V R 26/24) published on 27 August 2026.

Schlagwörter

filing deadlines, penalty surcharge