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By PwC Deutschland | 15. November 2026

Incorrect mileage report for company car is tax evasion

The Lower Saxony Tax Court decided that an employee may fulfill the legal requirements for tax evasion if he intentionally or in breach of his duty reports to his employer incorrect (lower) distances for travels between home and primary place of work if he later includes these false figures in his income tax return.

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What happened?

An employee was allowed to use a company car for travel between his home and his primary place of work. For the purposes of taxing the benefit in kind, he reported a short distance (22 km) between his home and workplace to his employer. In his personal income tax returns (covering the years 2009 through 2014), however, he claimed a significantly longer distance (99 km) up to 222 days per year as income-related commuter allowance. In fact, according to a later estimate, there were only 120 trips. As a result, his taxable wages were underreported, and his work-related expenses were overstated. The result in this “game of kilometers”: 22:99 against the tax office. But the head referee - enter: the tax investigation unit - corrected the number of “strikes” after a closer on-site examination.

In the end, the Tax Court of Lower Saxony became involved and held that an act of tax evasion was committed because the information provided regarding the distance between the taxpayer’s residence and primary place of work was incorrect across the board. The requirements for amending the prior tax assessment notices pursuant to Section 173(1) No. 1 of the General Tax Code (GTC) were met. According to that provision, tax assessment notices shall be cancelled or amended where facts or evidence which lead to a higher tax are subsequently ascertained.

Taxable benefit of private use of company car deliberately reduced

Since the plaintiff reported the distance between his home and his workplace to his employer as 22 kilometers, only this distance was initially subject to taxation of the benefit in kind by the employer. The remaining 77 kilometers remained untaxed thus far. The correct valuation pursuant to Section 8(2) Sentence 3 of the Income Tax Act by using the actual (higher) mileage results in a higher tax liability.

Higher commuter allowance due to incorrect number of trips

The actual number of trips between home and work as reported in the tax returns was overstated, yet the plaintiff expressly affirmed that they were complete and accurate. The fact that fewer trips were made during the years in question became known retroactively and may thus be corrected pursuant to Section 173(1) No. 1 GTC.

Plaintiff’s arguments rebutted by the court

The plaintiff erred by claiming that travel expenses for trips between his home and workplace would be taken into account on a “lumpsum” basis - that is, regardless of whether the trips were made or not. This is not acceptable. The Income Tax Act never contained a provision allowing for the deduction of fictitious trips to the workplace, the tax court said.

The plaintiffs claim that their tax advisor made the entries on their tax return on his own initiative and that they did not question this seems also implausible. After all, a tax advisor can only prepare a tax return for his client if the client provides him with the relevant information.

Alas, to be kept in mind:

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- Anyone who knowingly includes incorrect wage data in the tax return without making a corresponding note in the tax return commits tax evasion.
- Even contradictory information can be relevant under criminal tax law.
- The mileage figure serves solely to calculate the benefit in kind for tax purposes. Therefore, intent is a strong possibility here.
- The statement “That was my tax advisor” did not help in the case at hand.
- The extended ten-year assessment period for tax avasion applies. Even the 2009 tax return could still be corrected.

Source: Lower Saxony Tax Court, judgment of 21 January 2026 (3 K 78/24). The decision is final, as no further appeal (before the Supreme Tax Court) was filed.

Schlagwörter

Tax evasion, commuting costs, travelling expenses