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By PwC Deutschland | 22 October 2013

No right of taxpayer to be involved in mutual assistance requests

The ECJ has held that a taxpayer does not have rights under community law to query or contest the accuracy of information to be supplied by another taxing authority in response to a request under the Mutual Assistance Directive whilst the request is still being dealt with. Rather, he may raise his objections to his own authority afterwards under the local rules for challenging assessments.

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A Czech footballer claimed travelling expenses in his tax return for visits to clubs in Spain, France and England for the purposes of seeking employment. He also claimed business expenses invoiced from Hungary. The Czech tax office contacted its opposite numbers in the countries mentioned under the Mutual Assistance Directive for local confirmation of the reasons for the expenses claimed. The tax offices from Spain, France and England replied that the clubs concerned had no knowledge of a visit by the taxpayer; the Hungarian tax office replied that the Hungarian invoice issuer was only acting as an intermediary for a supplier from outside the EU/EEA and that it would be necessary to turn to that supplier for meaningful information on the business background to the costs at issue. On this basis, the Czech tax office disallowed the expenses claimed, as their business relevance had not been substantiated.

The taxpayer complained that he had not been informed in advance of the requests for mutual assistance, that he had not been able to name witnesses or otherwise contribute to the information gathering process and that the replies from the other tax authorities gave no indication of how, or from whom, they had obtained their information. Accordingly he asserted that he had been deprived of his right to a fair hearing under Czech and community law.

The ECJ has now held that there is nothing in the Mutual Assistance Directive, or under the general rule of law entitling the taxpayer to a fair hearing, requiring either tax authority to involve the taxpayer when presenting or answering requests for information. Indeed, such a requirement could well be counter-productive in certain circumstances. There was also no requirement as to the minimum content of the information supplied (such as naming the precise source). Rather, the tax authorities were free to gather information as they saw fit, it being up to the taxpayer to challenge the accuracy of the facts presented or the validity of the conclusions drawn when challenging the assessment issued. At this stage, his rights were governed by the rules on evidence under national law.

The ECJ case reference is case C-276/12 *Sabou*, judgment of October 22, 2013.

Keywords

footballer, mutual assistance