Downloaded from Blogs on 03.11.2026 05:07

By PwC Deutschland | 29 January 2014

No damages for excessive court delay leading to favourable result

The Supreme Tax Court has rejected a claim for damages for aggravation caused by a tax court's excessive delay in hearing a case where that delay was the only reason the claimant won his case.

Downloaded from Blogs on 03.11.2026 05:07

A taxpayer filed a suit in November 2005 against his income tax assessment 2004. The point at issue was the tax office' refusal to recognise court costs as having been necessarily incurred and therefore deductible. At the time, the Supreme Tax Court's case law supported the position of the tax office. The tax court took the first concrete step towards opening proceedings in August 2010 with the appointment of a judge to try the case. The first result was a rejection of the taxpayer's plea in October 2010 on the basis of existing case law of the Supreme Tax Court. Ultimately, though, the taxpayer was successful – Supreme Tax Court decision in February 2012. The basis for this decision was a Supreme Tax Court case decided in May 2011 in which the court reversed its previous attitude and held that court costs were necessarily incurred in defence of a taxpayer's rights, unless his case was hopeless from the start. The taxpayer then sued for damages for the aggravation caused by the long delay of the lower court in opening proceedings, claiming an amount of at least €4,200. The amount of tax in dispute was €169.

The Supreme Tax Court has now rejected the claim for damages, as the taxpayer had, all things considered, suffered no loss. It did not therefore go into the question of whether a delay of over four-and-a-half years before opening proceedings might have been unreasonable. Rather, it took the position that had the case been tried earlier, the lower court would have followed the earlier case law and the taxpayer would have lost. To this, the taxpayer objected that had he lost he would have appealed to the Supreme Tax Court with the same arguments that persuaded the court to change its attitude in 2011. The court, however, rejected this contention as hypothetical. Consequently, unreasonable or not, the delay had been to the taxpayer's advantage. He had therefore suffered no loss and had no claim for damages.

Supreme Tax Court judgment X K 2/12 of November 20, 2013 published on January 29, 2014

Keywords

damages, delay