

By PwC Deutschland | 06 November 2020

Supreme Tax Court: suspension of limitation period where claim for a refund exists

In a decision published on 5 November 2020, the Supreme Tax Court held, that the application of Section 171 (14) General Tax Code (“GTC”) is not restricted to cases of invalid tax assessments. Rather, any claim for a refund connected to a tax claim can in principle trigger a suspension of the run down to statutory limitation. However, if the refund claim is to suspend the limitation period for assessments, the claim must have come into existence before the expiry of this limitation period. Payments made in anticipation of an expected change to tax assessments for the years in dispute gave rise to a refund claim thus triggering the suspension of the limitation period under Section 171 (14) GTC as there was no formal legal basis for the payment.

Background

The appellants were a married couple assessed together for income tax. They submitted their income tax returns for the years in dispute on 18.07.2003 (2002) and on 14.05.2004 (2003).

On 07.06.2013, they submitted amended tax declarations for the years 2002 to 2011, stating that between 1965 and 1998 they had transferred taxed capital to accounts in Switzerland and not declared the income in their tax returns. The appellant also made a payment on account in July 2013 to reduce the tax arrears.

The Tax Investigation and Criminal Case Office of the Tax Office (Tax Investigation Office) initiated an investigation on 04.11.2013 for the years 2007 to 2011, which was completed in April 2015. The appellants agreed to the changes suggested by the Tax Investigation Office on 19.05.2015 and assessment notices were issued by the tax office on 27 August 2015 for the years 2002 to 2011.

The appellants appealed against the assessments for 2002 and 2003 on the basis that they were statute barred. The appeal was refused both by the tax authorities and the tax court. An appeal was then made to the Supreme Tax Court.

The basis of the appeal was that the start of the limitation period had not been suspended under Section 171 (14) GTC as this provision had to be interpreted very narrowly. The extension of the provision to include voluntary payments on accounts contravened the rule prohibiting arbitrary action as a person who made a voluntary payment on account was treated worse than a person who did not. Further, the voluntary payment on account did not give rise to a refund claim connected with a tax assessment; indeed, the tax office had booked the voluntary payment on account, which was not considered in the amended assessments, on with a general safekeeping account.

Judgement

The Supreme Tax Court rejected the appeal. The appellants submitted income tax returns for the years in dispute in 2003 (for 2002) and 2004 (for 2003). Accordingly, the beginning of the limitation period for assessment fell in accordance with Section 170 (2) GTC at the end of the years 2003 and 2004 respectively. The limitation period for assessment was extended to 10 years by reason of the appellants' tax evasion, thus ending on 31.12.2013 and 31.12.2014 respectively. As a result - subject to a suspension of the limitation period -the relevant years were already statute barred at the time when amended assessment notices were issued on 27.08.2015.

According to Section 171 (14) GTC the assessment period for a tax claim does not end, in so far as a related refund claim exists under Section 37 (2) GTC, which is not yet statute barred (Section 228 GTC).

The regulation was added to ensure that tax assessments could be issued within the period of limitation applicable to payments where necessary (see judgement of the Supreme Tax Court of 13. 03.2001 - VIII R 37/00, as well as the subsequent decision of the Federal Constitutional Court of 18.02.2003). The aim was to avoid the scenario where a taxpayer could demand a refund of overpaid taxes within the *five-year period*

of limitation applicable to payments on the grounds that a tax assessment notice was improperly served, without the tax office being able re-serve the tax assessment within the *four-year limitation period relevant to the issue of assessments* (see Supreme Tax Court decision of 16.11.2011 - V B 34/11). The considerations cited by the legislature to justify the provision satisfy the constitutional requirements for a balance between legal certainty on the one hand and substantive fairness on the other hand, although the provision has the legal effect that a person who makes no payment following an invalid assessment is treated differently from the person who claims a refund after making a payment.

Since the legislature's stated intention to suspend the running of the limitation period only in cases of invalid tax assessment did not find its way into the wording of Section 171 (14) GTC, the application of the regulation is not limited to cases of invalid tax assessments. In this regard the Supreme Tax Court follows the prevailing view. Rather every refund claim which is related to a tax claim will in principle suspend the limitation period.

Since the taxpayer's refund claim triggers the suspension of the limitation period, however, the relevant refund claim must have arisen before the limitation period for assessments ends.

In the case before the Court, the conditions of Section 171 (14) GTC were met. The appellants' payment on account gave rise to a refund claim directly upon its payment in July 2013 -- and thus before the limitation period for assessments expired.

Section 171 (14) GTC refers to a refund claim under Section 37 (2) GTC. A refund claim in this sense exists, inter alia, where a tax or incidental tax expense has been paid without legal basis or where the legal basis for the payment later ceases to exist.

The question as to whether there is a legal basis for a tax payment is to be interpreted on a strictly legal basis. This is because - at the time the provision was introduced - the legislature considered a payment made on the basis of a tax assessment which had not been properly served (regardless of the correctness of the underlying tax claim) as a payment without legal basis. If the taxpayer accepts the invalid service, the payments made on the basis of the tax assessment notice must be refunded within the payment limitation period. According to the Supreme Tax Court the definitive issue here is whether the taxpayer's payment has a formal legal basis in the form of a valid tax assessment notice.

In the case before the Court there was no formal legal basis for the appellants' payment on account, so that the appellants had a refund claim as soon as they made the payment. At the time of the payment, the amended tax assessments had not been issued. The appellants had made the payment following on from their voluntary tax evasion disclosure in an effort, inter alia, to reduce the late payment interest charges.

There was also no other formal legal basis for the payment on account, in particular there was no evidence that an agreement between the appellants and the tax office had been reached.

Finally, as required by Section 171 (14) GTC, the refund claim resulting from the payment on account was connected to the tax claim for the years in dispute. The appellants made the payment on account to the tax

office expressly with reference to the expected back-tax claim which included the years in dispute. The fact that the tax office initially only booked the payment on a custodian account was not relevant.

Reference

Supreme Tax Court decision of 4 August 2020 (VIII R 39/18) published on 5 November 2020

Keywords

statute-barred, suspension of limitation period