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By PwC Deutschland | 16 November 2020

No obligation to file electronic tax returns where economically unreasonable

In a decision of the Supreme Tax Court published on 12 November 2020, the Court held that the electronic filing of an income tax return may be considered unreasonable from an economic point of view, where the cost of setting up and maintaining a system for the transmission of remote data bears no meaningful economic correlation to the income triggered by the obligation to file the tax returns electronically

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Background

The plaintiff had been a self-employed physiotherapist since 2006. He had no employees nor did he have any practice premises/office rooms or Internet access.

Up to and including 2016 the tax office had assessed the plaintiff for income tax on the basis of the official tax declaration forms completed by hand. For the year relevant to the proceedings (2017), the tax office ordered the plaintiff on several occasions without success to submit the income tax return electronically and subsequently imposed a financial penalty. The tax office rejected the plaintiff's request to be exempted from the obligation to submit an electronic declaration.

The plaintiff appealed to the tax court Berlin-Brandenburg and was successful. The tax court ordered the tax office to waive the obligation to submit an electronic declaration and reversed the penalty.

Decision

The Supreme Tax Court confirmed the decision of the tax court and rejected the appeal of the tax office.

According to Section 150 (8), sentence 1 of the General Tax Code (GTC) in connection with Section 25 (4) sentence 2 of the Income Tax Act (ITA), in order to avoid undue hardship, the tax authority must, upon application, waive the obligation to file tax returns electronically, where such a filing of the declaration cannot be reasonably expected of the taxpayer from an economic or personal point of view. Economic unreasonableness exists in particular where the set-up of a system to make remote data transmission possible would not be possible without considerable financial expense.

Whether a considerable financial expenditure can be assumed can only be decided by taking into account the taxpayer's business income within the meaning of Section 2 (1) sentence 1 no. 1 to no. 3 ITA. This is because the hardship provision is intended to privilege very small businesses. Since the plaintiff only earned € 14,534 from his self-employed work in the relevant year, the Supreme Tax Court assumed a situation comparable to a very small business. The requirement to file declarations electronically could not therefore be demanded legally and thus the penalty was also invalid.

Source:

Supreme Tax Court judgement of 16 June 2020 (VIII R 29/19), published on 12 November 2020.

Keywords

Income Tax Act, electronic filing, electronic tax return, hardship