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By PwC Deutschland | 12 April 2021

Determination of the addressee of a tax audit notification order

In order to determine the content of an administrative act, the declared intention of the authority must be taken into account and not the literal meaning of the relevant wording; however, a notice clearly addressed to a specific addressee is not open to interpretation in this respect. This was decided by the Supreme Tax Court in a decision published on 8 April 2021.

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Background

Among other legal questions, the interpretation of a tax audit notice was in dispute. The appellant claimed that the tax audit notice had not been properly served due to the incorrect addressee. Thus, when the contested tax assessment notices were issued, the limitation period had already expired.

The appeal to the Munich Tax Court was unsuccessful.

Decision of the Supreme Tax Court

The Supreme Tax Court allowed the appeal, overturning the earlier decision and referring it back to the lower court.

In order to determine the content of an administrative act, the declared intention of the relevant authority must be considered and not just the literal meaning of the relevant wording. However, a notice clearly addressed to a specific addressee is not open to interpretation.

A tax audit that is carried out on the basis of a tax audit notice that has not become effective vis-à-vis the taxpayer cannot suspend the expiry of the limitation period for the relevant period of assessment.

If the limitation period for a period of assessment has expired, the principle of good faith does not allow an expired tax claim to be reinstated to the detriment of the taxpayer. This applies regardless of whether the taxpayer can be "blamed" for the expiration of the limitation period or not.

The lower tax court did not examine whether the extended assessment period for cases of tax evasion was applicable. It will have to do so at the referred re-hearing.

Source

Supreme Tax Court decision of 11 November 2020 (XI R 11/18), published on 8 April 2021.

Keywords

administrative act, administrative principles, suspension of limitation period, tax audit notice