

By PwC Deutschland | 22 November 2021

Supreme Tax Court: no refund of legal costs for appealing against interest on evaded amounts

In a recent ruling, the Supreme Tax Court decided that there is no claim for the refund of costs incurred in the event of a successful appeal against interest on evaded amounts, even in child benefit proceedings.

Background

The plaintiff had wrongly received child benefits. For this reason, the family benefits office levied interest on received wrongly child benefit .

The plaintiff's appeal this was successful on its merits. However, the family benefits office decided not to reimburse the costs incurred by the plaintiff in the appeal proceedings.

The Bremen Tax Court upheld the subsequent action and ordered the family benefits office to reimburse the expenses.

Decision of the Supreme Tax Court

The Supreme Tax Court saw the matter differently.

The appeal procedure according to the German General Tax Code is in principle free of charge for both sides, i.e. both the appellant and the authorities have to bear their own expenses.

Diverging from this principle, Section 77 of the German Income Tax Act (ITA) provides that in appeal proceedings against child benefit assessment notices, the successful appellant is reimbursed for the expenses necessary for pursuing the appropriate legal proceedings. However, according to the Supreme Tax Court ruling, this provision cannot be used if the appellant has successfully appealed against the assessment of interest for evasion due to child benefit payments wrongly received. According to its wording, Section 77 ITA is only applicable insofar as the appeal "against the child benefit assessment" is successful.

As an exception to the principle that out-of-court appeal proceedings are cost-free, the obligation to reimburse costs cannot be justified by applying § 77 ITA mutatis mutandis either. This is because there is no gap in the law that would allow such an analogy.

Source:

Supreme Tax Court , decision of September 01, 2021 (III R 18/21), published on November 18, 2021.

Keywords

Tax evasion, child benefit, legal costs