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By PwC Deutschland | 30 September 2022

Sudden visit from tax office for inspection of home office

The Supreme Tax Court decided that an unannounced inspection of an apartment by an official of the tax investigation department to check the taxpayer's information regarding the claim for home office is not justified and against the law if the taxpayer cooperates in clarifying the facts.

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Background

According to the relevant provisions of the Income Tax Act, a taxpayer cannot generally deduct expenses for an office in his home as income-related expenses. However, an exception to the general rule applies where the business or professional use of the office at home amounts to more than 50% of the total business or professional activity or if no other workspace is available for the professional activity.

A self-employed business consultant (plaintiff) claimed expenses for a home office for the first time in her income tax return. Upon inquiry by the tax office, she submitted a sketch of the apartment, which - according to the tax office - needed further clarification. It asked one of its field staff to visit the apartment for further checks. The officer in charge appeared unannounced at the door of the plaintiff's apartment, identified himself as a tax investigator and entered the apartment. The plaintiff did not object to the inspection.

Decision

The Supreme Tax Court held that the unannounced inspection violated the constitutional right for protection (inviolability) of the home as set forth in Article 13 of the Constitutional Statute (Basic Statute – Grundgesetz).

To verify the information on the claim for home office, an unannounced and spur of the moment inspection of the home of a taxpayer who is willing to cooperate is only necessary if the ambiguities can no longer be properly clarified by further information or other evidence (e.g., photographs). This also applies if the taxpayer - as in the case of dispute - has consented to the inspection and - at least in this respect - there is no serious infringement of the fundamental individual rights.

As the Supreme Tax Court further explained, the investigative measure was also against the law because it was carried out by a tax investigator and not by a member of the tax assessment office. Following such course of action could taint the personal reputation of the taxpayer as this can be made to appear to third parties who happen to be around (e.g., visitors or neighbors) that the taxpayer is under criminal investigation.

Source

Supreme Tax Court decision of 12 July 2022 (VIII R 8/19), published on 29 September 2022.

Keywords

Home office