

By PwC Deutschland | 20 January 2023

# Supreme Tax Court: Solidarity surcharge still constitutional?

**By the end of January, the Supreme Tax Court will announce its decision whether the solidarity surcharge levied to income tax (and corporate tax) remains constitutional also for assessment periods 2020 and 2021.**

## Decision pending

A hearing before the Supreme Tax Court was held on Tuesday, 17 January 2023 with no clear indication as to the likely outcome of the deliberations of the competent senate of the Supreme Tax Court. **The decision** in the pending case IX R 15/20 **will be announced on 30 January 2023**. The Supreme Tax Court will certainly also consider whether it is necessary to obtain a decision from the Federal Constitutional Court, as suggested by the plaintiffs.

## Background

The suit against the solidarity surcharge now before the Supreme Tax Court was launched by a couple from Bavaria with the help of the German Taxpayers' Association (*Bund der Steuerzahler*). The dispute is whether the tax office was right to reject the application of the plaintiffs for a reduction of their advance payments for the solidarity surcharge from 1 January 2020 to €0 on grounds that the levy was unconstitutional. The Nuremberg Tax Court had dismissed the claim in the first instance (case: 3 K 1098/19) but granted the appeal to the Supreme Tax Court due to the fundamental importance of the matter.

The lower tax court as court of first instance did not share the constitutional concerns of the plaintiffs. It also pointed out that the Federal Republic and the entire world have been struggling with a pandemic of unimagined proportions since the beginning of 2020. The economic, financial, and social challenges are unforeseeable, it says. Tax revenues have dropped, and new and unforeseen expenses have arisen for the federal (and state) governments.

## Keywords

[solidarity surcharge](#)