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By PwC Deutschland | 28 March 2024

Automatic exchange of bank account information does not violate fundamental rights

The provision of Section 5 (3) of the Financial Accounts and Exchange of Information Act is in compliance with constitutional law. In particular, the automatic exchange of financial account information does not violate the right to informational self-determination of the taxpayers affected by it. This was ruled by the Supreme Tax Court who stated that the right of individuals to decide for themselves on the disclosure and use of their personal data is not unduly impaired.

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Background

According to the Financial Accounts and Exchange of Information Act (*Finanzkonteninformationsaustauschgesetz* – in the following referred to as „FKAustG“) the Federal Central Tax Office exchanges information on financial accounts with several listed countries. Reporting financial institutions are obliged to provide the relevant information. This includes the name, address and tax number of the accountholder, the account balance at year end and the amounts of investment income (as well as the proceeds from the sale of investments) credited to the account during the year. The accounts affected are all those held with financial institutions and therefore include investment funds, insurance companies and other financial players as well as banks. The Act was introduced at the time with the intention to induce more honesty in tax matters cross-border.

Pursuant to Section 5 (3) FKAustG, the Federal Central Tax Office collects the data transmitted to it by other foreign competent authorities, stores it and forwards it to the competent tax authorities of the federal states for matters of taxation by following the parameters laid down in Section 88 (3) and (4) Fiscal Code.

The plaintiffs jointly hold an account with a bank deposit in Switzerland. The Swiss authorities reported the account balances to the Central Tax Office as provided in the competent authority agreements on automatic exchange of financial account information. The Central Tax Office stored and processed the data. This was challenged by the plaintiffs. Both the Cologne Tax Court (as court of first instance) and finally the Supreme Tax Court rejected the appeal.

Decision

The plaintiffs are not entitled to obtain an order restraining the Central Tax Office to process the data and demand that it be deleted from the automatic exchange of financial account information. The processing of this data by the Central Tax Office is legitimate. The plaintiffs have no valid claim under the General Data Protection Regulation to pursue their request.

The plaintiffs are also not entitled to a claim under public law for injunctive relief or the removal of consequences in accordance with Section 1004 (1) sentence 2 of the German Civil Code (BGB) or Article 20 (3) of the German Basic Law on the constitutional principles to prevent or abolish the constitutional order. A claim for injunctive relief under public law analogous to Section 1004 (1) sentence 2 Civil Code only exists if there is a sufficient probability that unlawful administrative action will result in interference with protected legal positions.

Contrary to the plaintiffs' view, the automatic exchange of financial account information does not violate their fundamental rights with regard to the personal freedoms under Art. 2 (1) Basic Law in conjunction with Art. (1) 1 Basic Law with respect to the right for informational self-determination (“protection and respect of human dignity”).

The processing and storage of the data transmitted by the Swiss authorities to the Central Tax Office as part of the automatic exchange of financial account information takes place based on Section 5 (3) FKAustG.

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This provision sets out in a sufficient manner

- that the Central Tax Office may process the data transmitted by another competent authority in order to pursue the taxation procedure, and
- the framework under which processing must take place.

Only data relating to accounts held abroad and which are included in the list of countries participating in the automatic exchange of information (Section 1 para. 1 FKAustG) are affected; this also includes accounts held in Switzerland.

The processing of data on accounts held abroad as provided for in Section 5 (3) FKAustG is suitable and necessary to achieve its desired objective. If taxpayers conceal their foreign interest income, they are held accountable only in rare exceptional cases without the possibility of control. Therefore, the enforcement of tax claims in these cases would be considerably impaired. These deficiencies are eliminated by use of the automatic exchange of information under the Financial Accounts and Exchange of Information Act.

Reference:

Supreme Tax Court, judgment of 23 January 2024 (IX R 36/21), published on 28 March 2024.

Keywords

automatic exchange of financial account information, information exchange