

By PwC Deutschland | 15 May 2024

Notification of an appeal decision to representative valid despite authorization being previously revoked

In a most recent judgment, the Supreme Tax Court decided that an administrative act (here: the appeal decision of the tax office) is also effectively and validly delivered if it is sent to an authorized representative who was originally appointed but whose power of attorney had been revoked in the meantime, a fact which only became known to the tax office until after the appeal decision was dispatched.

Legal background

According to **Section 122 (1) Fiscal Code** an administrative act shall be delivered to the person for whom it is intended or who is affected thereby. The administrative act may also be delivered to an authorized representative, provided the tax authorities are in possession of a written authorization or an authorization transmitted electronically using an officially prescribed data set, if the authorized representative has not been barred due to the provision of professional assistance in tax matters without having the authority to do so.

Section 122 (2) No. 1 Fiscal Code states that a written administrative act (such as, in the case of dispute, the tax office's decision on the appeal of the taxpayer) which is sent by post shall be deemed as being delivered on the third day after dispatch if mailed to an address within Germany (...).

Case of dispute

The tax office had initially forwarded its decision to the authorized representative designated by the plaintiff on 30 September 2020. The former returned the appeal decision to the tax office on 2 October 2020 and let it be known that his power of attorney had been revoked in the meantime. The appeal decision was then promptly sent to the plaintiff, who only filed an action herself months later (**the deadline** for lodging an appeal **is one month from delivery** of the respective administrative act; see above).

The question to be answered was therefore whether the action was legally effective and thus filed in due time by delivering the appeal decision to the plaintiff's former authorized representative.

Decision

The Supreme Tax Court confirmed the position taken by the tax office and held that the former authorized representative had been effectively notified and therefore considered the plaintiff's action to be inadmissible.

The tax office's decision of the appeal had been effectively delivered to the authorized representative since, according to the state of its files, the tax office was correct to assume that an effective power of attorney existed until the time the decision of the appeal was dispatched. The subsequent notification that the power of attorney had been revoked, did not preclude the effective delivery of the administrative act of the tax office. The relevant criteria to be considered here is the information and knowledge available to the tax office at the time of dispatch.

Reference:

Supreme Tax Court, judgment of 8 February 2024 (VI R 25/21), published on 10 May 2024; press release No. 24/24.

Keywords

delivery documentation