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By PwC Deutschland | 10 June 2024

No obligation to use the special electronic mailbox for law firm prior to August 2022

In a recently published decision, the Supreme Tax Court held that a law firm in the legal form of a limited liability company (GmbH) acting as representative of the claimant was not obliged to use the mandatory electronic legal communication system when submitting an appeal to the tax authorities before 1 August 2022.

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Background

In January 2022, the plaintiff, who was represented by a law firm (*Rechtsanwaltsgesellschaft mbH*), filed an action by fax with the tax court (Tax Court of Berlin-Brandenburg) against a notice of liability. The law firm acted through an authorized signatory who was admitted as a lawyer, tax law specialist and tax consultant. The tax court dismissed the complaint as inadmissible, as a lawyer since 1 January 2022 was obliged to use the electronic legal communication system (special electronic mailbox) in accordance with Section 52d of the Code of Procedure of Fiscal Courts (*Finanzgerichtsordnung - FGO*). The appeal submitted by the authorized representative did not comply with this prerequisite.

Legal background

TheCode of Procedure of Fiscal Courts (*Finanzgerichtsordnung - FGO*) states in Sec. 52d sentence 1 that „*preparatory pleadings and their supporting materials as well as applications and statements to be made in writing that are submitted by a lawyer, by an authority or by a legal entity under public law, including the associations formed by it to fulfill its public duties, must be transmitted as an electronic document*“. According to sentence 2, „*The same applies to persons authorized to act as representatives under this Act for whom a secure transmission path pursuant to Section 52a (4) sentence 1 no. 2 is available*“.

Section 31a (1) of the Federal Code for Lawyers (BRAO) specifies that the Federal Bar Association sets up a ready-to-receive special electronic legal mailbox (*besonderes elektronisches Anwaltspostfach*) for each *member* listed in the Central Register. The current version of Section 31a (1) sentence 1 BRAO, which has been amended effective 1 August 2022 no longer refers to the “member” entered in the Central Register, but rather to a “*natural person*”. The same applies to for professional practice companies as stated in Section 31b (1) BRAO.

Decision

The Supreme Tax Court set aside the decision of the court of first instance and referred the matter back for further hearings and a final decision. The action had been wrongly dismissed as inadmissible. The *Rechtsanwaltsgesellschaft mbH* was not yet obliged to use electronic legal communication pursuant to Section 52d sentence 2 FGO at the time the action was filed, because a special electronic lawyer's mailbox pursuant to Section 31b para. 1 BRAO (new version) was set up for use by such companies only from 1 August 2022.

There is also no requirement to use the electronic legal communication before 1 August 2022 when looking at Section 52d sentence 1 FGO. The wording of this provision covers, among other things, pleadings submitted by a lawyer, an authority, or a legal entity under public law. Law firms within the meaning of Section 59c (1) BRAO (old version) are not covered by the wording of Section 52d sentence 1 FGO. Furthermore, an obligation to use the electronic mail system did not exist because the *Rechtsanwaltsgesellschaft mbH* acted through a lawyer as its representative and not directly by itself.

Reference:

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Supreme Tax Court, judgment of 16 January 2024 (VII R 34/22), published on 6 June 2024; press release No. 25/24.

Keywords

electronic data, telecommunications