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By PwC Deutschland | 25 October 2024

Presentation of documents to the tax authorities to comply with the GDPR

According to a decision of the Supreme Tax Court, the tax office's request for rental agreements from the landlord in accordance with Section 97 Fiscal Code must comply with the guidelines laid down in the General Data Protection Regulation (GDPR). In its judgment. the Supreme Tax Court held in favor of the tax office and that the plaintiff is obliged to produce the relevant documents.

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Background

In the case of dispute, the tax office requested the submission of rental agreements and ancillary cost statements from the plaintiff to verify the amount of the rental income as declared in the income tax return.

With reference to the General Data Protection Regulation (GDPR), the plaintiff believed submission without the prior consent of the tenants was not permitted. The plaintiff also refused to submit the rental agreements and service charge statements without the tenants' prior consent by referring to the GDPR. The Nuremberg Tax Court dismissed the appeal in the first instance: The relevant administrative act was suitable, necessary, and appropriate with regard to the request for the documents (rental agreements and ancillary cost statements) pursuant to Section 97 Fiscal Code in order to ensure the accurate and equal taxation (the principle of equal burden).

Decision

The Supreme Tax Court confirmed the court of first instance and held that the provisions of the GDPR do not preclude the request for presentation of rental agreements and thus the tax obligation to cooperate. Private statements prepared by the taxpayer himself are of no use as they cannot replace the obligation to produce the requested documents.

Pursuant to Section 97 (1) sentence 1 Fiscal Code, participants and other persons must, upon request, submit or present accounts, records, business papers and other documents to the tax authority for the purpose of inspection and examination. The request for the submission of a document must furthermore (as a discretionary decision) be suitable, necessary, proportionate, feasible and reasonable. This was the case here.

The submission of the rental agreements to the tax office is permissible as it is for a purpose other than that for which the personal data have been collected (Article 6 para. 4 GDPR), specifically for the purpose of the implementation and performance of the rental agreements.

As the one responsible (i. e. the „controller“) within the meaning of Art. 4 No. 7 GDPR, the plaintiff was not entitled to refuse submission of the tenant data. „Controller“ as defined therein means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

The tenants' consent for the forwarding of the documents to the tax office is not required because the processing is justified in accordance with Art. 6 (1) point c GDPR („…*processing shall be lawful only if it is necessary for compliance with a legal obligation to which the controller is subject*…“)

Furthermore, the Supreme Tax Court did not consider it necessary to refer the matter to the ECJ for a preliminary ruling.

Source:

Supreme Tax Court, decision of 13 August 2024 (IX R 6/23) - published on 24 October 2024.

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Keywords

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