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# Failure to inform the revenue authorities of relevant facts may lead to tax evasion

**In cannot be assumed from the outset that electronic data which is not automatically transferred to the paper file/electronic file but is only available for retrieval on the tax authority's data storage devices has in any case been known to the tax authorities simply because it is linked to the taxpayer's tax reference number. A married couple could not rely on the tax office to ascertain their tax situation from their wage tax certificates. Anything that is not included in the file is not explained, the Supreme Tax Court said in its conclusion on the question of tax evasion.**

## Background

Tax evasion can arise because of active behavior or by omission. The latter aspect had to be settled before the Supreme Tax Court, namely whether the plaintiffs had failed in their duties as taxpayers by not informing the tax office of facts relevant to taxation and whether this therefore constituted tax evasion under Section 370 (1) and (2) Fiscal Code.

Originally, only the husband earned income from employment (wage tax class 3). The tax office treated the tax returns as voluntary assessments. Once the wife started working (wage tax class 5) there was a change from voluntary assessment to mandatory assessment which the couple did not take into account. Tax returns were still not submitted. Their tax case was still registered at the tax office as voluntary assessment. However, the tax office was in possession of all electronic income tax certificates with the correct tax reference number. No income tax returns were since requested by the tax office.

Several years later, when working through an e-data checklist sent by a regional Higher Finance Office (OFD), it became apparent that the plaintiffs would have been obliged to submit income tax returns for the years in question. The tax office then issued assessment notices for the years in dispute. The plaintiffs objected, albeit without success.

The tax court of first instance has upheld the claim. It stated that the objective elements and preconditions of tax evasion by omission (pursuant to Section 370 paras. 1 and 2 Fiscal Code) were not fulfilled because the information required for the tax assessment of the plaintiffs was available to the person responsible for the case.

## Decision of the Supreme Tax Court

The Supreme Tax Court did not take an easy way out and – after careful review of the matter - confirmed the position maintained by the tax office.

To determine whether the tax authority is aware of the factual circumstances relevant to the assessment of tax it is necessary to look at those people within the competent tax authority who are organizationally responsible for processing the tax case or who initially issued the tax assessment notices (which are to be amended).

The fact that electronically transmitted data can be specifically associated with the taxpayer (because it is linked to the tax reference number) and be retrieved from a data storage device of the tax authorities is not sufficient in this respect. Rather, only electronic data that is automatically transferred to the paper file/electronic file is assumed to be already known by the tax authority. However, this will not have a negative future impact on taxpayers, the Supreme Tax Court said.

The data transmitted to the tax office with the electronic wage tax certificates was connected to the plaintiffs' joint tax number and in fact attributed to them. However, it was

only accessible from a data storage facility as part of an overview of electronic certificates without having been automatically transferred to a paper or electronic file. As the data was stored as voluntary assessment, there was no reason for the officer responsible to inspect the data storage system and retrieve the data. Instead, the employee responsible at the tax office first became aware of the tax-relevant facts later, namely through the eData checklist which was sent by the regional Higher Finance Office.

**Note:** After all, one might be inclined to ask, why connecting tax information by using tax identification numbers does not automatically lead to an entry into the tax file. Or, to put it another way: If it is not in the system, it is not known. Tax evasion lurks around the corner - even if useful data is available.

**Source:**

Supreme Tax Court, decision of 14 May 2025 VI R 14/22- published on 9 October 2025.

**Keywords**

Tax evasion, electronic data