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By PwC Deutschland | 03 July 2026

Reinstatement into the status quo ante due to breach of judicial duty of care

The Supreme Tax Court decided that a simply signed legal statement prepared by an attorney does not meet the requirements for electronic legal communications under the Code of Procedure of Fiscal Courts unless it is transmitted to the court via a designated transmission channel specified therein. In the event the deadline for filing a lawsuit has been missed, reinstatement into the status quo ante may be granted regardless of the plaintiffs‘ fault if the court itself violated its duty of care.

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Background

The plaintiff was a GmbH who had retained legal counsel to represent it in a lawsuit before the lower tax court. The complaint was drafted but was not sent via the attorney's personal special electronic mailbox; instead, it was sent electronically to the court via the Electronic Court and Administration Mailbox (*Elektronisches Gerichts- und Verwaltungspostfach* - EGVP) as a document bearing a non-qualified electronic signature. At the court, the complaint was submitted to the presiding judge who confirmed receipt of the complaint and requested that the plaintiff provide the grounds for its claim. The attorney, who had also signed the complaint, took care and submitted the reasons for the appeal within the prescribed filing period from his personal special electronic attorney mailbox. A notice from the court which was not issued until well after the filing deadline stated that, in light of the relevant requirements in the Code of Procedure of Fiscal Courts (Finanzgerichtsordnung – FGO), there were doubts regarding the valid filing of the complaint. The tax court then dismissed the complaint.

Decision

The Supreme Tax Court found the plaintiff's appeal to be justified. First of all, the action before the lower tax Court had not been submitted within the statutory filing period because the electronic transmission of the complaint via the Electronic Court and Administration Mailbox (EGVP) did not comply with any of the transmission methods permitted under Section 52a (3) of the Code of Procedure of Fiscal Courts. However, this was not solely attributable to any fault of the plaintiff or the attorney but rather because the tax court had violated its duty of procedural care.

Although it is the responsibility of the plaintiff's attorney to submit the complaint to the court in the proper manner, a particular aspect of the current case was that the presiding judge had in fact verified its receipt while the filing deadline was still valid.

The Supreme Tax Court went on to say that, based on the constitutional requirement of a fair trial and the resulting duty of judicial care, it is necessary -as part of the ordinary course of administrative processes - to notify a party of an easily recognizable lack of procedural formality and to give that party the opportunity to correct the error within the still-pending filing

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period.

Therefore, the plaintiff is eligible for reinstatement into the status quo ante. The expiration of the deadline for submitting the claim does not preclude the plaintiff's reinstatement since the conditions to act ex officio for reinstatement were met prior to the filing deadline.

Source: Supreme Tax Court, judgment of 24 February 2026 (VII R 34/24) published on 2 July 2026.

Keywords

due care, reinstatement