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Fee for processing several requests for advance ruling in connection with business restructuring

In a recently published judgment, the Supreme Tax Court decided that a fee may be charged for each individual request for binding advance ruling and that the number of requests is determined by the underlying facts as a single course of events. The judges further concluded that the fees for providing the requested information are not subject to the statute of limitations and the collection of these fees is not unconstitutional, even if the requested advance ruling is denied.

Background

Article 89 (2) Sentences 2 and 2 of the General Tax Code (GTC) states that tax offices and the Federal Central Tax Office may upon request provide **advance rulings** on the tax treatment of precisely defined, as yet unrealized circumstances if this is of particular interest due to the existence of significant tax implications. The revenue authority that would have local jurisdiction if the underlying circumstances specified in the request were to be realized shall be responsible for issuing an advance ruling.

The parties are in dispute over the assessment of fees for the issuance of an advance ruling pursuant to Section 89 (2) Sentence GTC regarding the review and evaluation of a multi-stage restructuring in connection with an anticipated business succession. The tax office issued a total of eleven notifications to this effect against the plaintiff.

The case concerned a comprehensive restructuring in the course of a business succession which the parties had secured through numerous binding rulings from the competent tax office. Specifically, it involved a “shareholding restructuring,” “anticipated inheritance settlement,” and the filing of an application for a foundation yet to be established.

In the course of an appeal against an interim ruling of the lower tax court, the Supreme Tax Court had to decide whether the levy of the fees was generally permissible, and - if so - how many fee notices may be issued in the specific case. In its earlier interim ruling, the tax court of first instance considered the assessment of three fees to be legitimate. The question whether the fees were also correctly determined with respect to the amounts charged will be decided later by the tax court in its final judgment.

Decision

A fee may, as a rule, be charged for each individual request for an advance ruling pursuant to Section 89 (2) Sentence 1 GTC.

This conclusion is different to an earlier judgment of 3 July 2025 (IV R 6/23) concerning a slightly different set of facts where the Supreme Tax Court decided that only one fee for processing a binding information (advance ruling) may be charged to several applicants if the information is provided to the applicants in a uniform manner and on the same subject (for further details see our **blog post of 5 September 2025**).

In the current case, the Supreme Tax Court went on to say that the specific question of how many fee notices are issuued depends on the number of requests submitted. The key factor is the number of issues on which an advance ruling is sought.

The “facts of the case” to be reviewed relate to the applicant’s planned project. A project in this context is not limited to individual facts or single elements of a scheme but rather encompasses a single coherent course of events.

On the matter itself, the tax office's appeal was rejected. According to the Supreme Tax Court, the lower tax court erred insofar as the contested fee assessment against the plaintiff was based on two separate projects (facts) "restructuring" and "anticipatory inheritance succession." Since the fee assessments for steps 4, 5, and 8 - which are the only ones at issue - all relate to matters of "anticipated succession" only one fee was incurred for the application.

Furthermore, the Supreme Tax Court adds the following:

Information fees under Section 89 (3) GTC are **not subject to the statute of limitations** for tax assessment.

The collection of fees as such is **not unconstitutional**. Nor does it, in principle, preclude that a request for information is rejected ("negative response").

The fee is compensation for a service provided under public law, namely the tax authority's processing of the application pursuant to Section 89 (2) GTC and regardless of its outcome. Furthermore, the applicant also derives a benefit from a negative response which may be legitimately compensated by the information fee charged.

Source: Supreme Tax Court, judgment of 25 February 2026 (II R 38/23) published on 16 July 2026.

Keywords

binding ruling, statute-barred