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The legal effect and unjust legal effect of tax decrees

Dear Sir or Madam,

Once you have submitted your tax declaration, the tax official then sets the amount of tax. He or she decides what is right and what is wrong, and determines the income tax and the tax on assets. The taxpayer receives a tax assessment including a notice regarding legal remedies. This notice stipulates that objections may or even must be made within 30 days!

After 30 days the assessment takes full legal effect, and if the assessment is incorrect, it takes unjust effect.

A decree with legal effect can actually be re-evaluated by the tax authority, in supplementary and penalty tax proceedings. New facts come to the surface which the taxpayer had failed to declare. With such new facts the tax proceedings can be reopened. The taxpayer has the option to declare that these facts are nothing new, which is why the tax assessment then still retains its legal effect. Such an issue can be determined by the courts (Tax Appeals Commission). The consequences are either supplementary and penalty tax proceedings, or the court determines that the tax authority was aware of all facts and the assessments retains its legal effect.

It is interesting that a decision where no supplementary and penalty tax proceedings can be opened, as the tax authority was aware of all the facts, does not set a precedent for proceedings for tax fraud. Although a tax appeals commission may determine that there will be no supplementary and penalty tax proceedings, a penal court can then still decide on a sentence for tax fraud, even if there had been no attempt whatsoever to evade taxes at all. This is based on the fact that the criminal offence of tax fraud constitutes an endangerment offence and does not require an actual tax evasion. This was outlined in an unpublished decision by the penal court of Basel-Stadt from 1st September 2014 (SG 2014.9). This means that a conviction for tax fraud is possible even if no taxes have been evaded. This may be nonsense, but it happens.

The taxpayer can apply for a legally effective assessment via a revision, in order to have the original tax assessment re-evaluated. The basis for this revision is where new facts emerge which, at the time of the original tax assessment, had not been present, or where it would have been impossible at the time to find them even with a prudent search. The obstacles for such a revision are enormously high as the tax authority on

the one hand has little desire to tackle completed taxes, and as the equal treatment of the tax payer on the other hand should not pave the way for special solutions.

It is also possible to apply for a re-introduction of the time-limit if the taxpayer had been prevented from acting; a long-term illness or something similar can serve as an example. But even here the obstacles are high.

In all other instances the tax assessment gains legal effect, or, should this be incorrect, gains unjust legal effect. This can lead to a situation in which either taxpayer or tax authority has wrongly acknowledged something for years. That is then it, whether unjust or not.

Kind regards
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