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One back tax assessment can hide another – tax authorities communicate with each other

Introduction

When a taxpayer fails to declare an item of income or wealth, or declares it inaccurately, he or she is liable to a back tax assessment, i.e. to the reopening of his or her tax file and the payment of additional tax. This reminder is accompanied by interest for late payment and, depending on the circumstances, a fine. In corporate taxation, the tax authorities pay particular attention to the benefits granted by a company to its shareholders or to persons close to them (hidden distributions). A recent decision of the Federal Supreme Court illustrates the extent of such a back tax assessment procedure when the various tax authorities communicate with each other (ATF 9C_38/2026).

Facts

In this case, the company had been assessed for income tax and capital tax in due course, without any particular issue. However, during an audit by the VAT division of the Federal Tax Administration (FTA), it emerged that, between 2009 and 2013, the company had recorded numerous private expenses attributable to its shareholder. These mainly consisted of excessive representation expenses — including ski outings and racecar circuit events, without precise identification of the invited clients — as well as sponsorship expenses for which no genuine consideration was provided. The VAT authority issued back tax assessments and then informed the FTA's Withholding Tax Division, which in turn opened an audit, issued back tax assessments and notified the cantonal tax authority. The latter reviewed both the company's position and that of its shareholder, extending its analysis beyond the VAT and withholding tax findings. Moreover, since the limitation period for direct taxes is ten years, as opposed to five years for VAT and withholding tax, the cantonal audit covered a longer period.

Question raised by the Appellants

The company and its shareholder challenged the back tax assessments and fines issued by the cantonal tax authority, first by filing an objection and then an appeal. They argued in particular that the cantonal authority's position was inconsistent with that taken by the federal authorities responsible for VAT and withholding tax. In their view, the cantonal administration had gone beyond the scope of the federal assessments and, based on the principle of good faith, they were entitled to expect the same approach. They therefore claimed that the cantonal authority had acted beyond its powers.

Consideration of the Federal Supreme Court

In its decision, the Federal Supreme Court reaffirmed a key principle: the cantonal authority in charge of direct taxes is not bound by the conclusions reached by the authorities responsible for VAT or withholding tax. Accordingly, where the same facts are reviewed for VAT, withholding tax and direct tax purposes, each procedure remains legally independent and may produce different outcomes. This reflects the distinct purpose of each tax. VAT focuses in particular on the existence of consideration and the business allocation of expenses; withholding tax seeks to identify potential hidden distributions, namely monetary benefits; and corporate income tax examines whether the recorded expenses are commercially justified. Although these analyses may overlap, they rest on different legal bases and may therefore lead to divergent results.

Conclusion

As noted in previous issues of TaxPage, transactions between shareholders and companies call for particular care. The fact that an item was not challenged during a VAT audit, or that an arrangement was reached with the withholding tax authority, does not mean that the cantonal tax authority will take the same view for direct tax purposes. It may review additional items and look back over a ten-year period. As a result, the combined effect of back taxes, interest and fines across the various tax areas may have substantial financial consequences for both the company and the shareholder.

Do not hesitate to contact us if you have any questions.

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