



Constitutional doubts about late payment penalties

The Tax Court Munich expressed constitutional doubts about late payment penalties for periods dating from 2015 in its decision of 13.08.2018 (14 V 736/18). The applicant is the managing director of a limited liability company. On 31.07.2017, an insolvency application was filed for the company. The company's debts included outstanding VAT and late payment penalties. The applicant was held liable for these debts by the tax office and applied for a suspension of execution of the assessment of liability.

The Tax Court suspended the liability assessment from enforcement but only to the extent of the late payment penalty, which had been incurred after the insolvency application was filed. In holding an applicant financially liable, the tax office must always take special care in the exercise of its discretion. Furthermore, the tax office must also take into account whether amounts, for which liability is imposed, are to be waived in the future. In the case of the over-indebtedness and insolvency of a taxpayer, late payment penalties are partially waived. This is due to the fact that the purpose of late payment penalties is to induce a taxpayer to pay on time and, in the instance of insolvency, this cannot be achieved. The remaining part of a late payment penalty essentially serves the same purpose as an interest charge: for the tax authorities to recover some portion of the advantage the taxpayer has had from the benefits of use. Since constitutional doubts exist as to what the rate of interest should be, at least as from April 2015, the same concerns must apply in the case of late payment penalties.

The decision of the Tax Court Munich is relevant, not only for persons held liable for late payment penalties but also for insolvency administrators who wish to take action against the imposition of late payment penalties. As a late payment penalty serves, at least partially, the same purpose as an interest charge, it will be particularly interesting to see whether this approach of the Tax Court could also apply in other scenarios.



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