Right to information according to DS-GVO: Tax authorities are also obliged to provide information!

In the past, tax authorities have regularly refused to provide taxpayers with information about their personal data held by the tax authorities. They referred to conflicting (public) interests, which ultimately always amounted to the following: If we, the tax office, disclose to the taxpayer exactly what we know about his income, then this is bad for state revenues. Courts such as the Federal Fiscal Court have also assumed that data protection law does not give taxpayers the right to know what the tax office already knows about them. Rather, those affected would always have to show a "legitimate interest" in order to be able to inspect files "in exceptional cases".

Since 2018, the General Data Protection Regulation has clearly rejected this problematic view, which puts innocent citizens in the vicinity of tax fraudsters. However, common practice still often looked different.

However, a recent judgment of the Federal Administrative Court (BVerwG) of September 16, 2020 confirms that data subjects have a direct claim against the tax authorities for information about their own personal data in accordance with Article 15 GDPR. An insolvency administrator had sued because the tax office had refused him information about the tax file of his insolvency debtor. The court rejected this right to information because, as a third party (in contrast to those affected!), they cannot rely on Article 15 GDPR from the tax office to obtain data from a debtor. In its judgment, however, the BVerwG also emphasized that those affected can request information about the personal data stored by the tax authorities at any time. For those affected, one thing is certain: tax authorities are also obliged to provide information!

Exceptions (according to § 32c Fiscal Code), on the basis of which information can be refused, only apply to an extremely limited area of application. These include the specific threat to the proper fulfillment of tasks by the authority, specific threats to public safety or legally defined confidentiality interests. Accordingly, the reference to the administrative effort caused, the additional workload or fiscal disadvantages is not sufficient for the justification. Rather, the tax authority must explain in a concrete individual case why providing the information would prevent the proper fulfillment of the tax authority's tasks.

The State Commissioner for Data Protection and Freedom of Information Baden-Württemberg Dr. Stefan Brink warmly welcomes the court decision. The Federal Administrative Court rightly states that "the rights of data subjects enshrined in the GDPR [...] serve to protect the fundamental right to respect for privacy under Article 8 of the Charter of Fundamental Rights of the European Union. This protection can only be achieved if the data subject can be assured that his or her personal data is accurate and that it is being processed in a lawful manner, otherwise he can request that the data controller, among other things, rectify or erase his data." .

Stefan Brink emphasizes: "As the judgment of the Federal Administrative Court makes clear once again, all data subjects can assert the right to information that follows from Article 15 DS-GVO – even against the persistent refusal of some tax authorities. This request for information can no longer be rejected simply because the person concerned does not present a special legitimate interest. The data protection supervisory authorities are happy to support this exercise of civil rights!"

If you have any questions, you can reach us on the telephone number 0711/615 541-23. Further information on data protection and freedom of information can be found on the Internet at www.baden-wuerttemberg.datenschutz.de or at www.datenschutz.de.
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