

GZ: 2020-0.293.448 from November 3, 2020 (case number: DSB-D124.2080)

[Note editor: Names and companies, legal forms and product names, Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as their initials and abbreviations may be abbreviated for reasons of pseudonymization and/or changed. Obvious spelling, grammar and punctuation errors have been corrected.]

NOTICE

S P R U C H

The data protection authority decides on Günther A***'s data protection complaint (Appellant) of January 30, 2020 against the tax office N*** (Respondent) due to violation of the right to secrecy as follows:

1. The complaint is partially upheld and it is found that the Respondent the complainant thereby in his right has violated secrecy by in the preliminary appeal decision of January 22, 2020 in the letterhead with reference to Annex A in addition to the name of the complainant also stated his home address and this thereby the disclosed to other parties to the proceedings named there.

2. Otherwise the complaint is dismissed as unfounded.

Legal basis: Art. 51 (1), Art. 57 (1) lit. f and Art. 77 (1) of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter: GDPR), OJ No. L 119 of May 4, 2016 p. 1; Sections 1 (1) and (2), 18 (1) and 24 (1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; §§ 48a, 48d paragraph 1, 49 paragraph 1, 52, 93 paragraph 2, 97 paragraph 1 lit. a, 257 paragraph 1 and paragraph 2, 262 paragraph 1 and 282 paragraph 1 of the Federal Fiscal Code (BAO), BGBl. No. 194/1961
idgF; §§ 9 para. 1 and 15 of the

Tax Administration Organization Act 2010 (AVOG 2010), Federal Law Gazette I No. 9/2010 as amended; § 4

Paragraph 1 of the ordinance of the Federal Minister

for finances to carry out the

Tax Administration Organization Act 2010 (AVOG 2010 – DV), Federal Law Gazette II No. 165/2010

idgF; §§ 81, 82 and 86 paragraph 1 of the Income Tax Act 1988 (EStG 1988), BGBl.

No. 400/1988 as amended; Sections 251 and 252 of the Fiscal Penal Act (FinStrG.), Federal Law Gazette No. 129/1958

as amended by Federal Law Gazette No. 21/1959 as amended.

A. Submissions of the parties and course of the proceedings

REASON

1. The complainant asserted in a procedural submission dated January 30, 2020

a violation of the right to secrecy and brought about it summarized as follows

before:

The Respondent has a preliminary appeal decision to both the

Federal Ministry for **** and to 5*4 other people who are involved in the underlying

procedures were involved. Personal data (specifically:

name, address, place of residence) of the complainant to the others in Annex A

named parties has been disclosed without his consent. The disclosure of this data

was not necessary for the delivery of the preliminary appeal decision. Moreover

is the respective trade union affiliation by citing the legal representatives

derivable, although this does not apply to his address. The input was the

A copy of the preliminary appeal decision dated January 22, 2020 is attached.

2. With completion of February 19, 2020

demanding the data protection authority

Respondent to comment.

3. With a submission dated March 17, 2020, the Respondent commented as follows:

As an employee (along with 5*3 other employees), the complainant was the

Complaint by the Federal Ministry for **** as a former employer against the dem
BM**** towards issued notices of liability and payment regarding income tax
(permittedly) joined. The respondent is a federal tax authority
and would have the special data protection provisions of the BAO in the tax procedure
apply. When a disclosure or exploitation of protected by § 48a BAO
Circumstances or circumstances is permissible, results above all from § 48a Para. 4 BAO,
according to which a disclosure is permissible if it enables the implementation of a
tax procedure. The preliminary appeal decision in question (BVE) of
January 22, 2020 was issued in the course of a tax procedure. In such a
In this case, confidentiality obligations would not be violated if the tax authority
Third parties only to the extent necessary insight into the circumstances of the protected
person. The criteria of Section 48a (4) lit. a BAO are therefore met.
Against the background of § 281 BAO, according to which only uniform
Decisions could be made, the completion of the complainant
BM**** and the accession applicants were to be issued uniformly. § 281 paragraph 1
BAO also indicates a public interest in the processing of the name and the
Address of the complainant in the address field of the BVE ruling. The BVE
could only be effective if they addressed the addressees in their verdict
designate by law (§ 93 Para. 2 BAO) and make them known to the addressees
(delivered) will. Simply addressing the envelope would not have sufficed. To
According to § 48a paragraph 4 lit. b second case BAO, the disclosure of circumstances is legitimate if
it is in the overriding public interest. That too is in the public interest
Public interest in the proper fulfillment of a public authority
understand the tasks ahead. Without addressing the BVE to the BM**** and to
all applicants for accession would not have existed for the respondent
execution according to the law (and thus effective). To submit the

Complainant, after which by citing the legal representatives on the trade union membership of the respective person could be concluded stated that the complainant was not authorized to take action in this context.

4. With the date of March 27, 2020, the data protection authority granted the Complainant to be heard.

5. In a submission dated May 8, 2020, the complainant summarized as follows before:

The Respondent's comments on § 48a BAO primarily concern the tax secrecy obligations. For example, this obligation will then violated when an official makes available circumstances unknown to the public or reveal content from tax procedures. From the complainant's point of view, In this case, there is no subject of secrecy under tax law. the personal data of the complainant are also not in the address field been cited. From the complainant's point of view, it would have been entirely sufficient to the respective addressee in the address field provided for this purpose (mail merge), without to publish the address data.

B. Subject of Complaint

Based on the complaint, the subject of the complaint is whether the Respondent informs the Complainant by processing names and Residential address in the context of a preliminary complaint decision in the right to secrecy according to § 1 Abs. 1 DSG.

C. Findings of Facts

1. The Federal Ministry for **** (hereinafter: BM****) raised on December 3, 2018 Complaint against the liability notices of the respondent pursuant to Section 82 Income Tax Act 1988.

2. The complainant is a (former) employee of the BM****,

with which he joined the tax law complaints procedure.

3.

In the course of the tax law complaints procedure, the

Respondent issued a preliminary appeal decision on January 22, 2020, which

excerpts as follows (formatting not reproduced 1:1):

Tax office N*** 22.1.2020

***weg 25 tax account number:

5**0V*** 0* - 07*/597*

tax account number

FA FB

Please include all of your entries:

If you have any questions, please contact

Tax office N***

Phone: +43 **33**66

Fax: +43 ** 33 66 *229

Bank details: BANK

BIC: *****,

DVR: 0**5389*

IBAN: AT**0000****0000 0000

To the

BM****

*Department

Z*****gasse *39

503* Q***

as a complainant

To the

in the supplement under 1 to 5*4

mentioned persons

as an intervener in the complaint

Complaint preliminary decision

The preliminary appeal decision regarding the appeal of December 3rd, 2018 is issued

BM**** - *Department, in 503* Q***, Z*****gasse *39, against the liability notices

§ 82 EStG 1988 regarding income tax for the years 2012, 2013, 2014 and 2015 from
10/30/2018.

The complaint is based on Section 263 of the Federal Fiscal Code (BAO)

decided:

The complaint is dismissed as unsubstantiated. Concerning the contested decisions

Liability for income tax according to § 82 EStG 1988 for the years 2012, 2013, 2014 and 2015
from October 30th, 2018 remain unchanged.

III.1.1. Joining the procedure according to § 257 BAO

The following must be stated in advance for the declaration of membership:

In the present complaints procedure, (former) employees are the complaint

of the BM***, *department as (former) employer against those listed in the verdict,

liability and payment notices issued to the BM**** - *department

related to income tax. The individual applicants are in the attached

list by name. The accessions are subject to the legal provisions

accordingly and were therefore involved in the present complaints procedure

to include. Regarding the admissibility of the declarations of accession, see Ritz, BAO6, § 257 Tz 13

and the one quoted therein, ed. Case law to refer, which in the event of a complaint

of the employer against the wage tax liability notice to the employee

right of accession.

With the present preliminary appeal decision (BVE), which is addressed to the BM**** - *Department

and the persons listed in the attachment under 1 to 5*4

about the complaint mentioned in the verdict and about the accessions to this complaint

agreed. The BVE does not give reasons to the applicants for membership

Tax payment claim (cf. e.g. VwGH 22.03.1999, 98/17/0192).

4. The preliminary appeal decision of January 22, 2020 was sent to the BM**** and to the

Delivered to 5*4 applicants (by post). The preliminary appeal decision was also there

a list of all applicants attached who

the following

information of

complainant included:

6*8

Gunther A***

M***gasse 6/*1

3**2V***

6*9

Gunther A***

M***ALLEY 6/*1

3**2V***

Evidence assessment: The statements made are based

primarily on the

submission of the complainant dated January 30, 2020, initiating the proceedings

A copy of the preliminary appeal decision of January 22, 2020 was submitted. The

The complainant's submissions were supported by the respondent with comments

dated March 17, 2020 and is therefore undisputed.

D. In legal terms it follows that:

D.1. General and Relevant Legislation

According to § 1 para. 1 DSG everyone has, in particular with regard to the respect of his

Private and family life, right to secrecy of

concerning him

personal data, insofar as there is a legitimate interest in it. The existence

such an interest is excluded if data as a result of their general

availability or due to their lack of traceability to the person concerned

secrecy claim are not accessible.

It should be noted that in the present case a violation of the right to

Confidentiality according to § 1 Para. 1 DSG is to be checked and restrictions of this

Claim from Paragraph 2 leg. cit., but not from Art. 6 Paragraph 1 or Art. 9 Paragraph 2 GDPR

result. However, the GDPR and in particular the principles enshrined therein are

to interpret the right to secrecy (cf. the decision of the DSB

from October 31, 2018, GZ DSB-D123.076/0003-DSB/2018).

According to paragraph 2 leg. cit. the intervention of a state authority requires a legal one

Basis. Such laws prohibit the use of data that is specific by its nature

are worthy of protection, only provide and must provide for the protection of important public interests

at the same time adequate guarantees for the protection of confidentiality interests

determine those affected. Even in the case of permissible restrictions, the intervention in the

fundamental right can only be carried out in the mildest way that leads to the goal.

Tax authorities are those entrusted with the collection of public taxes and contributions

Authorities of the tax administration of the federal government, the states and municipalities (§ 49 para. 1

BAO).

According to § 52 BAO in connection with § 9 Abs. 1 AVOG 2010 and § 4 Abs. 1 AVOG 2010 - DV

the tax office N*** has been set up for the * district (general area of responsibility). Besides

there is an extended scope of duties of the tax office N*** according to § 15 AVOG 2010.

The employer is liable to the federal government for the withholding and payment of wages

income tax to be withheld (§ 82 EStG 1988). The tax office has according to § 86 paragraph 1 EStG 1988 the proper withholding and payment of wage tax through an audit

All employers who have a permanent establishment in the area of the tax office (§ 81 leg. cit.) entertain, monitor.

A complaint about a decision on which a final decision has not yet been made can join who according to tax rules for the subject matter of the disputed

Tax that forms the notification can be considered as joint and several debtors or as a party liable comes (§ 257 Abs. 1 BAO). In the event that the employer lodges a complaint, the Employees entitled to join (VwGH January 23, 1961, 0235/58).

Complaints about official notifications are referred to as a preliminary decision on complaints to deny the decision (§ 262 Para. 1 BAO). In the complaints procedure can only uniform Decisions (e.g. preliminary decisions on complaints) are made. They work for and against the same persons as the contested decision (§ 281 Para. 1 BAO).

Every decision must contain the sentence and the person to whom the it is issued (§ 93 Para. 2 BAO). Accomplishments become effective when they be announced for which they are intended according to their content. The announcement is made in the case of written transactions by service (§ 97 Para. 1 lit. a BAO).

In connection with the implementation of tax proceedings or fiscal criminal proceedings there is an obligation of secrecy under tax law. According to paragraph 2 and paragraph 3 leg. cit. e.g. injured if an official or certain other persons disclose circumstances or circumstances of another that are unknown to the public. who

Fiscal secrecy obligations are violated according to §§ 251 and 252 FinStrG to be punished in court. An exception exists, among other things, if this is the Execution of a tax procedure or a fiscal criminal procedure serves or in compelling public interest (§ 48a Para. 1 to Para. 4 BAO).

The whole or

partially automated and non-automated processing

personal data by a tax authority is permissible if it is used for the purposes of

collection of taxes or otherwise to fulfill their duties or in the exercise of public

Violence that was transferred to it is necessary (§ 48d Para. 1 BAO).

D. 2. In the matter

It should be noted at the outset that the respondent is in accordance with § 49 para. 1 BAO

a state authority within the meaning of § 1 para. 2 DSG acts, which is also due to the

Provisions of the BAO and § 4 para. 1 AVOG 2010 - DV or § 15 AVOG 2010 own

legal personality. The Respondent was thus considered data protection

to qualify the person responsible for the processing operations that are the subject of the procedure,

which, moreover, was never disputed.

In addition, it is undisputed that the name and home address are

personal data within the meaning of the GDPR or the DSG, to which in principle also

a legitimate interest in secrecy on the part of the complainant within the meaning of Section 1 (1).

DSG exists.

As can be seen from the findings, the personal data of the

complainant in the context of the tax law procedure towards others

parties to the proceedings – and thus to third parties.

The qualification of the respondent as an "authority" within the meaning of Section 1 (2) DSG

require that interference with the fundamental right to data protection only on the basis of a sufficient

determined legal basis. The complainant's statements

according to which he has not given his consent regarding the processing of his data

therefore irrelevant.

If the Respondent states in this regard that in certain cases pursuant to

§ 48a para. 4 BAO exceptions exist, so this overlooks the fact that these

determination

expressly

on

the

tax secrecy obligations

("Tax Secrecy"), related violations being subject to (criminal) judicial proceedings
are punishable.

Even if there is a breach of the confidentiality obligations under tax law

at the same time mean a violation of the right to secrecy according to § 1 Para. 1 DSG

could, the complainant neither complained about this nor did it arise during the

subject procedure

other

relevant indications. the

from the

The exceptional provisions cited by the Respondent prove themselves before this one
background as not relevant.

However, a tax authority is entitled to process personal data if

if this is necessary according to § 48d Abs. 1 BAO to fulfill their legal tasks:

As in point D.1. stated provisions of the BAO and AVOG 2010

be removed

can, was the Respondent

to issue one

Complaint preliminary decision

responsible in the tax procedure, which means that

Existence of a statutory task is to be affirmed in a first step.

Regarding the complainant's name (point 2):

the

legal validity of the preliminary appeal decision was of the

lawful designation of the addressees, including the complainant pursuant to Section 257

Para. 1 BAO counted, as well as the effective delivery to the parties to the proceedings

§§ 93 para. 2 BAO and 97 para. 1 BAO dependent.

The naming of the addressee of the notice must be of such clarity and

Be understandable, that clear identification is possible, confusion

are excluded and the assignment of the decision to the person of the designated person

can be carried out without a doubt (UFS Salzburg 21.7.2011, RV/0091-S/11, TAXguide

2011/37/2098). The Administrative Court represents this in its settled case law

the view that in the case of natural persons, the designation of the addressee of the notification by

his first and last name must be given (cf. e.g. VwGH 24.2.2005,

2001/15/0160).

Against this background, it can be stated in a further step that the

Citing the first and last name of the complainant undoubtedly to fulfill a

legal obligation - specifically: issue of a preliminary complaint decision -

was required. That this is compared to other parties to a tax procedure

is disclosed was

for the average legal subject

in any case

understandable and also lies within the general experience of life. Besides, the

named mention

just not enough on the envelope. the

The complaint in question was therefore dismissed on this point.

Finally, the complainant's argument that by citing the

Legal representatives of the other parties to the proceedings on their trade union membership

can be closed. It should be noted that the right to

Confidentiality according to § 1 Para. 1 DSG (as well as the rights of data subjects according to the DSGVO)

are highly personal rights, their assertion

as part of a

Complaints procedure requires individual concern, with which the relevant

The complainant's legitimacy to take action was not given.

To cite the complainant's address data (paragraph 1):

On the other hand, it is not apparent to the data protection authority and was

Respondent also did not specify to what extent the further

Disclosure of the complainant's residential address to the others

parties to the proceedings for the clear identification of which was necessary. Incidentally, is

to state that a uniform decision within the meaning of § 281 para. 1 BAO already then

exists if the matter (content) is the same for all parties to the proceedings

is decided. Service within the meaning of Section 97 (1) leg. cit. without disclosure

of the complainant's home address to third parties is possible and appropriate.

As a result, the data processing in the form of disclosure of the residential address was complete

the name of the complainant to fulfill the statutory duties of the

Respondent within the meaning of § 48d para. 1 BAO not required. The intervention took place

especially not in the mildest, goal-leading way, because of the clear identification

of the complainant by stating his first and last name is already sufficient

is possible (cf. already the notice of August 7, 2019, GZ DSB-D123.737/0003-

DSB/2019; for excessive stating of the date of birth, see BVwG 09/21/2017, GZ

W101 2017195-1).

It was therefore to be decided accordingly.