



St. Gallen, 13 December 2019

Press Release

regarding judgment A-1378/2019 of 5 December 2019

Judgment on the corporate fee for radio and television

At a mere six, the Federal Administrative Court deems the number of tariff levels that the Swiss Ordinance on Radio and Television uses to determine the corporate fee to be unconstitutional in a specific case. The court is urging the Federal Council to scrutinise the shortcomings identified during its review scheduled for mid-2020 and to rectify them promptly.

Swiss voters approved the revised version of the Federal Act on Radio and Television in mid-2015 and since 1 January 2019 a new radio and television fee is imposed on households and companies irrespective of the possession of a receiving device.

The case at hand

Acting in accordance with the new Swiss Ordinance on Radio and Television, the Swiss Federal Tax Administration (FTA) invoiced an SME from the canton of Bern for the amount of CHF 2,280.00 in January 2019. This figure was based on the company's annual turnover and the tariff levels specified in the Federal Council's ordinance:

	Turnover in CHF	Fee in CHF
Level 1	500,000 to 999,999	365
Level 2	1 million to 4,999,999	910
Level 3	5 million to 19,999,999	2,280
Level 4	20 million to 99,999,999	5,750
Level 5	100 million to 999,999,999	14,240
Level 6	1 billion and over	35,590

The company concerned contested the size of the CHF 2,280.00 fee and referred the FTA's adverse decision to the Federal Administrative Court (FAC). Essentially, it argued that the radio and television fee placed a much greater burden on it in relative terms than on companies with significantly higher turnover, which was incompatible with the principle of equality before the law.

Hugely important asset

Switzerland's federal constitution guarantees the independence of radio and television and autonomy in their programming. The radio and television fee

serves to finance the independent, high-quality supply of information as enshrined in the constitution. This is a hugely important asset, both in itself and for the promotion of direct democracy in particular, and is ultimately essential in making Switzerland a stable, well-functioning and thus attractive location (for businesses). In other words, it is an asset that benefits companies as well as individuals. It is thus necessary and appropriate that companies also contribute their fair share towards a well-functioning, independent broadcasting system.

Not enough differentiation

The FAC recognises that a degree of generalisation is unavoidable as regards charging the corporate fee. However, the court has concluded that it can see no objective grounds in the specific case to be ruled on that would justify such a sweeping generalisation as that resulting from dividing the companies that pay the fee into only six tariff levels. In the case at hand, the company in question is put at tariff level 3, where turnover ranges from CHF 5 million to just under CHF 20 million. Thus the companies at this level with the lowest turnover pay more in relative terms than those with higher turnover, and the effect increases at each higher level. This means that the company in the present case is charged 0.04 per cent of its turnover, while one turning over CHF 1 billion would pay at most 0.004 per cent, i.e. at least ten times less. The FAC deems this incompatible with the constitutional principle of equality before the law.

Recommendations to the Federal Council

Back in October 2017, the Federal Council announced plans to assess the impact of the new fee system by mid-2020 at the latest based on the experience gained from the whole of the first year in which it was levied. The court is neither able nor entitled to pre-empt this, not least given the many constitutionally permissible options available for setting the corporate fee. In addition, the actual burden on the companies is very low. Thus, the FAC is restricting itself to establishing unconstitutionality in the case at hand and is urging the Federal Council to scrutinise the shortcomings at its scheduled review and to rectify them promptly. Therefore, and in order not to jeopardise the ongoing financing of radio and television, the court has decided not to prohibit the application of the relevant provision of the ordinance. Accordingly, the court is partially upholding the complaint by the Bern-based SME in terms of the considerations but is rejecting it in all other respects. The fee will therefore not be reduced as requested.

This judgment may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (305.5 FTE) and its 76 judges (68.4 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.