

**Kleine Anfrage**

**des Abg. Dr. Hans-Peter Wetzel FDP/DVP**

**und**

**Antwort**

**des Finanzministeriums**

**Ausgaben am Europäischen Gerichtshof**

Kleine Anfrage

Ich frage die Landesregierung:

1. Welche Prozesse sind derzeit beim Europäischen Gerichtshof (EuGH) gegen die Bundesrepublik Deutschland rechtshängig, die eventuelle Mehrausgaben zur Folge haben könnten?
2. In welcher Höhe könnten Mehrausgaben oder Mindereinnahmen auf die Bundesrepublik Deutschland zukommen?
3. Wie können sich diese eventuellen Mehrausgaben bzw. Mindereinnahmen auf Baden-Württemberg auswirken?
4. Hat Baden-Württemberg mit eventuellen Mindereinnahmen zu rechnen?

06. 12. 2007

Dr. Wetzel FDP/DVP

## Begründung

In der Debatte im Landtag zum Nachtragshaushalt am 28. November 2007 hat Finanzminister Stratthaus darauf hingewiesen, dass Prozesse beim Europäischen Gerichtshof gegen die Bundesrepublik Deutschland rechtshängig seien. Man müsse damit rechnen, dass eventuelle Mehrausgaben auf die Bundesrepublik und dadurch Mindereinnahmen auf Baden-Württemberg hinzukommen könnten.

## Antwort

Mit Schreiben vom 21. Dezember 2007 Nr. 5–0404.4/51 beantwortet das Finanzministerium die Kleine Anfrage wie folgt:

### Vorbemerkung:

Die Kleine Anfrage bezieht sich auf die Einbringungsrede zum Nachtragsentwurf 2007/2008 im Landtag am 28. November 2007. Dabei erfolgte im Zusammenhang mit der derzeitigen sehr guten Steuerentwicklung folgende – als Mahnung vor übertriebenem Optimismus zu verstehende – Aussage:

„Es kommen auch noch reine Steuerrisiken dazu. Vor dem Europäischen Gerichtshof gibt es einige ganz große Prozesse – nicht bezogen auf das Land Baden-Württemberg, sondern auf die Bundesrepublik Deutschland –, die möglicherweise Milliarden an Steuermindereinnahmen verursachen können.“

Hintergrund für diese Aussage sind auch die als Folge des EuGH-Urteils im Fall Meilicke zu erwartenden Steuermindereinnahmen. Nach Erhebungen des Bundesfinanzministeriums ist mit bundesweiten Mindereinnahmen bei der Körperschaftsteuer in Höhe von insgesamt rd. 5 Mrd. Euro zu rechnen. Nach den Erkenntnissen zu den Terminen der Steuerschätzungen im Mai bzw. November diesen Jahres war bzw. ist mit folgendem Anfall dieser Mindereinnahmen zu rechnen (vgl. auch Schreiben des Finanzministers an den Vorsitzenden des Finanzausschusses vom 22. Mai und 16. November 2007):

	2007	2008	2009	2010
Mai 2007	– 255 Mio. €	– 3.495 Mio. €	– 1.250 Mio. €	+/- 0
November 2007	+/- 0	– 255 Mio. €	– 3.495 Mio. €	– 1.250 Mio. €

Die zwischen den Steuerschätzungen Mai und November 2007 geänderte Abwicklung ergibt sich aus verfahrenrechtlichen Problemen (Ausgestaltung der zur Berücksichtigung der EuGH-Urteilsfolgen erforderlichen Steuerbescheinigungen). Die vorgenannten Entwicklungen sind im Rahmen der Regionalisierungen der bundesweiten Schätzergebnisse im Mai und November 2007 in die baden-württembergischen Körperschaftsteueranteile sowie in die Folgewirkungen bei den Ansätzen für den Länderfinanzausgleich sowie den kommunalen Finanzausgleich eingegangen.

### Zu:

1. Welche Prozesse sind derzeit beim Europäischen Gerichtshof (EuGH) gegen die Bundesrepublik Deutschland rechtshängig, die eventuelle Mehrausgaben zur Folge haben könnten?
2. In welcher Höhe könnten Mehrausgaben oder Mindereinnahmen auf die Bundesrepublik Deutschland zukommen?

3. *Wie können sich diese eventuellen Mehrausgaben bzw. Mindereinnahmen auf Baden-Württemberg auswirken?*
4. *Hat Baden-Württemberg mit eventuellen Mindereinnahmen zu rechnen?*

Aus der Anlage sind die beim EuGH gegen Deutschland anhängigen Verfahren bei den direkten Steuern (siehe dort Seiten 10 bis 12) ersichtlich. Diese Liste wurde von der Kommission veröffentlicht und liegt nur in englischer Sprache vor. Aus der Anlage können die gegen Deutschland anhängigen Verfahren identifiziert werden. Grundsätzlich muss jedoch festgestellt werden, dass auch EuGH-Verfahren gegen andere Länder bei analogen Sachverhalten in Deutschland finanzielle Auswirkungen haben können.

Belastbare, zusammenfassende Unterlagen zu den bundesweiten finanziellen Auswirkungen der anhängigen Verfahren – ähnlich wie beim Meilicke-Urteil – gibt es nicht. Demzufolge können auch für Baden-Württemberg keine konkreten Daten genannt werden.

Des Weiteren ist darauf hinzuweisen, dass durch die an die Steuerverteilung anschließenden Finanzausgleichssysteme eine abschließende Betroffenheit des Landeshaushalts im Vorfeld der Verfahren nur schwerlich quantifizierbar ist.

Stratthaus  
Finanzminister

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Comm. v. <b>Sweden</b>	<u>IP/07/20</u> – discriminatory taxation of contributions to foreign pension funds (COM decision of 12.12.2006 - infr. 2000/4538) – application to be suspended subsequent to announced changes in legislation
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Comm. v. <b>Italy</b>	<u>IP/07/66</u> –withholding tax on dividends received by foreign shareholders higher than tax due by residents (COM decision of 12.12.2006 - infr. 2004/4350)
Comm. v. <b>Portugal</b>	<u>IP/07/66</u> –withholding tax on dividends received by foreign shareholders higher than tax due by residents (COM decision of 12.12.2006 - infr. 2004/4353)
Comm. v. <b>Belgium</b>	<u>IP/07/67</u> – refusal of credit for withholding tax levied on dividends from foreign companies (COM decision of 12.12.2006 - infr. 2005/4504)
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<b>Cases removed from the register</b>	
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<a href="#">C-290/98</a>	<b>Comm. v. Austria – anonymous savings accounts</b> (OJ C 299 26.09.1998 p. 18); opinion AdvG. Saggio 18.5.2000; removed from the register by decision of 29.09.2000 (OJ C 45 10.02.2001 p. 17)
<a href="#">C-249/00</a>	<b>Comm. V. Hellenic Republic</b> (OJ C 247 26.8.2000 p. 22) – reduced tax rate for the purchase of land with foreign currency (press release IP/00/256) – Withdrawn after legislative changes, – removed from the register 02.08.2001 OJ C 348 08.12.2001 p. 22
<a href="#">C-288/01</a>	<b>Thomsen v. FA Flensburg (D)</b> (Art.39, 43, 49; § 10 Abs. 2 Nr. 2 EStG 1990) – OJ C 275 29.9.2001 p. 8 – removed from the register 02.03.2002, OJ C 144 15/06/2002 p. 32
<a href="#">C-298/01</a>	<b>Comm. v. Germany (discriminatory conditions sickness insurance § 257(2a) SGB V, with tax consequences § 3 Nr.62 EStG)</b> (OJ C 289 13.10.2001 p. 14), removed from the register 11.12.2003, OJ 94 17.04.2004 p. 3
<a href="#">C-450/02</a>	<b>Qualitär Engineering Services v. FA Kassel-Goethestraße (D)</b> – waiver for wages withholding tax (DTA UK-D Art.XI, request from BFH - I R 21/01), OJ C 70 22.03.03 p. 1, removed from the register 05.05.2004 OJ C 228 11.09.2004 p. 34
<a href="#">C-400, 401, 402/97</a>	<b>Juntas Generales de Gipuzkoa, Alava y Bizkaia (ES)</b> (OJ C 41 07.02.1998 p. 9), opinion AdvG Saggio 01.07.1999; removed from the register 16.2.2000, ECR 2000, p. I-1073,1091
<a href="#">C-548/03</a>	<b>EP v. Council of the EU (legal base of dir. 2003/93 – mutual assistance)</b> – OJ C 47 21.02.2004 p. 24; see also <a href="#">C-338/01</a> and <a href="#">C-533/03</a> , in parallel:
<a href="#">C-549/03</a>	<b>EP v. Council of the EU – legal base of Reg. 1798/2003 admin.coop.VAT</b> both removed from the register 16.12.2004
<a href="#">C-8/04</a>	<b>Bujara v. Rijksbelastingdienst (NL)</b> – MFN treatment of German resident under NL-B DTA? (request of 08.01.2004 from Gerechtshof 's-Hertogenbosch); OJ C 59 06.03.2004 p. 17; similar to <a href="#">C-376/03</a> removed from the register 15.12.2005 (withdrawal of request)
<a href="#">C-47/05</a>	<b>Comm. v. Spain – tax deductibility of contributions to foreign pension funds – Art. 39, 43, 49, 56 EC + EEA, (infr. 2002/2293)</b> <a href="#">IP/04/873</a> order of 18.01.2007
<a href="#">C-56/05</a>	<b>Comm. v. Greece – non-transposition of Dir.2003/48; OJ C 93 16.04.2005 p. 12</b> removed from the register 25.5.2005. (after adoption of national measures).
<a href="#">C-66/05</a> DG EMPL	<b>Comm (supported by ES) v.The Netherlands (supported by FIN) – foreign pension income as base for social contributions</b> OJ C 93 16.04.2005 p. 14 removed from the register 22.11.2006
<a href="#">C-105/05</a> DG EMPL	<b>Comm v.Finland – foreign pension income as base for social contributions</b> (infr.2001/4647) OJ C 93 16.04.2005 p. 22 removed from the register 22.11.2006
<a href="#">C-185/06</a>	<b>British Telecommunications v. Commissioners of HM Rev. and Customs (UK)</b> – repayment of voluntarily, but erroneously paid taxes - <a href="#">OJ C 154 01.07.2006 p. 9</a> , removed from the register 25.08.2007 (order of the President of the Court of 5 June 2007) (withdrawal of request)

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<b>Cour de Justice Benelux (Brussels)</b> <a href="http://www.courbeneluxhof.be/index.htm">http://www.courbeneluxhof.be/index.htm</a>	
19.03.2007	<a href="#">A 2006/2/11</a> <b>Metabouw</b> Bouwbedrijf v. Belgium – Art. 2 and 59 of the Treaty on Benelux Union; similar to ECJ case <a href="#">C-383/05</a> R. <b>Talotta</b> v. Belgium
<b>EFTA Court (Luxemburg)</b> <a href="http://www.eftacourt.lu/">http://www.eftacourt.lu/</a>	
20.05.1999	<a href="#">E-6/98</a> <b>Norway</b> v. EFTA Surveillance Authority (ESA) – (State aid in form of regionally different social security taxation)
12.12.2003	<a href="#">E-1/03</a> EFTA Surveillance Authority (ESA) v. <b>Iceland</b> – higher tax on intra-EEA flights than on domestic flights – Art. 36 EEA Agreement (~49 EC) - <a href="#">OJ C51 26.02.2004 p. 3</a>
23.11.2004	<a href="#">E-1/04</a> <b>Fokus Bank ASA</b> v. Staten ( <b>Norway</b> ) – tax credit for foreign shareholders Art. 40 EEA Agreement; hearing 28.09.2004 – <a href="#">OJ C 45 23.02.2006 p.10</a>
24.11.2005	<a href="#">E-2/05</a> EFTA Surveillance Authority (ESA) v. <b>Iceland</b> – failure to end tax scheme for internat. trading companies (ITC) considered as State aid and to recover the State aid

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**Pending:**

<a href="#">E-7/07</a>	<b>Seabrokers AS v. Staten/Skattedirektoratet (N)</b> - request of 25 May 2007 from Stavanger District Court – Art. 4, 31, 40 of the EEA Agreement – <b>Oral Hearing scheduled for Friday 1<sup>st</sup> February 2008; 10:00.</b>
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**Removed:**

<a href="#">E-4/06</a>	<b>KLM Royal Dutch Airlines v. Staten (Norway)</b> – reimbursement of taxes collected in conflict with provisions of the EEA Agreement, removed by order of 22.12.2006
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<b>European Court of Human Rights (Strasbourg)</b> <a href="http://www.echr.coe.int/">http://www.echr.coe.int/</a>	
23.10.1990	(17/1989/177/233) Case of <b>Darby v. Sweden</b> (duty to pay special tax to the Church of Sweden), art. 14, 9 and 50 of the Human Rights Convention (HRC), Art.1 First additional Protocol to the HRC
29.08.1997	(71/1996/690/882; application 19958/92) Case of <b>A.P., M.P. and T.P. v. Switzerland</b> (criminal sanction on heirs for tax evasion committed by deceased), art. 6 § 2 HRC
29.08.1997	(75/1996/694/886; application 20919/92) Case of <b>E.L., R.L. and O.L. v. Switzerland</b> (criminal sanction on heirs for tax evasion committed by deceased), art. 6 § 2 HRC
22.05.1998	(81/1997/865/1076) Case of <b>Hooze v. The Netherlands</b> (unreasonably long time of proceedings in tax fraud), art. 6 § 1 HRC
03.05.2001	(81/1997/865/1076) Case of <b>J.B.</b> v. Switzerland (no obligation to incriminate oneself), art. 6 § 1 HRC
12.07.2001	application no. 44759/98: Case of <b>Ferrazzini v. Italy</b> (unreasonably long proceedings in a tax case), art. 6 § 1 HRC; judgment: tax obligations not covered by the term "civil rights and obligations" (dissenting opinion of Judge Lorenzen, joined by 5 other judges)
16.04.2002	(application no.36677/97: Case of S.A. <b>Dangeville v France</b> (damages for refusal to repay VAT unduly paid), Art.1 First Prot. HRC; [in French] <a href="#">Press Release 201</a> of 16.4.2002
23.07.2002	application no. 36985/97: Case of <b>Västberga Taxi AB and Vulic v. Sweden</b> (access to justice, length of procedure in tax matters), art. 6 § 1 HRC
06.03.2003	application no 63214/00: Case of <b>Ohlen v. Denmark</b> (length of criminal proceedings in a tax fraud case)
22.07.2003	applications no 49217/99 and 49218/99: Case of SA <b>Cabinet Diot</b> and SA <b>Gras Savoye v. France</b> (damages for refusal to repay VAT unduly paid), Art.1 First Prot. HRC; [in French]
21.06.2005	application no. 50664/99: Case of <b>STRÄG DATATJÄNSTER AB v. Sweden</b> – bankruptcy because of tax debt, Art.1 First Prot. HRC
19.07.2005	application no 6638/03: Case of <b>P.M. v. UK</b> (tax deductibility of maintenance payments), Art. 14 HRC and Art.1 First Prot. HRC <a href="#">Press release 408</a>
09.03.2006	application no 10162/02: Case of <b>Eko-Elda AVEE v. Greece</b> (interest on tax repayment claim), Art.1 First Prot. HRC; [in French only] <a href="#">Press release 133</a>
10.07.2006	application no 13578/02: Case of <b>Armex Holding v. Czech Rep.</b> ; partial decision (obligation to pay the same taxes twice), Art.1 First Prot. HRC; struck out after friendly settlement, <a href="#">decision of 02.05.2007</a>
<a href="#">14.11.2006</a>	applications nos. 63684/00, 63475/00, 63484/00 and 63468/00: cases of <b>Hobbs, Richard, Walsh and Geen v. United Kingdom</b> –refusal of widow's bereavement allowance to widowers contrary to Art.14 HRC, <a href="#">press release 690</a>
<a href="#">12.12.2006</a>	application no 13378/05: Case of <b>Burden and Burden v. United Kingdom</b> ; inheritance tax for surviving sister living together, but not for surviving spouse or civil partner, Art. 14 HRC, Art.1 First Prot. HRC, judgment of 4 <sup>th</sup> section <a href="#">press release 777</a> ; referred to Grand Chamber <a href="#">press release 488</a> of 06.07.2007

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<u>09.01.2007</u>	application no 803/02: Case of <b>Intersplav v. Ukraine</b> ; violation of tax repayment obligation protected by Art.1 First Prot. HRC <a href="#">Press release 14</a>
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<b>World Trade Organization (Geneva)</b>	
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<u>21.02.2006</u>	US v. European Communities - FSC (Foreign Sales Corporations) case, Report of the Appellate Body (Doc.WT/DS108/AB/RW2)
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