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By PwC Deutschland | 29 September 2025

Official collection of guiding reference values of the MoF under review

In a recent judgment, the Supreme Tax Court commented on the retention requirements when determining profits on an accrual accounting basis (Betriebsvermögensvergleich) and using an open cash register, the choice between several possible methods to estimate the tax base (Section 162 Fiscal Code), and the admissibility of an estimate based on the official collection of guiding reference values published by the Federal Ministry of Finance (MoF).

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Background

The plaintiff ran a discotheque, a bar, and a hookah lounge (shisha bar). During a tax audit it was found that the plaintiff had only noted the daily takings for the cash registers on a piece of paper and passed them on for accounting purposes. Individual cash register records (counting logs) were not presented. In addition to these formal deficiencies a reconciliation of the posted incoming invoices with the declared sales revealed further discrepancies. Furthermore, it was found that, taking into account the admission price, only 58 people on average had paid for admission to the discotheque, which was licensed for 321 visitors, which the tax auditor found to be not credible and plausible. In the hookah bar meter protocols and electronic cash register records as well as cash register system documents were missing. As a result, the tax auditor made an estimate based on a gross profit margin determined by him.

The tax court of first instance dismissed the claim, referring exclusively to the MoF's collection of guiding reference values and the standard values shown for catering establishments. These standard guidelines („*Richtsatzsammlung*“, which contains nationwide comparative values for numerous economic sectors) are a tool (“guide”) for the tax authorities to verify the turnover and profits of businesses and, if necessary, to estimate them in the absence of other suitable documents.

Decision

The Supreme Tax Court overturned the judgment of the tax court and referred the case back to the tax court for further hearing and decision.

People don’t visit the disco to eat. The same applies from a tax perspective, the Supreme Tax Court said by stating that the gross profit markup rates from the official collection of guiding reference values of the Federal Ministry of Finance for catering establishments cannot be used when estimating the beverage sales of a discotheque.

The tax court offirst instance has correctly confirmed that the tax office was entitled to estimate. However, the assessment made by the tax court based on the official MoF collection of reference values was not justified in a plausible manner and therefore cannot be checked for its appropriateness. For this reason, the case is now referred back to the tax court for further hearing and decision. The Supreme Tax Court also points out that there are considerable doubts as to the suitability of the official standard rate collection in its current form as a basis for estimation.

The Supreme Tax Court explains that this judgment is also of interest beyond this particular case because, on the one hand, in the case of an estimate of the basis for taxation (Section 162 Fiscal Code) internal business comparisons based on the data and circumstances of the audited business itself are generally considered to be a more reliable estimation method than external business comparisons which are based on statistical

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averages for the respective industries. The tax office and tax court must take this into account when exercising their discretionary powers in the context of an assessment (Section 5 Fiscal Code) even though they are generally free to choose their assessment methods.

Secondly, the Supreme Tax Court addressed the minimum requirements that data collections or databases of the tax authorities must meet if they are to be considered in court proceedings. The Supreme Tax Court had already raised questions on this issue in an earlier decision of 14 December 2022 – X R 19/21, in which it requested the MoF to join the appeal proceedings.

Now, the Supreme Tax Court has expressed considerable doubts as to whether the MoF's official collection of guiding reference values in its current form is a suitable basis for estimation. This is due, on the one hand, to the lack of representative statistical quality of the data used to determine the standard reference values and, second, to the deliberate exclusion of certain groups of businesses.

Source:

Supreme Tax Court decision of 18 June 2025 X R 19/21 - published on 25 September 2025.

Keywords

documentation, record retention