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By PwC Deutschland | 02 November 2026

Requirements for suspension of statute of limitations pursuant to Section 171(5) General Tax Code

In a recently published decision, the Supreme Tax Court addressed the conditions under which the expiration of the assessment period (statute of limitations) is suspended due to inquiries by the tax investigation department.

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Background

Tax assessment notices may only be issued if the assessment period has not yet expired. However, Section 171 of the General Tax Code (GTC) contains a number of suspensions of the statute of limitations. For example, Section 171(5) Sentence 1 GTC reads as follows: “Where the departments responsible for tax investigations begin the process of calculating tax bases for the taxpayer before expiration of the period for assessment, the period for assessment shall not expire before the tax assessment notices to be issued on the basis of the calculations have become incontestable (…)“. The same shall apply, according to Section 171(5) Sentence 2, where the taxpayer has been informed before expiration of the period for assessment of the initiation of criminal tax proceedings or administrative fine proceedings because of a tax offence.

In this respect and from an objective point of view, this suspension of the statute of limitations does not cover the entire tax claim, but only, on a case-by-case basis, the taxes arising from the set of facts that were the subject of the investigation. This differs from the suspension of the statute of limitations triggered by the commencement of an external audit (Section 171(4) GTC) which covers the entire tax claim.

Past differences of opinion within the Supreme Tax Court now resolved

The requirements of Section 171(5) Sentence 1 GTC have been a matter of debate within the Supreme Tax Court to date. The Tenth Senate has now ruled that it is not sufficient for the taxpayer merely to be aware that an investigation into his tax affairs is underway. It must also be apparent to him which specific circumstances are the subject of the investigation. Thus, the objective requirements for the suspension of the statute of limitations (occurrence of specific events regarding certain circumstances) run parallel to the subjective requirements (recognition of the relevant set of circumstances).

Case in dispute

In the case at issue, the tax investigation unit conducted a search in 2006 regarding the 2001 income tax without notifying the plaintiff that criminal tax proceedings had been initiated. While it was clear that the plaintiff was aware of the investigations directed against her, she was unable to identify the specific issues under investigation. Requests by her criminal defense attorney for access to the case files had been denied on several occasions. She did not learn of the details until after the assessment period expired. By the time the amended tax assessment notice was issued, in which additional tax was assessed, the period for assessment had already expired. The Supreme Tax Court therefore upheld the decision of the lower tax court to revoke the relevant tax assessment

Further comments from the Supreme Tax Court

The Supreme Tax Court is not satisfied by the tax authority’s objection that the long

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duration of the suspension of the statute of limitations did not require any further protection for the taxpayer because the suspension of the statute of limitations only covers, from an objective standpoint, what specifically emerged from the tax investigation. If, according to the Supreme Tax Court, the suspension of the statute of limitations is indeed limited from an objective point of view, there is no compelling reason not to inform the taxpayer accordingly.

According to the Supreme Tax Court, this does not impose excessive demands on the tax authorities because they always have the option to formally notify the taxpayer of the initiation of criminal tax or administrative fine proceedings thereby initiating the suspension of the statute of limitations pursuant to Section 171(5) Sentence 2 GTC. In the case at hand, however, this did not happen.

Source: Supreme Tax Court, judgment of 19 August 2026 (X R 8/25) published on 29 October 2026.

Keywords

statute-barred, suspension of limitation period