

## **Section 162 – Estimating tax bases<sup>1</sup>**

(1) Where the revenue authority cannot determine or calculate the tax base, the revenue authority shall estimate it. All circumstances which have an impact on the estimate shall be taken into account.

(2) An estimate shall be undertaken in particular where the taxpayer is not willing to provide sufficient explanation regarding his details or refuses to give further information or a sworn statement or breaches his obligation to cooperate pursuant to section 90(2). The same shall apply where the taxpayer cannot furnish accounts or records which he is obliged under tax laws to keep, where the accounts or the records cannot be used as a basis for taxation pursuant to section 158 or where there are factual indications of the incorrectness or incompleteness of the details provided by the taxpayer on taxable income or business asset increases and the taxpayer fails to give his consent pursuant to section 93(7), first sentence, number 5. Where the taxpayer breaches his obligation to cooperate under section 90(2), third sentence, it shall be refutably assumed that taxable income in states or territories within the meaning of section 90(2), third sentence exists or is higher than the income declared.

(3) If a taxpayer breaches his obligation to cooperate under section 90(3) by failing to submit records of a business transaction or if the business transaction records submitted are essentially of no use, or if it is determined that he has not compiled records as described in the eighth sentence of section 90(3) in a timely manner, it shall be rebuttably presumed that his taxable income in Germany – which the records described in section 90(3) serve to determine – is higher than the income he declared. If in such cases the revenue authority must conduct an estimate and if this income can be determined only within a certain range – and in particular only on the basis of a price band – then the unfavourable limit of that range may be selected to the detriment of the taxpayer. If, despite the submission of usable records by the taxpayer, there are indications that the application of the arm's length principle would cause the taxpayer's income to be higher than the income declared on the basis of the submitted records, and if corresponding doubts cannot be cleared up because a foreign related party fails to fulfil its obligation to cooperate under section 90(2) or its obligation to provide information under section 93(1), the second sentence above shall apply accordingly.

(4) If a taxpayer fails to submit records as described in section 90(3) for a business transaction, or if the records submitted for a business transaction are essentially of no use, a penalty of 5,000 euros shall be imposed. The penalty shall be at least 5 percent and at most 10 percent of the additional income that results from a correction carried out on the basis of subsection (3) above, if this leads to a penalty of more than 5,000 euros. In cases where usable records are submitted late, the penalty shall total up to 1,000,000 euros, and shall be at least 100 euros for each full day following the expiration of the deadline. Insofar as the revenue authorities are given discretion in determining the penalty amount, their decision shall take into account not only the objective of inducing taxpayers to compile and punctually submit records as described in section 90(3), but also, and in particular, the benefits derived by the taxpayer and, in the case of late submission, the length of time by which the deadline

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<sup>1</sup> This translation is provided merely for information purposes. Only the German language version is authoritative for the application of the law.

has been missed. No penalty shall be imposed in cases where the non-fulfilment of obligations under section 90(3) appears to be excusable or the degree of fault is negligible. Fault on the part of a legal representative or aide shall be deemed the fault of the taxpayer. As a rule, the penalty shall be imposed after the completion of an external audit.

(5) In cases where section 155(2) applies, the tax bases to be specified in a basic assessment notice may be estimated.