



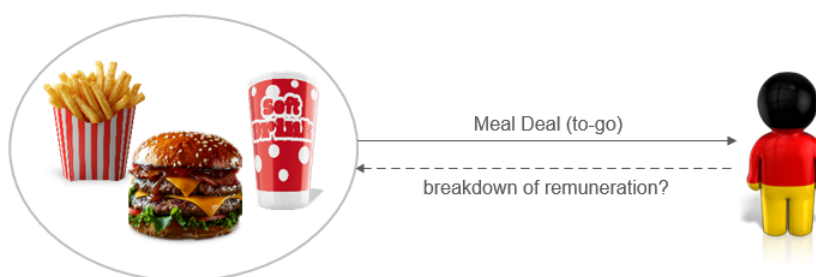
VAT NEWSLETTER

Splitting up the total price of a Meal Deal: When is an apportionment appropriate?

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1 Background

If food and beverages are sold together, at a flat rate, for consumption outside the premises in system catering (so-called "Meal Deals"), this price must be split up. This is because these supplies are two independent main supplies, consisting of the supply of food, at the reduced VAT rate of 7%, and the supply of a beverage, at the standard VAT rate of 19%. In practice, the question regularly arises as to which apportionment method should be used. In addition to an apportionment based on the ratio of the individual retail prices, an apportionment based on the cost of goods sold is also possible. The latter apportionment method is particularly popular in system catering, eg, where there are no retail prices for certain components of the value menu (eg certain burgers, toys in children's menus, etc). Since the profit margin on beverages is typically significantly higher than on food, an apportionment based on the cost of goods sold regularly results in a lower VAT liability for the taxable person, compared to an appropriation based on retail prices. The German Federal Fiscal Court (BFH) now had to decide whether the allocation method based on the cost of goods sold was appropriate in this specific case.



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2 Facts

The case concerns franchisees who operate fast food restaurants. They sold Meal Deals consisting of a drink, a burger and French fries at a uniform total price for consumption outside the restaurant. The franchisees split up the total price of the Meal Deal using the “food and paper” method. The apportionment was based on the cost of goods, ie the total expenses for the food and drink. The Fiscal Court of first instance considered the “food and paper” method to be permissible. The tax office, however, appealed against this decision.

3 German Federal Fiscal Court decision of 22 January 2025 – XI R 19/23

The German Federal Fiscal Court (BFH) overturned the judgment of the court of first instance. In the BFH's opinion, the “food and paper” method, applied in the present case, leads to inappropriate results. The BFH justified this on the grounds that if this method was applied, the price of a burger with a high cost of goods sold in the menu would in some cases exceed the retail price of the burger. From the BFH's point of view, this contradicts economic reality. This is because the price for a burger, in a discounted value menu, cannot be higher than its individual retail price outside a discounted value menu. In addition, the franchisees took changes in the purchase prices for goods into account immediately when allocating the costs, even though they had not yet sold these goods at that point in time. The BFH took the view that this also constitutes an inappropriate result.

The BFH did not have to decide on which apportionment method should be used in the present case. Nevertheless, it provides valuable guidance on the relationship between the apportionment methods. The court points out that the taxable person does not always have to use the simplest method possible. Even if individual retail prices are not available, a calculation using fictitious retail prices may be made. However, the BFH expressly points out that there may be permissible exceptions to this apportionment according to retail prices. The necessary requirement for this, however, is that the method used is at least as appropriate as the apportionment according to retail prices which, in principle, is the method to be used.

4 Consequences for the practice

When is an apportionment method appropriate? This is a question to be addressed by taxable persons who offer goods at a flat rate with different VAT rates. This applies not only to value menus in system catering restaurants, but also to product bundles and combination offers. The BFH has, once again, clarified that an apportionment method is only appropriate if it leads to economically reasonable results. In any case, reasonable results cannot be achieved, if the price, calculated using the cost of goods sold method for a product in the package deal, is higher than its actual retail price. This is logical.

If retail prices are available, an apportionment based on the ratio between them should generally lead to an appropriate result. However, if fictitious retail prices have to be used, due to the lack of actual retail prices, there are likely to be good reasons to believe that an apportionment, based on the cost of goods sold, is at least as appropriate. This is because when using fictitious retail prices, a certain degree of inaccuracy is naturally unavoidable, whereas the actual cost of goods sold generally corresponds to economic reality. In any case, even after the BFH's decision, the question of appropriateness cannot be answered in general terms. As is so often the case with VAT, also this question depends on the specific circumstances of each individual case.