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By PwC Deutschland | 25. Mai 2026

Inheritance tax: Legal fees incurred in connection with the settlement of an estate deductible as debt

Costs for legal advice and representation in connection with a partition auction for dissolution of a community of heirs are deductible from the total value of the estate. According to the Supreme Tax Court, this also applies if the community of heirs had already assumed management of the estate’s assets prior to a request for distribution by one of the co-heirs.

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Background

To begin with, it may be worth taking a closer look at **the concept of a community of co-heirs** (*Erbengemeinschaft*) under the applicable German Civil Code (BGB). From a legal point of view, a community of co-heirs is a kind of joint ownership where a single co-heir cannot unilaterally dispose of estate assets. However, because this community is designed for eventual dissolution, any single co-heir can demand its termination and the distribution of the estate at any time.

In **the case in dispute**, the plaintiff and his brother (B) were co-heirs to their late father's estate. The legacy included, among other things, domestic and foreign securities accounts as well as rental properties. In the course of the appeal proceedings, the plaintiff further claimed that his attorneys' fees be treated as deductible liabilities of the estate which had been incurred because of several legal disputes between 2012 and 2018 in connection with the settlement with his brother. The disputes concerned were, among others, partition auction proceedings to dissolve the community of heirs with respect to rental residential properties as well as the division of the rental accounts maintained for these properties. For advice and representation during the estate settlement the plaintiff retained a law firm. In this connection, he claimed estate liabilities totaling €104,156.

The lower tax court (Cologne Tax Court) recognized the legal fees incurred by the plaintiff in connection with the estate settlement and the proceedings for the partition sale, amounting to a total of €95,200, as deductible estate administration expenses. The legal fees incurred in connection with the division of the rental accounts, amounting to a total of € 8,956, were held as non-deductible estate settlement costs.

Decision

The Supreme Tax Court confirmed the decision of the Cologne Tax Court.

In 2016 and 2018, the community of heirs was in the process of settling the estate after one of the co-heirs had requested the settlement and filed motions for a partition sale of the land held in the estate. The ensuing legal consultation and representation costs, which were borne by the plaintiff alone, were directly related to the legal advice provided during the estate settlement as well as the civil court partition auction proceedings for the

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leased residential properties. They were used to divide the estate of the community of heirs between the plaintiff and B as co-heir and therefore constitute tax-deductible costs of the distribution of the estate within the meaning of Section 10 (5) Number 3 Sentence 1 of the Inheritance and Gift Tax Act (IGTA).

The connection between the claimed costs and the opening of the estate is not invalidated by the fact that the distribution of the estate among the heirs is based on the filing of the application and thus on the volition of one of the co-heirs. According to the Supreme Tax Court, it cannot be gathered from Section 10 (5) Number 3 Sentence 1 IGTA that only costs directly related to the fulfillment of the decedent's will - and therefore not based on a decision of the heir(s) themselves - are deductible under said provision.

The fact that the plaintiff and B took possession of the real estate as co-heirs following their father's death and initially continued the leases does not preclude the deduction of the claimed attorney fees as probate costs. The fact that the co-heirs initially entered the administration of the estate by continuing to lease the property and thereby deriving ongoing income from the inherited assets during the existence of the community of heirs does not preclude the possibility that the distribution of the estate may follow immediately thereafter due to a (subsequent) request by a co-heir to dissolve the community of heirs.

Summary: The Supreme Tax Court had already previously ruled that the costs of settling an estate include the expenses incurred in distributing the estate among the heirs. In its currently published decision, the court clarified that the costs of the distribution of the estate to be considered as estate liabilities also include the expenses for legal counsel as well as the attorney and court costs incurred for the judicial and extrajudicial representation of the co-heirs.

Source: Supreme Tax Court, judgment of 11 March 2026 (II R 10/23) published on 21 May 2026.

Schlagwörter

debt, heir, limited inheritance tax liability