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By PwC Deutschland | 25. Juni 2026

No transfer of deductions for modernization and preservation of listed buildings to heir

If a taxpayer who has incurred expenses for the maintenance of a historic building used as his or her primary residence dies before the end of the ten-year deduction period, the right to claim the deduction generally does not pass to the heir. With its most recently published decision the Supreme Tax Court confirmed its earlier case law in similar situations.

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Background

Section 10f of the German Income Tax Act (ITA) allows owner-occupiers under certain conditions to deduct costs for modernizing or preserving historically or structurally significant properties as special personal expenses (*Sonderausgaben*) up to 9% of these expenses annually in the year of completion and the following 9 years.

The plaintiff's parents claimed deductions under Section 10f ITA. The plaintiff's father passed away early 2017. The heirs to the father's estate were the plaintiff himself (45/100), his mother (32/100), and his sister (23/100). In April 2017, the plaintiff, his mother, and his sister reached an agreement regarding the inheritance whereby the shares in the property that had previously belonged to the father were transferred to the plaintiff, so that from then on he held a 50% interest in the property. The plaintiff has been the sole owner of the property since 2019.

The tax office, and subsequently also the tax court of first instance, held that the plaintiff, as the universal successor, could not continue to claim the tax deduction. Since Section 10f ITA is not a provision for depreciation, the so-called "footstep theory" (principle of legal succession) of Section 11d of the Income Tax Implementation Regulation - which states that in the case of succession without consideration (e.g., through inheritance or gift), the recipient assumes the tax position of the previous owner - does not apply.

Decision

The Supreme Tax Court confirmed the view of the lower tax court.

The reference in Section 10f (4) Sentence 3 ITA to the rules in Section 10e (5) Sentence 3 ITA allowing homeowners to deduct a portion of the construction or purchase costs of their primary residence from their taxable income as special personal expensesis an exception and not to be applied analogously in the situation at hand.

Section 10f ITA contains no further indications for cases where the taxpayer who incurred the expenses dies before the end of the statutory distribution period. It must therefore be dealt with in accordance with general legal principles, particularly those of tax law and income tax law, the Supreme Tax Court said.

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Personal income tax liability extends throughout a person's lifetime, it ends upon that person's death. The decedent and the heir are separate legal subjects each of whom is assessed for income tax individually and whose income is determined separately and then allocated for income tax purposes. It is a fundamental principle of income tax law that a taxpayer may not deduct a third party's expenses or losses.

The fact that Section 10f ITA constitutes a personal (individual) tax benefit is evident both from the wording of paragraph 1 ("The taxpayer" may deduct expenses) and- above all - from the restriction of its personal application which is expressly mentioned in Section 10f (3) ITA.

To illustrate the point, the Supreme Tax Court notes that married couples who file a joint tax return are treated jointly as a single taxpayer, also with regard to the special personal deductions pursuant to Section 10f ITA, unless otherwise specified. In that case, the surviving spouse, who acquires the deceased spouse's share of the property and continues to use it as a primary residence, could without any problems continue to claim the deduction at the previous amount.

With its current decision the Supreme Tax Court follows the principles laid down in the landmark decision of the Grand Senate in 2007 (case: GrS 2/04) who decided that unutilized tax losses of a deceased person are tied strictly to the personal capacity of the erstwhile taxpayer and cannot be transferred to the heir for offset against his own personal income tax.

Source:

Supreme Tax Court, judgment of 25 March 2026 (X R 23/24) published on 25 June 2026.

Schlagwörter

Personal expense deduction, residential buildings