

By PwC Deutschland | 09. Oktober 2026

Compensation payment by insolvent debtor to insolvency administrator deductible as business expense

For an insolvent debtor, the insolvency administrator's fees may be deductible as current or subsequent business expenses, provided the insolvency administrator's management activities help to satisfy the insolvent debtor's business liabilities. With this recently published decision, the Supreme Tax Court has clarified, in principle, an issue of great practical importance in cases of insolvency proceedings.

Background

The plaintiff is an attorney and an insolvency administrator. By virtue of his authority to pursue legal action as an insolvency administrator, he handled the lawsuit and the appeal proceedings on behalf of the insolvent debtor. Insolvency proceedings concerning the debtor's assets had been opened in 2015. During the tax assessment periods from 2015 to 2017 (the years in dispute), the plaintiff claimed provisions for contingent liabilities (deduction for business expenses) in the tax returns filed on behalf of the insolvent debtor, and with respect to his claims for insolvency administrator's compensation. The tax office refused to recognize this claim. The lower tax court agreed with the tax office's opinion and dismissed the action as unfounded.

Supreme Tax Court to set aside the decision of the lower tax court

The plaintiff's appeal was successful: The Supreme Tax Court overturned the lower tax court's decision and referred the case back for further hearing.

The Supreme Tax Court upheld the insolvency debtor's position on the main issue in the appeal proceedings. According to the findings of the lower tax court, the insolvency administrator's management activities in the case at issue were overwhelmingly directed toward satisfying the insolvency debtor's business liabilities and toward the debtor's business assets. If there is no doubt that a distinguishable portion of the insolvency administrator's compensation was incurred for business purposes, there is no restriction for allocation or deduction. In case of doubt, the deductible business portion must be estimated.

The Supreme Tax Court also regarded the reasons given by the lower tax court for denying the recognition as provision for contingent liabilities to be incorrect and is not, therefore, legally justifiable. The latter court must now examine, in the second instance, whether the insolvent debtor was still entitled to recognize the expense on its balance sheet during the years in question (2015–2017). If this is not the case, the deduction of business expenses would only be permissible in the year in which the compensation was actually paid.

Source:

Supreme Tax Court judgment of 25 June 2026 (III R 35/23) published on 8 October 2026.

Schlagwörter

insolvency, provision