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By PwC Deutschland | 08. November 2026

Litigation costs incurred in connection with inheritance or gift not deductible

Litigation costs are deductible as extraordinary personal expenses if they are unavoidable for the taxpayer. According to a recent decision of the Supreme Tax Court, this is generally not the case for litigation costs associated with the acceptance of an inheritance or a gift.

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Deductibility of litigation costs tightened

Under German tax law, legal costs cannot be deducted as extraordinary personal expenses (außergewöhnliche Belastungen) under Section 33 of the Income Tax Act unless the taxpayer risks losing his or her basic existential livelihood and is no longer able to meet the basic needs in the usual way. This restrictive rule was introduced in the course of the Act on the Implementation of the Mutual Assistance Directive and the Amendment of Further Tax Provisions (AmtshilfeRIC-Umsetzungsgesetz) which came into force in 2013.

Background

Effective 1 January 2015, the plaintiff - working at a forestry - had been granted the forestry business in exchange for retirement benefits. Consequently, he terminated his employment with the business and continued to run the business as a self-employed individual. In the same year, the transferor filed a lawsuit seeking the re-transfer of the business and a correction to the land registry arguing that she had been legally incapacitated due to dementia at the time of the transfer. The plaintiff challenged this claim in the civil courts. The plaintiff claimed the associated legal costs as extraordinary expenses with his competent tax office, however to no avail. The appeal filed with the lower tax court was upheld.

Supreme Tax Court: Litigation costs associated with accepting an inheritance or a gift are not necessarily inevitable

The Supreme Tax Court found the tax office's appeal to be justified and overturned the decision of the lower tax court.

In a legal dispute over claims arising from a contract concluded by the taxpayer himself, the taxpayer’s own conduct precludes the inevitability of civil litigation costs if he agreed to a contract that was specifically fraught with uncertainties and thus making subsequent civil disputes seem likely.

Based on these principles, the litigation costs incurred by the plaintiff are not to be considered extraordinary personal expenses. They did not inevitably and necessarily arise for the plaintiff. Upon conclusion of the transfer and retirement agreement, the plaintiff himself created the primary cause of the costs incurred.

Source: Supreme Tax Court, judgment of 27 August 2026 (VI R 22/24) published on 5 November 2026.

Schlagwörter

Personal expense deduction, court costs