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By PwC Deutschland | 10 January 2012

No deduction for court costs as private expenses

The finance ministry has decreed that a Supreme Tax Court ruling allowing a taxpayer a deduction for the costs of pursuing a civil claim for damages should not be followed as a precedent for other cases.

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Traditionally, the Supreme Tax Court has long taken the view that the court and other legal costs of pursuing or defending civil law claims did not generally qualify as tax deductible special expenses. Deductible special expenses are those necessarily incurred in fulfilment of an obligation or duty which the taxpayer is unable to avoid on legal, existential or moral grounds. Fighting a legal action before the civil courts is only unavoidable if the taxpayer would otherwise lose his or her basis for ensuring access to life's necessities. In May 2011, the Supreme Tax Court took a different view and allowed a deduction for court and other legal costs, provided the taxpayer could show sufficient likelihood of legal success and provided his action did not seem to be merely spiteful.

The finance ministry has now issued a decree instructing tax offices not to follow this latest ruling as a precedent in other cases. Its main argument is that to do so would be impossible, as the tax office has no means of reliably pre-judging the outcome of a case or of establishing the motives of the parties. The decree also hints at a "possible change in the statute" to re-establish the previous position in retrospect.

Keywords

civil law claims, court costs, private expenses, special expenses