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By PwC Deutschland | 08 April 2024

# Legal fees for military disciplinary proceedings deductible as employment related expenses

**A professional soldier was convicted of a criminal offense and also had to undergo military disciplinary proceedings. At least he can deduct the legal costs of the disciplinary proceedings as income related expenses, the Supreme Tax Court said in a most recent decision.**

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## Background

Formerly, the Supreme Tax Court has taken the view that the court costs and legal fees of pursuing or defending civil law claims did not generally qualify as **extraordinary personal deduction**. Deductible are those expenses necessarily incurred in fulfilment of an obligation or duty which the taxpayer is unable to avoid on legal, existential or moral grounds. First time 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 „turnaround from the turnaround“ came in 2016 when the Supreme Tax Court held the costs of civil court proceedings to be still generally not deductible as extraordinary personal deduction.

In the current case of dispute, though, the Supreme Tax Court had to deal with an altogether different starting point regarding the deduction of costs for legal proceedings, specifically whether legal fees for criminal and military disciplinary proceedings are deductible as **employment related expenses.**

## Case of dispute

The plaintiff worked as a professional soldier (employment as member of the voluntary military service) and received income from employment. He was convicted by a final court judgment for a criminally relevant text post on his private social media account. At the same time military disciplinary proceedings were initiated against the plaintiff which also dealt with further disciplinary offenses committed by the plaintiff. The plaintiff sought to deduct the legal fees incurred for his representation in the disciplinary proceedings (€ 1,785) as income-related expenses. The tax office disagreed by looking at the case law of the Supreme Tax Court, whereupon legal costs of criminal proceedings are generally not deductible as employment-related expenses.

## Decision

The Supreme Tax Court held in favor of the plaintiff. The court explained that the legal costs for criminal proceedings are usually not deductible as income-related expenses as there is commonly no connection between the criminal offense and the professional (occupational) activity. However, this was not the case as far as legal costs for military disciplinary proceedings are concerned.

The subject matter of these proceedings is the punishment of misconduct by imposing disciplinary measures such as a reduction in pay, a ban on promotion, a reduction in salary grade, a reduction in rank or by removal from the employment status. The expenses for the defense in the military disciplinary proceedings therefore contributed directly to maintaining the income from the employment relationship. The deductibility of the legal defense costs for the military disciplinary proceedings is also not precluded by the fact that the breaches of duty were partly the subject of criminal proceedings. Only the legal defense costs incurred for the criminal proceedings were therefore not deductible as income-related expenses.

The two proceedings differ significantly in terms of their legal grounds and purpose. Criminal proceedings are directed at sanctioning the violation of a legally protected right. A direct connection between criminal

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proceedings and professional activity therefore only exists in exceptional cases if the taxpayer is charged with an offense that he committed in the course of his professional activity.

**Reference:**

Supreme Tax Court, judgment of 10 January 2024 (VI R 16/21), published on 4 April 2024 - see press release 019/24.

**Keywords**

employment income