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Business expenses and involuntary expenses in case of fake invoices

In a most current decision, the Supreme Tax Court clarified that a financial loss is not considered to be of personal nature simply because the person who caused the damage is a family member or because a special relationship of trust existed. The decisive point is whether the cause of the loss caused by criminal acts stems from business activities which must be established beyond any reasonable doubt.

Background (in brief): The key question was whether payments or financial losses resulting from criminal acts can be deducted for tax purposes as business expenses. The plaintiff operated a security service as a sole proprietor. The case concerned substantial cash payments which, according to his account, were related to security services provided in Austria. The amounts in question were €380,000 in 2008 and €205,000 in 2009. The plaintiff claimed that a relative or employee acting on his behalf had told him that the invoices were based on actual services rendered. The plaintiff then passed on the money so that it could be forwarded to the Austrian company. The managing director of this company stated that these were fake invoices. The plaintiff's brother had asked him to issue them, and he received 32,000 in return.

Decision

Business expenses are expenses incurred for business reasons. It is not relevant whether they arise because of fraud. Nor is it important to what extent the taxpayer is at fault. This is the essence of the Supreme Tax Court’s decision.

The court further points out that expenses may also be deductible if not incurred intentionally at all. These are involuntary losses of assets that the business owner incurs, such as through theft, embezzlement, or breach of trust. Such losses may also qualify as business expenses if it is clear beyond a reasonable doubt that the loss stems from business activities rather than being attributable to the private sphere.

The tax courts and the tax authorities must be convinced that there is a business reason for the transaction despite fraud - especially when family members are involved. Any remaining doubt is to the detriment of the plaintiff. In the case at hand, a deduction based on a contractual payment obligation could not be demonstrated.

However, since the deduction of business expenses does not require the successful performance of a service, losses incurred by the taxpayer because of theft, embezzlement, or breach of trust (unintentional expenses), for example, may also qualify as business expenses.

It is not sufficient to rely solely on the fact that the unlawful act was committed by a close relative. Even in such a case, it must be examined whether - and under what conditions - an unrelated employee could have caused the same damage.

The lower tax court must now, in the second instance, decide once again on the question of whether there was a business-related reason for the transfer of large sums of cash. It will also have to make further findings regarding the nature and manner of the payments. If it is established that business expenses are incurred in principle, but the amount cannot be substantiated, an estimate must be made.

Source: Supreme Tax Court, judgment of 28 January 2026 (X R 21/23) published on 17 September 2026.

Keywords

Fraud, falsified invoices