

By PwC Deutschland | 30 October 2026

Costs incurred for removing mining damage are tax-deductible

The case before the Supreme Tax Court involved the question of whether and in what circumstances subsequent production costs for land were incurred. In its recent judgement, the Supreme Tax Court held that expenses to remove mining damage from a property may be treated as immediately deductible income-related expenses.

Background

In 1990, a married couple purchased a parcel of land in a mining region. The property contained a former mine supply shaft that had since been backfilled. The husband used the property for his sole proprietorship while the wife generated rental and leasing income from her half of the property. Due to mining-related damage, stability, accessibility, and suitability for development of the property could not be guaranteed. The husband therefore withdrew half of his property from his business assets. The couple subsequently spent approximately €135,000 to restore the property to its original condition at the time of purchase. The property was then to be developed and leased.

The couple claimed the costs for repairing the mining damage in their income tax return as immediately deductible expenses in connection with renting and leasing. **The tax office** denied this request. The appeal to **the lower tax court** was rejected.

Final decision postponed

The Supreme Tax Court set aside the judgment of first instance and referred the case back to the lower tax court for renewed decision.

Expenses incurred to restore a property to its original state are generally immediately deductible business expenses. The costs must only be capitalized as production costs of the land where there has been a substantial improvement to the property beyond its original condition. This is specifically the case when, above and beyond a standard renovation, the utility value of the asset as a whole is significantly increased based on objective criteria. In this context, the condition of the asset at the time the taxpayer included it in his or her assets (i. e., the condition at the time of acquisition or production) must be compared with the condition achieved as a result of the repair work performed (i. e., the condition after the repair work was completed).

If the property was part of business assets, it must be determined whether, during the holding period as business asset, any partial write-down for impairment was made. If so, the original condition must be determined based on the condition after the partial write-down was applied. In this respect, the condition prevailing at the time of the change in value must be compared with the condition achieved as a result of the repair work performed.

If, therefore, only the previous condition is restored, there is no significant improvement compared to the earlier point in time. In that case, the costs are immediately deductible as income-related expenses or business expenses.

Since the tax court of first instance had not yet examined the issue of comparability, among others, the case was referred back for a new hearing and final decision.

Source: Supreme Tax Court, judgment of 21 August 2026 (IX R 13/25) published on 29 October 2026.

Keywords

damages, expense deduction