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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.

Note: Essentially identical was the decision of the Supreme Tax Court’s in another case involving litigation costs related to online gambling contracts. The plaintiff, who had lost substantial amounts of money through online gambling between 2013 and 2022, had successfully sued several foreign-based online gambling providers to recover the amounts he had lost.

Requirements for deductibility as established by case law: Only costs that are unavoidable or inevitable (**Alternative 1**) and/or those that would put the plaintiff at risk of losing his means of subsistence and of no longer being able to meet his basic needs within the usual scope (**Alternative 2**) are eligible for deduction as extraordinary personal expenses.

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The Supreme Tax Court did not allow the plaintiff's litigation costs to be deducted as extraordinary expenses. These costs were not necessarily incurred by the plaintiff. By entering into the online gambling contracts, the plaintiff himself created the primary cause of the expenses. The plaintiff was not forced or compelled to enter into these contracts and to expose himself to the risk of losing his bets. With this in mind, it was not necessary for the Supreme Tax Court to decide whether a deduction under Alternative 2 would be applicable.

Decision from 9 September 2026 VI R 10/25, published on the same date

Keywords

Personal expense deduction, court costs