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By PwC Deutschland | 26. Januar 2026

Taxation of current income from participation in employer's business

Recurring remuneration from a typical silent partnership between the employee and the employer company is taxable as capital investment income within the meaning of Section 20 (1) No.4 Income Tax Act and not separately as commercial income or income from employment.

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I. Background

General principle

If other legal relationships exist between the owner of the commercial enterprise and the silent partner, the income allocation must be examined while observing the principle of causation (specific and economic connection) to determine on which legal relationship a benefit is based. It must be decided (on a case-by-case basis) which type of income is predominant and thus supersedes the other type of income.

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Case in dispute

The plaintiff was an employee of a limited liability company (GmbH) that had offered “selected, particularly important employees” the opportunity to participate as typical silent partners for the duration of their employment with the GmbH. In December 2010, the plaintiff concluded a partnership agreement to this effect with the GmbH and made his contribution as silent partner.

The tax office treated the plaintiff's share of profits from his silent partnership as income from employment. In his complaint, the plaintiff sought to have his share of profits recognized as capital investment income.

The lower tax court upheld the claim and stated that the income from the participation as a silent partner did not constitute commercial income since the plaintiff could not be regarded as a co-entrepreneur. Clearly, there was no atypical silent partnership (co-entrepreneurship). Furthermore, the court held that the profit shares from the silent partnership did not constitute income from employment. The plaintiff's status as an employee was an independent special legal relationship that was not characteristic and did not take precedence over the coexisting corporate relationship.

II. Final decision

The profit shares received by the plaintiff are not considered, either in whole or in part, as income from employment because they are caused solely by the special legal relationship of the plaintiff's typical silent partnership in the limited liability company. This presupposes that it has been effectively established, that the terms of the special legal relationship have been seriously agreed and implemented, and that it has its own economic substance apart from the employment relationship as regards its structure.

If these conditions are met, any employment-related connection that may have existed at the time of acquisition of the silent partnership does not continue to have an effect here.

According to these principles, the plaintiff's share of profits from the typical silent partnership in the limited liability company was based exclusively on the silent partnership. Upon conclusion of the silent partnership agreement, the plaintiff and the limited liability company established a special and separate legal

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relationship under company law in the above-mentioned manner in addition to the employment relationship.

Source:

Supreme Tax Court, decision of 21 October 2025 (VIII R 13/23), published on 22 January 2026.

Schlagwörter

employment income, investment income, silent partnership