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Tax treatment of employee-financed pension commitments

In a recently published decision, the Supreme Tax Court has, in some aspects, facilitated the tax recognition of employee-financed pension commitments for shareholder managing directors of a limited liability company (GmbH) but at the same time it also set some limits.

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Background:

The plaintiff (an entrepreneurial company – *Unternehmergesellschaft* - which is special form of limited liability company, informally often referred to as a “mini-GmbH” with restricting liability to the company's assets) had made a pension promise in the form of a direct commitment to its sole shareholder and managing director, a physician. The pension contributions were made exclusively by the physician himself through monthly salary conversions. The plaintiff set aside pension provisions for this purpose which had reduced its taxable profit. The tax office did not accept this because the pension promise had been granted to the doctor after his 60th birthday which meant that he had not been able to “earn” it. Thus, it treated the accruals to the pension provisions as hidden profit distributions. The appeal against this decision before the tax court of first instance has been successful.

Decision in the case of dispute:

The Supreme Tax Court overturned the decision and referred the case back to the tax court. In principle, a hidden distribution of profits can be ruled out for pension commitments that are financed exclusively by the employee through the conversion of part of his or her (reasonable) salary if this does not burden the company with increased risks and costs. Under these circumstances, compliance with a probationary period, the date of the company's formation or the age-dependent vesting of the pension are also irrelevant (following the Supreme Tax Court judgment of 7 March 2018 – I R 89/15). However, the findings of the lower tax court were not sufficient for a final assessment by the Supreme Tax Curt in several ways.

Among others, a direct commitment based on deferred compensation granted to a managing partner is generally not considered a serious agreement and is therefore not recognized for tax purposes if the entitlement to future pension benefits is not protected against insolvency. Since the pension commitment in the case of dispute was agreed at a time close to the initial salary payment the lower tax court will also have to examine whether the commitment was actually financed exclusively by the employee or, from an economic perspective and taking into account the reasonable overall remuneration of the managing partner, whether it was (co-)financed by the employer.

Source:

Supreme Tax Court, decision of 19 November 2025 (I R 50/22), published on 19 February 2026.

Note: Two further judgments of the Supreme Tax Court regarding the tax recognition (deductibility) of pension commitments were published at the same time (cases **I R 48/22 *NV*** and **I R 4/23**). With this series of judgments, the Supreme Tax Court has further clarified the important issue of pension commitments relevant for business practice.

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The case **I R 48/22 *NV*** (not initially intended for official publication) dealt with the tax deductibility of a business expense for the subsequent increase in remuneration agreed upon for assuming existing pension obligations. Here, the Supreme Tax Court accepted the appeal from the tax office and referred the case back to the lower tax court as it had neither sufficiently investigated nor taken into account essential circumstances of the case that are relevant for a possible classification of the salary increases as hidden profit distributions.

Schlagwörter

employee benefit, pension promises