By PwC Deutschland | 26. März 2026

Co-entrepreneurial risk of a silent partner

In a recently published judgment, the Supreme Tax Court clarified that, in the context of a silent partnership in a limited liability company, even a high degree of co-entrepreneurial initiative cannot establish the full status of a co-entrepreneur without at least a minimal co-entrepreneurial risk.

Background

The Supreme Tax Court clarified that, in the context of a silent partnership, even a high degree of entrepreneurial initiative cannot establish the status of a co-entrepreneur without at least a minimal co-entrepreneurial risk (defined as a partner's personal exposure to a business's success or failure). Specifically, the dispute arose as to whether silent partnerships in a limited liability company (GmbH) had resulted in an atypical silent partnership whose income is regarded as business income and assessed separately and uniformly.

The lower tax court dismissed the claim and held that - in general - at least a minimal level of co-entrepreneurial risk is sufficient to meet the prerequisite for the status as co-entrepreneur. In the case in dispute, however, the minimal co-entrepreneurial risk was compensated by a strong co-entrepreneurial initiative as a result of the verbal agreement reached at the time the GmbH was founded and based on the contracts governing the silent partnership.

Decision

The Supreme Tax Court took a different view and overturned the decision of the former tax court.

The status as co-entrepreneur (in a partnership) refers to partners who bear co-entrepreneurial risk, exercises co-entrepreneurial initiative, and have the intention of making a profit. Co-entrepreneurial risk presupposes a legal or economically equivalent participation in the success or failure of a business enterprise.

This risk is typically assumed through a share in the profits and losses, as well as in the hidden reserves of fixed assets, including goodwill. A shareholder contribution is required which may be charged to the shareholder's assets. In contrast, a mere waiver of a future share in profits is not sufficient (in confirmation of present case law).

In the present case, the silent partners did not bear any- or at least any minor -co-entrepreneurial risk. Although they received a significant share of the profits, they did not make any capital contribution that could encumber their assets. The services to be rendered under the partnership agreement were

insufficient for this purpose because the promise of future services does not represent a contribution that has an adverse effect on the silent partner's assets; no business risk is associated with this.

Secondly, the Supreme Tax Court stated that an atypical silent partnership, as a purely internal company, cannot be a party to tax court proceedings concerning the attributable determination of profits which are assessed separately and uniformly

Pursuant to § 48 (1) No. 2 Letter a of the Code of Procedure of Fiscal Courts (Finanzgerichtsordnung - FGO), the party entitled to file a lawsuit is the (joint) authorized representative. He acts in his own name in the interest of the parties and thus as their legally authorized person.

Source:

Supreme Tax Court, judgment of 13 November 2025 (IV R 24/23) published on 19 March 2026.

Schlagwörter

entrepreneur, risk