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Non-typical silent partnership excludes company from Organschaft

The finance ministry has decreed that a company with an untypical silent partner cannot be a member of a corporation tax group.

A “typical” silent partnership agreement grants the silent partner a right to share in the profits of a company together with a right to the return of his capital. He may or may not share in the losses, but is excluded from the enterprise management and liquidation surplus. If the agreement allows the silent partner a share in the accretion of intangibles together with at least some degree of managerial influence, the silent partnership arrangement is referred to as “untypical”. The finance ministry has now issued a decree excluding a company with an untypical silent partner from membership of a corporation tax group, be it as the parent, be is as a subsidiary. Existing recognised tax groups with an untypical silent partnership holding in the parent will be allowed to continue if the individual circumstances warrant.

Keywords

Organschaft, silent partnership, tax group