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By PwC Deutschland | 12 January 2026

MoF: Tax group involving a corporation with an atypical silent partnership

In two judgments published in April 2025, the Supreme Tax Court decided that a corporation in which there is an atypical silent partnership can be a subsidiary within a corporation tax group. With its rulings, the court deviated from an earlier opinion of the tax authorities. The Federal Ministry of Finance has now commented on the consequences of the two judgments.

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Background

An untypical silent partnership in the controlled group company does not generally prevent the recognition of a consolidated tax group for corporation tax purposes. With this decision of 11 December 2024 (I R 33/22), the Supreme Tax Court disagreed with the previous opinion of the tax authorities.

In another judgment (I R 17/21), the Supreme Tax Court held that if several atypical silent partnerships exist independently of each other (only) in different branches of a corporation this corporation can in principle be the controlling company within a corporation tax group.

The tax authorities were of the opinion that a corporation in which an atypical silent partnership exists cannot be a member of a corporation tax group, be it as the parent, be is as a subsidiary (Ministry of Finance, circular of 20 August 2015).

The Supreme Tax Court thus partially contradicted the statement in the letter from the Federal Ministry of Finance (MoF) dated 20 August 2015 according to which a corporation in which an atypical silent partnership exists cannot be either a subsidiary or a parent company.

The MoF has now reacted to these two court decisions and annulled its previous circular from 2015 and partially modified its own position. The following guidelines are now **to be applied in all open cases**:

Atypical silent partnership

If a corporation's trading business has a silent partnership pursuant to Section 230 of the German Commercial Code (HGB) that qualifies as a co-entrepreneurship (business partnership) for income tax purposes, this atypical silent partnership can be neither a subsidiary nor a parent company within a corporation tax consolidation group (*Organschaft*).

Corporation with an atypical silent partnership

Contrary to the previous ministerial opinion, a corporation in which an atypical silent partnership exists can also be a controlled company (subsidiary) in a corporation tax consolidation group.

However, a corporation in which an atypical silent partnership exists may only be an Organschaft parent if the shareholding in the subsidiary is attributable to a business unit of the corporation where there is no atypical silent partnership.

Equitable relief

Controlling companies in corporation tax groups with atypical silent partnerships participating in the entire commercial business of the company and which already existed on 20 August 2015 continue to be tax effective taking into account the circumstances of the individual case on concessionary grounds and for reasons of protection of legitimate expectations.

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Ministry of Finance, circular of 13 November 2025 - ref.: IV C 2 - S 2770/00048/001/044.

Keywords

non-typical silent partnership