By PwC Deutschland | 26 March 2026

Payment in installments for settlement of a lifetime waiver of compulsory share not subject to income tax

In a recent decision, the Supreme Tax Court established legal certainty for parents who, as part of an anticipated succession plan, agree with their children during their lifetime on a waiver of the statutory share of the inheritance in exchange for a lump-sum payment. The judges at the highest tax court made it clear that such lump-sum payments, even if paid in installments, are not subject to tax as capital investment income or other income.

In Brief: The Supreme Tax Court held that payment in exchange for a lifetime waiver of the statutory share and the waiver of supplementary compulsory share is not subject to income tax. The payments do not constitute taxable income even if made in installments. The Supreme Tax Court has thus confirmed its previous case law regarding the non-taxability of such settlements, whether in the form of lump-sum payments or recurring payments.

In the case of dispute, the plaintiff's parents transferred partnership shares, limited liability company (GmbH) shares, and their co-ownership in a business premises to the plaintiff's brother based on notarized transfer agreements in 2002 and July 2014. In a transfer agreement from July 2014, the brother agreed with the parents to pay the plaintiff an equalization payment. An equalization payment is a compensation that is typically agreed upon as part of an anticipated succession (a lifetime gift) to ensure that siblings are on equal financial footing. It was due in two installments (installment 1 on 30 December 2014, and installment 2 on 30 December 2015) with no interest payable. In the notarized transfer agreement, the plaintiff waived her claims for a compulsory portion and a supplementary compulsory portion against her parents with respect to the assets transferred to her brother in 2002 and 2014. The parents assigned their claim against the plaintiff's brother for payment of the equalization payment to the plaintiff without assuming any liability for its fulfillment.

The tax office and the lower tax court took the view that the second installment received by the plaintiff in the year in dispute (2015) should be split into a principal and an interest part because the claim was non-interest-bearing and - as stated in Section 12 (3) of the Valuation Act (BewG) - had a term of more than twelve months until its maturity on 30 December 2015. The plaintiff thus had earned taxable investment income in the amount of the difference between the principal portion and the nominal amount of the second installment.

The Supreme Tax Court took a different view and held that the entire compensation payment was not subject to income tax. The sole legal basis for receiving the second installment is the plaintiff's waiver of her compulsory share and supplementary compulsory share during her lifetime as declared toward her parents. Settlements in exchange for a lifetime waiver of the statutory share and the supplementary statutory share do not constitute taxable income even if paid in installments as provided for in Section 12 (3) Valuation Act. The settlement to the plaintiff was made free of charge without any exchange of services and is therefore more in the sense of a property right acquired through inheritance (such as an inheritance, a compulsory share, or a bequest). Such payments may only be subject to gift tax pursuant to Section 7 (1) No. 5 of the Inheritance and Gift Tax Act.

Source:

Supreme Tax Court, judgment of 20 January 2026 (VIII R 6/23) published on 12 March

2026.

Keywords

inheritance, waiver