

29 June 2022



tax + legal newsflash

Important changes in law and regulations

German IP nexus rules: Ministry of Finance issues a new circular to extend the simplified withholding tax procedure to payments received before 1 July 2023

Based on the wording of long-standing German tax law, income generated due to the licensing of rights or the sale of rights is currently considered to be in scope of German non-resident taxation if the underlying IP is registered in a German register (even if the payee and the payor are neither resident in Germany nor providing for another nexus to Germany).

On 6 November 2020, the German Ministry of Finance issued a circular in which the Ministry confirmed its view that a mere registration of rights in a German register shall be sufficient in order to establish a German tax nexus, both for royalties and capital gains, even if the payee and payor are resident outside of Germany (see [newsflash](#) dated 6 November 2020).

The provision was initially supposed to be abolished with retroactive effect as foreseen under the draft bill of the Modernization of the German withholding tax act published. The final bill, however, discarded the abolishment (see [newsflash](#) dated 20 January 2021). As a consequence, taxpayers and tax authorities are currently facing extensive tax compliance obligations for such payments made in the past.

In order to ease such tax compliance obligations, the Ministry of Finance outlined in its circular dated 11 February 2021 (see [newsflash](#) dated 12 February 2021) a procedure that allows taxpayers to follow a so-called simplified process to claim treaty entitlement for a limited period of time. This simplified procedure is subject to specific preconditions and applies to payments received up until 30 September 2021. With its circular dated 14 July 2021 (see [Tax&Legal Blog](#) dated 16 July 2021), this simplified procedure was extended to payments received before 1 July 2022.

Given the continuous time constraints arising from the application of the simplified procedure, the Ministry of Finance extends with its latest circular dated 29 June 2022 the simplified procedure another time to payments received before 1 July 2023. Accordingly, the deadline for applying for the issuance of a (retroactive) withholding tax exemption certificate is extended to 30 June 2023.

Further discussions are expected as to whether the underlying German domestic tax provisions will be changed and withholding taxes will only have to be withheld vis-a-vis payments to taxpayers residing in tax havens.

Any questions?

For a deeper discussion of how this might effect your business, please reach out to your local PwC contact advisor or our following international tax experts:

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