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tax + legal newsflash

Important changes in law and regulations

Draft bill on the taxation of payments for rights registered in a German register

The German Federal Ministry of Finance published a proposal which foresees far-reaching adjustments on the taxation of payments for rights registered in a German register between foreign taxpayers.

Following the recent publication of a circular on the one year extension of the "simplified procedure" ([Newsflash of June 29, 2022](#)) and the draft bill proposing an abolition of the limited tax liability ([Newsflash of November 23, 2020](#)), the German Ministry of Finance send out another draft bill dated July 28, 2022 – inter alia – which foresees changes to the taxation of royalty payments made between foreign taxpayers and capital gains from the sale of rights registered in a domestic register in Germany to the industry associations with the following content:

1. For royalties and capital gains received up until 31 December 2022, the former taxation of royalties is limited to payments between related parties in the sense of Sec. 1 para. 2 of the German Foreign Tax Act. Therefore, payments to unrelated (third) parties would be excluded from the scope of Sec. 49 of the German Income Tax act in all open cases under the current proposal.
2. For Payments received after 31 December 2022, the limited tax liability formerly included under Sec. 49 of the German Income Tax act shall be abolished in total (i.e. for payments between related and third parties).
3. All payments received from 1 January 2022 will be regulated under Sec. 10 German Tax Haven Defence Act (whether made between related or third parties). According to this revised provision, only payments made to taxpayers residing in territories within the meaning of the Tax Haven Defense Act would be subject to tax if the underlying rights are registered in a domestic register in Germany. Such territories are currently American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the U.S. Virgin Islands and Vanuatu. However, the list of territories may be subject to changes in the future based on a proposal by the German Ministry of Finance and with the approval of the German Federal Council.

As a result, royalties and capital gains concerned will be taxed:

1. up to and including 31 December 2021, only with respect to payments made between related parties as defined in Sec. 1 para. 2 of the German Foreign Tax Act, irrespective of their tax residency;
2. from 1 January 2022 until 31 December 2022 in relation to payments made between related parties as defined in Sec. 1 para. 2 of the German Foreign Tax Act and in relation to payments made to third parties, if the latter are domiciled in territories as defined in the Tax Havens Defense Act;
3. after 31 December 2022, with respect to payments made between related parties as defined in Sec. 1 para. 2 of the German Foreign Tax Act and with respect to payments made to third parties, if both are domiciled in territories as defined in the Tax Havens Defense Act.

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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