

Tax & Legal Newsflash

Federal Ministry of Finance Circular: obligation for non-resident taxpayers to submit tax returns for license income from rights registered in domestic registers

On 6 November 2020, the Federal Ministry of Finance issued a circular regarding the obligation for non-resident taxpayers to submit tax declarations/ tax returns for license income from rights registered in a domestic register.

As a result of discussions between with the highest tax authorities of the Federal States, the following considerations are to apply to the obligation of non-resident taxpayers to submit tax declarations/ tax returns if income is derived from licensing of rights registered in domestic registers:

1. Domestic income under Section 49 (1) No. 2 (Letter f) and No. 6 of the Income Tax Act ("ITA"), which gives rise to a limited tax liability, can also arise from the temporary or permanent licensing of rights which are entered in a domestic register. No further domestic nexus is required for the application of the provision.
2. Rights entered in a domestic register include, for example, patents which are registered in the domestic register based upon a European application in accordance with the European Patent Convention. The licensing of such rights will also give rise to domestic income, where the license fee is borne by a non-resident taxpayer.
3. If a right registered in a domestic register is licensed for a limited period of time, the debtor of the remuneration (license fee) must withhold the tax in accordance with Section 50a (5), Sentence 2 ITA (Section 50a (1) No.3 ITA) and submit a tax declaration to the Federal Central Tax Office.

For remuneration paid to the creditor up to 31 December 2013, the tax return must be submitted and the taxes paid to the competent tax office.

4. Where the underlying right has been licensed for an unlimited period of time, thereby giving rise to a transfer of rights, there is no withholding obligation. Instead, the recipient of the license fee must submit a tax return (Section 25 (3) ITA) to the competent tax office.

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