

Your Guide To German Non-Resident IP Taxation

Tax & Legal



Swiss and foreign resident companies may be subject to German non-resident taxation for their royalties and/or transfers of IP, merely because the IP is registered in a German public register; no German counterparty to the arrangement is required. Double taxation treaties may entitle to a zero-taxation but do not protect from the formal disclosure and compliance obligations imposed by the German tax authorities.



KPMG helps you analyze your group's tax exposure of 15% on gross royalties, if necessary, calculate the **lowest justifiable tax base**, compile the **minimum required information** to be filed with the German tax authorities (past and current periods), and guides you through the **compliance process with maximum pragmatism**.

Which (basic) scenarios are concerned and which steps must be taken to minimize the exposure to German withholding tax?



- Case I** **Swiss IP owner with evident treaty entitlement**
1. Gathering and review of facts and circumstances (IP registrations, ownership & royalty flows)
 2. Compilation of minimum required documentation
 3. Filing of application(s) for relief at source (Freistellungsantrag)

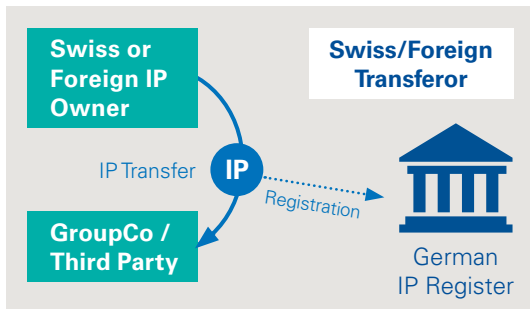


- Case II** **Swiss or foreign IP owner with uncertain treaty entitlement**
1. Case I, steps 1 & 2, plus analysis of treaty entitlement
 2. If considered entitled, filing of justified / well documented application(s) for relief
 3. If considered not entitled, computation of lowest possible tax base and disclosure

- Case III** **Foreign IP owner with no treaty or residual treaty rate > 0%**
1. Case I, steps 1 & 2 plus review of potential for further WHT reduction
 2. Computation of lowest possible tax base and disclosure including subsequent request for refund (treaty cases)



Which other scenarios must be reviewed?



IP Transfers

Transfer of IP registered in Germany

(including group internal spin-offs, post M&A integrations, etc.)

1. Gathering and review of facts and circumstances (IP registrations, ownership & remuneration)
2. Compilation of minimum required documentation
3. Preparation of German corporate income tax return (nil-return considered sufficient for evident entitlement to treaty with 0% residual WHT rate)

Anti-treaty shopping rules

The recently published draft bill of the "Act to Modernize the Relief from Withholding Tax and the Certification of Capital Gains Tax" aims at significantly tightening the German anti-treaty shopping rules.

1. A substantial nexus must be given in order for the recipient of the payment to qualify for relief.
2. Should the nexus condition not be met by the direct recipient of the payment, the recipients' shareholder must qualify for the relief under the same statutory provision.
3. Should none of the above be met, alternative tests might still allow for relief (e.g. direct stock exchange listing).



KPMG recommends the following timing of next steps

March/April 2021	May 2021	Early summer 2021	Prior to Dec. 31, 2021
Gathering of facts and circumstances <ul style="list-style-type: none"> - Analysis/assessment of existing IP structures for a possible entry in the German public register (incl. product price embedded IP/royalty free use of IP) - Compilation of relevant agreements and cash flows 	Conclusion as regards disclosure <ul style="list-style-type: none"> - If to be disclosed: see Cases I - III plus IP transfers - If not to be disclosed: Internal documentation on reasons for non-disclosure 	Relief applications/tax return preparation <ul style="list-style-type: none"> - Cases I - II: Application for relief at source to avoid future German WHT - Case II - III: Payment of WHT and application for refund - IP Transfer: Preparation and filing of tax returns 	Dealing with potential inquiries from tax authorities <ul style="list-style-type: none"> - Filing of additional documentation upon particular request - Reviewing/adapting/amending existing structures to meet the (draft) nexus condition



Your benefits

- ✓ Full compliance with German legislation, prevention of penalties, protection of reputation
- ✓ Least possible exposure to German withholding tax with minimum administrative efforts and costs
- ✓ For the past: in time to amend documentation if particularly requested for by the tax authorities
- ✓ For the future: in time to adjust existing IP structures to the (draft) anti-treating shopping rules

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