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German Tax and Legal News

MOF grants extension of deadline for certain filings relating to extraterritorial taxation of royalty payments

Original 31 December 2021 deadline is extended to 30 June 2022

The German Ministry of Finance (MOF) published a decree on 14 July 2021 that extends the deadline for certain filings that are required in connection with the German extraterritorial taxation of royalty payments derived by nonresidents ("ORIP" cases) from the original 31 December 2021 date to 30 June 2022. Despite the extension, affected taxpayers should be aware that the application of the relevant rules can be highly complex and that they should not delay in taking necessary actions.

Under the German rules for limited liability taxpayers, royalty income from the license of rights (royalties) that are being exploited in a German permanent establishment or other German facility or registered in a German public book or register may give rise to a German limited tax liability. This is referred to as an "ORIP" (offshore receipts in respect of intangible property) situation. Capital gains derived from the transfer of such rights also may be subject to a German tax that often is referred to as ETT (extraterritorial transfer tax), although the terms ETT and ORIP are not used in the relevant legislation.

In the case of royalty payments (ORIP), the tax must be withheld at the time of payment and remitted quarterly by the licensee even if the withholding tax (WHT) obligation may be mitigated under a relevant tax treaty, unless the licensor provides the licensee with a valid German WHT exemption certificate as required under Germany's domestic WHT rules, allowing the application of a reduced or zero percent royalty WHT rate.

In an earlier decree published on 11 February 2021 (see [GTLN dated 02/16/21](#)), the MOF provided some procedural relief relating to royalty WHT filings and payments in relation to certain nonresidents that qualify for benefits under an applicable tax treaty with Germany; the relief provided in that decree is available for 2013 and subsequent years. The relief is available for treaty-protected taxpayers (it must be clear that treaty protection is available, without any uncertainties) and requires, among other things, that an application for a royalty WHT exemption certificate for all payments until 30 September 2021 be filed with the federal tax office by the licensor (or, under certain conditions, by the licensee) by 31 December 2021.

The MOF's 14 July 2021 decree now allows necessary disclosure documents to be filed until 30 June 2022 regarding all royalty payments made until that date. However, it is important to note that the filing relief does not apply to cases where treaty protection is uncertain (e.g., due to the anti-treaty shopping rules or because of hybrid elements or dual resident companies in the structure) and that filing must occur without delay after having identified the applicability of the law and carrying out the subsequent analysis. It should also be noted that the relief, as provided in the 11 February 2021 decree, applies only to German-nexus rights that are German-registered rights and not in cases where intellectual property (IP) is being exploited in a German permanent establishment or other facility.

In the case of ETT (i.e., on the alienation of the IP), the tax must be declared via a German tax return filed by the non-German transferor even if treaty protection is available. The original filing and disclosure obligations remain unchanged where German-nexus rights are transferred (ETT scenario), i.e., required nil returns must be filed by 30 September 2021 for treaty-protected past periods.

As noted above, although the extension of the filing deadline is a welcome development for affected taxpayers, the publication of the new decree again draws attention to the need to analyze the situation and to take action immediately if a ETT/ORIP situation exists. The analysis of this issue can be highly complex and any required filings must be prepared properly.

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