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?

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)

KPMG recommends the following timing of next steps

<table>
<thead>
<tr>
<th>March/April 2021</th>
<th>May 2021</th>
<th>Early summer 2021</th>
<th>Prior to Dec. 31, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gathering of facts and circumstances</td>
<td>Conclusion as regards disclosure</td>
<td>Relief applications/tax return preparation</td>
<td>Dealing with potential inquiries from tax authorities</td>
</tr>
<tr>
<td>– 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)</td>
<td>– If to be disclosed: see Cases I - III plus IP transfers</td>
<td>– Cases I - II: Application for relief at source to avoid future German WHT</td>
<td>– Filing of additional documentation upon particular request</td>
</tr>
<tr>
<td>– Compilation of relevant agreements and cash flows</td>
<td>– If not to be disclosed: Internal documentation on reasons for non-disclosure</td>
<td>– Case II - III: Payment of WHT and application for refund</td>
<td>– Reviewing/adapting/amending existing structures to meet the (draft) nexus condition</td>
</tr>
</tbody>
</table>

Your benefits

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

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