

International Tax: Change to
taxation of German registered IP
- Action Required

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Non-German IP income in respect of German
registered IP to be subject to German WHT

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UK companies with German-registered IP now subject to tax – time to take action

What has changed?

Germany has changed the interpretation of its existing tax laws with the result that income from the sale and licensing of German-registered IP is subject to German withholding tax (WHT) **even where none of the participating foreign businesses have a presence in Germany.**

This creates **significant commercial and tax risks** to businesses who have sold or licensed German registered IP since 1 January 2015.

Businesses can avoid future issues by taking action now.

Failure to do so, will risk very significant financial exposure, enforcement action as well as criminal penalties for businesses and directors.

What does it affect?

The change affects businesses, which **since 1 January 2015** have:

- Carried out the following **transactions**:
 - any transfer of IP ownership to another or a new entity;
 - any licensing or sub-licensing of IP rights.
- Where the IP mentioned previously were registered on the following **German registers**:
 - German Patent register including German patents, utility models, supplementary protection certificates for medicinal and plant protection products and German parts of European patents ("Patentregister");
 - German trade mark register ("Markenregister");
 - Registered designs register ("Register für eingetragene Designs")
 - Plant protection roll;
 - EU trade marks and designs.

What happens?

Germany will apply withholding tax (WHT) on royalties, sale or transfer payments irrespective of whether the licensor, seller or the licensee or buyer have a German presence. The key is German registration.

The amount of tax is dependent on how the value of the IP is determined. It could be considerable.

Transactions need to be declared and application for treaty clearance submitted by **30 June 2022**.

After that date, the German tax authorities will proceed with issuing tax assessments, taking the necessary enforcement steps and imposing criminal sanctions.

Authorities have, already started issuing significant assessments against a number of businesses in non-double tax treaty jurisdictions.

One assessment we are aware of was for in excess of €1 billion and several others have been in the €100s of millions.

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Why should I worry if the business has no German connection?

German tax authorities are likely to want to enforce a German judgment against qualifying companies in the UK, or in other jurisdictions.

The approach of German tax authorities is notoriously heavy-handed, so that there is a real risk of enforcement action if the business:

- Establishes itself in Germany in future;
- Wants to acquire German assets, or a German business or wants to have the option of doing so;
- Transits goods, or assets through Germany;
- Has directors that travel to Germany, on business or on holiday.

How do I mitigate the risk?

Businesses have to **declare any relevant transactions by 30 June 2022**.

In many cases, your business can rely on Double Tax treaties (DTC) to apply for a full exemption. This can be done at the same time as making the declaration.

There may also be a Group exemption in an EU context, based on the Interests and Royalties Directive (please ask us for more detail on this).

What do I do?

Fieldfisher recommends that businesses carry out an audit to identify any German-registered intellectual property, which has been the subject of a transfer, or license since 1 January 2015.

It is important to locate all relevant agreements.

If you need help identifying qualifying activities, assessing your exposure, or have any other concerns about this issue, you should speak to a tax lawyer as soon as possible.

How Fieldfisher can help

Fieldfisher can help you identify relevant transactions – either those that we have advised you on in the past, or which have been presided over by other advisers.

Fieldfisher's specialist international tax team is composed of bi lingual German and English speaking international tax lawyers who can help with advice, declaration, application for German exemptions and accompanying translation of transaction documents.

Fieldfisher can offer competitive fixed fee models for the majority of this work.

We urge you to contact as soon as possible to allow us to assist you as soon as possible before the **30 June 2022** deadline.

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