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German Tax and Legal News

Ministry of Finance issues decree describing filing obligations in connection with extraterritorial taxation

Decree underscores importance of compliance with filing obligations relating to rights registered in a German public register.

The German Ministry of Finance (MOF) issued a decree on 6 November 2020 describing the filing obligations in connection with the German extraterritorial taxation of intellectual property (IP) rights that are registered in a German public register.

Based on German tax principles, a nonresident owner of IP may be subject to limited German tax liability in the case of income generated from the leasing or the transfer of IP that qualifies as German-nexus IP. "German-nexus IP" is defined as (i) rights that are registered in a German public register, or (ii) IP that is being exploited in a German permanent establishment or other German facility.

The brief guidance published by the MOF mainly repeats the wording of the relevant provisions in the German income tax code regarding taxation in the case of rights that are registered in a German public register. The guidance does not address any of the questions that arise in the context of the application of the rules, and seemingly creates additional confusion by a rather vague reference to the patent registration process and by being insufficiently precise regarding the determination of when there is a royalty payment from a German tax perspective, compared to when there is a transfer of IP for German tax purposes.

Although the guidance from the MOF does not include any new information, the mere fact that the MOF has published such a decree indicates that the tax authorities are focusing on the taxation of income derived from rights that are registered in a German public register and emphasizes the need for affected taxpayers to prioritize compliance with the rules. The publication of the decree in the federal gazette confirms the administration's view that taxpayers should take issues relating to the rules seriously and should take the necessary actions to comply with any resulting tax obligations.

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