



New German License Barrier

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Implementing BEPS action plan 5, Germany will introduce partial or entire non-deductibility for preferentially taxed intra-group royalties (license barrier) as of 1 January 2018. The aim of the new Sec. 4j in the German Income Tax Act is to protect the German tax base during the transitional period until 30 June 2021, during which time countries will still be allowed to continue extending current benefits to existing beneficiaries of IP regimes. The license barrier

will make sure the 0% withholding tax under tax treaties will be denied in the event that any treaty partner countries continue to offer non-compliant patent boxes.

The bill will apply to non-taxed intra-group payments, payments taxed at a low rate, or payments to countries that do not comply with the OECD's "nexus approach", which prohibits preferential treatment of income from IP other than self-developed patents and copyrighted software. It would not apply to royalties paid to unrelated parties or to countries

with patent boxes that comply with the nexus approach.

It will apply to intragroup payments subject to an effective tax rate of less than 25% after accounting for all exemptions, credits or loss offsets. For income taxed at a rate lower than 25%, the deductible amount is equal to the total amount of royalties multiplied by the ratio (effective tax rate/25). Deductibility will be related to income tax, corporate income tax and trade tax. It will prevail over any contradicting treaty provision ("treaty override").

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