

# Tax risks on royalty payments from Germany



## Royalty payments in the tax authorities' focus

Beginning of January 2022, the German Federal Ministry of Finance (BMF) published two letters on the license barrier, explicitly mentioning the privileged tax regimes in Switzerland.

According to the license barrier, royalty payments are only deductible to a limited extent in Germany, if the income is subject to privileged taxation at the related party recipient (preferential regime) and the preferential regime applied does not correspond to the OECD nexus approach.

## Applicability to Switzerland

In the aforementioned letters, the BMF stated that the former administrative, domiciliary and mixed companies as well as the holding companies (until 2019) as well as the license box in Nidwalden (until 2020) are considered harmful preferential regimes which fall under the application of the license barrier.

The patent box introduced in Switzerland on January 1, 2020 is classified as corresponding to the

nexus approach and is therefore not affected by the license barrier.

According to the BMF, certain taxation consequences for royalty income stipulated in tax rulings may also meet the criteria of a harmful preferential regime. Depending on the interpretation, this already includes the special rate solution or the old-law step-up introduced as part of the tax reform and AHV financing (STAF).

## Need for action by Swiss companies

Swiss companies with royalty payments from German group companies should first check whether the royalty payments may fall under the license barrier due to their taxation in Switzerland.

If there is a risk in this respect, a second step should be to evaluate, whether suitable measures can be taken in Switzerland to reduce the impending overall tax burden.



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