USCIB
UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

February 28, 2022

VIA EMAIL
Herrn Bundesminister Christian Lindner
Bundesministerium der Finanzen
11016 Berlin
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Re: Extra-territorial Taxation of Income from the Licensing and Sale of Intellectual Property Registered in Germany (§ 49 EStG)

Dear Honorable Finance Minister,

USCIB is a multi-sector US trade association which supports open markets, competitiveness and innovation, sustainability and corporate responsibility. USCIB members include some of the largest US-based multinational enterpreises (MNEs) from all sectors of the economy, with significant direct and indirect investment in Germany.

We are concerned by the position of the Ministry of Finance since the end of 2020 regarding the (extraterritorial) taxation on income and gains from the licensing and sale of intellectual property rights (§ 49 Abs. 1 Nr. 2f und Nr. 6 EStG). In light of the related disproportionate consequences for MNEs, we respectfully request that you consider how to find a solution to the unnecessary complexity of this interpretation, as described below.

The new interpretation of a statute that has been in the German tax code since 1925 leads to the situation that German nonresident taxpayers earning income from the licensing and sale of intellectual property rights become subject to German tax even when there are no German resident taxpayers involved in such transactions. The sole condition for German taxation is that the income is related to intellectual property rights that are registered in Germany (for example, in the Patent or Trademarks registry). This result leads to extraterritorial taxation at odds with international norms. German registation is a routine measure for MNEs to protect such valuable patents, trademarks, and similar rights globally.

This interpretation requires that virtually every global payment for rights, whether intercompany or between unrelated third parties, be reviewed to determine whether German tax liability arises. Since this risk also applies when nonresident German contracting parties (for example, two US companies) are involved, there is essentially an unmeasurable volume of worldwide contractual relationships that must be reviewed for the application of this rule that can result in unanticipated taxation in Germany.

The current interpretation of the statute leads to a significant extraterritorial taxation and compliance burden on nonresident companies, including US groups, that is at odds with international standards. In addition to facing double taxation, MNEs are required to incur significant costs for the collection of data and the review of an enormous volume of licensing structures and transactions. This burden also arises, if the intellectual property rights owner is established in a country that has entered into an income tax treaty with Germany.

We believe the proposed amendment to AbzStEntModG from November 2020, i.e., the retroactive repeal of the registry clause in § 49 EstG, would be the most effective solution to eliminate an extraterritorial taxation result that is clearly at odds with international norms.

Best regards,

Rick Minor
Vice President & International Tax Counsel
United States Council for International Business

Timothy McDonald
Chair, Taxation Committee
United States Council for International Business