



NEWS INTERNATIONAL

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Dear Sir or Madam,

Due to the newly introduced **royalty limitation rules**, licence expenses for cross-border transactions may, under certain circumstances, be deducted as operating expenses only to a limited extent **as of the assessment period 2018**. This may be the case if the licensor is a related party to the licensee and the licensing income is subject to so-called preferential taxation.

In this case, the licensor is considered a related party to the licensee primarily if there is a holding of at least 25% either between the licensor and the licensee or in a triangular relationship.

On the other hand, there is preferential taxation if the licensing income is taxed at a rate of less than 25% and the licensing income is **also** subject to taxation that deviates from standard taxation. According to what is probably the most prevalent opinion in literature, the preferential taxation must be based on a tax regulation that specifically favours licensing income. Regulations of a general nature, such as the Swiss cantonal holding privilege, cannot impose any restrictions on the business expense deductions. Although the fiscal authority has not yet commented on this.

According to information from the Federal Ministry of Finance, however, the publication of a letter concerning the royalty limitation rules is planned.

If the royalty limitation rules take effect, the corresponding licensing expenses in Germany cannot be deducted to the extent that the licensing income is taxed below the income tax rate of 25%. If the burden abroad is 12.5%, 50% of the expenses are not deductible.

It should be noted, however, that the royalty limitation rules only apply in a cross-border context. In addition, the application of the royalty limitation rules can be avoided by so-called qualified R&D activities. An R&D activity is qualified if the licensor either carries out the R&D work itself or has it carried out by third parties as part of a contract research.

If you have any questions about royalty limitation rules, please do not hesitate to contact us, we will advise and support you at any time!

Best regards

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The author

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Dr. René Schäfer completed his degree in Business Administration at Saarland University in Saarbrücken in 1999 as a Business Administrator. At the same time, he received the Diploma of the Ecole Supérieure de Commerce, Lyon after one year of study in France.

In 2003, he received a doctorate at the Chair for Business Management Studies, particularly Business Taxation from Univ. Prof. Dr. Heinz Kußmaul on the subject of "Taxation of a German-French company". Dr. Schäfer completed the examination for Tax Advisor in 2005. Since 2008, he has also possessed the title of "Specialist Advisor for International Tax Law".

In mid-February 2005, Dr. Schäfer began working as an employee in the tax department of DORNBACH GmbH, Saarbrücken branch.

In July 2007, Dr. Schäfer was made a person with full commercial power of attorney and on January 1st, 2011, he was accepted as a partner.

In July 2015, he was made an Honorary Professor in the subject of Business Administration at the Saarland University.

Specialisation

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Company presentation



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