

# Recreating nexus for intangibles

**Case 1: How the German tax authorities explore the boundaries of taxing IP (registration) rights?**

**Case 2: The Dutch Uber case – will the migration of IP to the Netherlands lead to tax benefits?**

**Speakers:**

**Gunnar Knorr, Hans van den Hurk**

**Panellists:**

**Philippe Freund**

## Agenda

- An update on Germany's approach to Nexus and WHT in relation to IP rights
- Nexus requirements
- Administrative guidance on Treaty Country cases
- Non-treaty Countries
- A look beyond the border

## Domestic Rules in Germany – When does Germany claim Nexus?

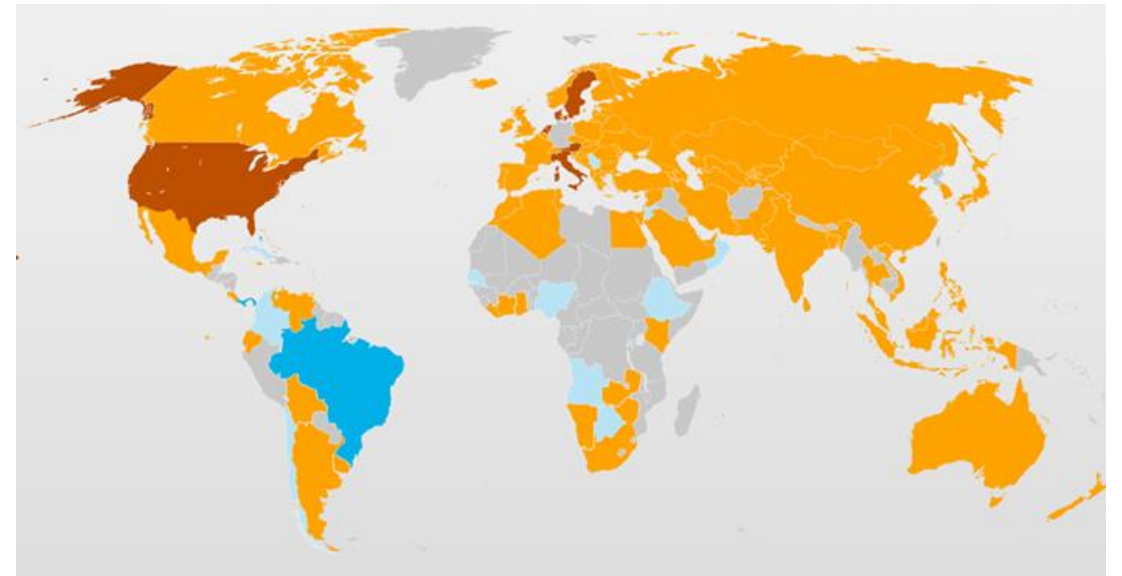
- IP licensed to German tax resident licensee
- German tax resident licensor
- Registration in German register
  - German patent
  - German trademark
  - European Patent
  - European Trademark?
- In breach with previous interpretations of laws: Even where neither licensor nor licensee are German residents
- Also, where included in larger transactions



# What creates Nexus?

## Treaty Protection

- OECD Model
  - Full right of taxation for country of residence of IP income recipient – potential credit for foreign wht
  - Limited right of taxation through wht in country of payor residence
  - Third countries have no right of taxation
- Potential issues
  - LOB clauses
  - Compliance requirements
    - Huge amount of cases
    - Extremely long handling times
    - What happened in reciprocity scenario?
  - Withhold first and obtain refund later
    - Grace provisions
    - additional instructions (11 Feb 21) regarding tax procedure and requirements for tax returns to be provided to the Federal Central Tax Office
    - no collection of tax, but subsequent exemption
    - taxpayer has to submit
      - certificate of residence country of origin and evidence of DTA treaty protection
      - all contracts on which the licensing is based and associated agreements, if applicable in German
    - Sept 30, 2021 deadline
    - Germany applies treaty override to its anti-abuse rules





## Non- Treaty Countries

- No protection against double taxation
- Full withholding requirements under current interpretations of laws
- No relief through fund procedure
- Full tax returns required to be filed under German interpretation of its laws



## A look to the panel:

- What do foreign revenue authorities make of the German approach?
  - Would they tax IP the same way?
  - What would the compliance requirements be in such case?
  - How to prevent double taxation?
- Where will this lead?
  - Future of Nexus?
    - Digital Services Tax?
    - Source state-based taxation?
  - Any right beyond IP?



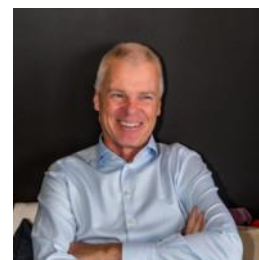
## What happens to IP onshoring?

- In the past, IP was on-shored e.g., to the Netherlands, giving rise to a step-up in basis
- Subsequent depreciation allowed for relatively low taxation of IP income
- How will this be treated going forward?
- What are the potential controversies arising here?

Speaker:



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