

# Country experience: Germany: Charges for the use of intellectual property

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14.358. Germany collects all BOP-relevant service transactions via a cut-off survey directly from enterprises, public authorities and natural persons on a monthly basis. Therefore, a generic questionnaire must be used by respondents to submit all their service transactions to Deutsche Bundesbank, as long as the value of a single transaction is above the reporting threshold of €12,500. Thus, the collection of data on "charges for the use of intellectual property" builds only one block in the frame of the general approach. Instead of asking explicitly what kind of intellectual property has been used and charged for in the reporting period, respondents must report only a transaction code indicating for which licences payments have been made/received (use or reproduction).

14.359. The list of transaction codes for filling out the forms is part of the basic law on the collection of BOP data. However, as the list may not always be self-explanatory enough for respondents, Deutsche Bundesbank has published, in addition, an explanatory note on the code list. As for other BOP items, in the case of intellectual property, the note describes, in more than three pages and in an understandable way, what types of transactions should be reported under a specific code and explains the differences between codes.

14.360. From the following excerpt from the explanatory note, it can be seen that, at the beginning of the section on intellectual property, a small table summarizes all relevant codes falling under that category.<sup>[1]</sup> The structure of the table mainly follows the structure presented in table III.1, treatment of intellectual property, in chapter III, subparagraph 8, of MSITS 2010. Subsequently, for each category (licences, distribution rights and purchase/sale) a general definition of the category is given, followed by detailed remarks about and examples of transactions to be reported under the respective codes. All the codes are in line with the recommendations of MSITS 2010 and BPM6.

Figure 14.7  
Treatment of intellectual property

Codes relating to intellectual property			
Items	Licences	Distribution rights	Purchase
Software	613	623	633
Audiovisual media	614	624	634
Patents/research findings	615	-	635
Brands and trademark rights	616	-	636
Other rights	617	627	637

## 1. Royalties and licences

The buyer, generally by acquiring licences, is given permission to use legally protected intellectual property for himself or for products that he produces.

### Special features

In Germany, income from licences is subject to income tax if a domestic enterprise acquires a licence from a non-resident that does not have a notice of exemption from the foreign tax authority, the German enterprise is obliged to deduct tax from the licence payment and to pay this amount to the German tax authorities. The amount that should be reported is not the amount of the licence payment minus the tax deduction but the actual invoiced amount.

Equally, German companies, as licensors, are subject to tax liability in various different countries. The licensee pays the taxes to the foreign tax authorities and only pays the licence amount minus the deducted taxes.

The income should be reported gross (excluding foreign withholding tax deductions) as licences, with the tax withheld abroad reported as an expense using code 810. If this tax is refunded, the corresponding incoming payment should also be reported using code 810.

467/507 Emissions allowances should be reported as "Other capital investment" using the financial transaction codes (p. 83/102).

### 613 Use of software Z4

The use of intellectual property relates to transactions based on the acquisition of a licence, even if, from the buyer's perspective, this looks like a software purchase (e.g., acquisition of software for office applications). One indication that such a licence has been acquired is that the acquired software must not be copied or distributed to third parties.

The following receipts and expenditure should be reported:

- Licences for individually produced or customised software, regardless of form in which supplied (CD, download, etc.). If the software company has the right to also

distribute this individual software to third parties, the client's payment for the individual software should be reported here (code 633);

- Licence fees (periodic and one-off payments) for standard software, if the software is downloaded via the Internet;
- Periodic licence fee for standard software supplied on a physical data carrier (e.g., DVD);
- Creation and production of software documentation;
- Charges from end customer to dealers or points of sale for use of software.

### Special feature

In the case of a one-off fee for standard software that was exported or imported on a physical data carrier or through having been pre-installed on hardware (pre-installed on PCs), checks should be made to determine whether there is a reporting obligation in relation to external trade statistics (intrastat or extrastat).

Given that the purchase of software generally entails the purchase of a licence and not acquisition of the proprietary rights to the full software (code 633), code 613 should be applied if there is any doubt.

### 614 Use of audiovisual products and other artistic copyrights Z4

Audiovisual and other artistic products can only be used as end user or for further use in own products. In the event of the latter, generally only extracts from relatively large works will be used. This includes, for example:

- Movies, documentaries, television films
- Videos (DVD, Blu-ray, etc.)
- Online media libraries
- Musical compositions
- Literary copyright
- Licence payments to authors
- Design patents
- Designs
- Access to encrypted television channels (e.g., pay TV)
- Charges received by the distributor from the distribution of audiovisual products.

### Special feature

624 Public playback or broadcast of audiovisual products

### 13 Use of research findings, inventions and processes Z4

This includes, for example, receipts from and expenditure on the use of patents through the payment of licence fees.

14.361. Currently the reports of the reporting agents are the only source used to compile the item "charges for the use of intellectual property". Besides the transaction code, the respondent must provide for each transaction (credit and/or debit), the partner country and the amount paid.

14.362. The incoming reports are checked by staff members for plausibility and completeness, mainly by cross-checking them with the reports of former periods. In case of doubt about accuracy, declarants are contacted to clarify the transaction in question. In the event that an open request could not be answered in due time by the respondent, imputations are made at least for important reporters.<sup>[2]</sup> The monthly values for the total and each partner country are then calculated by aggregating the transaction codes belonging to the item "charges for the use of intellectual property" of all individual reports. Codes for transactions with intellectual property belonging to other EBOPS items, for example, use of software (code 613 in the table above), are separated automatically and assigned to the appropriate item, such as software services.

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[1] It becomes obvious from the table that, under this section, not only codes belonging to the item “charges for the use of intellectual property” are listed, but also codes for transactions with intellectual property which have to be assigned to other Extended Balance of Payments Services Classification (EBOPS) items. This is done for practical reasons because respondents usually get confused if transactions in intellectual property are spread over various service items.

[2] Usually they are replaced by the confirmed or corrected transaction in the following month.