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Tax Rethink

German Idea – No Domestic Deduction Unless Payment Comparably Taxed Overseas

1. I understand that the Germans deny domestic income tax deductions for payments unless the taxpayer can show that the amount paid has ultimately been comparably taxed.
2. There would need to be some limits. Obviously, taxpayers cannot all be required to demonstrate such a thing for all outlays.
3. But the same sort of payments as are subject to transfer pricing scrutiny could be subject to this rule. That is to say a payment to a related non-resident.
4. There might need to be some further finessing of the regime. For instance, a payment might be made to a resident in a comparably taxed jurisdiction but the amount subject to tax was very low as there was another related party payment to an entity in the same group. The obligation to show that the payment made in Australia was ultimately comparably taxed would need to flow through all payments within the same group.
5. Further, careful thought would need to be given to what level of ultimate tax would be satisfactory for this rule (over 10%, over 15%, over 20% etc.)
6. Like with CFC rules, the drafting of the regime would need to exclude tax holidays and other concessions given by the laws or practices of otherwise comparably taxed jurisdictions.
7. But all of these issues have already been advanced to some degree as part of the drafting of the new s177DA of the *Income Tax Assessment Act 1936* (dealing with non-residents avoiding an Australian permanent establishment).
8. I need to add the caveat that I am submitting this idea on my own behalf and it should not be attributed to any of the professional groups of which I am a member.

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Heading

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