

# Explanatory leaflet

## on the refund procedure for foreign artistes and athletes and other persons under Section 50, para. 5, sentence 2, No. 3 Income Tax Law (*Einkommensteuergesetz – EStG*)

### Determining the refund amount

Taxes due from non-resident artistes, athletes and other persons specified in Section 50 a, para. 4, No. 1 and 2 Income Tax Law is imposed by way of withholding tax.

The withholding tax is

- 25% of the revenue for remunerations received by **31 December 2002**;
- 20% of the revenue for remunerations received or to be received after **31 December 2002**.

The solidarity surcharge of 5.5% of the withholding tax is calculated in accordance with Section 51 a Income Tax Law.

Pursuant to the Circular of the Federal Ministry of Finance of 3 November 2003 – IV A 5 - S 2411 - 26/03 –, the withholding tax to be refunded must be calculated as follows, thereby implementing ECJ Judgment of 12 June 2003 – C-234/04:

#### • Natural persons

Income	€		
Less expenses	€		
= Net income	€		
+ Basic personal allowance*)	€		
= Income relevant for the refund procedure	€		
-> Income tax according to the basic scale	€	Solidarity surcharge ( <i>Solidarit�tszuschlag – SolZ.</i> )	€
Less tax withheld	€	Solidarity surcharge withheld	€
<b>Tax to be refunded</b>	€	<b>Solidarity surcharge to be refunded</b>	€
	€		€

\*) Amount of basic personal allowances

1998: DM 12.360,-; 2001: DM 14.093,-; 2004: EUR 7.664,-;  
1999: DM 13.067,-; 2002: EUR 7.235,-; 2005: EUR 7.664,-;  
2000:DM 13.499,-; 2003: EUR 7.235,-; 2006:EUR 7.664,-

- **Legal persons**

Income	€		
Less expenses	€		
= Net income	€		
-> Corporate tax ( <i>Körperschaftsteuer</i> – <i>KSt</i> )	€	Solidarity surcharge	€
Less corporate tax withheld	€	Solidarity surcharge withheld	€
<b>Tax to be refunded</b>	€	<b>Solidarity surcharge to be refunded</b>	€
	€		€

The income comprises not only the fees paid for each performance, but also benefits in kind (e. g. travel expenses, hotel costs or subsistence allowances) granted by the German contracting party or third persons. Revenue from advertising (sponsorship) and merchandising derived directly before and after the concerts must also be added.

### **Procedural issues**

The refund procedure applies to the individual performance or series of performances. Therefore, the applicant must calculate the income and submit a separate refund application for each performance or clearly distinguishable series of performances, by, for example, an artiste or a group of artistes.

### **Applicant**

Only **non-resident** persons, i.e. persons subject to limited tax liability within the meaning of Section 1, para. 4 Income Tax Law may apply for refund in this procedure under Section 50, para. 5, sentence 2, No. 3 Income Tax Law. This includes non-residents deriving income pursuant to Section 50 a, para. 4, No. 1 or 2 Income Tax Law, such as self-employed artistes, professional athletes, authors, journalists and press photographers. The right to submit an application is not conditional upon the applicant having a certain legal form. Both individuals and groups of persons or companies may submit applications. Where an application is submitted for a group of artistes, it is sufficient where all members sign the application or endow one of the members with the authority to represent them and collect on their behalf.

### **Required documents**

- As a rule, the original documents supporting expenses must be submitted. An informal list of the individual expenses must be added to the documents. This list should include the invoice date and the "type of service" for each expense, and should contain numbers clearly assigned to the documents (i.e. the documents should be numbered). When a tour takes place both in Germany and abroad, the costs must be split according to the proportion of performances in Germany relative to the entire number of performances. Moreover, invoice amounts must be stated in EURO, i.e., they must be converted from other currencies into EURO, where necessary.

- Applicants must submit the original contracts and annexes which form the legal basis of the performance or officially authenticated copies thereof. They must be signed by both contracting parties.
- The original tax certificates pursuant to Section 50 a, para. 5, sentence 7 Income Tax Law, stating the date and amount of withholding tax paid, must be submitted.
- If required to do so by the Bundeszentralamt für Steuern, the German contracting party (debtor of remuneration) must confirm in writing that they will not subsequently bear any costs in connection with the performance/tour.

### **Time limits**

The application must be submitted on the officially prescribed form by the end of the calendar year following the calendar year in which the remuneration is received. For example, the time limit for applications with regard to remunerations received in 2005 ends on 31 December 2006. This is a statutory time limit which, once elapsed, may only be prolonged by way of a restoration to the original legal position – *restitutio in integrum* – pursuant to Section 110 of the Fiscal Code (*Abgabenordnung – AO*), subject to the conditions mentioned therein. The signed application must be received by the Bundeszentralamt für Steuern within this time limit. Other necessary components of the application, such as the certificate of tax paid or documents supporting expenses, may be submitted at a later date.

### **When to file an application**

The tax is fully or partly refunded upon request after the performance or series of performances. It is not possible to partially refund tax in advance. Please also note that the tax certificate pursuant to Section 50 a, para. 5, sentence 7 Income Tax Law may only be issued by the debtor of the remuneration after having complied with his obligation to declare and pay the tax. When the debtor takes full advantage of the time limit for filing his tax declaration pursuant to Section 73 e Income Tax Implementing Ordinance (*Einkommensteuer-Durchführungsverordnung*), the applicant must wait accordingly.

### **Applicability of Double Taxation Agreements**

Where a Double Taxation Agreement provides for further relief from German withholding tax, this relief has priority (Section 2 Fiscal Code).

### **Direct economic relation**

The use of the term "direct economic relation" is a reference to the wording in Section 3 c Income Tax Law. A close relation is required which must be unambiguously discernible and clearly distinguishable.

### **Interaction between income and expenses**

Artistic or athletic performances are often combined with further activities. For example, the athlete/artiste might be remunerated for participating in a talk show or an athlete might receive further remuneration, i.e. in addition to the winner's bonus, for participating in the sponsor's promotional activities.

In these and similar cases, the additional remuneration is not part of the income from artistic or athletic activities. The total costs incurred in connection with the stay in Germany must therefore be split accordingly (see Decree by the Federal Ministry of Finance dated 23 January 1996, Federal Tax Gazette 1996 Part I page 89 No. 2.3.3).