



## Guidance notes

### on applications under section 50d of the Income Tax Act (EStG) for a certificate of exemption and/or refund of German withholding tax on the basis of double taxation agreements or section 50g of the EStG

#### Royalties and similar remuneration

As a supplement to the [guidance notes](#) (in German) on relief from German withholding tax pursuant to section 50a(4) of the EStG on the basis of double taxation agreements (issued by the Federal Ministry of Finance on 7 May 2002 under reference IV B 4 – S 2293 – 26/02 and published in the Federal Tax Gazette 2002 Part I p. 521 ff.), the following principles set out below apply to relief (refund or exemption) from German withholding tax pursuant to section 50a(4) of the EStG.

#### 1. Tax liability under the EStG

##### 1.1 Income subject to limited tax liability in accordance with section 50a(4) of the EStG

Foreign natural or legal persons are subject to limited tax liability in respect of the income they derive in Germany within the meaning of section 50a(4) of the EStG (section 1(4) of the EStG and section 2 of the Corporation Tax Act (KStG) in conjunction with section 49 of the EStG). The tax is withheld at source. Remuneration debtors must withhold the tax for the account of the remuneration creditor subject to limited tax liability (the tax debtor) and remit this to the tax office responsible for their affairs.

The remuneration debtor is required to issue the creditor subject to limited tax liability with a **tax certificate** upon request (section 50a(5), seventh sentence, of the EStG). The [specimen](#) tax certificate from the Federal Central Tax Office (BZSt) may be used for this purpose.

#### **Please note:**

Special guidance notes can be obtained from the BZSt on relief from the withholding of tax in the case of income derived by [artistes or sportsmen](#). Information on relief from withholding tax for royalty payments made between **associated enterprises** of different EU Member States can be found via the BZSt's website in [Council Directive 2003/49/EC of 3 June 2003](#) (as last amended by Council Directive 2006/98/EC of 20 November 2006, OJ L 363 p. 129).

## 1.2 Responsibilities of the BZSt

The BZSt is responsible for relief (refund or exemption) from withholding tax within the meaning of section 50a(4) of the EStG on the basis of section 50g of the EStG or on the basis of double taxation agreements (section 5(1) number 2 of the Fiscal Administration Act (FVG) in conjunction with section 50d of the EStG).

**The responsibility for establishing whether domestic income is subject to limited tax liability pursuant to section 49(1) of the EStG and whether tax is to be withheld from such income and remitted pursuant to section 50a(4) of the EStG lies exclusively with the tax office having jurisdiction for the remuneration debtor.**

Hence if there is any reasonable doubt concerning the limited tax liability or the obligation to withhold tax, the matter should first be clarified with the tax office having sole jurisdiction for the remuneration debtor before an application is filed.

## 2. Restrictions on the right to tax on the basis of double taxation agreements

[Overview of the double taxation agreements currently in force](#) (in German)

### 2.1 General

The relevant provisions must be consulted to ascertain whether the income subject to the withholding of tax may also be taxed in Germany in accordance with an existing double taxation agreement. Particular reference is made to the specific provisions of double taxation agreements concerning:

- employment
- independent personal services
- royalties
- artistes and sportsmen

These guidance notes can deal only with general principles. Provisions may differ from one double taxation agreement to another. The text of the respective agreement is decisive in individual cases.

If a double taxation agreement with a country of which the person subject to limited tax liability is a resident stipulates that the income liable to tax withholding may not be taxed or may be taxed only at a rate lower than that prescribed by the EStG, the remuneration debtor may refrain from withholding the tax or withhold the tax at the lower rate only if the BZSt has issued a corresponding certificate (section 50d(2) of the EStG). See no. 3.1 of these guidance notes for details.

### 2.2 Assignment of the right to tax under double taxation agreements

Royalties and similar remuneration are payments made in return for the consent to exercise or to exploit rights.

Following paragraph 2 of Article 12 of the OECD Model Tax Convention, most double taxation agreements define the term “royalties” as meaning:

*“payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.”*

In principle, double taxation agreements assign the right to tax royalties to the country of which the licensor is a resident. However, there are also double taxation agreements that assign the Federal Republic of Germany the right to impose a limited amount of tax (cf. the [overview of Germany's right to tax royalties under double taxation agreements](#) in German).

### 3. Relief procedures

Relief from German withholding tax may be obtained either by applying for a refund of tax already remitted (section 50d(1) of the EStG) or – before payment is made to the remuneration creditor – by applying for exemption from the withholding of tax (section 50d(2) of the EStG). The [application forms](#) are available on the BZSt's website at [www.bzst.de](http://www.bzst.de)

#### 3.1 Exemption procedure

On application, full or partial exemption from the withholding of tax will be certified pursuant to section 50a(4) of the EStG. The procedure for issuing certificates of exemption is governed by section 50d(2) of the EStG. Please note the following:

- The certificate of exemption is issued only against written application on the [officially prescribed form](#).
- The application must be filed by the remuneration creditor. The application may also be filed by a third party (such as the remuneration debtor) if the creditor has given that party written authorisation to do so and the authorisation is submitted to the BZSt.
- The period of validity of the certificate of exemption will begin to run at the earliest on the date on which the application is received by the BZSt.
- It is not possible for certificates of exemption to be issued with retroactive effect for periods before the date on which the application is received.
- If tax withholding is to be waived, the certificate of exemption must be available to the remuneration debtor at the time the payment is made. The application should therefore be filed in good time before the start of the period for which exemption is required. **It currently takes three months to process applications.** Applications are processed in the order in which they are received.
- Remuneration creditors must submit proof of residency in the form of certification from the appropriate tax authorities of their country of residence (section 50d(4) of the EStG). To ensure that the tax authorities responsible for the remuneration creditor are aware of the application and the income from the Federal Republic of Germany declared in it, this certification must be made on the reverse of the form. Application forms completed online should be printed only by clicking the "Print form" button at the top of the document. This automatically assigns a serial number to the forms. Certification supplied on a separate sheet or by town or local authorities (residents' registration office, town or local authority treasuries) are not acceptable.

#### **Exception:**

Applicants resident in the USA may state their social security number (in the case of natural persons) or employer identification number (in the case of companies and other legal entities) as well as the US tax authority with which the most recent American income tax return was filed. The US Internal Revenue Service issues certificates of residency. The original of these certificates must be attached to the application for exemption. Notes on the issuance of certification of residency are available from the US tax authorities in the [Instructions for Form 8802](#).

- In the case of first-time applications, a copy of the **licence agreement** must be appended to the application. To the extent the applicant has not himself created the rights transferred to the remuneration creditor, a copy of the contract on the purchase of the rights by the applicant must be submitted as well (this contract is also referred to as the master licence agreement).

### 3.2 Refund procedure

If section 50g of the EStG or an agreement for the avoidance of double taxation stipulates that the income subject to the withholding of tax may not be taxed or may be taxed only at a lower rate, the full or partial refund of tax withheld and remitted may be applied for pursuant to section 50d(1) of the EStG. Please note the following:

- The refund will be granted only against written application on the [officially prescribed form](#). The refund application may be combined with an application for exemption in respect of future payments. In this case, the amount of tax to be refunded and the **bank account** to which payment is to be made must be stated on the official application form for a certificate of exemption.
- The application must be filed by the remuneration creditor. It may also be filed by a third party (such as the remuneration debtor) if the creditor has given that party written authorisation to do so and the authorisation is submitted to the BZSt.
- Applications for refunds relating to periods pre-dating the validity of a certificate of exemption already issued may be made by simple letter within 12 months of notification of the certificate of exemption. After 12 months, a refund application must be submitted using the officially prescribed form.
- The remuneration debtor's [tax certificate](#) must be appended to the application for refund. In accordance with section 50a(5), seventh sentence, of the EStG, the remuneration debtor is obliged to certify the necessary particulars if required to do so by the remuneration creditor subject to limited tax liability.
- For a refund of tax withheld to take place it is **essential** that the tax has been remitted.
- Under tax law the refunded amount is assigned to the remuneration creditor. Payment can be made to a third party only if an appropriate **authority to collect** or a declaration of assignment has been submitted.
- A copy of the **licence agreement**, or master licence agreement where appropriate, must be appended to the application for refund (see no. 3.1).

#### Deadline for applications

An application for refund must be submitted within a period of four years after the end of the calendar year in which the remuneration was paid. The period ends not less than six months after the date on which the tax was paid (section 50d(1), seventh and eighth sentences, of the EStG).

## 4. Responsibilities in cases of refunds

The BZSt is not responsible for refunding withheld tax that has been assessed and remitted in error. This is a matter for the tax office having jurisdiction for the remuneration debtor.

### 4.1 Remittance of withholding tax following issuance of a certificate of exemption

The BZSt is responsible for granting refunds on the basis of section 50g of the EStG or on the basis of double taxation agreements (section 5(1) number 2 of the FVG). However, it is not responsible if, having granted a certificate of exemption in response to an appropriate application, the withholding tax is reported and remitted only **after** this point in time. If tax was withheld although there was no obligation to do so, the self-assessed tax returns must be corrected and the amounts withheld and remitted in error refunded by the **tax office** (section 37(2) of the Fiscal Code (AO)).

### 4.2 Remittance of withholding tax on the basis of a notice of liability issued although the time-limit for tax assessment has expired

The remuneration debtor is liable for withholding and remitting tax (section 50a(5) of the EStG). The period for tax assessment is **four years** (section 169(2) number 2 of the AO). It shall begin upon expiration of the year in which the tax has arisen (section 170(1) of the AO) and/or the expiration of the calendar year in which the self-assessed tax return is submitted, at the latest, however, upon expiration of the **third** calendar year following the year in which the tax has arisen (section 170(2) number 1 of the AO). The tax liability shall arise as soon as the remuneration is paid to the creditor. The **expiry of the time-limit for issuing a notice of liability** coincides with the expiry of the time-limit for tax assessment (see Federal Fiscal Court judgement of 9 August 2000, published in the Federal Tax Gazette 2000 II, p. 13).

Objections to a notice of liability must be filed with the authority responsible for the administrative act (section 357(2) of the AO).

Sections 169 et seqq. of the AO apply only to the issuance of notices of liability, not to the cancellation or amendment of such notices (cf. section 191(3) of the AO). Hence notices of liability may be revoked even after achieving mandatory status or after expiry of the time-limit for tax assessment (Federal Fiscal Court judgement of 12 August 1997, Federal Tax Gazette 1998 II, p. 131).

If a notice of liability is revoked, the person for whose account the payment was made has a claim pursuant to section 37(2) of the AO. The claim must be addressed to the tax office responsible for the notice of liability. The BZSt is not able to refund these amounts.

## 5. Simplified procedure (control notification procedure)

Notwithstanding section 50d(2) of the EStG, the BZSt may, for cases described in section 50a(4), first sentence, numbers 2 and 3 of the EStG, endow the remuneration debtor, upon application, with the general authority to refrain from the withholding of tax or to withhold tax at a lower rate.

### **Please note:**

Special [guidance on the control notification procedure](#) is available (in German) from the BZSt.