

Guidance Notice

on applications under Section 50c para. 2 sentence 1 no. 1 of the German Income Tax Act (ITA) for a certificate of exemption or under Section 50c para. 3 ITA for a certificate of refund of German Withholding Tax pursuant to Section 50a ITA on the basis of Double Taxation Agreements (DTA) or Section 50g ITA for royalties or similar remuneration

1. Tax liability under the German Income Tax Act

- a. Income subject to limited tax liability in accordance with Sections 49 para. 1 no. 2 letter f), 50a para. 1 no. 3 ITA

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 para. 1 ITA (Section 1 para. 4 ITA and Section 2 of the German Corporation Tax Act in conjunction with Section 49 ITA). The tax is withheld at source.

Information, application forms, guidance notices etc. on the Withholding Tax procedure can be found [here](#).

- b. Responsibilites

The Federal Central Tax Office (FCTO) is responsible for relief (exemption or refund) from withholding tax within the meaning of Section 50a para. 1 ITA, on the basis of Section 50g ITA or DTA (Section 4 para. 2 and Section 5 para. 1 no. 2 of the German Fiscal Administration Act (FVG) in conjunction with Section 50c ITA).

The FCTO is also responsible for establishing whether domestic income is subject to limited tax liability pursuant to Section 49 para. 1 ITA and whether tax is to be withheld from such income and remitted pursuant to Section 50a para. 1 ITA. If there is any doubt concerning the limited tax liability or the obligation to withhold tax, before an application is filed the matter should be clarified with the Deduction Division (Abzugsbereich) of Department St I B 5 at the FCTO (Abzugsteuer@bzst.bund.de).

2. Restrictions on the right to tax on the basis of DTA

The DTA currently in force can be found [here](#) (in German).

a. General

If there is an applicable DTA in force, the relevant provisions of that DTA must be consulted to ascertain whether the income subject to the withholding of tax may indeed be taxed in Germany. This concerns in particular the specific provisions of DTA concerning

- dependent personal services (Art. 15 of the OECD Model Taxation Agreement [OECD-MA])
- independent personal services (Art. 14 OECD-MA)
- royalties (Art. 12 OECD-MA) and
- artists and sportsmen (Art. 17 OECD-MA).

This guidance notice can deal only with general principles. Provisions may differ from one DTA to another. The text of the respective DTA is decisive in each case.

If a DTA with a country of which the person subject to limited tax liability is a resident stipulates that the income liable to withholding tax may not be taxed or may be taxed only at a rate lower than that prescribed by the ITA, the remuneration debtor may refrain from withholding the tax or withhold the tax at the lower rate only if the FCTO has issued a corresponding certificate of exemption (Section 50c para. 2 sentence 1 no. 1 ITA). See no. 3 letter a of this guidance notice for details.

Please note:

A special guidance notice is available on the FCTO website on relief from withholding tax in the case of income derived by [artists or sportsmen](#).

Information on relief from withholding tax for royalty payments made between associated enterprises of different EU Member States can be found in [Council Directive 2003/49/EC](#) of June 3, 2003 (as last amended by Council Directive 2013/13/EU of May 13, 2013, OJ No. L 141 p. 30).

b. Assignment of the right to tax under DTA

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

Following Art. 12 para. 2 OECD-MA, most DTA define the term „royalties“ as meaning:

„Payments of any kind received as a consideration for the use of, or the rights 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.“

As a general rule, DTA assign the right to tax royalties to the licensor's country of residence. However, there are some DTA 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 DTA; in German: [Reststeuersatzliste](#)).

3. Relief procedures

Relief from German Withholding Tax may be obtained either by applying for a refund of tax already remitted (Section 50c para. 3 ITA) or – before payment is made to the remuneration creditor – by applying for a certificate of exemption (Section 50c para. 2 sentence 1 no. 1 ITA).

Since 1 January 2023, applications for a certificate of exemption or refund must be submitted to the FCTO in accordance with the officially prescribed data set via the officially specified interface, i.e. by means of the corresponding application via the BZSt online portal (BOP) (Section 50c para. 5 sentence 1 ITA). Further information on registration and application can be found [here](#).

a. Exemption procedure under Section 50c para. 2 sentence 1 no. 1 ITA (certificate of exemption)

On application, full or partial exemption from the withholding of tax pursuant to Section 50a para. 1 ITA will be certified. If the remuneration creditor is granted a certificate of exemption at his/her request, the remuneration debtor is authorized to refrain from withholding and paying the withholding tax. However, the remuneration debtor must also submit a tax declaration in this case. The procedure for issuing certificates of exemption is governed by Section 50c para. 2, from sentence 4 and para. 5 ITA. Please note the following:

- The certificate of exemption was issued upon written application on an officially prescribed form (if the application was received by 31.12.2022; for applications from Switzerland until 30.11.2023). For applications submitted after 31.12.2022, electronic transmission is mandatory. To avoid undue hardship, the FCTO may waive electronic transmission upon request (Section 50c para. 5 sentences 1 and 3 ITA).
- 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 authorization to do so and the authorization is submitted to the FCTO.
- The period of validity of the certificate of exemption begins at the earliest on the day on which the application is received by the FCTO. The issuance of retroactive exemption certificates is not possible.
- The prerequisite for exemption from tax withholding is that an exemption certificate has been issued at the time of payment. The application should therefore be filed in good time before the start of the period for which exemption is required. The processing time is approximately twelve months once all the necessary documents have been submitted. The order of processing is based on the receipt of applications or requested documents.
- The remuneration creditor must prove that he/she is a resident of the country of residence by means of confirmation from the competent tax authority of the country of residence for the year in which the application is submitted (Section 50c para. 5 sentence 2 ITA).

Exception USA:

Applicants resident in the USA may state their social security number (in the case of natural persons) or their employer identification number (in the case of companies and other legal entities) instead of their Taxpayer Identification Number. The US Internal Revenue Service issues certificates of residence for income tax purposes, which must be attached to the application for exemption (Form 6166). Notes to the issuance of certificates of residency are available from the US tax authorities in the “Instructions for Forms 8802”.

- A copy of the current license agreement must be appended to the application.

b. Refund procedure under Section 50c para. 3 ITA (certificate of refund)

If Section 50g ITA or a DTA stipulates that the income subject to the withholding 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 50c para. 3 ITA. Please note the following:

- The certificate of refund was issued upon written application on an officially prescribed form (see above Point 3 a). For applications submitted after 31.12.2022, electronic transmission via the BOP is mandatory. To avoid undue hardship, the FCTO may waive electronic transmission upon request (Section 50c para. 5 sentences 1 and 3 ITA).
- 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 authorization to do so and the authorization is submitted to the FCTO.
- The remuneration debtor's tax certificate must be appended to the application for refund (Section 50c para. 3 sentence 3 ITA). In accordance with Section 50a para. 5, sentence 7 ITA, the remuneration debtor is obliged to certify the necessary particulars upon request by the remuneration creditor subject to limited tax liability.
- The payment of the tax withholding amounts is an indispensable prerequisite for a refund.
- Under tax law the refunded amount is assigned to the remuneration creditor. Payment can be made to a third party only if a corresponding power of collection or a declaration of assignment has been submitted to the FCTO.
- A current copy of the license agreement must be appended to the application for refund.

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 a year after the date on which the tax was paid (Section 50c para. 3 sentence 2 ITA).

4. Responsibilities for refunds in special cases

In cases where tax withholding amounts have been incorrectly assessed and paid, the remuneration debtor may correct the tax withholding declaration in accordance with Section 164 para. 2 of the German Fiscal Code (AO). The FCTO is responsible for corrections.

a. Remittance of withholding tax after issuance of a certificate of exemption

The tax withholding declaration must be corrected by the remuneration debtor (Section 164 para. 2 AO) and the amounts wrongly withheld and paid must be refunded by the FCTO (Section 37 para. 2 AO).

b. Remittance of withholding tax in the period between application and issuance of a certificate of exemption

The remuneration debtor shall withhold tax in accordance with Section 50a ITA if remuneration is paid for which an exemption certificate has not (yet) been issued in accordance with Section

50c para. 2 sentence 1 no. 1 ITA. In cases where remuneration for which tax has been withheld has been paid in the period between the submission of the application for a certificate of exemption and the actual issuance of a certificate of exemption, there is an option with regard to the refund of the tax withheld amounts:

- The remuneration debtor can correct the declaration concerning the tax deduction (Section 164 para. 2 AO)

or

- The remuneration creditor can file an application in accordance with Section 50c para. 3 ITA. For this purpose, the tax certificate issued by the remuneration debtor must be submitted (Section 50c para. 3 sentence 3 ITA).

c. Remittance of withholding tax on the basis of a notice of liability issued even though the time-limit for tax assessment has expired

The remuneration debtor is liable for withholding and remitting tax (Section 50a para. 5 ITA). The period for tax assessment is four years (Section 169 para. 2 no. 2 AO). It begins upon expiration of the year in which the tax has arisen (Section 170 para. 1 AO) and/or upon 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 para. 2 no. 1 AO). The tax liability arises 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 time-limit for tax assessment (see Federal Fiscal Court judgement of August 9, 2000, published in the Federal Tax Gazette 2000 II, p. 13).

Objections to a notice of liability must be filed with the authority which issued the administrative act (Section 357 para. 2 AO).

Section 169 et seqq. AO apply only to the issuance of notices of liability, not to the cancellation or amendment of such notices (cf. Section 191 para. 3 AO). Hence notices of liability may be revoked even after achieving mandatory status or expiry of the time-limit for tax assessment (Federal Fiscal Court judgement of August 12, 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 to a refund pursuant to Section 37 para. 2 AO. The claim must be addressed to the tax office responsible for the notice of liability.

5. Simplified procedure (Exemption option) for remunerations up to 10,000 euros (until 31.12.2023: 5,000 euros) – omission of the control notification procedure

The control notification procedure has been abolished. The remuneration debtor may refrain from withholding and paying tax in the case of the transfer of rights pursuant to Section 50a para. 1 no. 3 ITA,

- insofar as the taxation of the remuneration is contrary to a double taxation agreement and

- the remuneration to be paid by the remuneration debtor plus the remuneration already paid to the same remuneration creditor in the relevant calendar year does not exceed the limit of 10,000 euros (until 31.12.2023: 5,000 euros).

The verification of the correct application of the new regulation is carried out via the tax declaration, which the remuneration debtor must submit in any case (Section 50c para. 2 sentence 2 ITA).

In contrast to the control notification procedure, no prior approval procedure is required for the application of the new simplification rule. In addition, the annual control report is no longer required. The new exemption applied for the first time to remuneration paid after December 31, 2021. Until then, the control notification procedure pursuant to Section 50d para. 5 ITA old version could continue to be applied.