



Guidance notice

on applications under Section 50d of the Income Tax Act for a certificate of exemption and/or refund of German withholding tax on the basis of Double Taxation Agreements for

Remuneration paid to foreign artists and athletes

As a supplement to the guidance notes on relief from German withholding tax pursuant to Section 50a (4) of the Income Tax Act (ITA) on the basis of Double Taxation Agreements (DTAs) (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 (1) ITA).

1. Tax liability pursuant to the German ITA

1.1 Income subject to limited tax liability pursuant to Section 50a (1) ITA

Foreign artists and athletes having neither their domicile nor habitual abode in Germany are subject to limited tax liability on income derived from the artistic or sporting activity they exercise in Germany (Section 1 (4) in conjunction with Section 49 (1) nos. 2d, 3 and 4 ITA).

In the case of artists or athletes subject to limited tax liability who are self-employed or who conduct a business activity, income tax is levied by withholding in accordance with Section 50a (1) ITA, and in the case of dependently employed artists or athletes by deducting wages tax at source.

1.2 Wages-tax deduction

Artists or athletes subject to limited tax liability who carry on their activity in Germany as employees of a German employer are not subject to tax withholding in accordance with Section 50a (1) ITA. Instead, they are subject to wages-tax deduction at source pursuant to Section 38 (1) ITA in the same way as all other employees subject to limited tax liability.

If wages tax cannot be withheld owing to the absence of a German employer, the foreign employer (who is the remuneration debtor as a result of services carried out or commercially exploited in Germany) is obliged to withhold the tax in accordance with No. 1.1 above.

The tax office having jurisdiction for the remuneration debtor (employer) is responsible for relief from wages-tax deduction in the case of income from dependent employment on the basis of DTAs.

1.3 Responsibilities

The Federal Central Tax Office (FCTO) is responsible for relief from withholding tax within the meaning of Section 50a (1) ITA on the basis of DTAs (Section 5 (1) no. 2 of the German Fiscal Administration Act (FVG) in conjunction with Section 50c ITA).

The following responsibilities apply for determining whether there is a limited tax liability for domestic income pursuant to Section 49 (1) ITA and whether withholding tax must be withheld and paid for this income pursuant to Section 50a (1) ITA:

For remunerations paid up to December 31st, 2013, the responsibility lies with the tax office responsible for the remuneration debtor.

In the case of remuneration received by the remuneration creditor since January 1st, 2014, the responsibility lies with the FCTO.

The decision on whether the income constitutes income from independent personal services or **income liable to wages tax** from dependent personal services lies with the tax office responsible for the remuneration debtor.

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 tax office/FCTO.

2. Restrictions of the right of taxation on the basis of DTAs

An Overview of the currently applicable DTAs can be found [here](#).

2.1 General

If a DTA with a country of which the artist or athlete subject to limited tax liability is a resident stipulates that the income liable to tax withholding may not be taxed in the Federal Republic of Germany, the remuneration debtor may refrain from withholding the tax only if the Federal Central Tax Office has issued a corresponding certificate (Section 50c (2) ITA). See No. 3.1 of these guidance notes for details.

2.2 Assignment of the right to tax to the Federal Republic of Germany

In line with the arrangement contained in Article 17 of the OECD Model Tax Convention, all DTAs currently in force assign in principle to the Federal Republic of Germany the right to tax remuneration paid to performing artists subject to limited tax liability and to sportsmen for activities exercised in Germany (examples of performing artists are given in No. 2.5 below).

In such cases the Federal Central Tax Office does not issue any notice of exemption or certificate of exemption.

However, to avoid double taxation of the income derived by the artist or athlete, the country of residence either refrains from taxing the remuneration in question (exemption method) or grants a tax credit for the tax paid in Germany (credit method). The method used will depend on the respective DTA in conjunction with the tax laws of the country of residence.

2.3 Assignment of the right to tax to the country of residence

In some DTAs, the Federal Republic of Germany relinquishes the right to tax such income subject to certain conditions, i.e., in such cases the right to tax is retained by the country of residence of the artist or athlete.

This applies in the following three categories of cases (giving only a **rough breakdown** – the text of the respective DTA is decisive in the individual instance).

2.3.1 Cultural exchange

The artist or athlete carries on activity in Germany within the framework of an official cultural exchange approved by the Contracting States.

A clause of this kind is to be found in the DTA with the following countries:

Bosnia and Herzegovina (see Yugoslavia)	Macedonia (see Yugoslavia)
China	Serbia (see Yugoslavia)
Czech Republic	Slovakia
Kosovo (see Yugoslavia)	Vietnam
Montenegro (see Yugoslavia)	Yugoslavia (successor states)

2.3.2 Subsidies from public funds of the sending state

The performance of the artist or athlete is substantially or wholly subsidised by public funds from the sending state (country of residence). This support must equal or exceed a specific minimum level. Most DTA stipulate that the visit of the artist or athlete is to be **wholly or substantially** supported by the **sending state**.

A clause of this kind is to be found in the DTA with the following countries:

Albania	Ireland	Romania
Algeria	Italy	Russian Federation
Argentina	Ivory Coast	Singapore
Armenia (see USSR)	Kazakhstan	Slovenia
Austria	Kenya	Switzerland
Azerbaijan	Korea, Republic	Sri Lanka
Bangladesh	Kuwait	Sweden
Belarus	Kyrgyzstan	Syria
Bolivia	Latvia	Tajikistan
Bulgaria	Lithuania	Thailand

Canada	Macedonia	Turkey
Croatia	Malaysia	Turkmenistan (see USSR)
Cyprus	Malta	Ukraine
Denmark	Mauritius	United Arab Emirates
Ecuador	Mexico	United Kingdom
Egypt	Moldova (see USSR)	Uruguay
Estonia	Mongolia	USSR
Georgia	Namibia	USA
Ghana	Norway	Uzbekistan
Hungary*	Pakistan	Venezuela
India	Philippines	White Russian (see Belarus)
Indonesia	Poland*	Zambia

*) Public subsidies may come from sending country and/or country of the performance.

2.3.3 Special exception for low income – USA only

Artists or athletes resident in the USA who have derived income from performances in Germany may claim a refund of the tax withheld **after the calendar year concerned** if their fee including expenses reimbursed to them and other allocations did not exceed **US\$20,000**. The application for a refund can be filed only **when the calendar year in question has elapsed**.

2.4 Proof of support from public funds and proof of cultural exchange

The extent to which a specific performance is supported from public funds or the fact that a performance takes place within the framework of cultural exchange must be certified by a state institution (or in the case of support from public funds the supporting authority) or the diplomatic or consular representation of the country of origin of the artist or athlete.

2.5 Performing artists

Performing artists within the meaning of Nos. 2.1 to 2.3 above are those who perform in public directly or indirectly by way of the media (e.g., stage and film actors, singers, dancers, conductors, musicians).

People exercising other forms of artistic activity (such as composers, directors, choreographers, set or lighting designers) are not covered by the DTA rules modelled on Article 17 of the OECD Model Convention. The remarks in Nos. 2.1 to 2.3 above do not apply to such persons. Instead, they are subject to the specific rules on independent or dependent personal services contained in each DTA (provisions may differ from one Agreement to another, and the text of the respective Agreement will be decisive in the individual case).

3. Relief procedures

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

Application forms are provided on the Federal Central Tax Office website at <https://www.FCTO.de/>.

3.1 Exemption procedure pursuant to Section 50c (2) Sentence 1 no. 1 ITA (certificate of exemption)

On application, full or partial relief from tax deduction is certified pursuant to Section 50a (1) ITA. The procedure for issuing a certificate of exemption is regulated in Section 50c (2) from Sentence 4 and (5) ITA. The following should be noted:

- The certificate of exemption is issued only upon written application using the [officially prescribed form](#) (if the application is received by December 31st, 2022). For applications submitted after December 31st, 2022, electronic transmission is mandatory. To avoid undue hardship, the FCTO may waive electronic transmission upon request (Section 50c (5) sentences 1 and 3 ITA).
- The application must be filed by the artist or athlete (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 a written [power of attorney](#) is presented.
- 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 three months once all the necessary documents have been submitted. The order of processing is based on the receipt of applications or requested documents.
- The artist or athlete must prove that he/she is resident in his/her country of residence by way of a confirmation from the responsible tax authority of the country of residence (Section 50c (5) Sentence 2 ITA). Residence no longer has to be confirmed on the officially prescribed form. The application can also be accompanied by a separate confirmation of residency in accordance with the respective DTA with Germany.

Exception USA:

Applicants resident in the US indicate their social security number and the US tax authority to which their most recent US income tax return was submitted. The US tax authority IRS issues certificates of residence, the original version of which is to be enclosed with the exemption application. Instructions regarding the issuance of the certificate of residence have been published by the US tax authority in the information document "[Instructions for Form 8802.](#)"

- In the case of first time applications, a copy of the contract concluded with the remuneration debtor must be appended to the application.

3.2 Refund procedure under Section 50c (3) ITA (certificate of refund)

If a DTA stipulates that income subject to tax deduction cannot be taxed, or can only be taxed at a lower rate, then pursuant to Section 50c (3) ITA a full or partial refund of the taxes deducted and transferred can be claimed. The following should be noted:

- The refund is issued only upon written application using the [officially prescribed form](#) (if the application is received by December 31st, 2022). For applications submitted after December 31st, 2022, electronic transmission is mandatory. To avoid undue hardship, the FCTO may waive electronic transmission upon request (Section 50c (5) sentences 1 and 3 ITA). The refund application may be combined with an application for exemption in respect for future payments. In this case, the amount of tax to be refunded and the bank account which payment is to be made to must be stated on the official application form for a certificate of exemption.
- The application must be filed by the artist or athlete (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 a written [power of attorney](#) is presented.
- 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 issuance 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 (Section 50c (3) sentence 3 ITA). In accordance with Section 50a (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 refund amount is assigned to the supervisory or advisory board member as the person liable for payment of the tax. Payment to third parties is possible only if a corresponding power of collection or a formal declaration of assignment is submitted to the FCTO in the original version.

- A copy of the contract concluded with the remuneration debtor must be appended to the application.

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 doesn't end before the expiry of one year from the date on which the tax was paid (Section 50c (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 (2) of the German Fiscal Code (AO). The following responsibilities apply here:

- In the case of remuneration received by the remuneration creditor until December 31st, 2013, the responsibility lies with the tax office responsible for the remuneration debtor.
- In the case of remuneration received by the remuneration creditor since January 1st, 2014, the responsibility lies with the FCTO.

4.1 Remittance of Withholding Tax after issuance of a certificate of exemption

The following applies to remuneration that accrued to the remuneration creditor by December 31st, 2013:

The FCTO is responsible for refund on the basis of DTA (Section 5 (1) no. 2 FVG). However, the FCTO is not responsible if it has issued the exemption certificate upon application and the withholding tax was not declared and paid until after this date. If the tax was withheld despite the lack of an obligation to do so, the tax returns must be corrected by the remuneration debtor (Section 164 (2) AO) and the amounts wrongly withheld and paid must be refunded by the tax office (Section 37 (2) AO).

In the case of remuneration that accrues to the remuneration creditor as of January 1st, 2014, the FCTO is the recipient of the amended tax return.

4.2 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 (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 (2) AO)

or

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

4.3 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 (5) ITA). The period for tax assessment is four years (Section 169 (2) no. 2 AO). It begins upon expiration of the year in which the tax has arisen (Section 170 (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 (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 (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 (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 (2) AO. The claim must be addressed to the tax office responsible for the notice of liability.

5. Proof of payment of the 2nd stage

Pursuant to Section 50c (3) sentence 4 ITA, the issuance of an exemption notice or exemption certificate may be made dependent on the condition that the remuneration creditor proves that he or she has fulfilled his or her own obligations to withhold tax with respect to the artists' fees.

This obligation exists insofar as payments for artistic activities in Germany are made to self-employed artists who are not resident in Germany. In this respect, the payment

creditor is himself or herself the payment debtor vis-à-vis the self-employed individual artists.

The following documents must be submitted as proof of payment of the 2nd stage:

For remuneration received by December 31st, 2013:

- Copy of the tax return
- proof of payment
- Copy of the contract between the self-employed artist and the creditor of the remuneration.

For remuneration received as of January 1st, 2014, only the copy of the contract with the self-employed artists must be submitted.

6. Independent orchestras and cultural associations

Foreign cultural associations that are not exempt from tax deduction under Section 50a (1) ITA on the basis of the provisions of a DTA may, under certain conditions, be exempt from domestic income tax under Section 50 (4) ITA. However, it is not the FCTO that is responsible for this exemption, but the tax office (for information on responsibilities, see point 5.1 of the Federal Ministry of Finance circular dated November 25, 2010, BStBl. 2010 I, p. 1350ff.). Further details can be found in the Federal Ministry of Finance circular dated July 20, 1983, BStBl. 1998 I page 1168.

7. Other legal issues relating to the taxation of foreign artists and athletes

In a decree dated November 25th, 2010 (Federal Tax Gazette 2010 I, p. 1350 ff.), the Federal Ministry of Finance commented on many legal issues arising in connection with the taxation of artistes and athletes subject to limited tax liability in Germany (e.g., on the problems relating to foreign artiste agencies or advertising contracts entered into by artistes or athletes).

In accordance with No. 7.4 of the decree, remuneration paid for a public performance by an artist in Germany and its utilisation on picture and sound recording media (e.g., recordings made during a performance) is to be split in the ratio allocating 80 percent to personal activity (activity remuneration) and 20 percent to utilisation (royalty remuneration) if there is no indication that another ratio is applicable. Full or partial exemption is generally possible in respect of the royalty remuneration.

8. Note: Assessment option pursuant to Section 50 (2), second sentence, no. 5 ITA

The 2009 Annual Tax Act, replaces – effective January 1st, 2009 – the simplified tax refund procedure pursuant to Section 50 (5), second sentence, no. 3 ITA (old version), with an assessment option pursuant to Section 50 (2), second sentence, No. 5 of the Income Tax Act for taxpayers from EU/EEA states subject to limited tax liability.

The FCTO is responsible for the assessment.