

“Section 50c¹

Withholding tax relief in certain cases

(1) ¹Insofar as the taxation of income subject to capital income tax or withholding tax pursuant to Section 50a is precluded by Section 43b, Section 50g or under an agreement on the avoidance of double taxation, the provisions on withholding, paying and declaring tax shall be applied regardless. The withholding agent cannot, subject to subsection (2), invoke the rights of the creditor of capital income or remuneration under Section 43b, Section 50g or the agreement.

(2) ¹The debtor of capital income or remuneration is not obliged to withhold and pay the tax,

1. insofar as the creditor of the capital income or remuneration receives, upon his/her or its application (application for exemption, *Freistellungsantrag*), confirmation (certificate of exemption, *Freistellungsbescheinigung*) from the Federal Central Tax Office (*Bundeszentralamt für Steuern*) that the taxation of income is precluded by Section 43b, Section 50g or an agreement on the avoidance of double taxation, or
2. insofar as the income is that of a taxpayer subject to limited tax liability within the meaning of Section 50a (1) no 3 and as far as taxing the income would conflict with an agreement on the avoidance of double taxation; this applies only if the remuneration does not exceed € 5,000 when added to the remuneration already paid in the same calendar year to the taxpayer subject to limited tax liability by the debtor.

²The debtor must submit a tax return even if he/she or it does not have to withhold and pay tax pursuant to sentence 1 above. ³A tax return cannot be changed on the basis of sentence 1 unless the certificate of exemption has not yet been issued at the time of filing the tax return. ⁴A certificate of exemption must be limited to a maximum period of three years starting at the earliest on the day on which the application is received by the Federal Central Tax Office and must be made conditional on compliance with the requirements for its issue during its period of validity; ancillary provisions in accordance with Section 120 (2) of the German Fiscal Code (*Abgabenordnung*) may be added to the certificate of exemption. ⁵A certificate of exemption for capital income tax based on an agreement on the avoidance of double taxation may only be granted if the creditor of the capital income is a corporation which is subject to tax on income or on profit in its country of residence and is not exempt from this taxation, and as far as the creditor receives capital income from a corporation with unlimited tax liability within the meaning of Section 1 (1) number 1 of the German Corporation Tax Act (*Körperschaftsteuergesetz*) and the creditor holds a minimum direct share of 10% in the corporation's nominal capital. ⁶A decision on an application for exemption must be made within three months after all required documentation has been provided.

(3) ¹The creditor of capital income or remuneration who is subject to limited tax liability shall be refunded the tax withheld and paid pursuant to subsection (1) sentence 1, or paid by reason of a liability notice or additional assessment, upon his/her or its application to the Federal Central Tax Office by the legal deadline (application for refund, *Erstattungsantrag*) by reason of a certificate of refund (*Freistellungsbescheid*), if the tax cannot be offset against the creditor's income tax or corporation tax in accordance with Section 36 (2) no 2. ²An application for exemption can be submitted within four years, beginning with the end of the calendar year in which the capital income or remuneration were received; the four-year period ends no earlier than one year since the time of

¹ This working translation of the *Einkommensteuergesetz* (EStG) is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

payment of the tax and not before the deadline provided for by the agreement on the avoidance of double taxation. ³A certificate of refund for capital income tax is granted only if the tax certificate described in Section 45a (2) or Section 45a (3) was provided or the information pursuant to Section 45a (2a) has been transmitted; an application for the refund of tax paid pursuant to Section 50a must be accompanied by a tax certificate pursuant to Section 50a (5) sentence 6. ⁴If the creditor pursuant to Section 50a (5) is obliged to withhold tax on behalf of other creditors subject to limited tax liability, the disbursement of the refund can be made conditional upon the creditor furnishing proof of payment of the tax to be withheld, providing securities for the tax to be withheld or declaring that he or she irrevocably agrees to the offsetting of his or her refund claim against the tax liability pursuant to Section 50a (5) sentence 3.

(4) ¹The amount of tax to be refunded pursuant to subsection (3) above in conjunction with Section 50g accrues interest in accordance with Sections 238 and 239 of the German Fiscal Code. ²The assessment period begins at the end of the calendar year in which the certificate of refund was issued, revoked or corrected in accordance with Section 129 of the German Fiscal Code. ³The period of interest accrual begins 12 months after the end of the month in which the application for refund and all documentation required for the decision were submitted, and no earlier than the day on which the tax was paid. ⁴The period of interest accrual ends with the expiration of the day when the certificate of refund comes into effect. ⁵Section 233a (5) of the German Fiscal Code applies accordingly.

(5) ¹The application for exemption and the application for refund must be transmitted via the officially stipulated interface using the officially prescribed data set. ²The applicant must provide evidence in the form of a confirmation from the other state's tax authority responsible for him/her or it that he/she or it is resident in that state or, in the cases described under Section 43b (1) sentence 1, second option, or Section 50g (1) sentence 1, last option, that he or she operates a permanent establishment in that state. ³To avoid undue hardship, the Federal Central Tax Office can, upon application, waive the requirement regarding transmission pursuant to sentence 1 above; in this case, the application for exemption or refund must be provided using the officially prescribed form. ⁴Data on the decision on an application for exemption and on an application for refund can be retrieved via the officially stipulated interface, unless the application was to be provided using an officially prescribed form; Section 122a (3) and (4) of the German Fiscal Code applies accordingly."

“Section 50d

Application of agreements on the avoidance of double taxation

- (1) (repealed)
- (1a) (repealed)
- (2) (repealed)
- (3) ¹A corporation, association of persons or total assets is not entitled to relief from capital income tax and from withholding tax under Section 50a by reason of an agreement on the avoidance of double taxation as far as
 - 1. persons participate in them or are beneficiaries under the Articles of Association, the foundation business or another form of constitution who would not be entitled to such relief if they obtained the income directly, and
 - 2. there is no substantial link between the source of income and an economic activity of this corporation, association of persons or total assets; obtaining income, passing on such income to participating or beneficiary persons, and an activity as far as it is carried out with a business operation that is not appropriate for the business purpose, are not deemed to constitute an economic activity.

²Sentence 1 above does not apply as far as the corporation, association of persons or total assets proves that none of the principle purposes of its involvement is to obtain a tax advantage, or if there is a substantial and regular trade with the principal class of its shares at a recognised stock exchange.

³Section 42 of the German Fiscal Code remains unaffected.”
- (4) (repealed)
- (5) (repealed)
- (6) (repealed)
- (7) If income as defined by Section 49 (1) no 4 is granted via the cash office of a legal entity governed by public law as defined by the provision on public service of an agreement on the avoidance of double taxation, and in the event that an employment relationship exists with another person, this provision must be interpreted as meaning that the payments are made for services performed for the first-mentioned person if they are raised in full or substantially from public funds.
- (8) ¹If income of a person subject to unlimited tax liability from dependent employment (Section 19) is to be excluded from the assessment basis for German tax under an agreement on the avoidance of double taxation, the exemption for the assessment is only granted, irrespective of the agreement, insofar as the taxpayer provides proof that the state which is entitled to the taxation right under the agreement has waived this taxation right or that the tax assessed for the income in this state has been paid. ²If such proof is provided only after the income has been included in an income tax assessment, the tax assessment notice must be amended accordingly. ³Section 175 (1) sentence 2 of the German Fiscal Code applies accordingly.
- (9) ¹If income of a person subject to unlimited tax liability is to be excluded from the assessment basis for German tax under an agreement on the avoidance of

double taxation, the tax exemption of the income is not granted, irrespective of the agreement, as far as

1. the other state applies the terms of the agreement in such a way that the income must be excluded from taxation in this state or can be taxed only at a tax rate limited by the agreement,
2. the income is not liable to tax in the other state only because it is earned by a person who is not subject to unlimited tax liability in this state due to their residence, permanent abode, the location of business management, the registered office or a similar criterion, or
3. the income is not liable to tax in the other state only because it is attributed to a permanent establishment in another state or because the tax base in the other state is reduced on the basis of a presumed contractual relationship.

²Number 2 above does not apply for dividends which are excluded from the assessment basis for German tax under an agreement on the avoidance of double taxation, unless the dividends were deducted when determining the profit of the distributing company. ³Terms of an agreement on the avoidance of double taxation as well as subsection (8) above and Section 20 (2) of the External Tax Relations Act (*Außensteuergesetz*), remain unaffected insofar as they limit the exemption of income to a greater extent. ⁴Terms of an agreement on the avoidance of double taxation which stipulate that income is not to be exempt from the assessment basis for German tax due to its treatment in the other contracting state, must also be applied to items of income, to the extent that the conditions for the respective terms of the agreement regarding the items of income are fulfilled.

- (10) ¹If the provisions of an agreement on the avoidance of double taxation must be applied to remuneration as defined in Section 15 (1) sentence 1 no 2 second half-sentence and no 3 second half-sentence, and if the agreement does not contain provisions explicitly concerning such remuneration, this remuneration is considered, for the purposes of applying the agreement, solely as part of the company profits of the shareholder who is entitled to the remuneration. ²Sentence 1 also applies to income and expenses created by special operating assets. ³Notwithstanding the provisions of an agreement on the avoidance of double taxation regarding the attribution of assets to a permanent establishment, the remuneration of the shareholder must be attributed to the permanent establishment of the company to which the service underlying the remuneration must be attributed; the income and expenses mentioned in sentence 2 above must be attributed to the permanent establishment to which the remuneration is attributed. ⁴Sentences 1 to 3 above also apply accordingly in the cases laid down in Section 15 (1) sentence 1 no 2 sentence 2 and in the cases laid down in Section 15 (1) sentence 2. ⁵If income within the meaning of sentences 1 to 4 above must be attributed to a person who is deemed resident in the other state under an agreement on the avoidance of double taxation, and provided that the taxpayer proves that the other state taxes this income without crediting the German tax due on this income, then the foreign tax on the income in that state which corresponds to German income tax and which has been verifiably assessed, paid and reduced by any applicable allowance that has arisen, must be proportionally credited up to the amount of the pro rata German income tax

due for this income. ⁶Sentence 5 does not apply if the agreement on the avoidance of double taxation contains an explicit rule regarding such income.

⁷Sentences 1 to 6

1. do not apply to partnerships within the meaning of Section 15 (3) no 2;

2. apply accordingly if income is part of income from self-employed work within the meaning of Section 18; in this case, the article on self-employed work replaces the article on company income, if the agreement on the avoidance of double taxation contains such an article.

⁸Subsection (9) sentence 1 no 1 remains unaffected.

- (11) ¹If, for a payment recipient subject to unlimited tax liability, an agreement on the avoidance of double taxation stipulates that dividends are to be exempt from the assessment basis for German tax, the exemption is only granted, notwithstanding the agreement, to the extent the dividends are not attributable to another person under German tax legislation. ²To the extent the dividends are attributable to another person under German tax legislation, they are exempt for this person, provided that the agreement stipulates that they would be tax-exempt for this person as recipient of the payment.
- (11a) If the creditor of the capital income or remuneration is a person to whom the capital income or remuneration is not attributable under this Act or the tax legislation of the other contracting state, a full or partial refund of the tax withheld from the capital income or in accordance with Section 50a on the basis of an agreement on the avoidance of double taxation may only be claimed by the person to whom the capital income or remuneration is assigned as the income or profits of a resident person under the tax legislation of the other contracting state.
- (12) ¹Severance pay is deemed, for the purposes of applying an agreement on the avoidance of double taxation, as additional payment for earlier services. ²This does not apply insofar as the agreement contains a separate provision explicitly stipulating diverging rules for such severance payments. ³Subsection (9) sentence 1 no 1 and statutory instruments in accordance with Section 2 (2) sentence 1 of the German Fiscal Code remain unaffected.
- (13) If shares of a company with a registered office or business management in Germany are acquired with qualification for dividend but delivered without dividend entitlement, other payments received by the purchaser in lieu of dividends are deemed, for the purposes of applying an agreement on the avoidance of double taxation, equal to dividends paid by this company.”