



Guidance Notice

on the limitation of the entitlement to relief pursuant to Art. 31 of the Double Taxation Agreement between Germany and Liechtenstein (DBA LIE) and Sec. 50d para 3 of the German Income Tax Act (ITA) in the case of applications pursuant to Sec. 50c para 2 sentence 1 no. 1 (exemption) and para 3 (refund) ITA for relief from German withholding tax pursuant to Sec. 50a ITA

1. Limitation of treaty protection according to Art. 31 DBA LIE

a) Limitation of the treaty protection to the real economy

Pursuant to Art. 31 DBA LIE, companies resident in a Contracting State (here: Liechtenstein) which receive income from the other Contracting State (here: Germany) may only claim relief from German withholding tax in this other Contracting State (here: Germany) pursuant to Sec. 50c para 2 sentence 1 no. 1 (exemption) or para 3 (refund) ITA only if they meet the requirements of Art. 31 DBA LIE and Nos. 11 to 13 of the Protocol to the DBA LIE. These requirements are met if

- there are natural or legal persons participating in the applicant who are fully entitled to benefits under the DBA LIE (Prot. no. 11 let. a) sentence 1)

or

- legal entities are involved in the applicant that are fully entitled to benefits under another agreement concluded with Germany and additionally meet the requirements of Art. 31 para. 1 of the DBA LIE (Prot. no. 11, let. a), sentence 2).

Insofar as the above requirements are not met, a claim to the relief from German withholding tax pursuant to Sec. 50c para 2 sentence 1 no. 1 (exemption) or para. 3 (refund) may exist, if the applicant resident in Liechtenstein itself carries on an active commercial activity in Liechtenstein within the meaning of Art. 31, para 1 DBA LIE and the income received from Germany is received in connection with this commercial activity or arises on the occasion of this activity, If the company is resident in Liechtenstein and commercial active there also receives income from a commercial activity in Germany, according to Art. 31 para 2 DBA LIE, the activity in Liechtenstein must also be significant in qualitative and quantitative terms compared to the commercial activity carried out in Germany. This is the case in particular if the gross income derived from the commercial activity in Liechtenstein amounts to at least 25% of the gross income derived from the commercial activity in Germany (Prot. no. 12).

b) Special provisions for Liechtenstein OGAW and investment companys

If the applicant is a OGAW according to Liechtenstein law or a investment company according to Liechtenstein law, the agreement benefits applied for may only be granted in full if

- the shares are traded on a recognized stock exchange, or
- at least 90 % of the shareholders are entitled to treaty benefits and are resident in the EU or the EEA, or
- at least 75% of the shareholders are entitled to a treaty benefits and are resident in Liechtenstein.

In other cases, the agreement benefits applied for can only be granted on a pro rata basis to the extent that the shareholders are resident in Liechtenstein or in other countries with which Germany has concluded a DTA and would be entitled to the treaty relief granted in the respective DTA if the income were received directly (pro rata relief).

2. Limitation of the relief entitlement pursuant to Sec. 50d para 3 ITA

While Art. 31 DBA LIE limits the treaty protection, Sec. 50d para 3 ITA restricts the relief entitlement of a claimant in certain cases. For remuneration paid on or after 09.06.2021, only participants who are resident in the applicant's country of residence can be taken into account for the Ownership Test under Section 50d para 3 ITA, in deviation from Art. 31 DBA LIE.

Pursuant to Sec. 50d para 3 ITA, a corporation, association of persons or estate (or similar organization subject to corporate tax; hereinafter: applicant) is entitled to full or partial relief from withholding tax as far as

- persons have an interest in it or are beneficiaries under its articles of association, foundation business or other constitution who would be entitled to tax relief if they generated the income directly (Ownership Test)

or

- they pass the Company and Earnings/Substance Test

or

- if none of the principle purposes of its involvement is to obtain a tax advantage

or

- if there is substantial and regular trading on a recognized stock exchange in the main class of shares held by the applicant itself or by a company in which it holds a 100% interest (stock exchange clause). In the second case, this only applies if all the companies directly and indirectly involved are resident in the applicant's country of domicile.

Pursuant to Section 50d para 3 ITA, tax relief is excluded insofar as the aforementioned conditions are met.

Details on the entitlement to relief under Sec. 50d para 3 ITA can be found in the guidance notice on Sec. 50d para 3 ITA published on the website of the Federal Central Tax Office.

3. Certificate of exemption or refund

A certificate of exemption or refund will only be issued if the applicant is both entitled to an exemption under Art. 31 DTA LIE and entitled to relief under Sec. 50d para 3 ITA. If one of these requirements is not met, the corresponding application will be rejected.