



Exemption and refund of withholding tax according to § 50a EStG

Notes on legal changes in 2021 (AbzStEntModG)

The provisions on the procedure for the relief of foreign taxpayers from withholding taxes by the BZSt were revised in the Withholding Tax Relief Modernization Act (AbzStEntModG). In particular, the procedural provisions of Sec. 50d (1) and (2) EStG were transferred to the new Sec. 50c EStG. Significant changes are presented in the following overview.

Unless otherwise described below, the new legal situation will apply to all open procedures with effect from June 9, 2021.

1. Certification of exemption

Duration of the exemption period (Sec. 50c (2) Sentence 4 Half-Sentence 1 EStG).

The exemption period can now also be less than one year. The restriction to a maximum of three years remains in place.

Conditions during the exemption period (Sec. 50c (2) Sentence 4 Half-Sentence 2 EStG)

The validity of the exemption certificate is subject to compliance with the conditions that existed when it was issued. If the conditions are no longer met due to a change in circumstances, the exemption certificate may no longer be applied. The creditor of the remuneration must be asked whether the circumstances notified in the application remain unchanged at the time of payment of the remuneration.

2. Certification of refund

Refund period (Sec. 50c (3) Sentence 2 EStG)

The period for applying for a refund continues to be four years after the end of the calendar year in which the remuneration was received. However, it does not end before the expiry of one year from the date of payment of the tax (previously six months).

Obligation to present the tax certificate (Sec. 50c (3) Sentence 3 EStG)

The new provision on the refund of tax withheld and paid pursuant to Sec. 50c (3) Sentence 3 EStG stipulates that the application must be accompanied by a tax certificate issued by the party liable for the refund.

3. Application

Electronic transmission (Sec. 50c (5) Sentences 1 and 3 EStG)

For all applications submitted to the BZSt by December 31, 2022, the officially prescribed form must continue to be used. For applications received on or after January 1, 2023, the obligation to transmit electronically in accordance with the officially prescribed data set applies.

In order to avoid undue hardship, the BZSt may grant an exception to the requirement for electronic transmission upon request. In these cases, the application must also be submitted after December 31, 2021 using the officially prescribed form

Confirmation of residency (Sec. 50c (5) Sentence 2 EStG)

In the future, it will no longer be mandatory to confirm residency on the officially prescribed form. The application can also be accompanied by a separate confirmation of residency in accordance with the respective double taxation agreement with Germany.

Electronic issuance of notices (Sec. 50c (5) Sentence 4 EStG)

The decision on applications submitted after December 31, 2022 will be made available electronically for data retrieval. In all other cases, notification will continue to be made by mail.

4. Simplified procedure for remunerations up to 5,000 euros per calendar year - omission of the control reporting procedure.

The party liable for the remuneration may refrain from withholding and paying the tax in the case of the transfer of rights pursuant to Sec. 50a (1) No. 3 EStG,

- insofar as the taxation of the remuneration is contrary to a double taxation agreement and
- the remuneration to be paid by him plus the remuneration already paid to the same remuneration creditor in the relevant calendar year does not exceed the limit of 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 (Sec. 50c (2) Sentence 2 EStG).

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 simplification rule applies for the first time to remuneration paid after December 31, 2021. Until then, the control notification procedure pursuant to Sec. 50d (5) EStG can continue to be applied.

5. Changes to the examination of the entitlement to relief under Sec. 50d (3) EStG

The more extensive examination of the entitlement to relief under Sec. 50d (3) EStG is being fundamentally revised and adapted to the case law of the European Court of Justice. In the future, the examination of Sec. 50d (3) EStG will also be carried out in cases in which a separate abuse avoidance provision is contained in the DTA (e.g. Art. 28 DTA USA). Further information on the future review of Sec. 50d (3) EStG will be published in due course on the website of the BZSt.

(https://www.bzst.de/DE/Unternehmen/Abzugsteuern/Abzugsteuerentlastung/abzugsteuerentlastung_node.html).

The website of the Federal Ministry of Finance is available for further questions regarding the AbzStEntModG

(https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/19_Legislaturperiode/Gesetze_Verordnungen/2021-06-08-AbzStEntModG/0-Gesetz.html).