



## Guidance notes

### 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 the

#### Remuneration of foreign artistes and sportsmen

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

#### 1. Tax liability under the Income Tax Act

##### 1.1 Income subject to limited tax liability in accordance with Section 50a subsection 1 of the Income Tax Act

Foreign artistes and sportsmen 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 subsection 4 in conjunction with Section 49 subsection 1 Nos. 2d, 3 and 4 of the Income Tax Act).

In the case of artistes or sportsmen 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 subsection 1 of the Income Tax Act, and in the case of dependently employed artistes or sportsmen by deducting wages tax at source.

The remuneration debtor is required to issue the creditor subject to limited tax liability with a **tax certificate** upon request (Section 50a subsection 5, sixth sentence, of the Income Tax Act). A [specimen](#) is available from the Federal Central Tax Office for this purpose.

##### 1.2 Wages-tax deduction

Artistes or sportsmen 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 subsection 1 of the Income Tax Act (cf. Section 50a subsection 1 No. 1 of the Income Tax Act). Instead, they are subject to **wages-tax deduction at source pursuant to Section 38 subsection 1 in conjunction with Section 39d of the Income Tax Act** 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 Double Taxation Agreements (cf. Section 39d subsection 3, fourth sentence, of the Income Tax Act in conjunction with Section 39b subsection 3, fourth sentence, of the Income Tax Act), and is consequently responsible for issuing certificates of exemption pursuant to Section 39b subsection 6 of the Income Tax Act.

### 1.3 Responsibilities

The Federal Central Tax Office is responsible for relief (refund or exemption) from withholding tax within the meaning of Section 50a subsection 1 of the Income Tax Act on the basis of Double Taxation Agreements (Section 5 subsection 1 No. 2 of the Fiscal Administration Act in conjunction with Section 50d of the Income Tax Act). **The responsibility for establishing whether domestic income is subject to limited tax liability pursuant to Section 49 subsection 1 of the Income Tax Act and whether tax is to be withheld from such income and remitted pursuant to Section 50a subsection 1 of the Income Tax Act lies exclusively with the tax office having jurisdiction for the remuneration debtor.**

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

Hence if there is any reasonable doubt concerning the limited tax liability or the obligation to withhold tax, before an application is filed the matter should first be clarified with the tax office having jurisdiction for the remuneration debtor, for responsibility for tax deduction at source lies solely with that tax office.

## 2. Restrictions on the right to tax pursuant to Double Taxation Agreements

[Overview of the Double Taxation Agreements currently in force](#) (in German)

### 2.1 General

If a Double Taxation Agreement with a country of which the artiste or sportsman 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 50d subsection 2 of the Income Tax Act). 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 Double Taxation Agreements currently in force assign in principle to the Federal Republic of Germany the right to tax remuneration paid to **performing** artistes subject to limited tax liability and to sportsmen for activities exercised in Germany (examples of performing artistes 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 artiste or sportsman, 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 Double Taxation Agreement 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 Double Taxation Agreements, 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 artiste or sportsman.

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

### 2.3.1 Cultural exchange

The artiste or sportsman 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 Double Taxation Agreements 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 artiste or sportsman 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 Double Taxation Agreements stipulate that the visit of the artiste or sportsman is to be **wholly or substantially** supported by the **sending state**.

A clause of this kind is to be found in the Double Taxation Agreements 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

Artistes or sportsmen 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**.

**This application can be filed only by artistes or sportsmen who derive income from independent personal services. Hence no application can be filed, for example, by singers or actors employed by a German theatre.**

### 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 artiste or sportsman.

### 2.5 Performing artistes

Performing artistes 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, compères).

Persons exercising other forms of artistic activity (such as composers, directors, choreographers, set or lighting designers) are not covered by the Double Taxation Agreement 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 Double Taxation Agreement** (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

One option for obtaining relief from German withholding tax is to apply for a refund of tax that has already been remitted, in which case a notice of exemption with advice of the refund will be issued (Section 50d subsection 1 of the Income Tax Act). The other method is to apply for exemption from the withholding of tax **before payment is made** to the remuneration creditor; in this instance a certificate of exemption is required (Section 50d subsection 2 of the Income Tax Act). The [application forms](#) are available on the Federal Central Tax Office's website.

### 3.1 Exemption procedure

On application, full or partial exemption from the withholding of tax will be certified pursuant to Section 50a subsection 1 of the Income Tax Act. The procedure for obtaining a **certificate of exemption** is governed by the provisions of Section 50d subsection 2 of the Income Tax Act. Please note the following:

- The certificate of exemption is issued only against written application on the **officially prescribed form**.
  - The application must be filed by the artiste or sportsman. 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 the authorisation is submitted to the Federal Central Tax Office.
  - The **period of validity** of the certificate of exemption will begin at the earliest on the date on which the application is received by the Federal Central Tax Office.
  - It is not possible for certificates of exemption to be issued with **retroactive** effect for periods before the date on which the application is received.
  - If tax withholding is to be waived, the certificate of exemption must be available to the remuneration debtor **at the time the payment is made**. The application should therefore be filed in good time before the start of the period for which exemption is required. **Applications are processed in the order in which they are received.**
  - Artistes or sportsmen must submit proof of residency in the form of certification from the appropriate **tax authorities of their country of residence** (Section 50d subsection 4 of the Income Tax Act). To ensure that the tax authorities responsible for the remuneration creditor are aware of the application and the income from the Federal Republic of Germany declared in it, this certification must be made on the reverse of the form. Application forms completed online should be printed only by clicking the "Print form" button at the top of the document. This automatically assigns a serial number to the forms. Certification supplied on a separate sheet or by town or local authorities (residents' registration office, town or local authority treasuries) are not acceptable.
- Exception:**  
Applicants resident in the USA may state their social security number (in the case of natural persons) or employer identification number (in the case of companies and other legal entities) as well as the US tax authority with which the most recent American income tax return was filed. The US Internal Revenue Service issues certificates of residency. The **original** of these certificates must be attached to the application for exemption. Notes on the issuance of certification of residency are available from the US tax authorities in the [Instructions for Form 8802](#).
- On filing, a copy of the **contract** with the remuneration debtor must be appended to the application.

### 3.2 Refund procedure

If an Agreement for the Avoidance of Double Taxation stipulates that income subject to the withholding of tax may not be taxed, a refund of the tax withheld and remitted may be applied for pursuant to Section 50d subsection 1 of the Income Tax Act. Please note the following:

- The refund will be granted only against written application on the **officially prescribed form. The refund application may be combined with an application for exemption in respect of future payments.** In this case, the amount of tax to be refunded and the **bank account** to which payment is to be made must be stated on the official application form for a certificate of exemption.
- The application must be filed by the remuneration creditor. It may also be filed by a third party (such as the remuneration debtor) if the remuneration creditor has given that party written authorisation to do so and the authorisation is submitted to the Federal Central Tax Office.
- 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 notification of the certificate of exemption.
- The **remuneration debtor's tax certificate** must be appended to the application for refund. In accordance with Section 50a subsection 5, sixth sentence, of the Income Tax Act, the remuneration debtor is obliged to certify the necessary particulars if required to do so by the remuneration creditor subject to limited tax liability.
- For a refund of tax withheld to take place it is **essential** that the tax has been remitted.
- Under tax law the refunded amount is assigned to the remuneration creditor as tax debtor. Payment can be made to a third party only if an appropriate **authority to collect** or a formal declaration of assignment has been submitted.
- A copy of the **contract** 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 six months after the date on which the tax was paid (Section 50d subsection 1, seventh and eighth sentences, of the Income Tax Act).

### 4. Refund of withheld tax

The Federal Central Tax Office is not responsible for refunding withheld tax assessed and remitted in error. This is a matter for the tax office having jurisdiction for the remuneration debtor.

#### 4.1 Remittance of withholding tax following issuance of a certificate of exemption

The Federal Central Tax Office is responsible for granting refunds on the basis of Double Taxation Agreements (Section 5 subsection 1 No. 2 of the Fiscal Administration Act). However, it is not responsible if, having granted a certificate of exemption in response to an appropriate application, the withholding tax is reported and remitted only **after** this point in time. If tax was withheld although there was no obligation to do so, the self-assessed tax returns must be corrected and the amounts withheld and remitted in error must be refunded

by the **tax office** (Section 37 subsection 2 of the Fiscal Code).

#### **4.2 Remittance of withholding tax on the basis of a notice of liability issued although the period for tax assessment has expired**

The remuneration debtor is liable for withholding and remitting tax (Section 50a subsection 5 of the Income Tax Act). The period for tax assessment is in principle **four years** (Section 169 subsection 2 No. 2 of the Fiscal Code). It begins upon expiration of the year in which the tax has arisen (Section 170 subsection 1 of the Fiscal Code) 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 subsection 2 No. 1 of the Fiscal Code). 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 expiry of the time-limit for tax assessment (see Federal Fiscal Court judgement of 9 August 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 subsection 2 of the Fiscal Code).

Sections 169 et seqq. of the Fiscal Code apply only to the issuance of notices of liability, not to the cancellation or amendment of such notices (cf. Section 191 subsection 3 of the Fiscal Code). Hence notices of liability may be revoked even after achieving mandatory status or after expiry of the time-limit for tax assessment (Federal Fiscal Court judgement of 12 August 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 subsection 2 of the Fiscal Code. The claim must be addressed to the tax office responsible for the notice of liability. The Federal Central Tax Office is not able to refund these amounts.

#### **5. Independent orchestras and cultural associations**

In cases where there are no provisions in a Double Taxation Agreement granting foreign cultural associations exemption from tax withholding pursuant to Section 50a subsection 1 of the Income Tax Act, the foreign culture associations may under certain conditions be exempted from German income tax pursuant to Section 50 subsection 4 of the Income Tax Act. However, responsibility for such exemption does not lie with the Federal Central Tax Office. This is a matter for the **tax office** having jurisdiction for the first remuneration debtor (first promoter). Further details can be found in the Federal Ministry of Finance circular of 20 July 1983, Federal Tax Gazette 1998 I, p. 1168). This document can be accessed [here](#) (in German).

#### **6. Other legal issues relating to the taxation of foreign artistes and sportsmen**

In a decree dated 25 November 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 sportsmen 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 sportsmen).

In accordance with No. 7.4 of the decree, remuneration paid for a public performance by an artiste 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 third 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.

**7. Note: Assessment option pursuant to Section 50 subsection 2, second sentence, No. 5 of the Income Tax Act**

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

**However, the Federal Central Tax Office is not responsible for the assessment, but rather the tax office responsible for the permanent establishment of the remuneration debtor or the tax office in whose district the performance took place (on a tour: place of the first performance).**