

URL: <http://www.deloitte-tax-news.de/german-tax-legal-news/new-mandatory-electronic-filing-procedure-for-withholding-tax-exemption-certificates-and-refund-procedures-apply-as-from-01-january-2023.html>

 12.01.2023

*German Tax and Legal News*

## **New mandatory electronic filing procedure for withholding tax exemption certificates and refund procedures apply as from 1 January 2023**

Starting from 1 January 2023 filings have to be made via an electronic portal of the federal tax office; prior registration of the applicant is required.

As from 1 January 2023, a new electronic filing procedure applies for applications for withholding tax (WHT) exemption certificates and WHT refunds with the German federal tax office (Bundeszentralamt für Steuern). The electronic filing procedure replaces the past system where applications had to be filed via hardcopy paper applications and is mandatory for all applications filed after 31 December 2022. The electronic filing procedure requires the applicant (or its representative) to register with the federal tax office, which requires several steps in which passwords and activation codes are provided via email and regular (physical) mail.

### **Background**

Germany generally does not apply WHT on interest, but a 15.825% WHT applies on royalties and a 26.375% WHT applies on dividends (both inclusive of the solidarity surcharge). In order to benefit from a reduced or zero percent WHT rate under an applicable double tax treaty (DTT) or an EU directive, a foreign recipient of a WHT triggering payment first must obtain a WHT exemption certificate from the federal tax office.

Once the WHT exemption certificate has been issued by the federal tax office to the foreign recipient, the German payor may apply a reduced or zero percent WHT rate. A WHT exemption certificate cannot be issued with retroactive effect; rather, the effective date starts on the date when the application was received by the federal tax office. If no WHT exemption certificate is available at the time the WHT is due to the tax authorities, the German payor must apply the domestic WHT rate and remit the WHT to the tax authorities, at which time the foreign recipient may apply for the reduced or zero percent WHT rate in a refund procedure with the federal tax office.

In addition to the conditions under the DTT or EU directive, as the case may be, the conditions of the German anti-treaty shopping rules of section 50d (3) of the Income Tax Code (ITC) must be fulfilled in order to benefit from a reduced or zero percent WHT rate. The federal tax office requires the submission of extensive information and documentation in order to analyze whether the conditions of the anti-treaty shopping rules are fulfilled, as such rules were significantly amended and tightened in 2021.

### **New electronic filing procedure**

The introduction of an electronic filing procedure for WHT purposes as from 1 January 2023 already had been announced and included in the 2021 law on the modernization of withholding tax relief and certification of withholding tax. The federal tax office [published](#) further details on the electronic filing procedure on its website in early December 2022, which include an application form for participating in the electronic filing procedure, a checklist, and frequently asked questions.

Based on the explanation provided by the federal tax office on its website, hardcopy paper applications that are filed after 31 December 2022 will be accepted only under limited circumstances (i.e., in case of hardship); otherwise, the electronic filing procedure is mandatory for all applications that are filed as from 1 January 2023. However, based on a verbal discussion with the federal tax office in the beginning of January 2023, hardcopy paper applications are still being accepted until at least mid-2023, as the electronic filing procedure is not yet fully functional.

For the electronic filing procedure, the [online portal](#) of the federal tax office must be used.

Prior to filing on the portal, an applicant (or applicant's representative) must be registered with the federal tax office. The registration procedure involves several steps where passwords and access codes are provided via email and regular mail to the applicant. The registration process could take several weeks depending on the mail delivery time from the federal tax office to the applicant (the federal tax office generally uses regular mail).

Along with the application form for a reduced or zero percent WHT, an applicant may submit supporting documentation on the portal. There is no longer a requirement to have the tax residency of the applicant certified by the foreign tax authorities on the application form itself. Rather, an applicant may submit a tax residency certificate issued by the foreign tax authorities on the portal (this also should apply for US tax residency certificates issued by the IRS on Form 6166). Furthermore, based on the frequently asked questions provided by the federal tax office, the submission of original documents via regular mail is no longer required. However, supporting documentation may still be provided to the federal tax office via email, regular mail, or facsimile.

The WHT exemption certificate and the WHT refund assessment notice will be provided electronically to the applicant via the portal (provided the original application was filed using the portal). However, copies of the WHT exemption certificate and WHT refund assessment notice will still be sent to the German remuneration debtor using regular mail.

Applicants resident in Switzerland cannot yet participate in the electronic filing procedure due to a special mutual agreement procedure currently in place for such applicants. An [amended mutual agreement procedure](#) has been signed between Germany and Switzerland on 19 December 2022 (published on 3 January 2023), and the updated procedures are effective as from 1 December 2023. The Swiss tax authorities currently are working on a procedure to provide a streamlined Swiss tax residency certificate that covers both Swiss federal and cantonal level taxation.

#### **Comments**

Foreign taxpayers that rely on a reduced WHT rate for payments made by a German payor should familiarize themselves with the new electronic filing procedure. If taxpayers are filing these applications on their own, they must obtain the necessary registration to use the electronic filing procedure, which can take several weeks. If the filing is being done by a tax service provider, taxpayers should make sure that the provider is familiar with the updated procedure and has all the required approvals to participate in the electronic filing procedure. The acceptance of hardcopy paper applications until mid-2023 should provide for some leeway to get all the required registrations in place and become familiar with the electronic filing procedure. It should, however, be highlighted that the acceptance of hardcopy paper applications until mid-2023 is based only on a verbal discussion with the federal tax office.

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