

Capital Gains Tax: New Fact Sheet Published on Entitlement to Relief un- der Section 50d para.3 EStG

Section 50d (3) of the German Income Tax Act [Einkommensteuergesetz (EStG)] regulates the refusal of tax relief from capital gains tax for foreign companies if they do not have any economic activities of their own and are therefore only interposed in order to obtain tax advantages. A new fact sheet on this regulation was published that we have summarised in the following overview.



Fact Sheet on Entitlement to Relief

On Tuesday, the 18th of March 2025 the German Federal Ministry of Finance [Bundesfinanzministerium (BMF)] published a factsheet (Status: March 2025) giving tax recommendations on claiming relief for capital gains tax as specified in Sec. 50d para 3 of the German Income Tax Act. It describes the prerequisites for tax relief for corporations, for associations of persons or for asset estates.

General Requirements for Tax Relief

In accordance with Sec. 50d para. 3 of the German Income Tax Act, a full or partial capital gains tax exemption may be granted if at least one of the following conditions has been fulfilled:

1. Personal entitlement to relief

Natural persons who hold an interest in a corporation may be entitled to tax relief if they realise the income from a specific source directly as stated in the following laws:

- Sec. 43b of the Income Tax Act (exemption for corporations in the EU or European Economic Area),
- Sec. 44a para. 9 of the Income Tax Act (exemption for certain shareholders),
- Sec. 50g of the Income Tax Act (exemption for an intercompany dividends),
- or a double taxation treaty (DTT).

In the case of applying for one or several of these regulations, pro-rata tax relief corresponding to the ownership structure may be granted.

2. Factual right to relief

The source of income must substantially be related to the economic activities of the entitled entity/person. Purely passive asset management is not sufficient (e.g. simply holding interests in companies).

What is required is active entrepreneurial activities in an appropriate operating business, qualified personnel, business premises and technical infrastructure. Moreover, the company must be able to provide evidence that the investment fulfils an economic function (e. g. operational use of the investment for business purposes).

3. No tax models designed for avoiding taxes

It must be ensured that no tax model for avoiding taxes has been used. Relief is ruled out if the main purpose of structuring a company is to achieve a tax advantage. This is particularly the case if a company has only been interposed in order to achieve a lower tax burden.

The tax benefits can result not only from German tax law but also from foreign tax law (e. g. low tax countries, treaty shopping).

The duty of evidence for non-fiscal economic grounds is up to the claimant seeking tax relief.

4. Stock Exchange Clause

If the main class of a company's stock or of a wholly owned company is regularly being traded on a recognised stock exchange, an abuse of rights is refuted.

- A public listing on a stock exchange must result in substantial and regular trading.
- • This also applies to holding structures, to the extent that all companies involved have at least an equal right to claiming tax relief.

Tax Restrictions and Duties to Provide Evidence

In accordance with Sec. 50d para. 3 of the German Income Tax Act, tax relief may only be granted if the claimant can provide the required evidence supporting the claim. This includes the following:

- Company's structure and ownership relationships: Disclosing direct and indirect shareholders up to the ultimate natural person and or up to the ultimate beneficial owner
- Evidence of activities: Business management documentation, financial statements, management reports and tax returns, which provide evidence of active business activities
- Permanent establishments and personnel: Existence of business premises, employees and a functioning corporate structure
- Substance evidence: The company must be economically independent and not simply be acting as a pass-through entity (a so-called "letterbox company").

Should such evidence not be presented, tax relief may be refused or only partially granted.

Tax Consequences of Non-compliance

Should tax relief be refused, the capital gains tax will be levied in full. This may have the following consequences:

- Increasing the company's effective tax burden
- Related to capital gains tax, losing the tax benefits from double taxation treaties or EU directives
- Reclaiming tax refunds already granted by the tax authorities
- Suffering criminal law consequences in the event of false information or abusive tax avoidance



Summary

The fact sheet describes complex tax requirements for relief from capital gains tax in accordance with Sec. 50d para. 3 of the German Income Tax Act. Taxpayers should be able to provide comprehensive evidence of the economic activities of their companies and ensure that they are not simply interposing an entity for tax reasons. Especially holding and investment structures should be examined for their taxable substance in order to receive relief and to avoid tax risks. We at Nexia would be glad to provide you with assistance in such matters.

Do you have any questions on this topic?

Do you have any questions? Do you need support? Please contact our experts Henning Straeter or Oliver Schmitz. They will be pleased to explain our services to you.

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