

Withholding Tax in International Business Transactions: Expanded Withholding Obligations for Countries on the EU Blacklist, such as Russia and Panama

The Tax Haven Defense Act (StAbwG) tightens the tax framework governing business relationships with non-cooperative tax jurisdictions. Section 10 of the StAbwG expands the withholding tax obligation in Germany and presents companies with new audit and compliance challenges.



Introduction

With the Act to Combat Tax Avoidance and Unfair Tax Competition (Tax Oasis Prevention Act – StAbwG), the German legislature introduced a series of stricter measures as early as July 1, 2021, to combat business relationships with non-cooperative tax jurisdictions.

The background to this is the fight against aggressive tax planning as well as the implementation of international and European initiatives against unfair tax competition.

In addition to the increased cooperation obligations under Section 12 StAbwG, the law contains a series of substantive defensive measures that can apply regardless of whether abuse conduct is present.

Section 10 of the StAbwG represents a particularly relevant provision in practice: the extension of limited tax liability and an additional withholding tax liability for certain payments to recipients in non-cooperative tax jurisdictions.

This provision means that, under certain conditions, payments originating in Germany may be subject to withholding tax in Germany, even if no tax liability would have existed under the general rules.

Legal Background

Under the previous legal framework, payments to foreign recipients were generally subject to German taxation only if limited tax liability under § 49 EStG applied or if special withholding tax provisions (e.g., § 50a EStG) applied.

Section 10 of the StAbwG significantly expands this approach. The provision establishes an additional limited tax liability for income of natural persons, corporations, partnerships, or estates that are resident in a non-cooperative tax jurisdiction.

This applies in particular to income from:

- financing relationships (e.g., loans or group financing),
- insurance or reinsurance premiums,
- services,
- trading in goods or services,
- the leasing, letting, or sale of certain rights, particularly those registered in domestic registers.

The tax is collected through withholding at source. The withholding tax rate amounts to 15% of gross remuneration.

Scope of Application of Section 10 of the StAbwG

The provision applies whenever a taxpayer pays remuneration to individuals or companies (including within a multinational enterprise) that are resident in a so-called non-cooperative tax jurisdiction.

The list of non-cooperative tax jurisdictions published by the European Union ("EU Blacklist") is decisive. Companies must therefore check whether their business partners are resident in such countries.

The withholding tax obligation applies in particular to:

- intra-group financing structures,
- cross-border service relationships,
- commercial relationships with companies in such jurisdictions,
- insurance structures,
- IP or registry rights related to Germany.

A prerequisite for tax liability in financing, service, and trade relationships is, in particular, that the remuneration is tax-deductible for the German payer.

Practical Implications

Section 10 of the StAbwG has significant practical implications for German companies.

First, extensive audit and compliance obligations arise. In particular, companies must continuously review the tax status of their contractual partners as well as the nature of the remuneration and identify potential withholding tax obligations. It is advisable to document the relevant business relationships, the residency of the contractual partners, and the underlying service and payment flows in a clear and traceable manner in order to be well-prepared in the event of inquiries from the tax authorities.

In addition, the German payer of the remuneration is generally obligated to withhold and remit the tax. Errors in tax withholding can lead to liability exposures.

This provision is particularly relevant for internationally active corporate groups with central financing, service, or trading companies in low-tax jurisdictions. In such cases, additional tax burdens may arise, and existing contractual structures may need to be adjusted.

Conclusion and Recommendation from Nexia

Section 10 of the StAbwG represents a significant expansion of German withholding tax regulations and leads to additional tax risks in business relationships with non-cooperative tax jurisdictions.

Companies should therefore review existing business relationships with affected jurisdictions, implement internal processes to identify potential withholding tax obligations, and analyze and document contractual and transfer pricing structures accordingly.

We recommend integrating the requirements of Section 10 StAbwG into existing tax compliance processes at an early stage to avoid liability risks, additional tax exposures, and potential penalties.

Do you have any questions about this topic?

Do you need assistance? Simply contact our experts, Henning Straeter and Levin Flascha. They will be pleased to assist you.

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