

THE ASSOCIATION OF GLOBAL CUSTODIANS

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COUNSEL AND SECRETARIAT TO THE ASSOCIATION:

BAKER & MCKENZIE LLP

GLOBAL  
ATT: ROBIN TRUESDALE  
815 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20006  
TEL: 202 452 7000  
FAX: 202 452 7074

WWW.THEAGC.COM

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Bundesministerium der Finanzen  
Herr Dr. Christian Schleithoff  
Leiter des Referats IV B 8  
Wilhelmstraße 97  
10117 Berlin

Deutscher Bundestag  
Finanzausschuss  
Platz der Republik 1  
11011 Berlin  
E-Mail: [finanzausschuss@bundestag.de](mailto:finanzausschuss@bundestag.de)

**Re: Mandatory electronic submission of German tax reclaims via the BZSt Online Portal (BOP) under Section 50c German Income Tax Act with effective date January 1, 2023 respectively July 1, 2023**

Dear Dr. Schleithoff,

With effective date January 1, 2023, the German Federal Central Tax Authorities (GTA; Bundeszentralamt für Steuern (BZSt)) will replace the current long form paper filing process with a new filing procedure via a web portal (also referred to as 'BZSt Online-Portal (BOP)' by the GTA). All withholding tax (WHT) reclaims are required to be submitted to the GTA via the BOP as from January 1, 2023, irrespective of the income pay year.

The Association of Global Custodians supports the digitization of the reclaim process and the possibility to submit additional documentary evidence (for example tax vouchers, certificates of residence etc.) via the BOP. A transition period was kindly

granted to custodians and tax service providers to adopt the changes by June 30, 2023, during which time they can continue to submit long form paper claims on behalf of their clients.

However, after a number of informal conversations, and a live demo of the BOP that some of our member banks were invited to by the GTA on September 12, 2022, at the GTA's offices in Bonn, we hold considerable concerns with respect to the intended roll out of the BOP, which we would like to share with you.

We write to you to respectfully request a continuation of the transition period, permitting filing of long form paper claims until the end of 2024 to allow a seamless implementation of the BOP portal and integration of the portal by the custodians and tax service providers into their systems. Importantly, such longer transition period will allow the GTA to develop a bulk submission functionality with system-to-system connectivity.

### **Reasons to request a delay**

Our request for a delay arises from the fact that the BOP is currently not developed to enable bulk filing of WHT reclaims (whereby reclaims may be submitted for multiple dividend events and/or multiple beneficial owners at the same time via the web portal), a capability that is essential for custodians and other tax service providers. Each custodian/provider submits thousands of WHT reclaims per annum on behalf of investors entitled to tax relief under the provisions of double taxation treaties or German domestic legislation. These investors include pension funds, sovereign wealth funds and collective investment vehicles who invest substantially via cross border portfolio investments. Such investors are generally not eligible to file via the electronic filing process (Datenträgerverfahren) meaning the BOP will become the only route for filing their German WHT reclaims.

According to the GTA, the capability to upload bulk submissions is not expected to be made available until the end of 2024 or the beginning of 2025. Until it becomes available, each reclaim must be submitted individually into the BOP, significantly increasing the likelihood of human error compared to the current process for which robotics solutions are available.

As it stands today, an investor may expect to receive a refund of German WHT between 12-24 months after the submission via the long form paper filing process. The implementation of the BOP portal in its current state will result in additional delays due to the lack of a bulk submission capability. Investors, both institutional and retail, are often dependent on the support of custodian banks for applications for reimbursement of German WHT. In most cases, this support will not be available in the absence of the ability to bulk file by banks. Refund requests may likely be very limited if the BOP becomes mandatory as of next year.

Furthermore, it is our understanding that in order for a custodian to file reclaims on behalf of their clients, in the BOP's current state, each user (each staff member of the custodian operations team responsible for German reclaim submissions) must register separately with the GTA and receive their own BOP IT certificate (linked to the custodian BOP IT certificate) and password in order to login to BOP. The introduction of the bulk submission functionality, and the ability for the reclaims to be submitted under the name of the registered custodian, would considerably ease current concerns regarding the potential liability of individual employees who are hired to perform operational tasks and send the reclaims.

For example, custodians cannot provide, nor assess or confirm information with respect to some of the required content of the applications. This applies in particular to the questions on 50j Income Tax Act (position in the application form 010004 – Erstattungsantrag bei Quellensteuersatz von unter 15% - IV. Check for income allocation and beneficial ownership). Therefore, please could you kindly clarify who may be held liable, and under what conditions, when a reclaim is filed on behalf of a claimant by a global custodian through the BOP?

In the Appendix attached we outline additional areas of concern for your consideration, but in particular:

- BOP administration rights resulting in unmanageable risk for providers
- Lack of "system to system" connectivity

Based on the current design of the BOP, we respectfully request a continuation of the transition period, permitting filing of long form paper claims until the end of 2024. This would also be in line with the effective date of the comprehensive transaction data reporting requirements for tax reclaims under Section 45b and 45c of the German Income Tax Act. This would allow the GTA time to include these important requirements and make it fit for purpose for the financial institutions who file thousands of reclaims on behalf of cross border investors, enabling the institutions to prepare for a smooth implementation of the BOP as from 2025.

We appreciate your attention to the concerns raised in this letter. We would be happy to discuss these issues or answer any questions you may have, and we look forward to hearing from you.

Sincerely yours on behalf of the Association,



Alexandra Minkovich  
Baker & McKenzie LLP  
+1(202) 452-7015

## **APPENDIX**

### **Reclaim Administration in the BOP**

As a consequence of each user requiring their own BOP IT certificate and password, each user is only able to see in the BOP the tax reclaims and relevant communication with the GTA which the respective user submitted. They cannot view the information other team members may have submitted. Common risk-based checks such as the 4-eyes principle (whereby one staff member keys in the information and another staff member reconciles and submits the tax reclaim) cannot be applied in the BOP.

In addition, legal deadlines communicated by the GTA (for example for an objection by the claimant) cannot be monitored by other staff members in case the staff member who submitted the tax reclaim is absent or has since left the company. This imposes additional risks on custodians and tax service providers which cannot be reasonably managed.

Furthermore, the BOP is currently only available in German. The GTA has noted that it is currently unclear when an English version will be made available. This makes it very challenging for foreign claimants, filing either directly or via their foreign banks, to submit reclaim applications, and have certainty that they are correctly completing the application. This is particularly important given the level of liability applicable when submitting the claim.

### **Guidance and Implementation**

In our experience with similar changes in other markets, the most successful implementation of new systems/processes is achieved when the following are made available:

Assurance that the portal is secure for the sharing of confidential and sensitive data, including personal data. Our members are clear that the use of a secure connection, preferably “system-to-system” connectivity, is a priority.

Provision of English language guidance with clarification of the responsibilities and liabilities of parties, including those filing a reclaim on behalf of a claimant. Such guidance should address how the filing process varies when submitting different categories of reclaims, meaning claims for standard double taxation treaty (DTT) rate, exempt DTT rate, domestic law rate, American Depositary Receipts.

Initiation of a consultation period, once the final requirements are defined by the GTA. This would allow stakeholders to review the feasibility of the requirements, assess timeframes for implementation and raise any additional concerns before a final “go-live” date.

Adequate time for stakeholders to implement and test the use of the BOP once guidance and requirements are published, as well as obtain the necessary resources to do so.

Financial institutions will usually review upcoming capital spending in the year prior (meaning development budget and resourcing for 2023 is generally completed already) and without firm requirements to understand the level of resourcing required, it becomes extremely challenging to meet a short timeframe for implementation.

A contact at the GTA for queries during the implementation and testing phases.