



NEWS INTERNATIONAL SPECIAL EDITION

E-MAIL NEWSLETTER 2019

Dear Sir or Madam,

To date, employees without a place of residence and without a habitual abode in Germany, and who receive domestic income as defined by Section 49 of the German Income Tax Act (EStG), had wage tax deducted on the basis of a paper certificate. From 1 January 2020, employers must also include employees with limited tax liability in the ELStAM system for the electronic recording of wage tax deduction criteria (statement by the Federal Ministry of Finance (BMF) dated 7 November 2019, Federal Tax Gazette (BStBl.) I 2019, p. 1087).

The BMF's new announcement stipulates that from 1 January 2020, ELStAM data will also be requested for employees with limited income tax liability according to Section 1(4) EStG. This applies to employees who have neither a place of residence nor a habitual abode in Germany but who receive domestic income according to Section 49 EStG (e.g. income from employment carried out in Germany) and do not have unrestricted tax liability according to Section 1(2,3) EStG or Section 1a EStG.

The general prerequisite for employees to be able to participate in the ELStAM system is the assignment of an identification number. This must be applied for at the employer's tax office by the employee or the employer - with the employee's authorisation (Section 80(1) General Fiscal Code (AO)). The tax authority will provide a national template for this purpose from 1 January 2020 (www.formulare-bfinv.de).

However, there are exceptions. In the following cases, employees with limited tax liability remain excluded from the ELStAM system:

- If they have an income tax allowance according to Section 39a EStG (e.g. allowance for advertising costs or exceptional costs)
- If wages are exempted from taxation by a double taxation agreement upon application
- If tax deduction is reduced or limited by a double taxation agreement upon application
- If there is extended unlimited tax liability according to Section 1(2) EStG
- If the employee is to be treated as having unlimited tax liability according to Section 1(3) EStG upon application (border commuters with Domestic income)

In these cases, income tax deductions should continue to be made on the basis of a paper certificate.

If you employ staff with limited tax liability for whom ELStAM data may be required from 1 January 2020, please contact us. We are happy to advise and support you at any time.

Best regards

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The author

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Dr. René Schäfer completed his degree in Business Administration at Saarland University in Saarbrücken in 1999 as a Business Administrator. At the same time, he received the Diploma of the Ecole Supérieure de Commerce, Lyon after one year of study in France.

In 2003, he received a doctorate at the Chair for Business Management Studies, particularly Business Taxation from Univ. Prof. Dr. Heinz Kussmaul on the subject of "Taxation of a German-French company". Dr. Schäfer completed the examination for Tax Advisor in 2005. Since 2008, he has also possessed the title of "Specialist Advisor in International Tax Law".

In mid-February 2005, Dr. Schäfer began working as an employee in the tax department of DORNBACH GmbH, Saarbrücken branch.

In July 2007, Dr. Schäfer was made a person with full commercial power of attorney and on January 1st, 2011, he was accepted as a partner.

In July 2015, he was made an Honorary Professor in the subject of Business Administration at the Saarland University.

Specialisation

International tax law /
Corporate reorganisation tax law /
Transaction consultancy

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Company presentation



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Publisher: DORNACH GMBH, Auditing, Tax consulting,
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