

SFTA Practice Note: Limitation periods for the refund of withholding tax



On 13 September 2022, the Swiss Federal Tax Administration (SFTA) published the applicable limitation periods for the assertion of a withholding tax refund claim in the event of an informal rejection of a refund application. The new practice leads to a shortening of the previously applied limitation periods and those entitled to a refund are advised to monitor the individual limitation period for each application submitted.

Applicable limitation periods

The entitlement to a refund of the withholding tax expires if the application is not filed within three years after the end of the calendar year in which the taxable service became due. This is a forfeiture period that can in principle neither be interrupted nor extended.

If the SFTA rejects a refund application by means of a formal decision, the applicant may appeal this decision within 30 days.

An informal rejection (without issuing a formal decision) of a refund application by the SFTA cannot be appealed. In such a case, however, the person entitled to a refund may file a new application and thus assert the claim again.

The tax laws do not contain any provisions on the limitation of the refund claim as a result of an informal rejection of an application by the SFTA. According to practice, a relative limitation period of 5 years applies

in this regard. This limitation period begins to run when the refund claim arises.

The limitation period is interrupted by any action of the person entitled to a refund that is aimed at asserting the refund claim. For example, the limitation period is interrupted by the filing of the refund application, whereby a new limitation period of 5 years begins to run on the day after the filing. The same applies to the later filing of requested information and/or documents in connection with the submitted refund application, as this is also an act of the refund claimant aimed at asserting its refund claim.

However, since the refund claim can only be asserted by the person entitled to a refund, actions by the SFTA, such as the informal rejection (without issuing a formal decision) of a refund application or the request for information and documents, are not relevant in this context and do not interrupt the limitation period.

This practice notice is effective immediately. Assurances to the contrary by the SFTA in individual cases must be assessed in good faith. It is the responsibility of the person entitled to a refund to provide proof of this.

Conclusion

In the past, the limitation period of 5 years began to run at the time of the informal rejection by the SFTA and the claimant had exactly 5 years after receipt of the corresponding letter to reassert the claim. Under the changed practice, this period now begins to run as soon as the refund application is submitted and, depending on the processing time of the SFTA, can be significantly less than 5 years.

If an informal rejection of a refund application by the SFTA takes place within a few months of submission, we believe that the now reduced period for reassertion should still be sufficiently long. However, in cases

with a long processing time by the SFTA, where the informal rejection only occurs shortly before the expiry of the 5-year period or even afterwards, this new practice may lead to an unfair result. However, discussions with the SFTA indicate that the new practice should not lead to the impossibility of asserting a refund claim and that such cases will be examined individually.

Persons submitting withholding tax refund claims to the SFTA are now strongly advised to monitor the deadline for each individual claim and, if necessary, to renew the limitation period by reasserting the claim.



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