

99066004024000

Discharge of residual debt, application and granting after good behaviour

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Modul	Sachverhalt
Leistungsschlüssel	99066004024000
Leistungsbezeichnung I	Discharge of residual debt, application and granting after good behaviour
Leistungsbezeichnung II	Discharge of residual debt, application and granting after good behaviour
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Sachsen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	
Leistungsgruppierung	
Verrichtungskennung	

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SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • §§ 286 ff. Insolvenzordnung (InsO) – Restschuldbefreiung im Einzelnen: • § 290 InsO – Versagung der Restschuldbefreiung • §§ 287b, 295 InsO – Obliegenheiten des Schuldners • §§ 296, 297a InsO – Verstoß gegen Obliegenheiten • §§ 297 InsO – Insolvenzstraftaten • § 302 InsO – Ausgenommene Forderungen • § 174 Abs. 2 InsO – Anmeldung der Forderungen • § 39 Abs. 1 Nr. 3 InsO – Nachrangige Insolvenzgläubiger • §§ 283 bis 283 c Strafgesetzbuch (StGB) – Insolvenzstraftaten • § 58 Gerichtskostengesetz (GKG) – Insolvenzverfahren • §§ 370 ff. Abgabenordnung (AO) – Steuerhinterziehung, Schmuggel, Steuerhhehlerei
Teaser	<p>Private individuals - whether as consumers or personally liable entrepreneurs - can also apply for residual debt discharge with the application for the opening of insolvency proceedings. This gives honest debtors the chance of a debt-free restart after they have gone through the insolvency proceedings and passed a three-year grace period (period of good behaviour). (This applies to insolvency proceedings applied for from 1 October 2020)</p>
Volltext	<p>Application for the granting of residual debt discharge according to §§ 286 ff. Insolvency Code (InsO)</p> <p>Private individuals - whether as consumers or personally liable entrepreneurs - can also apply for residual debt discharge with the application for the opening of insolvency proceedings. This gives honest debtors the chance of a debt-free restart after they have gone through the insolvency proceedings and</p>

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passed a three-year grace period (period of good behaviour). (This applies to insolvency proceedings applied for from 1 October 2020)

- Discharge of residual debt is already possible before this date if no claims have been filed in the insolvency proceedings or the insolvency claims have been satisfied and the debtor has settled the costs of the proceedings and other debts of the estate.
- The Insolvency Code stipulates that the opening of insolvency proceedings and discharge of residual debt must be applied for together - possibly in conjunction with an application for deferral of the costs of the proceedings.

Erforderliche Unterlagen

- "Application for residual debt discharge" form (part of the insolvency application for consumers)

Voraussetzungen

Authorised applicants

- Only natural persons

Admissibility

- The application for discharge of residual debt is inadmissible if the debtor has already been granted discharge of residual debt once within the last 11 years.
- Even if residual debt discharge has been refused by the court in the past, it may be excluded under certain conditions. Details can be found in the application form.

Kosten

- Procedural fee (calculated according to the value of the creditor's claim or the insolvency estate)
- Expenses
- legal fees, if applicable
- Trustee's fee

Verfahrensablauf

Application

An admissible application for residual debt discharge always requires an admissible application for personal insolvency. Under the new law, it is therefore no longer possible to file an admissible application for residual debt discharge once insolvency proceedings have been

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opened.

- Apply for residual debt discharge together with your application for the opening of insolvency proceedings.
- In consumer insolvency proceedings, the application for residual debt discharge is part of the insolvency application.
- Fill out the forms carefully, including the declaration of assignment.
- Submit the complete documents to the insolvency court.

Start of proceedings

- With the application for discharge of residual debt, the debtor declares that he/she will assign his/her attachable income to a trustee to be appointed by the court for a period of three years after the opening of insolvency proceedings (assignment period). The so-called period of good behaviour begins with the opening of insolvency proceedings.
- If the application is admissible, the court will issue a ruling that the debtor will be discharged from residual debt if they fulfil their obligation to earn a living and the conditions for refusal are not met.
- A refusal can be considered at the request of a creditor, for example, if the debtor is convicted of an insolvency offence or culpably fails to comply with their obligations to cooperate. The creditor can submit the application for refusal in writing up to the closing date. If the creditor only learns of the grounds for refusal at a later date, the application can still be submitted after this date.

Good behaviour period

In order to receive residual debt discharge at the end of the proceedings, it is crucial in this phase that you

- actively participate in the proceedings and provide information about your financial circumstances at all times (duty to provide information and co-operate),
- you are in appropriate gainful employment,
- Transfer income that exceeds the seizure limit to the trustee (for the trustee's remuneration and annual

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payment to the creditors),

- assign half of any assets obtained (e.g. inheritance) to the trustee and
- Notify the trustee and the insolvency court immediately of any changes such as a change of residence or employment.

In the event of a culpable breach of the aforementioned obligations, the court can refuse the discharge of residual debt at the request of a creditor.

Discharge of residual debt

- At the end of the proceedings, the court will check whether you have conscientiously fulfilled all the obligations imposed on you during the good conduct phase. The trustee, the creditors and you as the debtor are heard for this purpose. If the requirements are met, the court will decide that all of your remaining debts to your creditors will be cancelled and the proceedings are concluded.
- The court can revoke the discharge of residual debt if irregularities are subsequently discovered.

Note: Both the refusal and the revocation of the discharge of residual debt are made public.

Bearbeitungsdauer

Frist

Application deadline • if the debtor files for insolvency (own application): together with the application for the opening of insolvency proceedings, but no later than 14 days after the court has informed the debtor of the possibility of residual debt discharge • in the event of an insolvency application by a creditor: no later than the opening of insolvency proceedings (as an admissible application for residual debt discharge requires an admissible own application for insolvency). A personal application can only be filed up to the opening of proceedings. Note: Apply for residual debt discharge together with your application for the opening of insolvency proceedings no later than two weeks after the insolvency court notice, as otherwise you run the risk of your application for residual debt discharge being rejected as inadmissible. Duration of

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the proceedings • three years ("good behaviour period") The period begins with the opening of insolvency proceedings. Refusal / revocation of residual debt discharge An application for refusal can be filed up to the final hearing or within six months of becoming aware of the refusal. The application to revoke the discharge of residual debt must be filed within one year of the decision becoming final.

weiterführende Informationen

Hinweise

Claims excluded from the discharge of residual debt

Irrespective of whether residual debt discharge has been granted, the following claims remain:

- Liabilities arising from an intentionally committed tort, from arrears of statutory maintenance which the debtor has intentionally failed to provide in breach of duty, or from a tax debt if the debtor has been convicted of a tax offence in connection with this by a final judgement. Note: The creditor must register the claim stating this legal basis.
- Fines and equivalent liabilities
- Liabilities from interest-free loans with which the debtor settles the costs of the insolvency proceedings

Rechtsbehelf

Kurztext

Ansprechpunkt

Zuständige Stelle

Formulare

Ursprungsportal