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Tax Short Cuts

Current tax information for Austria by EY

Energy Cost Subsidy II – final directive and updated FAQs published

Contents

On 20 November 2023, the final directive for the Energy Cost Subsidy II (Energiekostenzuschuss II, EKZ II) was published on the aws website (directive dated 10 November 2023). The directive was previously approved by the European Commission. There were no significant changes compared to the draft version.

The EKZ II is intended to subsidize part of the additional costs caused by the increased energy costs. Depending on the subsidy stage, fuel, pellets and heating oil are also taken into account as eligible energy sources in addition to electricity, natural gas and heating/cooling/steam.

The aws also published updated FAQs for the EKZ II on 23 November 2023. The update includes clarifications to some FAQs.

The application period started on 9 November 2023. The aws has allocated individual application periods, some of which will end shortly. Your EY tax specialists are happy to support you with the analysis of eligibility requirements, the required statements and submission of the application.

The directive is available under the following link (German version only):
https://www.aws.at/fileadmin/user_upload/Downloads/EKZ_II/2023_11_10_Richtlinie_Energiekostenzuschuss_II.pdf

The FAQs are available under the following link (German version only):
https://www.aws.at/fileadmin/user_upload/Downloads/EKZ_II/FAQs_EKZII.pdf

Building a better working world

Austrian group taxation

Corporate Income Tax Act

The formation of a tax group within the meaning of Sec 9 Corporate Income Tax Act (Körperschaftsteuergesetz, KStG) is recommendable for financially affiliated corporations to offset profits against losses. Financial affiliation means shareholding of more than 50% and majority of voting rights at the same time. The financial affiliation must exist throughout the entire fiscal year.

For the formation of a new tax group or expansion of a tax group starting with the 2023 assessment - for groups with a balance sheet date of 31 December 2023 - the group application must be demonstrably signed by 31 December 2023 at the latest and submitted to the competent tax office within one month of signing (if the above-mentioned requirements are met).

The inclusion of a foreign affiliate that is currently in a loss-making situation into an Austrian group is worth considering in particular if loss carryforwards may expire abroad (due to a time limit on loss carryforwards under foreign tax law). Remaining sevenths from write offs prior to the establishment of the tax group remain deductible in the tax group. Foreign corporations may only be included in a tax group if comprehensive mutual assistance with Austria has been agreed with their country of residence.

Foreign losses are to be calculated in accordance with Austrian regulations but can only be utilized in Austria up to the amount of the (non-converted) foreign losses. The offsetting of foreign losses is limited to 75% of the domestic tax group income. Exceeding losses are to be deducted in subsequent years as losses of the group parent that can be carried forward.

If a new tax group is formed as of the 2024 assessment, a review as of the 2023 balance sheet date should be carried out to determine whether there is a need to write down the value of the possible tax group affiliates since write-offs are ineffective for tax purposes while the corporations belong to the tax group. Goodwill amortization is no longer available for the acquisition of affiliates after 28 February 2014. Remaining amortization amounts continue to be deductible.

The dissolution of an existing tax group in 2023 should be considered if there is a need for a write-off of an affiliate within the group. If group members suffer losses in 2023 that cannot be utilized within the group, the existing group could be (partially) dissolved in 2023 if a future improvement in the earnings situation is expected. Subsequently, with the formation of a new tax group, 100% loss utilization would be possible (no 75% offsetting limit for pre-group losses in the case of group members) in the event of an improvement in results. When dissolving a tax group, it has to be made sure that the minimum holding period of three full years is met, otherwise the group entities will be taxed on a stand-alone basis. When a new tax group is formed, the three-year period starts again.

Minimum Taxation Act: Government Bill

Minimum Taxation Act

The Minimum Taxation Act (Mindestbesteuerungsgesetz) is intended to transpose the global minimum taxation and thus regulations to ensure minimum taxation for multinational groups and large-scale domestic groups (Pillar II) into national law. The ministerial draft was published on 3 October 2023 (see our Tax Short Cuts No. 21/2023 of 9 October 2023).

On 24 November 2023, the government bill for the Minimum Taxation Act has been submitted for parliamentary debate. It is expected that the draft will be approved by the end of the year, or at least a parliamentary referral is possible. Comments from the appraisal have been partially incorporated.

Further legislation remains to be seen.

The government bill can be accessed via the following link (German version only): https://www.parlament.gv.at/gegenstand/XXVII/I/2322

Interest limiation rule: Regulation on non-climate-damaging infrastructure projects published

Corporate Income Tax Act

The regulation on infrastructure projects that are not harmful to the climate for the purposes of the interest limitation rule was published in the Federal Law Gazette (BGBl. II No. 319/2023) on 8 November 2023. The regulation specifies the conditions under which an infrastructure project is not to be taken into account for the purposes of the interest limitation rule when determining exceeding borrowing costs and the taxable EBITDA.

For further details please refer to the German version of our Tax Short Cuts No. 25/2023 of 28 November 2023.

The regulation can be found at the following link (German version only): https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_II_319/BGBLA_2023_II_319.pdfsig

Profit allowance 2023

Income Tax Act

Individuals with business income can claim a profit allowance (Gewinnfreibetrag; Sec 10 Income Tax Act (Einkommensteuergesetz, EStG)).

For profits up to EUR 30,000.00, a basic allowance of EUR 4,500.00 is available without any investment requirement. If a taxpayer has several sources of business income, the basic allowance is allocated at the taxpayer's discretion. If this option is not exercised, the basic allowance is allocated in proportion to the profits.

If the profit exceeds EUR 30,000.00 per year, an investment-related profit allowance (maximum EUR 45,950.00) can be claimed, provided that this is covered by acquisition or production costs of eligible assets acquired in the fiscal year. The profit allowance amounts to 15% up to an assessment base of EUR 30,000.00. For profits from EUR 30,000.01 to EUR 175,000.00, only a profit allowance of 13% is available and for profits from EUR 175,000.01 to EUR 350,000.00 a profit allowance of 7% is available. For additional EUR 230,000.00, 4.5% profit allowance can be claimed. For profits exceeding EUR 580,000.00, no profit allowance is available.

Eligible are investments in depreciable, tangible, unused, fixed assets with a minimum useful life of 4 years. Securities within the meaning of Sec 14/7/4 EStG, provided that they are dedicated to the business (by inclusion in the list of assets) for at least 4 years from the date of acquisition, are also eligible assets. The restriction to housing bonds as preferential securities was removed as of the end of 2016.

The following investments are not eligible

- passenger cars,
- aircraft,
- low-value assets,
- assets acquired from businesses that are under a controlling influence, and
- assets for which the research premium is claimed.

The basic allowance and the investment-related profit allowance are available to each individual only once per assessment year. In the case of partnerships, the basic allowance and the investment-related profit allowance are available in proportion to their share of the profit. If partners have other sources of business income, they are also only entitled to one basic allowance and one investment-related profit allowance per person and assessment year.

The prerequisite for claiming the profit allowance in 2023 is that the eligible investments (acquisition or production) are made in the fiscal year 2023.

Reminder: Securities coverage for pension provisions

Income Tax Act

At the end of each fiscal year (for standard fiscal years therefore on 31 December 2023), securities coverage amounting to 50% of the previous year's pension provision for tax purposes is required (Wertpapierdeckung). The securities coverage must exist continuously throughout the following fiscal year.

In the event of a shortfall in coverage, even if it is only temporary, the taxable profit for the financial year must be increased by 30% of the securities shortfall.

Securities include, in particular, debentures issued in Euros by domestic debtors. Debentures of issuers in the EU/EEA that are acquired after 30 June 2009 must be issued in Euros (Sec 14/7/4 Income Tax Act). Claims under reinsurance policies also qualify for the coverage, provided that the reinsurance policies invest in accordance with the standards of the Insurance Supervision Act for "traditional life insurance policies" or for investment-oriented life insurance policies and the insurer is in the EU/EEA area.

Furthermore, the securities or claims from reinsurance policies must serve exclusively as collateralization for pension entitlements or pension claims in order to be eligible for coverage. Finally, certain share certificates in pension and real estate funds can also be used for securities coverage.

MoF: Electricity price 2024 for emission-free employer-owned vehicles

Income Tax Act

On 25 October 2023, the Federal Ministry of Finance published the decree (2023-0.751.538) on the cost reimbursement of the electricity price for charging emission-free employer-owned vehicles in accordance with Sec 4c/1/2/b Remuneration-in-kind Ordinance. The electricity price for 2024 is set at 33.182 cent/kWh (2023: 22.247 cent/kWh).

CbCR: Notification obligation and transmission of the report

Transfer Pricing Documentation Act

In 2016, the Transfer Pricing Documentation Act (Verrechnungspreis-dokumentationsgesetz, VPDG) introduced new transfer pricing documentation requirements for business entities located in Austria.

Reporting obligations in connection with the Country-by-Country Report (CbCR) result from the VPDG for business entities located in Austria (essentially all companies belonging to a group with or without own legal personality, permanent establishments) that belong to a multinational group of companies and whose total turnover in the previous fiscal year amounted to at least EUR 750 million according to the consolidated financial statements. A CbCR must be prepared for such groups.

The competent Austrian tax office must be notified no later than the last day of the respective fiscal year for which reporting is required ("reportable fiscal year") whether the business entity located in Austria is the ultimate or representative parent company of the multi-national corporate group that submits the CbCR in Austria to the tax authorities. If this is not the case, the competent tax office must be notified of the identity and residency of the reporting business unit.

This notification had to be made for the first time for fiscal years beginning on or after 1 January 2016. For reporting fiscal years beginning after

31 December 2021, a notification is only required if there are changes compared to the notification of the previous year (see margin no. 447 Austrian transfer pricing guidelines 2021).

For reportable fiscal years with a balance sheet date of 31 December, the notification for 2023 must be made by 31 December 2023 at the latest. The term "reportable fiscal year" always refers to the circumstances of the multinational group and not to the circumstances of the individual business unit.

The notification can be made by submitting the "VPDG 1" form (form unchanged from the previous year). This form must be submitted to the competent tax office in paper form. Electronic transmission via FinanzOnline is also possible.

The form can be downloaded under the following link (German version only): https://formulare.bmf.gv.at/service/formulare/inter-Steuern/pdfs/9999/VPDG1.pdf

Austrian-based reporting parent companies of multinational groups with a balance sheet date of 31 December must submit the CbCR for the year 2022 electronically via FinanzOnline by 31 December 2023 at the latest. The transmission must be made in XML format.

We are happy to support you in converting the CbCR data into the XML format requested by the tax authorities, which is more comprehensive in terms of content than the requirement according to the VPDG or OECD. EY uses a specially developed tool for the conversion, which converts the corresponding data from lists of account balances or already summarized Excel files into the required XML files ready for dispatch. Both the correct structure of the XML specification and the completeness of the content are guaranteed. For documentation purposes, the transmitted data is also made available as a pdf file or can be graphically evaluated using a risk report.

Insurance Tax Act: Changes as of 1 January 2024

Insurance Tax Act

In course of the Tax Amendment Act 2023 passed on 3 July 2023 (Abgabenänderungsgesetz 2023, AbgÄG 2023; see our Tax Short Cuts No. 13/2023 of 29 June 2023) the following changes will enter into force for the insurance sector as of 1 January 2024 regarding the person liable to pay the insurance premium tax:

According to the current Sec 7/3 Austrian Insurance Tax Act the policyholder must pay the insurance premium tax if the insurer has neither its seat nor an authorized representative to receive the insurance premium payments in a member state of the EU or the EEA.

The AbgÄG 2023 gives the insurer the option of calculating the insurance premium tax by himself and paying it for the account of the policyholder - also in cases where the insurer has a branch in Austria.

If the insurer does not make use of this option, he has an information obligation; in case of nonfulfillment, he is also liable for the insurance premium tax. This means that the insurer must inform the policyholder without delay and the responsible Austrian tax office by 31 March of the following year that the policyholder is obliged to calculate and pay the insurance premium tax by himself. If the insurer does not fulfil this duty, he is also liable for the insurance premium tax.

The new regulation enters into force on 1 January 2024 and is applicable to existing insurance relationships with insurance premium payments due after 31 December 2023 as well as to newly established insurance relationships. Different from that, the information obligation to the Austrian tax office shall apply to those insurance relationships that are established as of from 1 January 2024 onwards.

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