

# EY Tax Short Cuts - English

Latest tax news for Austria  
by EY

## Energy cost subsidy: updated FAQs on the energy cost subsidy 1, National Council decides on further relief measures

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On 27 January 2023, the updated FAQs on the energy cost subsidy 1 were published.

In particular, additional explanations concerning the following topics were added to the FAQs: calculation methods for determining energy intensity, subsidies for district heating and oxygen, impact of the energy cost subsidy on the business' profit, calculation of the production value, retention period for documents and participations to be indicated in the application.

The updated FAQs can be found under the following link:

[https://www.aws.at/fileadmin/user\\_upload/Downloads/EKZ/20230126\\_FAQ\\_Energiekostenzuschuss\\_Clean.pdf](https://www.aws.at/fileadmin/user_upload/Downloads/EKZ/20230126_FAQ_Energiekostenzuschuss_Clean.pdf)

Furthermore, the extension of the energy cost subsidy 1 and the energy cost subsidy 2 were approved by the National Council. As already announced by the Federal Ministry of Labour and Economic Affairs, the energy cost subsidy 2 is less based on energy intensity, and the subsidy intensity for additional energy costs in the lowest stage was doubled from 30% to 60%. Moreover, heating, cooling and steam can now also be subsidised. The necessary funding guidelines are still being drafted.

In addition, a flat-rate subsidy model for micro and small enterprises, which receive a subsidy of less than EUR 2,000, is planned as a further support measure. This measure is currently being finalised.

## Energy cost allowance: updated FAQs on the energy cost subsidy 1, National Council decides on further relief measures

Moreover, the compensation of electricity customers for the high network loss costs caused by the wholesale market prices was increased. It is planned to compensate 80% of the additional costs.

In addition, a further electricity cost subsidy was approved. This is to be paid to households with more than three persons, in the amount of EUR 105 per year per additionally registered person.

The further development of the law remains to be seen.

## Adaptation of the EU "Unshell Directive" (ATAD III) by the EU Parliament

### *EU: Unshell-Directive*

On 22 December 2021, the European Commission published a proposal for an EU directive to prevent the abuse of shell entities (2021/0434(CNS)). On the basis of amendments proposed by the European Parliament's Committee on Economic and Monetary Affairs (ECON Committee), the European Parliament proposed a number of amendments to the Unshell Directive on 17 January 2023 and called on the European Council of Ministers to adopt them.

The main amendments concern (i) the reduction of the threshold for "gateways" (i.e. cumulative conditions that must be met by a business in order to be considered "at risk" and subject to reporting requirements), (ii) the reduction of exemptions for companies that do not fall within the scope of the ATAD-III Directive and (iii) the relaxation of the reporting indicators for the minimum substance to be met in order not to be considered an "at risk" enterprise.

The „Gateway-criteria“ have been adapted as follows:

- ▶ More than 65% (previously 75%) of the income of the last two years is passive income (e.g. dividends, interest, royalties, leasing, income from immovable assets);
- ▶ More than 55% (previously 60%) of the book value of the enterprise's assets have been located outside the enterprise's state of residence for at least two years, or more than 55% (previously 60%) of the enterprise's relevant income is derived from cross-border transactions; and
- ▶ The enterprise has outsourced the management of day-to-day operations and decision-making with respect to key functions to third parties.

The most significant change to the exemptions is the elimination of enterprises with at least five full-time employees of their own.

If an enterprise fulfils the above-mentioned three "gateways", the next step is to prove the substance criteria defined in Article 7 lit. a -c in order to disprove its status as a letterbox business:

### **Indicator 1 (business premises) [Art. 7(1)(a)]:**

The enterprise has its own premises or premises available for exclusive use in the state of residence or the enterprise shares the premises with other companies of the same group.

# Adaption of the EU „Unshell Directive“ (ARAD III) by EU Parliament

## **Indicator 2 (bank account) [Art. 7 para. 1 lit. b]:**

The enterprise has at least one actively used bank account (new) or electronic cash account in the EU in which the relevant income is recorded.

## **Indicator 3 (Managing Directors or FTEs) [Art. 7 para. 1 lit. c]:**

According to the wording of the draft directive, the third indicator is to be understood as referring to either management or employees.

One or more directors of the business must be resident for tax purposes in the country in which the business has its registered office - or at least no further away from that country than is compatible with the proper fulfillment of their duties - and they must have appropriate decision-making powers. The requirements that (i) the directors must be appropriately qualified, (ii) they must exercise their decision-making powers regularly, actively and independently and (iii) the directors must not be employed by other companies and exercise a similar function, have been dropped. Based on the amended draft directive, this means that business managers of "service providers" are now also possible.

The majority of full-time employees of the business can also be used as an alternative substance indicator, whereby the same requirements as for managing directors apply with regard to residency.

## **What are the next steps?**

The adoption of the Directive requires a unanimous decision in the European Council of Ministers. According to the information available, the negotiations in the European Council of Ministers are still ongoing.

Since the plausibility of the implementation of the Directive is, in our opinion, very high, we recommend that you carry out an analysis of your corporate structures as soon as possible. Our EY experts will be happy to support you in this analysis.

## New interest rate adjustments in the BAO

*Federal Tax Code*

On 3 February 2023, the Federal Ministry of Finance published the decree on interest rate adjustments for deferral interest, CIT interest, interest for suspension, appeal interest and VAT interest (2023-0.067.111), which replaces decree 2022-0.882.005 of 16 December 2022. Due to the renewed increase of the base rate by the ECB, the Austrian base rate has also increased from 1.88% to 2.38% per annum.

The following interest rates will apply from 8 February 2023:

- ▶ Deferral interest: 4.38% (previously 3.88%)
- ▶ Suspension interest: 4.38% (previously 3.88%)
- ▶ CIT interest: 4.38% (previously 3.88%)
- ▶ Appeal interes: 4.38% (previously 3.88%)
- ▶ VAT interest: 4.38% (previously 3.88%)

## New interest rate adjustments in the BAO

The decree can be found at the following link:

<https://findok.bmf.gv.at/findok/resources/pdf/cd91b45e-2393-44aa-a3ea-39faab997773/81673.1.1.pdf>

## Reduction of the Business Register fee for the disclosure of annual financial statements

*Court Fees Act*

With the Business Law Digitisation Act 2022 (Federal Law Gazette I No. 186/2022 of 6 December 2022) amended, among other things, the Court Fees Act to the effect that only the filing fee is payable for the filing of annual accounts. The amendment applies to all filings after 30 November 2022.

The filing fee is currently EUR 36 for general partnerships, limited partnerships and limited liability companies and EUR 100 for public limited companies.

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