

# Tax Short Cuts - English

Latest tax news for Austria  
by EY

## Start-up Promotion Act and Company Law Amendment Act 2023

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On 26 May 2023, the Start-up Promotion Act was sent out for review together with the Company Law Amendment Act 2023 (GesRÄG 2023). They contain essential tax and company law measures to promote the start-up sector in Austria.

For the specific needs of start-ups, the new corporate form "Flexible Kapitalgesellschaft" (also FlexKap or FlexCo) shall be created. A separate federal law is to be enacted, with subsidiary validity of the Limited Liability Company Act. Regulations, e.g. on own shares and flexible capital measures, are to be taken over from the Stock Corporation Act. Young companies shall receive greater freedom for individual structuring and extended possibilities for employee participation than is offered by the currently applicable law on limited liability companies. In addition, it shall be possible to convert FlexCos in a simple and unbureaucratic way into a stock corporation or a limited liability company (Ltd.). The minimum amount for capital contributions by individual shareholders shall be only EUR 1 (for Ltds: EUR 70). Supervisory boards will be obligatory already for medium-sized companies as defined in Sec 221 of the Austrian Commercial Code. The articles of association may provide for the issue of new enterprise value shares for employee participation; these must not reach 25% of the share capital.

The reduction of the minimum share capital for Ltds to EUR 10,000 represents a further simplification for the establishment of a company. In return, the foundation privilege (Gründungsprivilegierung) will be abolished. This is also accompanied by a reduction of the minimum corporate income tax by over 70% from the first quarter of 2024 for all Ltds. The minimum

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corporate income tax is 5% of the statutory minimum share capital and will thus amount to EUR 500 p.a. for Ltds from 2024.

Another simplification concerns employee participations. Start-ups and young companies are often not in a position to provide adequate monetary compensation for urgently needed, highly qualified employees, but in the form of company shares. Under current Austrian tax law, employees had to pay taxes based on the current market value when they received a participation in the company, although no money had flowed ("dry income") from which the tax liability could be paid. Under the following conditions, a deferral of taxation is to be granted in future within the framework of the Start-up Promotion Act in a new Sec 67a Income Tax Act until the actual sale of the shares:

- ▶ The capital shares are acquired free of charge (but not at a discount).
- ▶ The group criterion does not apply, i.e. shares may also be granted to particular employees; however, the granting of shares must be objectively justified.
- ▶ Taxation takes place only upon specific circumstances listed in the law, such as termination of employment (except in the case of enterprise value shares in a FlexCo, subject to certain conditions), sale of the shares by the employee, liquidation of the employer or death of the employer, etc.
- ▶ The shares must be held for at least five years and the employment relationship must have lasted at least three years at the time of taxation (the 5-year period does not apply in the case of taxation due to termination of the employment relationship).
- ▶ The benefits do not apply to employees with an existing or past participation in the company of at least 10%.
- ▶ A "start-up employee participation" requires, among other things, that the company does not exceed a certain size: It must not have more than 100 employees, must not generate a turnover of more than EUR 40 million and must have been founded no more than ten years ago. The employer's company must not be included in consolidated financial statements.
- ▶ Employee and employer must agree that a sale or transfer by the employee inter vivos is only possible with the consent of the employer (transfer restriction).
- ▶ If all requirements are met, 75% are taxed at a fixed rate of 27.5%, the remaining 25% are taxed at regular progressive rates.
- ▶ An exemption from non-wage labour costs (municipality tax, employer's contribution and surcharge on employer's contribution) is also granted for 75%. The remaining 25% are taxed in the regular manner. In accordance with the tax law regulation, favourable provisions are also provided for social security contributions.

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- ▶ The regulation shall apply for the first time to shares surrendered after 31 December 2023.

The review period runs until 7 July 2023. Further legislation still has to be awaited.

The draft of the Start-Up Promotion Act can be accessed at the following link:  
[https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT\\_F245CDAA\\_3E03\\_4FA5\\_B230\\_E31BC31FE31A/BEGUT\\_F245CDAA\\_3E03\\_4FA5\\_B230\\_E31BC31FE31A.pdf](https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_F245CDAA_3E03_4FA5_B230_E31BC31FE31A/BEGUT_F245CDAA_3E03_4FA5_B230_E31BC31FE31A.pdf)

## Eco-Investment Allowance Regulation and Fossil Fuel Facilities Regulation

*Income Tax Act* The Regulation on assets whose acquisition or production are to be allocated to the area of greening for the purposes of the Eco-Investment Allowance (Öko-IFB-VO) was published in the Federal Law Gazette (BGBl. II No. 155/2023) on 24 May 2023 (for the draft see our Tax Short Cuts No. 04/2023 of 21 February 2023).

Compared to the draft, the Eco-Investment Allowance will also apply to assets for the operation of hydrogen refueling stations at which only hydrogen from renewable energy sources is available, as well as for the production of biomethane and the production of hydrogen from renewable sources. If no subsidy is granted and the existence of the material subsidy requirements must be verified, this can now also be done by the taxpayer himself for assets with acquisition or production costs of no more than EUR 50,000. The fulfilment of the requirements must then be made credible at the request of the tax office.

The regulation can be accessed at the following link:  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_II\\_155/BGBLA\\_2023\\_II\\_155.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_II_155/BGBLA_2023_II_155.pdf)

The Fossil Fuel Facilities Regulation (Federal Law Gazette II No. 156/2023) was also published. There were only amendments of wordings of this regulation.

The regulation can be accessed at the following link:  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_II\\_156/BGBLA\\_2023\\_II\\_156.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_II_156/BGBLA_2023_II_156.pdf)

# Subsidies Update: „Transformation of the Economy“ and „Transformation of Industry“

## *Environmental subsidies*

Under the "Transformation of the Economy" funding program an amount of EUR 95 million is currently available. In the course of the "Transformation of Industry" tender, as much as EUR 175 million is currently available.

The program "Transformation of the Economy" addresses transformative, emission-reducing measures of the economy that make a significant contribution to the reduction of greenhouse gas emissions (GHG). These are measures that lead to an efficient use of energy, a switch to renewable energy sources or another maximum reduction of GHG emissions.

- ▶ All companies from the manufacturing industry and energy supply companies that have energy- and/or process-related GHG emissions and whose operating sites or facilities are located in Austria are eligible to apply.
- ▶ The measures applied for must lead to a significant reduction in the GHG emissions of the applicant company. In the course of the current tender, both measures that lead to the conversion to renewable energy sources and measures that lead to an efficient use of energy or to the greatest possible reduction of GHG emissions are eligible. Investment costs of at least EUR 2 million per submitted measure are required. Certain minimum saving targets must be achieved.
- ▶ Funding rate: Up to 80% of the eligible costs, max. EUR 10 million per submitted measure.
- ▶ This is a competitive tendering procedure. The decisive factor for the ranking and subsequently for the award of the contract is the ratio of the requested funding in euros and the total GHG emissions (CO<sub>2</sub> equivalent) saved by the measure per year.
- ▶ The funding agency is Kommunal Kredit Public Consulting (KPC).
- ▶ Project applications must be submitted by no later than 12 noon on 28 June 2023.

The program "Transformation of Industry" aims to promote the reduction of GHG emissions from the direct combustion of fossil fuels or directly from industrial production processes in order to contribute to the decarbonisation of these economic sectors by 2040 and to strengthen Austria as an industrial and business location.

- ▶ All enterprises according to Environmental Promotion Act (EPA) Annex I (depending on NACE code) whose operating site or plant is located in Austria are eligible to apply.
- ▶ The object of funding are industrial plants with a technical maturity (TRL) of  $\geq 8$  (qualification of the entire system), as well as pilot and

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demonstration plants with a technical maturity (TRL) of 6 to 7 (demonstration under operational conditions - demonstration in use).

- ▶ In the course of this call for proposals, measures pursuant to Art 24 para. 1 no. 1 EPA are eligible for application. These are investments
  - for the efficient use of energy,
  - for the generation and efficient use of renewable energy sources in fixed or mobile installations and in operational mobility or transport measures,
  - for the expansion of district heating pipeline and district cooling pipeline systems, including the associated infrastructure facilities and pipelines, which - taking into account industrial waste heat - have a share of less than 80% of district heating or district cooling from renewable energy sources, chillers based on renewable energy sources or waste heat within the meaning of Art 23 para. 1 no. 4 EPA, whereby in the case of compression chillers at least 50% of the waste heat generated by these facilities is used and fed into the district heating network, as well as building connections,
  - to convert production to the efficient use of biogenic raw materials, and
  - to otherwise avoid or reduce greenhouse gas emissions.
- ▶ There must be investment costs of at least EUR 2.5 million per submitted measure. Certain minimum sizes of the plants and minimum savings targets must be achieved.
- ▶ Funding rate: Up to 80% of the eligible costs, max. EUR 30 million per submitted measure.
- ▶ This is a competitive tendering procedure. The following is decisive for the ranking and subsequently for the award of the contract
  - the ratio of the requested "required funding" in euros and the total GHG emissions saved by the measure "CO<sub>2</sub> equivalent" (with a weighting of 70%), and
  - the result of the evaluation of the qualitative tender criteria of the projects by a jury of experts (with a weighting of 30%).
- ▶ The funding agency is Kommunal Kredit Public Consulting (KPC).
- ▶ Project applications must be submitted by no later than 12 noon on 19 September 2023.

If you have any questions, please do not hesitate to contact our colleague Sebastian Koch ([Sebastian.Koch@at.ey.com](mailto:Sebastian.Koch@at.ey.com)).

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