

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

New Year brings relief for e-mobility

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The Ministry of Finance (MoF) published simplifications and clarifications in connection with the tax treatment of electric business cars, charging processes and salary conversion models for (electric) bicycles and electric cars. The new regulations create practicable solutions, clarifications and legal certainty for companies that want to implement e-mobility or have already taken the first steps to do so. Most of the regulations are applicable as of 1 January 2023.

Clarification relating to e-mobility programs and salary conversion

In the past, salary conversion in the course of e-mobility programs was subject to legal uncertainty. The amended regulation concerning remuneration in kind now clarifies that the provision of an employer-owned (electric) bicycle or electric car for private use does not lead to remuneration in kind that is subject to tax even if a cash payment is converted into remuneration in kind due to a salary conversion. This also applies for the purposes of social insurance contributions. It should be noted that the agreement for a salary conversion may also have an effect on other claims of the employee.

Practical simplification for the purchase of (electric) bicycles by employees

If employees acquire (after a period of use) an employer-owned (electric) bicycle at low costs, there is in principle a taxable non-cash benefit in the amount of the difference between the acquisition price and the actual market value of the (electric) bicycle. Hence, for businesses the determination of the market value has been difficult in those cases.

A simplified valuation rule has now been introduced in the wage tax guidelines, according to which the fair market value can be determined using the tax book value less a flat-rate deduction of 20%. A useful life of 5 years is to be assumed for (electric) bicycles.

New Year brings relief for e-mobility

New framework for the charging of electric vehicles as of 2023

The tax treatment of the reimbursement of charging costs and the provision of charging facilities by businesses to their employees has so far given rise to doubts in practice. For payroll accounting periods beginning after 31 December 2022, the amended regulation on remuneration in kind now provides for the following benefits and practicable simplifications depending on the charging station used:

- ▶ **Charging at public charging stations**

The reimbursement of charging costs at public charging stations does not constitute a benefit in kind if it can be proven (e.g. by means of an invoice). Consequently, the reimbursement of direct charging processes at public charging stations (e.g. as part of the expenses settlement) does not result in a taxable benefit in kind.

- ▶ **Homecharging / charging at private residence**

If an employer-owned vehicle is charged at a private charging device, a reimbursement of costs without remuneration in kind is possible if the charging device allows the charged amount of electricity to be allocated to the business vehicle. The prerequisite for this is that the reimbursement of costs is assessed at the level of the flat rate electricity price published annually by the Federal Ministry of Finance (based on an average total electricity price according to the E-Control). For the year 2023, this was set at 22.247 cents/kWh.

For wallboxes that do not allow charging processes to be assigned to the employer's own vehicle, the regulation provides for a temporary transitional rule. Accordingly, a lump sum of up to EUR 30 per month can be reimbursed free of wage tax and social security contributions in the years 2023 to 2025. The application of this simplification rule requires proof that the wallbox does not meet the above criteria.

- ▶ **Charging on business premises**

Starting from 2023, charging electric vehicles at the employer's premises free of charge will generally not result in a taxable remuneration in kind. It is irrelevant whether a business-owned or a private vehicle is charged. It is now also no longer relevant whether there is a free public charging facility in the vicinity of the business.

It should be noted that the new regulations for charging only apply to vehicles with CO₂ emissions of 0 g/km. This means that vehicles with hybrid drives are not benefited.

New requirements for charging infrastructure at employee's residence

In order to offer employees a charging option at their residence, in practice the acquisition and installation costs of wallboxes at the residence are often covered by the employer. With the new regulations, as of 1 January 2023, the reimbursement of costs for the purchase of such a wallbox is also exempt from wage tax and social security contributions up to an amount of EUR 2,000. If the employer bears a higher amount, the amount exceeding EUR 2,000.00 must be recognized as a taxable benefit in kind.

Private foundations: Supreme Administrative Court on the transfer of hidden reserves

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Corporate Income Tax Act

In the past, private foundations often transferred hidden reserves from the alienation of wholly owned subsidiary by way of a capital increase in another subsidiary. In the foundation guidelines of the tax authorities (Rz 117 Stiftungsrichtlinien 2009), this method is explicitly mentioned as a permissible option for the acquisition of a replacement investment. In this way, the taxation of the realized capital gain can be postponed to the time of the sale of the participation in the newly acquired subsidiary.

However, in its decision of 17 November 2022 (Ra 2021/15/0053-9) (Ra 2021/15/0053-9) the Supreme Administrative Court denies the transfer of hidden reserves by means of a capital increase including a premium in the case of an already existing wholly-owned subsidiary. According to Sec. 13 (4) KStG, a replacement investment only exists if a share in a corporation of more than 10% is acquired. Since the private foundation in this case already held a 100% interest in the subsidiary, it did not acquire a new (additional) interest of more than 10% as a result of the capital increase, according to the Supreme Administrative Court. Furthermore, no hidden reserves can be transferred to the share premium. In the case of a 100% shareholding, this is not paid to compensate for the value exceeding the nominal value and does not have its origin in the compensation of the contributions of various shareholders of the corporation.

We will inform you in a timely manner about the currently unclarified approach of the tax authorities regarding replacement investments made in the past in reliance on the foundation guidelines and the tax consequences for the future transfer of hidden reserves.

Supreme Administrative Court: progressivity proviso applicable even though Austria is the source state

Income Tax Act

In its decision Ra 2021/13/0067-5 of 7 September 2022, the Austrian Supreme Administrative Court had to decide whether a progressivity proviso also applies to the source state - therefore not only to the state of residence - and thus to domestic taxation.

In the relevant case, an individual had a residence both in Austria and abroad, which resulted in dual residency. From the perspective of the applicable DTA-Turkey, the foreign state was the "resident state". In the course of the assessment by the domestic tax office, the income taxable abroad was included in the tax calculation by applying the progressivity proviso, against which an appeal was filed.

In its decision, the Supreme Administrative Court confirmed the approach of the tax office (and the previous decision of the Federal Fiscal Court). The

VwGH: progressivity proviso even though Austria is the source state

Supreme Administrative Court explained that the DTA-Turkey is to be understood in such a way that a progressivity proviso was neither granted nor prohibited for the source state. Thus, the DTA-Turkey does not have any effect on the progression proviso. Since Austrian law also takes foreign income into account when determining the tax rate for a person with unlimited tax liability and the DTA-Turkey does not restrict the use of Turkish income when determining the tax rate, the tax rate in Austria is also calculated on the basis of this foreign income.

According to the previous administrative practice (margin no. 7595 Income Tax Guidelines 2000), foreign income was only to be taken into account in the context of the progressivity proviso if Austria was also the state of residence. A change in the administrative practice remains to be seen.

The entire Supreme Administrative Court decision is available under the following link:
https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021130067_20220907L00/JWT_2021130067_20220907L00.html

Draft Venture Capital Fund Act

Venture Capital Fund Act

The Federal Ministry of Finance has sent out the draft of the Venture Capital Fund Act for review by 30 January 2023. In order to facilitate the provision of equity capital or the investment in companies, the Venture Capital Fund Act (WKFG) is intended to enable the establishment of a venture capital fund in the legal form of a stock corporation and to provide for accompanying tax measures in the Investment Fund Act 2011 and the Income Tax Act.

In particular, the WKFG creates a financing instrument for the provision of venture capital to companies for the purpose of support (e.g. for growth, innovation, etc.) and is intended to enable companies to access over-the-counter venture capital.

The entire draft bill is available at the following link:
https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_46A71AB2_0487_449F_8CC0_468C9F60CDA1/BEGUT_46A71AB2_0487_449F_8CC0_468C9F60CDA1.pdf

Poland: Mandatory electronic invoicing as of 1 January 2024

Shortly before the turn of the year, the Polish Ministry of Finance published a draft law for mandatory electronic invoicing - as of 1 January 2024. This is expected to improve the fight against VAT fraud. The EU has already approved Poland's application for exemption.

The obligation applies to companies located in Poland, including companies located outside Poland if they have a permanent establishment in Poland. Foreign companies that are merely registered for VAT purposes in Poland are not required to submit electronic invoices.

Poland: Mandatory electronic invoicing as of 1 January 2024

Electronic invoices must be issued in the form specified by the Polish tax authorities and validated for completeness by the National e-invoices system (KSeF) before being sent to the customer. For this purpose, all mandatory fields required by the structure must be filled in, otherwise the invoice cannot be accepted.

If your business is affected by this change, the necessary steps should be taken timely to ensure that the technical requirements are in place from 1 January 2024 and that the necessary invoice information is available in a structured manner.

Our VAT experts will be happy to help you with any detailed questions you may have.

Guidelines on appeal interest

Federal Tax Code

On 20 December 2022, the Federal Ministry of Finance published the appeal interest decree (2022-0.891.470), which replaces the decree BMF-010103/0071-VI/2012 of 21 March 2012. Interest on appeals pursuant to Section 205a of the Austrian Fiscal Code (BAO) is paid on disputed tax amounts paid by a taxpayer and reduced in the course of appeal proceedings.

The conditions for setting appeal interest are, in particular:

- ▶ payment of a tax debt,
- ▶ the amount of the levy is related to an appeal procedure,
- ▶ reduction of the disputed tax debt as a result of the appeal against the decision, and
- ▶ timely application of the person liable to the tax

The person liable to pay the tax who is affected by the notice on the reduction of the tax debt is authorized to file an application. The application shall be made in writing, whereby transmission by fax or FinanzOnline is also permissible.

The entire decree is available under the following link:

<https://findok.bmf.gv.at/findok/resources/pdf/64991104-88e9-4003-b969-f2a804430d32/81583.1.1.pdf>

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