

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

Russia on EU blacklist - tax consequences

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On 14 February 2023, Russia was added to the EU list of non-cooperative countries and territories for tax purposes (Annex 1), the so-called "EU blacklist".

The EU blacklist is updated twice a year based on an assessment of tax transparency, fairness and the implementation of various international standards.

For Austrian companies with a connection to Russia (e.g. affiliated companies, permanent establishments or registered offices in Russia), the inclusion of Russia on the EU blacklist has the following tax implications:

Fiction of low taxation pursuant to Sec. 10a para 11 KStG

For the purposes of the Austrian CFC regime (Sec. 10a KStG (Austrian Corporate Income Tax Act)) and the switch-over of dividend income and capital gains (Sec. 10 KStG), a Russian company is henceforth considered to be low-taxed within the meaning of Sec. 10a (3) KStG, regardless of the actual taxation. Therefore, if a Russian subsidiary generates passive income, the criterion of low taxation is automatically met and does not need to be examined in more detail. If all other requirements are met (extent of participation, passive income or focus of passive income, etc.), the CFC taxation of the controlling corporation and the taxation of income from international participations (internationalen Schachtelbeteiligungen) and qualified portfolio participations with crediting of the foreign tax (change of method) must be applied in the future. The decisive factor is the status of the EU blacklist on the company's reporting date. Thus, the CFC taxation and the change of method would generally apply for assessments from 2023 onwards.

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Increased duty of disclosure according to EU Mandatory Disclosure Regime DAC 6 (EU-MPFG/DAC 6)

Arrangements that result in deductible payments (e.g. interest/licence payments, service fees) between affiliated companies may henceforth trigger a reporting obligation under Sec. 5 no. 1 EU-MPFG if the recipient is resident in Russia.

COVID-19 Subsidies and good conduct in tax matters

Companies that wanted to apply for a subsidy due to the COVID 19 pandemic (e.g. fixed cost subsidy, investment premium) had to confirm that they had shown good conduct in tax matters for a period of five years prior to the application until the subsidy was granted (final settlement). Among other things, a company has not shown good conduct in tax matters (Sec. 3 WohlverhG) if it has a registered office or a branch in an EU blacklist country and predominantly generates passive income there according to Sec. 10a para 2 KStG. The status of the EU blacklist on the balance sheet date of the business year for which the predominance of passive income is determined is decisive. Austrian companies that have their registered office or a branch in Russia could therefore no longer be entitled to COVID 19 subsidies or the energy cost subsidy or other subsidies in accordance with the respective subsidy guidelines if the company or branch located in Russia predominantly generates passive income.

Public CbCR

Public country-by-country reporting (CbCR), which is currently still being implemented in Austria, also refers to the EU blacklist. If Russia is on the EU blacklist, the reporting for Russia must be presented separately in the future, instead of aggregated as is otherwise the case for third countries.

In addition to Russia, the British Virgin Islands, Costa Rica and the Marshall Islands were also included on the EU blacklist, for which the above-mentioned consequences also apply.

Action required

Austrian companies with shareholdings in Russia should immediately analyse whether the inclusion of Russia in the "blacklist" means that the CFC taxation and the change of method apply in the case of dividends or capital gains from Russian shareholdings. Likewise, Austrian companies that have their registered office or a branch in Russia and that primarily generate passive income should check their eligibility for subsidies and carefully examine possible reporting obligations under the EU-MPFG/DAC6.

Draft Corporate Mobility Act (GesMobG)

Corporate Mobility Act

In the past, it was already possible for Austrian corporations to reorganise not only domestically, but also across borders within the European Economic Area. Until now, explicit regulations on this were only provided for cross-border mergers (EU Merger Act). For a cross-border transfer of the registered office, one could only refer to the case law of the European Court of Justice. The court had decided that a cross-border conversion was possible. By converting a German corporation into an Austrian private limited company, for example, it was possible to achieve the desired transfer of the registered office across the border.

The previous legal loopholes in international reorganisation law are now to be closed. On 20 January 2023, the Ministry of Justice presented the draft of a Corporate Mobility Act (GesMobG), with which the EU Directive 2019/2121 on cross-border transformations, mergers and divisions (EU Mobility Directive) is to be implemented in national law.

The previous rules on cross-border mergers will be adapted, while the cases of cross-border conversion and division will be regulated by law for the first time. These long-awaited regulations are intended to significantly facilitate the implementation of international reorganisations and increase legal certainty for all parties involved. The plan is to regulate cross-border conversions, mergers and splits in a uniform "Federal Act on Cross-Border Reorganisations of Corporations in the European Union (EU Reorganisation Act - EU-UmgrG)". The previous EU Merger Act can be repealed in the course of this. The EU Reorganisation Act will form the core of the GesMobG. In addition, the EU Merger Act will result in amendments to the Company Register Act, the Code of Judicial Conduct Act, the Takeover Act and the Court Fees Act.

An important innovation in terms of content is the abuse control. In the future, it must be carried out by the competent authority of the Member State of departure for all three types of cross-border reorganisations. Thus, in the case of a departure from Austria, the Commercial Register Court must in future examine whether the reorganisation serves abusive or fraudulent purposes intended to evade or circumvent EU law or national law, or is intended to be carried out for criminal purposes (Sec. 21 para 7 EU Reorganisation Act). This requires a review based on the circumstances of the individual case. If the court has no concrete indications from the application or possibly from information provided by third parties, it can generally assume that there is no abuse. It then does not have to take any further investigative steps.

The review period for the present draft of the Corporate Mobility Act expired on 24 February 2023. The comments received on the draft were quite positive. In the coming weeks, the draft will go through the parliamentary procedure. It can be expected that there will be no significant changes to the draft.

Movements of excisable goods now only with electronic administrative document

Excise duties

Products subject to excise duty, such as mineral oils, alcohols or products containing alcohol, which are in free circulation in a Member State and are brought into the territory of another Member State for supply for commercial purposes or for use there, are subject to excise duty in the Member State of destination.

As of 13 February 2023, the electronic procedure for monitoring the movement of certain excisable goods, Excise Movement and Control System (EMCS), which was previously only used for movements of untaxed goods, will now also be applied to commercial movements of already taxed goods. Simplified electronic administrative documents replace the previously used accompanying documents in paper form.

A prerequisite for participation in the electronic procedure for goods in free circulation under excise law is certification of the consignor and consignee. Companies that want to carry out deliveries from the free circulation for commercial purposes not only occasionally or in individual cases are registered by the locally competent customs office upon application and receive a new excise duty identification number. The prerequisites for certification are, in particular, the tax reliability of the applicant and, in the case of the certified consignee, a valid guarantee.

If the transport procedure has been duly completed, the excise duty paid in Austria can be refunded or reimbursed on application.

According to the transitional regulations, transports that were opened before 13 February 2023 can still be carried out and settled outside the electronic procedure until 31 December 2023. If consignments are carried out outside the electronic procedure after 13 February 2023, this will result in an irregularity for this transport, which may lead to the incurrance of a tax debt or a financial offence.

Exceptions to the electronic procedure exist for traffic with Member States and the United Kingdom that have not adapted their national systems in time. At the time of writing, this concerns goods traffic with the Netherlands, Greece and Northern Ireland, which is carried out or settled in a special default procedure.

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https://globaleysurvey.ey.com/jfe/form/SV_3rOY16DYABBkUu2

Drafts of the Financial-Video Identification Regulation and on the Amendment of the FinanzOnline Regulation

*FinanzOnline Regulation
Financial-Video Identification
Regulation*

On 22 February 2023, the Federal Ministry of Finance published a draft regulation on the video-based online identification of persons in the area of the federal financial administration (Financial-Video Identification Regulation - FVIV), as well as a draft amendment to the FinanzOnline Regulation for review.

According to the draft regulations, a video-based electronic procedure for the online identification of natural persons is to be set up in the tax administration. This procedure should also enable persons without their main residence in Austria, whose home country does not offer an electronic means of identification or this has not yet been notified and is therefore not available for registration via EU login, to obtain access to FinanzOnline, as well as to apply for its reset.

Furthermore, legal representatives of non-natural persons should also be able to apply for access data to FinanzOnline for them by means of online identification. If several persons have joint power of representation, each of these persons must be identified by means of online identification.

The procedure can be carried out in German or English language. During the ongoing online identification, the presentation of an official photo ID is required.

The draft regulations can be found at the following links (in German language only):

https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_C92CFD52_ADA0_4952_8742_6ABACF088971/BEGUT_C92CFD52_ADA0_4952_8742_6ABACF088971.pdf

https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_872632A0_26A0_44AE_8F89_67FCB54FD595/BEGUT_872632A0_26A0_44AE_8F89_67FCB54FD595.pdf

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