

EY Tax Short Cuts - English

Latest tax news for Austria by EY

As of 29 March 2023: Pre-registration for energy cost subsidy for Q4 2022

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The energy cost subsidy 1 has previously only covered the months of February to September 2022 as an eligible period. The amendment to the Energy Cost Allowance Act (UEZG) created the legal basis for extending the Energy Cost Allowance 1 to Q4 (October to December 2022).

In addition to natural gas, electricity and fuels, heating, cooling and steam are now also eligible energy sources. Furthermore, the list of sectors particularly affected was extended by the EU Commission.

Pre-applications for the energy cost subsidy 1 for Q4 2022 are possible from 29 March to 14 April 2023. The subsequent application phase runs from 17 April to 16 June 2023. The timely pre-registration is still a prerequisite for submitting an application.

The details for Energy Cost Allowance 1 for Q4 2022 and Energy Cost Allowance 2 for 2023 are still being worked out.

BFG: Submission of group applications via FinanzOnline inadmissible

Corporate Income Tax Act

In its decision of 3 February 2023 (RV/7102169/2022), the Federal Fiscal Court (BFG) ruled that the submission of group applications via FinanzOnline is not permissible and that even if a group decision is issued, it does not have the character of a decision due to the lack of a (relevant) submission. The background to this is that sec. 9 para. 8 point 5 of the Austrian Corporate Income Tax Act 1988 (KStG) expressly stipulates that group applications must be submitted using the official forms.

As there is yet no relevant case law from the Supreme Administrative Court, the appeal to the Supreme Administrative Court has been admitted. However, because the BFG currently considers filing via FinanzOnline to be inadmissible, there is a risk that a tax group will not be established or will not be established in time. For the time being, group applications should therefore only be submitted on the official forms (G-forms) and only by letter mail or fax.

The BFG decision can be found at the following link (in German language): <https://findok.bmf.gv.at/findok/resources/pdf/10f178a8-7e9b-44c3-9d76-e23972d97e82/139699.1.1.pdf>

VwGH: Merger with a newly entering group member

*Corporate Income Tax Act
Restructuring Tax Act*

In its decision of 19 October 2022 (Ro 2022/15/0032), the Supreme Administrative Court (VwGH) dealt with the question of whether a merger still constitutes a transfer of assets within the group if a limited liability company that has only been a member of the group for one year is merged with another company that only became a member of the group in the year of the merger agreement.

The facts of the case: B-GmbH, a group member since 2017, was merged with A-GmbH with retroactive effect for tax purposes as of 31 December 2017 by concluding a merger agreement in 2018. A-GmbH was initially not a group member, but the group parent had held 100% of the shares in A-GmbH since 2000. A-GmbH became a group member with effect from 1 January 2018 on the basis of a group application submitted before the merger agreement was concluded.

According to sec. 9 para. 5 fourth sentence of the Austrian Corporate Income Tax Act 1988 (KStG), (only) transfers of assets within the group do not constitute a change in the conditions for the formation of the group, provided that the group of companies remains financially unchanged. In the opinion of the tax office, however, B-GmbH had been merged into a company outside the group and was thus retroactively excluded from the group - because the three-year minimum period had not been met. The tax office revoked the group member 2017 assessment notice and assumed a retroactive withdrawal.

VwGH: Merger with a newly entering group member

B-GmbH filed an appeal. The BFG ruled in favour of the complainant, whereupon the tax office filed a complaint.

The Supreme Administrative Court confirmed the view of the BFG and justified this by stating that, from an income tax perspective, the assets of B-GmbH were transferred to A GmbH at the beginning of 1 January 2018. At this point in time A-GmbH was already a member of the group of companies in question, as it had already joined the group with effect from 1 January 2018. This satisfied sec. 9 para 5, last sentence KStG, as the assets in question never left the group.

In the case at hand, the decisive factor was that A-GmbH, as the absorbing company, had already fulfilled the requirements for becoming a group member from the outset (A-GmbH had already been a wholly-owned subsidiary of the group parent since 2000). A temporally overlapping existence of the transferring and acquiring company is not necessary; a seamless temporal connection is sufficient. If, however, the financial connection only came into existence as a result of the merger, a seamless transition could not be argued in the opinion of the VwGH.

BMF: Answering questions of doubt regarding e-mobility

Income Tax Act

As reported in our Tax Short Cuts No. 2/2023 of 24 January 2023, the benefits in connection with charging electric vehicles in accordance with the amended Non-Monetary Remuneration Regulation already apply to payroll periods beginning after 31 December 2022.

In its answer to the question of 8 March 2023, the Federal Ministry of Finance answered various questions of doubt regarding the charging of electric vehicles (e.g. technical minimum requirements, extent of various proofs, etc.). Furthermore, the Wage Accounts Regulation was amended in Federal Law Gazette II No. 55/2023 of 27 February 2023 to the effect that the cost reimbursements paid by the employer in connection with the charging of electric vehicles must be continuously recorded in the wage accounts.

- ▶ Anfragebeantwortung BMF (in German language):
<https://www.bmf.gv.at/rechtsnews/steuern-rechtsnews/aktuelle-infos-und-erlaesse/Fachinformationen---Ertragsteuern/Fachinformationen---Lohnsteuer/Zweifelsfragen-zur-Sachbezugswerteverordnung-Laden-von-Elektroautos.html>
- ▶ Payroll Accounts Ordinance (in German language):
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004237>

EU-OSS: Clarifications for correct registration

Value Added Tax Act

The BMF has published clarifications on the registration process for the EU One Stop Shop for VAT purposes (EU-OSS) via information to the KSW, as errors are increasingly occurring:

The field "electronic interface" must only be ticked if the trader operates a platform or similar on which third-country traders sell goods to customers in the EU and the trader is qualified as a debtor for VAT. An entrepreneur who sells his own goods in his own webshop, for example, does not have to tick this box.

Furthermore, EU establishments and EU countries from which goods are dispatched (countries of departure) must be indicated during registration. This information can be stored in the company profile. It should be noted that the entrepreneur's own VAT number in the country of departure (if available) must be entered and not the VAT number of a warehouse keeper.

Cross-border telework and social security

Social Security

Special Covid rules for cross-border telework in the EU area have ensured that social security allocation to a state does not change for cross-border telework. These rules are valid until 30 June 2023.

From 1 July 2023, cross-border telework may lead to a change of competent state if a substantial part of the professional activity (25% measured in terms of working time and/or income) is carried out in telework, unless bilateral framework agreements for telework have been concluded in the meantime.

Currently, there are framework agreements between Germany and Austria as well as the Czech Republic and Austria, according to which persons with cross-border activities may spend up to 40% of the working days in the home office in the state of residence without the social security obligation being transferred from the state of activity to the state of residence. The use of these framework agreements for periods beginning on or after 1 July 2023 is subject to application.

Beginning of March 2023, a framework agreement was also signed with Slovakia as the third country for ordinary cross-border telework. Employers are therefore advised to check the current legal situation in a timely manner. If you have any questions, please do not hesitate to contact your EY contact.

Interest rate adjustments

Federal Tax Code

On 16 March 2023, the Federal Ministry of Finance published the decree on the adjustment of interest for deferral, claim, suspension, appeal and VAT interest. (2023-0.192.676), which replaces the decree 2023-0.067.111 of 3 February 2023. Due to the further increase of the base rate by the ECB, the Austrian base rate has also risen from 2.38% to 2.88% per annum.

The following interest rates will apply from 22 March 2023:

- ▶ Stundungszinsen: 4.88% (previously 4.38%)
- ▶ Aussetzungszinsen: 4.88% (previously 4.38%)
- ▶ Anspruchszinsen: 4.88% (previously 4.38%)
- ▶ Beschwerdezinzen: 4.88% (previously 4.38%)
- ▶ Umsatzsteuerzinsen: 4.88% (previously 4.38%)

The decree can be accessed at the following link (in German language):
<https://findok.bmf.gv.at/findok/resources/pdf/7feab028-d502-4b2c-b601-adfffc6c8761/81792.1.1.pdf>

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