

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

Reminder: Pre-registration for Energy Cost Subsidy for the 4th quarter 2022

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The energy cost subsidy 1 has so far only covered the months 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 subsidy 1 to the 4th quarter 2022 (October to December 2022).

Pre-applications for the energy cost subsidy 1 for the 4th quarter 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 again a prerequisite for submitting an application. The aws has published FAQs on pre-registration:

https://www.aws.at/fileadmin/user_upload/Downloads/EKZ1-Q4-2022/FAQ_Voranmeldung_Energiekostenzuschuss1_Q4_2022.pdf

The available funding budget is allocated on a first-come-first-served basis in the order in which the applications are submitted in full. The allocation of the application period also takes place in the order of the received pre-applications.

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

The calculation of the subsidy by subsidy level will likely be structured as follows:

► **Level 1**

In stage 1, additional costs for electricity, natural gas, fuels, heat and cold are subsidised at 30% of the price difference compared to the previous year. The lower subsidy limit is EUR 750 and is capped at EUR 400,000.

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▶ Stage 2

For stage 2, the prices for electricity, natural gas, heat and cold must have at least doubled. In this case, up to 70% of the previous year's consumption is subsidised with a maximum of 30%. The maximum subsidy amount here is EUR 2m. Fuels cannot be subsidised in this stage.

▶ Level 3

From level 3 onwards, companies must also demonstrate an operating loss due to high energy costs in addition to the requirements of level 2. Maximum subsidies of up to EUR 25m are possible here.

▶ Level 4

In stage 4, only those particularly affected, such as steel manufacturers, can be supported. Here, maximum subsidies of up to EUR 50m are possible.

Further details for the energy cost subsidy 1 for Q4 2022 and the energy cost subsidy 2 for 2023 and the associated guidelines are still being developed.

Known details can be found here (in German language):

<https://www.aws.at/ukraine-krieg-sonder-foerderungsprogramme/aws-energiekostenzuschuss/>

German BFH submits non-taxability of intra-group transactions within a fiscal unity to the ECJ for a decision

Value Added Tax Act

In its rulings on the fiscal unity for VAT purposes in cases C-141/20, Norddeutsche Gesellschaft für Diakonie and C-269/20, Finanzamt T, the ECJ considered it permissible to designate the controlling company as the sole taxable entity (instead of the fiscal unity as an independent taxable entity) for VAT purposes and rejected the additional requirement of a majority of votes in addition to the majority shareholding for the purposes of financial integration.

In its recently published ruling (XI R 29/22 of 18 January 2023), the German BFH follows the ECJ, but considers the question of whether intra-group transactions within a fiscal unity are to be regarded as non-taxable to be unresolved. In its decision V R 20/22 of 26 January 2023, the BFH therefore refers the following questions in summary to the ECJ for a preliminary ruling:

- ▶ Does the grouping of several persons into one taxable person mean that paid supplies between those persons are not subject to VAT?
- ▶ Are paid supplies between such persons subject to VAT in any event if the recipient of the supply is not entitled to deduct input tax or is only partially entitled to deduct input tax, since otherwise there is a risk of tax losses?

BFH submits non-taxability of intra-group transactions to the ECJ for a decision

Should the ECJ actually assume a tax liability of intra-group transactions in the fiscal unity, these would have to be declared by the controlling company and would lead to increased costs in cases without full input VAT deduction entitlement; an increased assessment basis for the chamber levy would also have to be considered. The ECJ's decision is therefore eagerly awaited.

ECJ: Turnover from the resale of wrecked vehicles by an insurance company is subject to VAT

Value Added Tax Act

In case C-42/22 (Generali Seguros SA) of 9 March 2023, the ECJ ruled that transactions from the resale of accident vehicle wrecks by an insurance company do not fall under the tax exemption for insurance transactions. In the case in question, an insurance company had purchased the wrecked vehicles covered by the insurance contract from the insured and sold them to third parties. According to the ECJ, the resale of the accident vehicles takes place on the basis of contracts that are concluded independently of the insurance contract with persons other than the insured and do not fall under an insurance relationship. Furthermore, the determination of the basis of assessment for the resale does not pose any difficulties, which is why an exemption is not required. According to the ECJ, an exemption under the title of services belonging to insurance and reinsurance transactions is also not applicable in the specific case, as it is indisputable that a supply and not a service is involved.

Since the wrecked accident vehicles acquired by the insurance company were not intended for use in the context of its insurance activities but for resale in an unchanged condition and without prior use, according to the ECJ the tax exemption for the supply of goods not entitled to input tax deduction and used for activities not genuinely exempt from tax is also not relevant.

Nor is there a violation of the principle of fiscal neutrality if turnover from the resale of wrecked accident vehicles from damage claims by an insurance company is not classified as tax exempt, even though their acquisition did not entitle the taxpayer to deduct input tax. This is because the principle of neutrality does not allow the scope of a tax exemption to be extended.

Guidelines on the Jurisdiction of the Tax Offices - Maintenance Decree 2023

Federal Tax Code On 28 March 2023, the MoF published the maintenance decree 2023 on the Guidelines on the Jurisdiction of Tax Offices (ZustRL) (2023-0.126.849).

This decree makes adjustments regarding questions of service due to legal changes resulting from the Tax Amendment Act (AbgÄG 2022), the Federal Act on the Energy Crisis Contribution for Electricity (EKBSG), the Federal Act on the Energy Crisis Contribution for Fossil Energy Sources (EKBFSG) as well as supreme court rulings. Thus, these guidelines are adapted and clarifications are added due to recent legal changes.

The maintenance decree can be accessed at the following link (in German language): <https://findok.bmf.gv.at/findok/resources/pdf/4006d82b-2a83-4408-b7c3-6878ed542ec4/81725.1.1.pdf>

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