

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

Tax Amendment Act 2023 - Ministerial Draft

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On 21 April 2023, the Federal Ministry of Finance (MoF) published the Ministerial Draft of the Tax Amendment Act 2023. The period to submit comments ends on 12 May 2023.

The Tax Amendment Act 2023 will among others lead to amendments of the Income Tax Act, the Corporate Income Tax Act, the Reorganization Tax Act, the Value Added Tax Act, the Insurance Tax Act, the National Emission Certificate Trading Act, the Natural Gas Levy Act, the Real Estate Transfer Tax Act, the Federal Fiscal Code and the Financial Criminal Code.

For details on the individual amendments please refer to the German version of our Tax Short Cuts No. 9/2023 of 3 May 2023.

The ministerial draft of the AbgÄG 2023 can be accessed at the following link:
https://www.parlament.gv.at/dokument/XXVII/ME/264/fname_1553314.pdf

Income Tax Guidelines – Maintenance Decree 2023

Income Tax Act

On 31 March 2023, the MoF published the Income Tax Guidelines Maintenance Decree 2023 (2023-0.039.376), taking into account current case law and legal changes since the last amendment in May 2021. We provide an overview of the main changes:

Distinction between payment and non-remuneration (no. 134b ff, 6625 ff)

Based on the Supreme Administrative Court ruling of 16 November 2021 (Ro 2020/15/0015), the distinction between payment and non-remuneration in the above-mentioned marginal numbers will be as follows for circumstances after 15 November 2021:

- ▶ If the consideration amounts to at least 75% of the fair market value of the transferred asset, it is assumed that a sale takes place.
- ▶ If the consideration does not exceed 25% of the fair market value of the transferred asset, it is assumed that the transfer is free of charge.
- ▶ If the consideration is more than 25% but less than 75% of the fair market value of the transferred asset, a transaction between close relatives is generally assumed to be free of charge.

Progressivity proviso for tax exemption method (no. 326, 7588 ff)

Based on the Supreme Administrative Court ruling of 7 September 2022 (Ra 2021/13/0067) the previous administrative practice will be changed to the effect that, beginning with the 2023 tax assessment, the progressivity proviso must be applied to resident taxpayers in any case, regardless of whether Austria qualifies as the country of residence or the source country under the applicable DTA, provided that the DTA does not prevent the application of the progressivity proviso (see our Tax Short Cuts No. 02/2023 of 24 January 2023).

Low-value assets (no. 454, 740, 3894)

With the Eco-Social Tax Reform Act 2022 the limit for low-value assets increased from EUR 800 to EUR 1,000 acquisition or production costs. The change applies for fiscal years beginning after 31 December 2022.

Balance sheet adjustment (no. 652 ff)

With regard to the balance sheet adjustment (Sec. 4/2/2 AITA), the effects of a ruling by the Supreme Administrative Court have been incorporated. These relate to statements on the necessary procedural title for the year that is subject to the statute of limitations, elements to be taken into account in a discretionary decision and the consideration of additions and deductions in the case of partnerships.

Non-cash remuneration of motorcycles and bicycles (no. 1069)

The extension of Sec. 22/2 AITA and the Non-Cash Remuneration Ordinance concerning motor vehicles for managing directors with a significant shareholding to include motorcycles and bicycles was incorporated into the guidelines.

Income Tax Guidelines - Maintenance Decree 2023

Workplace allowance (no. 1298 ff)

Starting with the 2022 assessment, it will be possible to deduct a workplace allowance. This allows expenses from the business use of private living space outside of a taxable home office to be taken into account in the amount of EUR 300 or EUR 1,200 (depending on the amount of other income).

Deduction of business expenses for public transport tickets (no. 1528, 1700a, 4127a)

In the case of network tickets for public transport that are (or can be) used for both business-related and private journeys, the costs must be split up. Without further proof, 50% of the costs incurred for a non-transferable weekly, monthly or annual network ticket for individuals can be claimed as business expenses if it can be credibly shown that this network ticket is also used for business-related travel.

Useful life of bicycles and e-bikes (no. 3115)

For bicycles and e-bikes, a normal useful life of five years can be assumed.

Degressive depreciation after 31 December 2022 (no. 3261, 3263)

For acquisitions and manufacturings after 31 December 2022, the degressive depreciation (Sec. 7/1a AITA) can only be applied if it is also used under Austrian GAAP. This does not apply to electricity companies, that can continue to apply degressive depreciation for periods prior to 1 January 2026 irrespective of depreciation under Austrian GAAP.

Investment allowance (no. 3801 ff)

The new section 9.2 contains information on the new investment allowance (Investitionsfreibetrag; Sec. 11 AITA). Beginning with 2023, an investment allowance of 10% or 15% of the acquisition or production costs can be claimed as a business expense for certain investments in depreciable fixed assets.

No prohibition of deduction for social plan payments (no. 4852m)

Based on a ruling of the Austrian Constitutional Court, social plan payments are exempt from the prohibition of deductions under Sec. 20/1/8 AITA. All severance payments made after 31 December 2022 in the context of social plans can therefore be claimed as business expenses without limit in terms of amount

Taxation of cryptocurrencies (no. 6103j ff, 6178a ff).

With the Eco-Social Tax Reform Act 2022, the taxable income from capital assets was expanded to include income from cryptocurrencies. In the above-mentioned marginal numbers, the regulations on the taxation of cryptocurrencies were incorporated into the guidelines.

Withholding tax liability in the case of evident hidden profit distributions (no. 7758)

The Ordinance Federal Law Gazette No. 56/1995 provides for a mandatory withholding of withholding tax in the case of evident hidden profit distributions with a subsequent refund procedure. However, in cases of hidden distributions, the authority may refrain from claiming withholding tax liability as part of its discretionary decision to issue a liability notice if it can already be proven beyond doubt that the parent company is entitled to relief from withholding tax based on the EU Parent-Subsidiary Directive before it is issued. Regarding the proof, see margin no. 7759 ff.

Income Tax Guidelines - Maintenance Decree 2023

The full decree can be viewed under the following link (German language only):
<https://findok.bmf.gv.at/findok/resources/pdf/134f3cdd-6abe-4900-9e72-08d502f3c870/81831.1.1.pdf>

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