

# Tax Short Cuts - English

Latest tax news for Austria  
by EY

## Electricity Costs Compensation Act 2022 published in the Federal Law Gazette

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The aim of the Electricity Costs Compensation Act (Stromkosten-Ausgleichsgesetz 2022, SAG 2022) is to reduce the burden on companies that are particularly affected by significantly increased electricity prices in 2022 as a result of the inclusion of the costs of greenhouse gas emissions to European emissions trading (indirect CO<sub>2</sub> costs) and are exposed to an actual risk of carbon leakage.

The SAG 2022 for funding of internationally active large enterprises with an annual electricity consumption of more than one gigawatt hour in a calendar year was published in the Federal Law Gazette on 14 June 2023 (Federal Law Gazette I No. 58/2023).

Legal basis is Art 10a para 6 of the EU Emissions Trading Directive 2003/87/EC and the Guidelines for certain State aid measures in connection with the scheme for greenhouse gas emission allowance trading after 2021.

Under Sec 4 SAG 2022, an application for subsidies for the share of the annual electricity consumption of a plant that exceeds one gigawatt hour can be submitted by those companies,

- ▶ which bear indirect CO<sub>2</sub> costs and are exposed to an actual risk of carbon leakage, and
- ▶ which in 2022 produced in one or more plants products in the sectors or subsectors listed in Annex 1.

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The sectors include, among others, the production and processing of aluminium and other metals, the production of raw iron and steel, and the production of wood and pulp.

The funding is provided in accordance with Sec 3 SAG 2022 by granting direct subsidies and includes compensation for the indirect CO<sub>2</sub> costs for the calendar year 2022. It amounts to 75% of the indirect CO<sub>2</sub> costs actually incurred.

Austria Wirtschaftsservice GmbH (aws) is entrusted with handling the funding. Applications for funding must be submitted by 30 September 2023 at the latest.

The detailed provisions for granting and processing the funding will be regulated in the funding guidelines, which are still to be issued by the competent federal minister.

The law can be accessed at the following link (German language only):  
<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20012285/SAG%202022%2c%20Fassung%20vom%2007.07.2023.pdf>

## Climate Bonus 2023

### *Climate Bonus*

With the eco-social tax reform presented in autumn 2021 and adopted at the beginning of 2022, the National Emissions Certificate Trading Act 2022 introduced the pricing of CO<sub>2</sub> in Austria from October 2022. The regional climate bonus was envisaged as a compensation for the pricing of greenhouse gas emissions, which will be paid automatically to all individuals with their main residence in Austria.

The climate bonus should initially consist of a uniform base amount of EUR 100 and an additional regional compensation (0% to 100% of the base amount), which would be paid out annually.

Due to high inflation, the climate bonus for 2022 was amended so that the basic amount was raised to EUR 250 and all persons received an anti-inflation bonus of additional EUR 250 instead of the regional compensation - thus a total of EUR 500 per person (cf. our Tax Short Cuts No. 14/2022 of 28 June 2022).

On 30 June 2023, the Federal Act on the Regional Climate Bonus (KliBG) was amended with Federal Law Gazette Federal Law Gazette I No. 71/2023 and the base amount for 2023 was set at EUR 110. In 2023, the originally planned additional regional compensation (0% to 100% of the basic amount) will be applicable for the first time. From 2024 onwards, the basic amount is to be adjusted annually and set by regulation.

The law can be accessed at the following link (German language only):  
<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20011819/KliBG%2c%20Fassung%20vom%2007.07.2023.pdf>

# Publications via the Electronic Announcement and Information Platform (EVI) as of 1 July 2023

*WZEVI Act* On 19 May 2023, the Federal Act on Wiener Zeitung GmbH and the Establishment of an Electronic Announcement and Information Platform of the State (WZEVI Act) was published in the Federal Law Gazette BGBl. I No. 46/2023. Sec 5 of the WZEVI Act provides that the electronic announcement and information platform (EVI) of the State shall be established at Wiener Zeitung GmbH.

The WZEVI Act changes the medium of the publication, but not the publication obligation itself. Existing publication or announcement obligations in the Wiener Zeitung (and in the official Gazette of the Wiener Zeitung) remain in force, including the obligation to publish the annual financial statements of large stock corporations pursuant to Sec 277 para 2 of the Austrian Commercial Code (UGB). As of 1 July 2023, these publications must be made via EVI.

The publications will continue to be initiated by the legal entities or competent bodies required to do so by federal law, e.g. by the board of directors of a large stock corporation. In the future, the board of directors can either request the publication of the annual financial statements in the EVI from the Wiener Zeitung as before or, when disclosing the annual financial statements to the commercial register, request that the Commercial Register Court forwards the annual financial statements to the Wiener Zeitung for publication in the EVI (provided that the annual financial statements are submitted in an electronic form suitable for publication). This second option only applies to annual financial statements for financial years beginning after 30 November 2022.

Pursuant to Sec 2 para 3 of the WZEVI Act, publications in the EVI are in principle free of charge. However, there may be an obligation to pay a fee to the extent that additional expenses are incurred for the publication (e.g. if the publication does not comply with the formal requirements and Wiener Zeitung Ltd has to carry out the formatting).

Further information is available at the following links:

- ▶ WZEVI legal text (German language only): <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20012264/WZEVI-Gesetz%2c%20Fassung%20vom%2007.07.2023.pdf>
- ▶ FAQs on the Electronic Federal Announcement and Information Platform (German language only): <https://www.evi.gv.at/faq>

# Austrian Fiscal Court: Invoice requirements for intra-Community triangular transactions

## *Value Added Tax Act*

In its ruling of 15 February 2023 (RV/4100572/2018), the Fiscal Court had to decide whether the simplification for triangular transactions may be applied if no correct EC sales lists are filed and certain invoice requirements are not fulfilled. In the underlying facts, an Austrian company had ordered goods from Germany and arranged for the direct transport of the goods to customers in the Czech Republic, the United Kingdom, Slovakia and the Netherlands. The invoices of the Austrian company as the second entity in the three-party-chain referred to a VAT-exempt intra-Community supply instead of a triangular transaction and VAT liability shifting to the recipient. The Fiscal Court found that the simplification rule for triangular transactions cannot apply in this case, because mandatory invoice requirements are missing.

In its decision, the Fiscal Court applies the principles laid down by the ECJ in the *Luxury Trust Automobil* case (8. December 2022, C-247/21), according to which the invoice reference "Reverse Charge" is required for an effective use of the triangular transaction simplification, also in a situation in which the last entity in the chain was not a so-called "missing trader", and thus does not appear to limit the principles of the ECJ's ruling in *Luxury Trust Automobil* to "missing trader" cases.

# ECJ on the economic activity of municipalities in loss-making activities

## *Value Added Tax Act*

In cases C-612/21 (*Gmina O*) and C-616/21 (*Gmina L*) of 30 March 2023, the ECJ had to decide on the VAT liability of loss-making activities provided by municipalities.

In the case of *Gmina O*, a municipality organised the development of renewable energy systems for those of its residents who are owners of a property, in return for a contribution by the owners of 25% of the subsidisable costs. The remaining 75% of the subsidisable costs were financed by a public subsidy. After 5 years, ownership of the energy systems was transferred to the property owners. The ECJ denied the existence of an economic activity of the municipality in such a case, i.e. where the municipality, through a company, supplies and installs renewable energy systems for the benefit of certain residents of the municipality, provided that such an activity is not intended to obtain income on a continuing basis and only leads to a payment by the residents that covers at most one quarter of the costs incurred, with the balance being financed from public funds.

In the case of *Gmina L*, a municipality provided asbestos removal services for which the affected residents did not have to pay. Between 40 and 100% of the costs incurred by the municipality were covered by a public subsidy. Here, too, the ECJ denied the existence of an economic activity if a municipality has a company carry out asbestos removal measures and the collection of

## ECJ on the economic activity of municipalities in loss-making activities

asbestos-containing products and waste for the benefit of its residents, provided that such an activity is not intended to obtain income on a continuing basis and does not lead to a payment by the residents, as these measures are financed from public funds.

Interestingly, the ECJ's statements were made in general with regard to the interpretation of economic activity within the meaning of Article 9 of the VAT Directive and could therefore also be of significance outside of cases involving municipalities. The ECJ also mentions the lack of profit-making intent in the specific case as one of several criteria to be considered when determining economic activity from a VAT perspective. This contrasts with the explicit domestic regulation in § 2 Austrian VAT Act, according to which the intention to make a profit is precisely not a criterion for the status of a taxable business.

## Austrian Supreme Administrative Court: No VAT exempt outsourcing of processing services in the credit card business

### *Value Added Tax Act*

In its decision of 22 March 2023 (Ra 2022/13/0084), the Supreme Administrative Court ruled that processing services outsourced to external service providers, in particular including the authorisation process within the credit card business as well as settlement and a service centre regarding the processing activity, are not VAT exempt.

The Supreme Administrative Court considers the entirety of the services provided by the external service provider to be a complex single supply, the core element of which is not the - VAT exempt - payment transfer, but the mere processing process with regard to the payments and transfers to be made in the credit card network. The main purpose of the bundle of services rendered is to comprehensively perform all functions, work steps and processes in order to smoothly handle the processing of payments and transfers associated with the credit card business. The outsourced service was therefore not characterised by the execution of the payment transfers themselves, but by their "processing". The service provider is therefore not responsible for the transfer of funds; rather, it is a matter of services that precede or follow the transfer of a sum of money from one account to another with a change in the legal and financial situation or merely accompany this process in a supportive manner. In the opinion of the Supreme Administrative Court, the complex single service is therefore not eligible for VAT exemption.

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