

# Tax Short Cuts - English

Latest tax news for Austria  
by EY

## Tax Amendment Act 2023 published in the Federal Law Gazette

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The Tax Amendment Act 2023 (AbgÄG 2023) was published in the Federal Law Gazette (BGBl. I No. 110/2023) on 21 July 2023. The AbgÄG 2023 introduced various amendments to, among others, the Income Tax Act, the Corporate Income Tax Act, the Value Added Tax Act, the Reorganization Tax Act and the Federal Tax 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 and No. 13/2023 of 27 June 2023). Unless a specific effective date is specified in the text of the law, the amendments entered into force on 22 July 2023.

The entire Tax Amendment Act 2023 can be accessed at the following link (German version only):  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_110/BGBLA\\_2023\\_I\\_110.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_110/BGBLA_2023_I_110.pdf)

## ECJ: Resale of accommodation services purchased in one's own name are travel services, even if no other services are associated with them

### *Value Added Tax*

In case C-108/22, Dyrektor Krajowej Informacji Skarbowej, dated 29 June 2023, the ECJ ruled that the provision of accommodation purchased from other taxable persons by a company carrying out activities similar to those of a travel agency is subject to margin taxation even if the reseller does not render any additional services to the accommodation service provided. In the specific case, it was relevant for the ECJ that the geographical diversity of the accommodations procured could cause practical difficulties with regard to VAT and that the margin taxation scheme must therefore be applicable for this activity.

## ECJ: No fixed establishment through exclusive tolling agreement

### *Value Added Tax*

In case C-232/22, Cabot Plastics Belgium SA, of June 29, 2023, the ECJ ruled that the use of the human and technical resources of a service provider established in a Member State exclusively for rendering services (in the specific case, tolling services) to a legally independent service recipient belonging to the same corporate group and established outside the European Union does not constitute a fixed establishment of the service recipient in that Member State.

For the question whether a fixed establishment is given, the existence of human and technical resources that enable a taxable person to receive and use the services is decisive. According to the ECJ, it can only be assumed that the service recipient has the resources relevant for creating a fixed establishment in the Member State of the service provider if the service recipient can dispose of the service provider's resources on the basis of contractual provisions as if they were his own. An - albeit exclusive - service contract does not have the consequence that the service provider's resources become those of the customer, if (as in the original case) the service provider remains responsible for his own resources and provides the service at his own risk. It is clear from the case law of the ECJ that the same resources cannot be used both to provide and receive the same services.

Furthermore, the ECJ clarifies that for the determination of a fixed establishment, the fact that both entities form part of the same group is just as irrelevant as the question whether the service provider also provides additional services as preparatory or auxiliary activities that support the taxable supplies of goods of the (original) service recipient after the tolling service in the European Union.

# Energy cost subsidies for self-employed and non-profit organisations

## *Energy cost subsidies for self-employed persons and non-profit organisations*

On 21 July 2023, the energy cost subsidy for self-employed persons was published in the Federal Law Gazette (BGBl. I No. 101/2023) with the amendment of the Commercial Social Security Act (GSVG). Persons who were compulsorily insured in the health insurance scheme in accordance with Sec. 2 para. 1 no. 4 or Sec. 3 para. 1 no. 2 GSVG in the period from 1 February 2022 to 31 December 2022 are entitled to an energy cost subsidy in the amount of EUR 410, provided that the monthly contribution basis for the social insurance for December 2022 does not reach the maximum contribution basis. The subsidy will be granted as a credit in the context of the contribution assessment for the fourth quarter of 2023.

Also on 21 July 2023, the Federal Law on an Energy Cost Subsidy for Non-Profit Organizations (EKZ-NPOG) was published in the Federal Law Gazette (Federal Law Gazette I No. 102/2023), which forms the basis for support payments for additional energy costs to NPOs for the years 2023 and 2024. Eligible to apply are organizations that are not or only partially entrepreneurially active and either pursue non-profit, charitable or ecclesiastical purposes or are legally recognized churches or religious societies. The details of handling (in particular personal and material eligibility requirements, eligible costs, calculation of the amount of funding, etc.) are to be determined by means of guidelines on the basis of a regulation authorization. The handling is then carried out by the AWS. The exact form and publication of the regulations remains to be seen.

The two laws can be accessed at the following links:

- ▶ Energy cost subsidy for the self-employed (German version only):  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_101/BGBLA\\_2023\\_I\\_101.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_101/BGBLA_2023_I_101.pdf)
- ▶ Energy cost subsidy for NPO (German version only):  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_102/BGBLA\\_2023\\_I\\_102.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_102/BGBLA_2023_I_102.pdf)

# Amendment Act 2023 on the Beneficial Owners Register Act published

## *Beneficial Owners Register Act*

On 20 July 2023, the Amendment Act 2023 on the Beneficial Owners Register Act was published in the Federal Law Gazette (Federal Law Gazette I No. 97/2023) (for the draft, see our Tax Shortcuts No. 13/2023 of 27 June 2023).

The amendments promote the automation-based comparison of sanctions lists with the register of companies, the register of associations, the supplementary register, and the register of beneficial owners within the register. Also, the cooperation between authorities is intensified, as well as an exchange of information going beyond administrative assistance is made possible in order to prevent money laundering, terrorist financing and the evasion of sanctions.

Furthermore, there will be more transparency in trusteeships.

Parties with a legitimate interest (e.g. members of the press and academia) may now access the register. Public institutions that award public funds as grants may also access the register.

The Amendment Act 2023 can be accessed at the following link (German version only):

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_97/BGBLA\\_2023\\_I\\_97.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_97/BGBLA_2023_I_97.pdf#sig)

# Corporate Mobility Act published

## *Corporate Mobility Act*

On 19 July 2023, the Corporate Mobility Act (GesMobG) was published in the Federal Law Gazette (Federal Law Gazette I No. 78/2023) (for the draft, see our Tax Shortcuts No. 05/2023 of 7 March 2023).

The GesMobG, which implements the EU Mobility Directive (Directive (EU) 2019/2121), facilitates cross-border reorganizations within the European Union and increases their legal certainty.

A significant innovation is the introduction of abuse control, which must be carried out by the competent authority of the Member State of exit in the case of cross-border types of reorganization. In Austria, in the case of an exit, the Company Register Court examines on the basis of the circumstances of the individual case whether the reorganization serves abusive or fraudulent purposes. If the court has no particular indications, it is generally assumed that there is no abuse and consequently no further investigations need to be taken.

The GesMobG can be accessed at the following link (German version only):

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_78/BGBLA\\_2023\\_I\\_78.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_78/BGBLA_2023_I_78.pdf#sig)

# Virtual Shareholders' Meetings Act published in the Federal Law Gazette

## *Virtual Shareholders' Meetings Act*

The Virtual Shareholders' Meetings Act (VirtGesG) was published in the Federal Law Gazette (BGBl. I No. 79/2023) on 19 July 2023 and entered into force on 14 July 2023.

Within the framework of the Covid-19 legislation, the temporary possibility of holding shareholders' meetings virtually was created, for the last time until 30 June 2023. After the holding of shareholders' meetings using technical means of communication has proven itself in practice, a permanent legal basis has now been created with the VirtGesG. However, unlike the Covid-19 legislation, the VirtGesG is not applicable to partnerships and private foundations and the holding of virtual or hybrid meetings must be regulated in the articles of association, statutes or bylaws.

Furthermore, the VirtGesG provides for special provisions for listed stock corporations (e.g.: right to ask questions/propose motions in advance, request for a general meeting).

The VirtGesG offers three options for holding virtual meetings:

- ▶ Simple virtual meeting: acoustic and optical two-way connection in real time (e.g.: video conference via MS Teams or Zoom).
- ▶ Moderated virtual meeting: optical and acoustic transmission is sufficient; the possibility for participants to speak/oppose and exercise their voting rights can be ensured e.g. by means of text fields via a shareholder portal, voting software or via special e-mail addresses.
- ▶ Hybrid assembly: participants are free to choose the form in which they wish to participate; it must be ensured that physical and virtual participants are treated equally.

Since the VirtGesG stipulates that virtual meetings will only be possible in the future if there are explicit provisions in the articles of association, statutes or bylaws, almost all companies will have to make contractual adjustments in order to be able to hold shareholders' meetings in virtual form in the future.

The entire text of the law can be accessed at the following link (German version only):

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2023\\_I\\_79/BGBLA\\_2023\\_I\\_79.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_79/BGBLA_2023_I_79.pdf#sig)

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