

Tax Short Cuts - English

Latest tax news for Austria
by EY

Electricity Cost Compensation Act 2022: Funding guidelines and guide published, application as of now possible

Content

- 01 Electricity Cost Compensation Act 2022: Funding guidelines and guide published, application as of now possible
- 02 Flat-rate energy cost allowance: application as of now possible
- 03 CESOP Implementation Act and Venture Capital Fund Act published in the Federal Law Gazette
- 04 EAS 3445: (No) Home Office Permanent Establishment of a Managing Holding Company

To support companies particularly affected by the high electricity costs, another subsidy was created with the Electricity Cost Compensation Act 2022 (Stromkosten-Ausgleichsgesetz 2022). The funding guidelines and a guide were published on the website of aws (austria wirtschaftsservice) on 31 July 2023. The application period starts with 8 August and ends on 30 September 2023. For this subsidy there will be no first-come-first-serve principle.

Eligible companies

Applications for subsidies can only be submitted by companies that have produced products of the sectors or subsectors listed in annex 1 of the Electricity Cost Compensation Act in one or more plants in 2022.

Furthermore, companies must bear indirect CO₂ costs and be exposed to a real risk of relocation of CO₂ emissions (relocation of production to other countries). Furthermore, only the amount of annual electricity consumption in 2022 that exceeds 1 GWh will be subsidized.

Subject of funding

The indirect CO₂ costs of the year 2022 will be subsidized. The subsidy amounts to 75% of the indirect CO₂ costs actually incurred that exceed 1 GWh. "Indirect CO₂ costs" are greenhouse gas emissions costs that are passed on via the electricity price. However, only electricity consumed in plants used in one of the eligible sectors (see above) will be subsidized. The exact amount of the subsidy is determined according to the calculation formulas of the electricity consumption efficiency benchmark or the fallback electricity consumption efficiency benchmark and taking into account the specified CO₂ emission factor. Details can be found in the Electricity Cost Compensation Act 2022 and the aws funding guidelines.

Electricity Cost Compensation Act 2022: Funding guidelines and guide published, application as of now possible

Mandatory energy audit

Companies must undertake to carrying out an energy audit as defined in the Directive 2012/27/EU regarding energy efficiency by 30 September 2023, either as a stand-alone audit or as part of a certified energy management or environmental management system. The implementation of the recommendations from the audit report must start in a legally binding manner at the latest by the time the funding is paid out, and the completion of the investment must be reported at the latest 12 months after the funding is granted (provided that the amortization period of the investment does not exceed three years and the costs are proportionate to the funding amount).

Application procedure

Companies can submit their applications to aws from 8 August to 30 September 2023. Applications and the required supporting documents must be submitted via the electronic platform provided by aws.

Certain data must be checked and confirmed by a tax advisor or public accountant, same as it was with the energy cost subsidy. Due to the technical details, the tax advisor or public accountant may consult technical experts, whereby the commissioning of these experts must be carried out by the applicant.

The extent to which a combination of energy cost subsidy and electricity cost compensation is possible does not yet appear to have been conclusively clarified.

The funding is to be paid out by 22 December 2023 at the latest.

The funding guidelines and the guide can be found at the following link (German version only): <https://www.aws.at/stromkosten-ausgleich-2022/downloads/>

Flat-rate energy cost allowance: application as of now possible

Flat-rate energy cost allowance

The flat-rate energy cost allowance (Energiekostenpauschale) is intended to support micro and small enterprises in coping with high energy costs (see our Tax Short Cuts 08/2023 of 20 April 2023). Applications for subsidies can be submitted from now until 30 November 2023 via Business Service Portal (Unternehmensserviceportal, USP). A mobile phone signature or ID Austria is required to access the portal. Furthermore, the industry classification according to ÖNACE is required. The processing agency is the Austrian Research Promotion Agency (Forschungsförderungsgesellschaft).

Eligible enterprises are those with business premises in Austria with an annual turnover for the calendar year 2022 between EUR 10,000 and EUR 400,000, which are commercially or industrially active in their own name and for their own account, as well as concessionary public transport companies and non-profit legal entities with their business activities as defined in Sec 2 of the Austrian Value Added Tax Law Act. Eligibility to apply can be determined by means of self-check at <https://www.energiekostenpauschale.at/> (German version only).

Flat-rate energy cost allowance: application as of now possible

Excluded from the application are public companies, regional authorities, enterprises from the energy, finance and insurance, real estate and agriculture sectors as well as freelancers and political parties as well as their companies. Civil law companies are not eligible to apply.

The amount of the flat-rate allowance depends on the sector, the annual turnover in the calendar year 2022 and the allowance period selected for 2022 and ranges from EUR 110 to EUR 2,475. The company itself must apply for the allowance via USP. Payments of the allowance are to be made by 31 December 2023.

The Directive of the Federal Ministry of Labour and Economy in the version of 31 July 2023 can be found at the following link (German version only): https://www.energiekostenpauschale.at/assets/pdf/Richtlinie_Energiekostenpauschale_Fassung_Juli_2023_v1.0.pdf

CESOP Implementation Act and Venture Capital Fund Act published in the Federal Law Gazette

CESOP Implementation Act Venture Capital Fund Act

On 21 July 2023, the CESOP Implementation Act 2023 (CESOP Umsetzungsgesetz 2023) was published in the Federal Law Gazette (BGBl. I No. 106/2023) and enters into force as of 1 January 2024 (see our Tax Short Cuts No. 09/2023 of 4 May 2023).

The CESOP Implementation Act 2023 implements the EU Council Directive 2020/284 of 18 February 2020. With the aim of combating VAT fraud, payment service providers will be obliged to keep detailed records of certain cross-border payments.

The text of the law can be found at the following link (German version only): https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_106/BGBLA_2023_I_106.pdf

Also on 21 July 2023, the Venture Capital Fund Act (Wagniskapitalfondsgesetz) was published in the Federal Law Gazette (Federal Law Gazette I No. 111/2023), which entered into force on 22 July 2023.

A venture capital fund is a closed-end alternative investment fund (AIF) that is to be established in the legal form of a public limited company and invests in unlisted companies. The aim is to facilitate access to equity, especially for small and medium-sized enterprises.

The text of the law can be found at the following link (German version only): https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_111/BGBLA_2023_I_111.pdf

EAS 3445: (No) Home Office Permanent Establishment of a Managing Holding Company

*Double Taxation Convention
Germany*

On 7 July 2023, the Federal Ministry of Finance (MoF) published EAS 3445 in which it denied the existence of a home office in the case of "non-requirement" of home office activity on the part of the employer.

If an accounting employee resident in Austria of a managing holding company resident in Germany carries out their work permanently for three days a week on the premises of the holding company in Germany and for two days a week in their home office in Austria, the question arises as to whether the holding company in this constellation establishes a permanent establishment in Austria pursuant to Article 5, para. 1 DTC-Germany.

According to the MoF, the employee does not establish a home office if

- ▶ the activity qualifies as a purely auxiliary activity, or
- ▶ the home office activity is carried out only occasionally, or
- ▶ if the employer does not request the work in the home office.

If the home office is used on two days per week, it cannot be assumed that the use is merely occasional. Furthermore, an activity can only be considered merely ancillary if it does not constitute the core business of the company. In the case of an activity in the accounting department of a managing holding company, which itself does not perform any activities in the operational core business of the group but does provide a multitude of typical central services to affiliated companies, usual for managing holding companies, an auxiliary activity would be denied.

If the employee works three days a week at their own workplace at the employer's premises, which is always available, it must be assumed that the employer does not request the employee to work in the home office and that there is therefore no factual authority of disposal over the home office. Thus, no permanent establishment is established pursuant to Art. 5, para. 1 DTC-Germany.

The OECD Model Commentary does not clarify whether the criterion of "not requesting" a permanent establishment for management personnel or senior executives is an argument against the establishment of a permanent establishment. According to the MoF, this question has not yet been clarified at the international level. The mere fact that the home office activity takes place at the employee's request is not decisive for the assessment of a permanent establishment in such a case.

The EAS can be accessed at the following link (German version only):
<https://findok.bmf.gv.at/findok/resources/pdf/ee87cb11-34ab-4757-b085-0d6df1e36f72/82103.1.1.pdf>

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