

Tax Short Cuts - English

Latest tax news for Austria
by EY

Federal Ministry of Finance on tax measures in connection with the current flood disasters

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On August 21, 2023, the Federal Ministry of Finance (MoF) published information on the tax measures in connection with the current flood disasters (2023-0.599.910), which refers to tax relief for those affected and helpers.

Extension of deadlines

Taxpayers who are directly affected by a natural disaster may file a justified request for an extension of the deadline for filing a tax return or a request for an extension of the deadline for filing an appeal. Taxpayers who have already missed a deadline or a hearing may file an application for reinstatement if the natural disaster was the cause of the missed deadline.

Relief for tax payments

- ▶ Payment facilities such as deferral or payment by installments, reduction or non-assessment of late payment penalties can be requested by taxpayers directly affected by the natural disaster.
- ▶ A reduction in advance payments may be requested by taxpayers affected by disaster damage by October 31 (instead of September 30).

Payments from the Disaster Fund and voluntary contributions by third parties

Payments from the Disaster Fund (Katastrophenfonds) and corresponding payments from charitable or benevolent private foundations are tax-exempt. Voluntary grants to repair disaster damage are exempt from income or payroll taxes on the recipient side.

Grants and donations for the repair of disaster damage

Beneficiary purposes pursuant to Sec 4a para 2 of Austrian Income Tax Act (EStG) also include assistance in national and international disaster situations (esp. flood, landslide, mudslide and avalanche damage). The beneficiary institutions are listed on the website of the MoF, such as volunteer fire departments and various aid organizations. Direct donations to affected persons can thus not be claimed for tax purposes. It should be noted that in the case of donations by private persons, only monetary donations are eligible; in the case of donations by businesses, donations in kind are also eligible.

Pursuant to Section 4 para 4 no. 9 of the Austrian Income Tax Act, companies have the option of claiming promotional assistance in cash or in kind as business expenses. The prerequisite for this is advertising effectiveness, which means that there are no "grants" or donations, but rather advertising expenses, whereby the requirements for advertising effectiveness are generally not too high. For the deductibility it is irrelevant who the recipients are (e.g. aid organizations, municipalities, own employees).

The donation is a non-taxable income for its recipient. Non-cash benefits in connection with disaster damage are also tax-exempt.

Extraordinary expenses

Costs incurred in remedying disaster damage are tax-deductible to this extent as an extraordinary burden without a deductible. A mere pecuniary loss does not in itself constitute an extraordinary burden; only the costs incurred in remedying the pecuniary loss are tax-deductible. The provision of own work is not to be taken into account for tax purposes due to the lack of a cost.

Hobby activities assessment

Natural disasters such as floods are to be qualified as unforeseeable events and thus as imponderables. Imponderables do not lead to a hobby assessment of an activity if the intention to generate profit or surplus was demonstrated prior to the occurrence of the event.

Fees and federal administrative charges

There is an exemption for certain fees and federal administrative charges related to disaster damage.

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

<https://findok.bmf.gv.at/findok/resources/pdf/230702e3-9f4d-4f56-a7ca-a21ab763c4d6/82189.1.1.pdf>

Russia suspends certain Double Taxation Convention provisions with 38 countries including Austria

Double Taxation Convention Austria - Russia

On 8 August 2023, Russia issued Presidential Decree No. 585 temporarily suspending the application of key provisions of double taxation conventions (DTCs) with 38 "unfriendly" states. In the case of the DTC between Russia and Austria, this affects Articles 5 - 22, 24, 26.1 and 26.2 as well as parts of the protocol to the DTC.

In addition to Austria, the other EU member states, the USA, UK, Australia, Switzerland, Singapore and Japan are among those affected by the measure. The regulation came into force immediately upon publication.

Suspension of the application of provisions is not provided for in the DTC from 2000 between Russia and Austria. Article 29 of the DTC provides for the possibility of written notice of termination through diplomatic channels by June 30 of each calendar year. No such notice of termination was given by June 30, 2023. The agreement would then no longer be applicable as of January 1 of the following calendar year.

The suspension of provisions of the DTC is likely to revive Russian taxation rights lost or limited under the DTC. This may apply in particular to Russian withholding taxes on dividends, interest and royalties as well as foreign permanent establishments, real estate and capital gains.

The inclusion of Russia on the EU blacklist already means that the fiction of low taxation pursuant to Sec 10a para 11 KStG applies to participations in Russia, there is an increased obligation to report under the EU Reporting Obligations Act and, in the case of branches in Russia with predominantly passive income, this has an impact on COVID-19 subsidies due to infringement of tax good conduct.

According to the information available to date, Russia is not suspending the application of Art 26 DTC Russia (exchange of information). The exchange of information with Russia has already been suspended since mid-2022. (cf. MoF-Info 2022-0.493.052 of 18 July 2022), the prerequisite of the existence of comprehensive administrative assistance is nevertheless still met in the view of the MoF in relation to Russia. The existence of comprehensive administrative assistance is, among other things, a prerequisite for the tax exemption of investment income from portfolio holdings in third countries, for the inclusion of a foreign group member in an Austrian group, as well as for the subsequent taxation of losses and for the preferential treatment of donations.

A statement of the MoF is not yet available.

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