

Tax Short Cuts

Latest tax news for Austria
by EY

Supplementary prepayments of income tax and corporate income tax 2022

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Additional income tax and corporate income tax are principally subject to interest according to Sec 205 Federal Fiscal Code (BAO). The interest on such additional tax payments, which is not deductible for tax purposes, is 2% above the applicable base rate and currently amounts to 5.38% per annum.

If the income tax or corporate income tax 2022 of a taxpayer has not been assessed by 30 September 2023, any excess of the later assessed income tax or corporate income tax 2022 over earlier made income tax or corporate income tax prepayments 2022 will be subject to interest charged by the tax office. Submission of the tax return at a later point in time cannot postpone this deadline, nor can the submission of an application for an extension of the deadline. Only an advance payment made before 1 October 2023 in the amount of the expected additional tax payment can prevent the imposition of interest. Interest of less than EUR 50.00 are not imposed.

Any supplementary prepayment must be remitted to the tax office in due time, stating a corresponding clearing instruction, so that the tax office receives the payment prior to 1 October 2023. Any supplementary prepayment made after 30 September 2023 will also reduce the interest. Multiple supplementary prepayments may also be made in equal or different amounts. The clearing instruction must state "E 01-12/2022" for payments relating to income tax and "K 01-12/2022" for payments relating to corporate income tax.

In case of a tax group according to Sec 9 of the Austrian Corporate Income Tax Act (KStG), any supplementary prepayment must be made by the group parent. The taxable income of all group members must be considered in the calculation of the payment.

Applications for reduction of income tax and corporate income tax prepayments 2023 until 30 September 2023

Income Tax Act
Corporate Income Tax Act

If the actual income tax or corporate income tax on the estimated taxable income for the financial year 2023 (balance sheet date in calendar year 2023) is expected to be lower than the currently determined income tax or corporate income tax prepayments for 2023, it is possible to apply for a reduction of the income tax and corporate income tax prepayments for 2023. An application can be submitted to the respective tax office by 30 September 2023 at the latest, together with a forecast of the (expected) taxable income for 2023. Corporate income tax rate was reduced from 25% to 24% as of 1 January 2023 (with a further reduction to 23% as of 1 January 2024).

In the case of a tax group according to Sec 9 of the Austrian Corporate Income Tax Act, any application for a reduction must be submitted by the group parent. The taxable income of all group members must be considered in the calculation of the prepayment.

Valorization of tax brackets and tax deductions as of 2024 published

Income Tax Act

The progressive income tax rate and fixed deductions result in an annual increase in income tax revenue due to inflation. With the Inflation Relief Package II, it was decided in 2022 to compensate for this additional tax burden through the cold progression. Under Sec 33a of the Austrian Income Tax Act (EStG), certain marginal and deductible amounts are to be adjusted annually by two-thirds of the inflation rate. A resolution must be passed annually by 15 September to compensate for the remaining third.

On 29 August 2023, the Inflation Adjustment Regulation 2024 was published in the Federal Law Gazette (BGBl. II No. 251/2023). The regulation increased the inflation-adjusted tax brackets and tax deductions by 6.6% (i.e., 2/3 of the inflation rate) in accordance with Sec 33 para 1a of the Austrian Income Tax Act. Among other things, the following tax brackets for income tax were increased for the calendar year 2024:

- ▶ Income up to EUR 12,465.00 is now subject to a tax rate of 0% (previously up to EUR 11,693.00),
- ▶ Income over EUR 99,266.00 is now subject to a 50% tax rate (previously over EUR 93,120.00).

The regulation can be accessed at the following link (German version only):
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_II_251/BGBLA_2023_II_251.pdf

DTC Austria - Germany: partial revision

Double Taxation Convention Austria - Germany

On 21 August 2023, Austria and Germany signed a protocol amending the double taxation convention (DTC). The main content is the implementation of BEPS minimum standards and the revision of the cross-border commuter regulation.

The amendment of Art 5 para 4 DTC Austria-Germany is intended to prevent circumvention of the permanent establishment status on the basis of the list of exceptions and to cover only constellations that are actually of a preparatory nature or constitute an auxiliary activity. With the new wording, the exception of Art 5 para 4 DTC Austria-Germany is generally not applicable if the main activity of an enterprise is carried out at a fixed place of business.

The Protocol of Amendment also introduces an anti-misuse provision in the form of the principal purpose test, according to which no treaty benefits are granted for arrangements and transactions if one of the principal purposes is to obtain such a treaty benefit. In connection with the implementation of the BEPS minimum standards, the title and preamble of the agreement will also be amended.

The DTC Austria-Germany contains a cross-border commuter provision under which income from employment is taxed in full in the country of residence, even though the work is performed in the other country. The wording of the old regulation of Art 15 para 6 DTC Austria-Germany on the taxation of cross-border commuters basically required the "daily" return from the place of work to the place of residence. Days on which the cross-border commuter did not commute to the place of work near the border, e.g. because activities were performed in the home office, outside the border zone or in a third country, were regarded as "harmful non-return days". According to the consultation agreement, the previous regulation meant that cross-border commuters who worked from their home for more than 45 days could no longer make use of the cross-border commuter rule.

According to the wording of the new provision, cross-border commuters are persons who have their main residence near the border and usually carry out their employment activities near the border (=30 kilometers on both sides of the border). Since the home office of cross-border commuters is by definition located in the border zone, the new version means that home office days will no longer be considered "harmful non-return" days in the future. However, work of more than 45 days outside the border zone (e.g. business trips) shall continue to be detrimental for the cross-border commuter status. In addition, no more than 20% of the actual working days during a calendar year can be worked outside the border zone. According to the general regulation of Art 15 DTC Austria-Germany, the right of taxation is divided between the country of residence and the country of activity if the thresholds are exceeded. In addition, a cross-border commuter rule will also be created for employees in the public sector. The new rules are to be applicable as of 1 January 2024.

Finally, the special treaty provision on exit taxation in Art 13 para 6 DTC Germany-Austria was repealed.

DTC Austria - Germany: partial revision

The minutes are available at the following link (German version only):
https://www.ris.bka.gv.at/Dokumente/Mrp/MRP_20230517_59/006_001.pdf

Input tax refund in the EU until 30 September 2023

Value Added Tax

Austrian businesses who purchased supplies or other services subject to local VAT in other EU member states in the calendar year 2022 can still apply for a refund of the related input tax until 30 September 2023. The input tax refund application must be submitted via FinanzOnline. A prerequisite for the applicability of the procedure is that neither a permanent establishment nor the registered office of the business activity nor a VAT registration obligation existed in the relevant member state in the respective refund period.

Disclosure of financial statements - deadline and mandatory penalties

Commercial Code

Pursuant to Sec 277 of the Austrian Commercial Code (UGB), the legal representatives of corporations and partnerships in which no natural person is personally liable (e.g. GmbH & Co KG) have the obligation to disclose

- ▶ the annual financial statement,
- ▶ the management report,
- ▶ the auditor's report,
- ▶ the proposal/decision on the appropriation of the result, and, if applicable
- ▶ the report of the Supervisory Board,
- ▶ the Corporate Governance Report,
- ▶ the separate non-financial report and the report on payments to public authorities

to the competent Commercial Register Court no later than nine months after the balance sheet date. Extended deadlines due to COVID-19 have expired in the meantime. In the case of small limited liability companies, only an abridged balance sheet and abridged notes to the financial statement must be disclosed, as well as the auditor's opinion if an audit is required. Large stock companies must also submit proof that the annual financial statement was published in the official gazette of the "Wiener Zeitung". The disclosure must also indicate the classification of the company in the size categories. The provisions on disclosure also apply to the consolidated financial statements, which must be disclosed to the Commercial Register Court at the same time as the annual financial statements.

For corporations with a balance sheet date of 31 December, the deadline for disclosing the annual financial statements as of 31 December 2022, is 30 September 2023. Disclosures must generally be made electronically. Corporations whose sales revenues do not exceed EUR 70,000.00 in the 12 months prior to the balance sheet date may also submit their annual financial statements in paper form.

Disclosure of financial statements - deadline and mandatory penalties

According to the Regulation on Electronic Legal Transactions, the annual financial statement data to be submitted electronically must, in principle, be transmitted to the Company Register in structured form. Disclosure for small and micro limited liability companies can also be made using the forms provided on JustizOnline as an XML file via FinanzOnline.

Pursuant to Sec 242 of the Austrian Commercial Code, micro-corporations pursuant to Sec 221 para 1a of the Austrian Commercial Code are not required to prepare or disclose notes to the financial statements if they disclose the total amount of contingent liabilities and other material financial obligations that are not to be shown on the liabilities side, as well as the type and form of any collateral provided under the balance sheet. The amounts of advances and loans granted to members of the management board and the supervisory board must also be stated there.

If annual financial statements are not disclosed to the competent Commercial Register Court by the last day of the deadline at the latest, a penalty of at least EUR 700.00 per managing director/board member and per company (reduced to EUR 350.00 in the case of micro-corporations) will be imposed automatically without prior investigation.

If the disclosure is not made up within two months (after expiry of the statutory nine-month period), further mandatory penalties are automatically imposed at two-month intervals. In this case, the range of penalties in the ordinary proceedings increases per managing director/board member/company three times (EUR 2,100.00) in the case of medium-sized corporations (as defined in Sec 221 of the Austrian Commercial Code) and six times (EUR 4,200.00) in the case of large corporations.

If accounting documents of foreign corporations with a domestic branch cannot be retrieved from the Business Register Interconnection System (BRIS) in German or in a commonly used language in international finance circles, foreign corporations with a domestic branch must also disclose their foreign annual financial statements in German or in a commonly used language in international finance circles to the Austrian Commercial Register Court no later than nine months after the balance sheet date (in the case of balance sheet dates before 1 January 2023), provided that the company's annual financial statements were prepared, audited and disclosed in accordance with the law applicable to the main branch (Sec 280a Austrian Commercial Code). In its decision of 11 January 2006 (4 R 343/05y), the Higher Regional Court in Vienna (OLG) ruled that the representatives of the domestic branch office must disclose the foreign annual financial statements in German to the Austrian Commercial Register Court even if the company is not required to be audited under foreign law. The mandatory penalty regime is also applicable to domestic branches.

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