

Tax Short Cuts

Current tax information for Austria from EY

EU Commission: Proposed Directives for a Framework for Income Taxation (BEFIT) and Transfer Pricing

Content

- 01 EU Commission: Proposed Directives for a Framework for Income Taxation (BEFIT) and Transfer Pricing
- 03 Interest rate adjustments
- 03 EU Carbon Border Adjustment Mechanism (CBAM) for imports from 1 October 2023
- 04 FAQs on the Electricity Cost Compensation Act 2022
- 05 Federal Act on Contributions to the Austrian Broadcasting Corporation (ORF Contribution Act 2024) - household levy as of 1 January 2024
- 06 Regulation on the electronic transmission of executions and applications by means of electronic file transfer (EDTV Regulation)

On 12 September 2023, the EU Commission presented a Directive proposal for a new, uniform set of rules for calculating the taxable base of groups of companies (2023/0321). The “Business in Europe: Framework for Income Taxation, BEFIT” package intends to reduce the costs for large companies resulting from complying to different taxation rules - primarily those operating in several Member States - (up to 65%, according to the EU Commission) and to make it easier for tax authorities to determine the taxes owed.

The package, which builds on the OECD/G20 international agreement on global minimum taxation and the Pillar 2 Directive, includes the following proposals:

- ▶ All companies belonging to the same group calculate their tax base according to the common set of rules;
- ▶ The tax bases of all companies that are part of a group are combined into a single tax base. This leads to cross-border loss relief, as losses are automatically offset against profits;
- ▶ Using a formulary apportionment rule, a percentage of the aggregated tax base is calculated for each member of the BEFIT group based on the average of the taxable results of the three previous tax years.

EU Commission: Proposed Directives for a Framework for Income Taxation (BEFIT) and Transfer Pricing

A one-stop-shop will allow a member of the group to submit the tax information of the entire group to the tax administration of a Member State. Individual tax returns, audits and dispute settlement will remain primarily local in conformity with national tax sovereignty.

The new rules are to apply on a mandatory basis to groups operating in the EU with annual combined revenues of at least EUR 750 million whose parent company holds at least 75% of the ownership rights or of the rights giving entitlement to profit. Smaller groups may voluntarily opt to apply the rules as long as they prepare consolidated financial statements.

Companies or permanent establishments with an ultimate parent entity outside the EU are exempt from the Directive, if the combined revenues of the group in the EU either do not exceed 5% of the total revenues for the group based on its consolidated financial statements or the amount of EUR 50 million in at least two of the last four fiscal years.

The profits and losses of related parties that are not part of the BEFIT group (for example, because they are not located in the EU) are not included in the tax base of the group. This means that there is no cross-border compensation for their losses, but that transfer pricing continues to apply in transactions between these companies and the members of the BEFIT group.

The package also includes a proposed Directive of 12 September 2023 on the harmonization of transfer pricing rules within the EU (2023/0322), which aims to incorporate the arm's length principle and the main transfer pricing rules into EU law, and to create a common approach to transfer pricing issues. This is intended to clearly define the role and status of the OECD Transfer Pricing Guidelines and to create the possibility of establishing common binding rules within the Union on certain aspects of these rules. In addition, the possibilities for companies to use transfer pricing for aggressive tax planning should be reduced.

If adopted by the Council, the proposals are expected to enter into force on 1 July 2028 (BEFIT) or 1 January 2026 (transfer pricing proposal), following implementation of the Directives by the member states.

The Directive proposals can be accessed at the following links:

https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_532_1_EN_ACT_part1_v6.pdf

https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf

Interest rate adjustments

Federal Fiscal Code

On 14 September 2023, the Federal Ministry of Finance published the decree on the adjustment of interest rate for deferral, suspension, late payment, appeal and VAT interest (2023-0.665.675), which replaces decree 2023-0.433.685 of 16 June 2023. Due to the further increase of the base rate by the ECB, the Austrian base rate has also risen from 3.38% to 3.88% per annum.

As of 20 September 2023, the following interest rates will apply:

- ▶ Deferral interest: 5.88% (previously 5.38%)
- ▶ Suspension interest: 5.88% (previously 5.38%)
- ▶ Late payment interest: 5.88% (previously 5.38%)
- ▶ Appeal interest: 5.88% (previously 5.38%)
- ▶ VAT interest: 5.88% (previously 5.38%)

The decree can be accessed at the following link (German version only):
<https://findok.bmf.gv.at/findok/resources/pdf/fc63e0a4-532d-4268-913c-25f7ae5ecbbe/82223.1.1.pdf>

EU Carbon Border Adjustment Mechanism (CBAM) for imports from 1 October 2023

Carbon Border Adjustment Mechanism (CBAM)

On 15 September 2023, the Implementing Regulation laying down the rules for the application of the EU Carbon Border Adjustment Mechanism (CBAM) was published in the Official Journal of the European Union (Commission Implementing Regulation (EU) 2023/1773 of 17 August 2023). The regulation sets out the details of the reporting obligations for EU importers during the transitional period (from 1 October 2023 to 31 December 2025).

As reported in our Tax Short Cuts in June (Tax Short Cuts No. 13 of 27 June 2023), the scope of CBAM covers product categories such as cement, fertilizers, iron and steel products, certain aluminum containers, such as tanks, drums, but also other goods made of aluminum as well as hydrogen and electricity. Since in addition to raw materials and semi-finished products also downstream products are covered by the CBAM regulation, the list of affected products hits a wide range of companies and industries.

CBAM-affected importers must register in the EU Trader Portal (accessible via [Unternehmensserviceportal/USP](https://www.ustportal.eu)), which should be activated by the end of September 2023. The CBAM reporting obligation starts on 1 October 2023 and the first quarterly report is due on 31 January 2024. A wide-ranging set of data must be submitted in the CBAM reports, which includes typical customs data elements as well as emissions data. This data will also be the basis for the purchase of CBAM certificates from 2026 with the objective of ensuring that emissions embedded in emission-intensive products imported

EU Carbon Border Adjustment Mechanism (CBAM) for imports from 1 October 2023

into the EU are subject to a carbon price. Customs declarants/importers must therefore ensure that suppliers of CBAM-affected goods provide emission data according to CBAM standards. Imports from Switzerland, Liechtenstein, Norway, and Iceland are exempt from these obligations.

From 31 December 2024, importers will have to apply for a new authorization as "Authorized CBAM Declarant" until 2026. From 2026, CBAM will then come into full effect with the obligation to purchase CBAM certificates.

We would like to invite you to join our EY Europe West webcast on CBAM on Wednesday, 4 October 2023, 16:45-18:00:
<https://webcast.meetyoo.de/reg/9026xa2illj2>

FAQs on the Electricity Cost Compensation Act 2022

Electricity Cost Compensation Act

Applications based on the Electricity Cost Compensation Act 2022 can be submitted until 30 September 2023. As of 29 August 2023, FAQs regarding the Electricity Cost Compensation Act 2022 (Stromkosten-Ausgleichsgesetz 2022 (SAG)) have been published. Thereby, some clarifying statements were made.

- ▶ The applicant companies do not have to prove that they have to bear the indirect CO₂ costs and are subject to an actual risk of carbon leakage. The only decisive factor as to whether a company belongs to the group of addressees is the NACE code according to Annex 1 SAG.
- ▶ It is not the electricity consumption or the electricity costs that are subsidized, but rather the indirect CO₂ costs of manufacturing certain products that are partially offset. In the overall balance sheet, therefore, the self-generated electricity is to be listed, whereby the self-consumption for electricity generation (e.g. operation of fuel extraction plants) is to be deducted (net value).
- ▶ Apart from the guide, there should be no other templates (e.g. calculation report).
- ▶ There is no obligation to prepare a new energy audit. The obligation to conduct an energy audit does not apply if an existing energy audit or a report of the energy management system has an evaluation of the results of the year 2022 as its subject (see Sec 41 et seqq. Federal Energy Efficiency Act (EEffG) regarding criteria). Furthermore, it was clarified that certification in accordance with ISO 14.001:2015 is covered under the alternatives to the energy audit listed in the Directive.
- ▶ In the list of measures, the measures to be implemented must be named, described in terms of content, and the expected investment costs and the expected implementation period until completion as well as the payback period must be stated (see also Sec 6 no 4 SAG).

FAQs on the Electricity Cost Compensation Act 2022

- ▶ A simple report is required as proof of timely implementation, which must be verifiable on the basis of supporting documents (invoices, payments, activation confirmation). With regard to the implementation of the measures, aws can carry out spot checks on site. The actual energy savings achieved will not be verified by aws.
- ▶ For Energy Cost Subsidy I (EKZ I), guidelines are currently in place that exclude the subsidization of electricity costs with EKZ I if a subsidy is granted under SAG 2022. According to the FAQ on SAG 2022, based on the current legal situation, only the granting/approval of the SAG subsidy is decisive, not the mere submission of the application. It remains to be seen whether there will be any changes in that respect.
- ▶ The maximum subsidy amount is based on the EU-ETS Guidelines and a 75% limit for indirect CO₂ costs. The maximum subsidy amount is taken into account in the formula for calculating the subsidy. Furthermore, it is crosschecked with the transparency database whether the cumulation of all subsidies does not exceed the maximum limit under the law of State aid according to the ETS Guidelines. Therefore, if further subsidies for indirect CO₂ costs are claimed, this should be checked.

The FAQ is available at the following link (German version only):

https://www.aws.at/fileadmin/user_upload/Downloads/SAG/20230829_SAG_FAQ.pdf

Federal Act on Contributions to the Austrian Broadcasting Corporation (ORF Contribution Act 2024) - household levy as of 1 January 2024

ORF Contribution Act 2024

The ORF Contribution Act 2024 (ORF-Beitrags-Gesetz) was published on 8 September 2023, together with amendments to the ORF Act and other ancillary laws, in the Federal Law Gazette I No. 112/2023 and will enter into force on 1 January 2024.

In the future, a device-independent household fee will replace the current GIS fee for financing public broadcasting in Austria. As of 1 January 2024, each household will have to pay a monthly ORF contribution of EUR 15.30, plus any provincial levy. No value-added tax will be charged on the ORF contribution. The obligation to pay the contribution is independent of whether and to what extent the public broadcaster's services are used.

Entrepreneurs must pay the ORF contribution for each municipality in which they had to pay municipal tax for at least one business location in the preceding calendar year.

Federal Act on Contributions to the Austrian Broadcasting Corporation (ORF Contribution Act 2024) - household levy as of 1 January 2024

The ORF contribution for companies is scaled according to the annual gross payroll total, with a total of 6 levels. The following annual ORF contributions, excluding provincial levies, are due per municipality in which a permanent establishment is located:

1. Gross payroll total up to EUR 1.6 million: one annual ORF contribution (EUR 183.60)
2. Gross payroll total up to EUR 3 million: two annual ORF contributions (EUR 367.20)
3. Gross payroll total up to EUR 10 million: seven annual ORF contributions (EUR 1,285.20)
4. Gross payroll total up to EUR 50 million: ten annual ORF contributions (EUR 1,836.00)
5. Gross payroll total up to EUR 90 million: 20 annual ORF contributions (EUR 3,672.00)
6. Gross payroll total exceeding EUR 90 million: 50 annual ORF contributions (EUR 9,180.00)

The maximum per company is 100 ORF contributions (EUR 18,360.00). One-person companies do not pay any ORF contributions for their business. In contrast to the previous regulation in the Broadcasting Fees Act, there will no longer be any deviating regulations for hotels and hospitality businesses.

The obligation to pay contributions in the private sector begins on the first of the following month in which the main residence was registered in the Central Register of Residents and ends at the end of the month in which the main residence was deregistered.

The obligation to pay contributions for business operations begins on 1 January of the following calendar year in which municipal tax was first payable for a permanent establishment in a municipality and ends at the end of the following year in which municipal tax was last payable in a municipality. The ORF contribution is levied by ORF-Beitrags Service GmbH.

The law can be accessed at the following link (German version only):
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_112/BGBLA_2023_I_112.pdf

Regulation on the electronic transmission of executions and applications by means of electronic file transfer (EDTV Regulation)

*Federal Fiscal Code
Criminal Tax Act*

On 1 September 2023, the EDTV Regulation, which entered into force on 1 September 2023, was published in the Federal Law Gazette (Federal Law Gazette II No. 259/2023), establishing the legal basis for the electronic

Regulation on the electronic transmission of executions and applications by means of electronic file transfer (EDTV Regulation)

transmission of data and large amounts of data between tax authorities and taxpayers outside the existing "FinanzOnline" system.

Electronic file transfer within the meaning of the Regulation shall mean the end-to-end encrypted transfer of electronic files by means of uploads or downloads via a platform provided by a federal tax authority, a tax crime authority, or the Federal Fiscal Court.

The use of electronic file transfer can only take place after consent has been given by the taxpayer or his representative. It should be noted that after the taxpayer/representative consented, only the authority has the right to choose the use of electronic file transfer. The tax authority must have previously sent the taxpayer or its representative an administrative letter concerning the specific matter.

The electronic data transfer may only be used for the settlements issued by the tax authority. The use for requests is not permitted and will not be accepted. Electronically transmitted requests must be provided with a qualified electronic signature.

The Regulation can be found at the following link (German version only):
<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20012348/EDTV%2c%20Fassung%20vom%2015.09.2023.pdf>

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Business Tax

Markus Stefaner
+43 1 211 70 1283
markus.stefaner@at.ey.com

International Tax

Roland Rief
+43 1 211 70 1257
roland.rief@at.ey.com

Transfer Pricing

Andreas Stefaner
+43 1 211 70 1041
andreas.stefaner@at.ey.com

Indirect Tax

Ingrid Rattinger
+43 1 211 70 1251
ingrid.rattinger@at.ey.com

People Advisory Services

Regina Karner
+43 1 211 70 1296
regina.karner@at.ey.com

Global Compliance & Reporting

Maria Linzner-Strasser
+43 1 211 70 1247
maria.linzner-strasser@at.ey.com

Transaction Tax

Andreas Sauer
+43 1 211 70 1625
andreas.sauer@at.ey.com

Editor and owner of the medium:

Ernst & Young
Steuerberatungsgesellschaft
m.b.H. („EY“)
Wagramer Straße 19, IZD-Tower
1220 Vienna

Responsible Partner

Klaus Pflieger
+43 1 211 70 1179
klaus.pflieger@at.ey.com

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**Ernst & Young
Steuerberatungsgesellschaft m.b.H.**
1220 Vienna, Wagramer Straße 19
4020 Linz, Blumauerstraße 46
5020 Salzburg, Sterneckerstraße 33
9020 Klagenfurt, Eiskellerstraße 5

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