

Tax Short Cuts

Current tax information for Austria by EY

Minimum Taxation Reform Act - Global minimum taxation implemented

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After the ministerial draft for the national implementation of global minimum taxation in Austria was published at the beginning of October 2023, the Minimum Taxation Act (Mindestbesteuerungsgesetz, MinBestG) was unanimously passed by the Austrian parliament as part of the Minimum Taxation Reform Act (Mindestbesteuerungsreformgesetz) including amendments to the Austrian Commercial Code (Unternehmensgesetzbuch, UGB) and subsequently published in the Federal Law Gazette No. I 187/2023. The MinBestG entered into force on 31 December 2023 and is to be applied starting with fiscal years beginning on or after 31 December 2023. Deviating from this, the undertaxed payment rule (Sekundär-Ergänzungssteuer) is applicable for fiscal years beginning on or after 31 December 2024.

Compared to the ministerial draft published in October, the following significant changes have been made (mostly already in the government bill for the Minimum Taxation Act):

- ▶ Clarifications regarding the calculation basis for the minimum tax profit calculation in Sec 14/1 with regard to the non-inclusion of purchase price accounting and in the explanatory notes with regard to the use of reporting packages and local financial statements for immaterial constituent entities in accordance with Sec 14/2;
- ▶ Specifications regarding the option to include tax-effective gains and losses from equity participations (Sec 18/4);
- ▶ Specifications of the safe harbor regulations (Sec 54-55) and addition of an authorisation to issue an ordinance for the definition of more detailed requirements as to the definition of qualified financial accounts and qualified country-by-country reporting;

Minimum Taxation Reform Act - Global minimum taxation implemented

- ▶ Specifications of the transitional provision (Sec 80) and in the explanatory notes regarding the first-time recognition of deferred taxes. The mandatory exemption from the recognition of deferred taxes resulting from the implementation of Pillar II already applies to annual financial statements beginning on or after 30 November 2023;
- ▶ Practical additions to the regulations on the substance-based income exclusion in accordance with pt. 3 of the OECD Administrative Guidelines of July 2023 (Sec 48);
- ▶ Equal treatment of marketable and transferable tax credits with qualified refundable tax credits in accordance with pt. 2 of the OECD Administrative Guidelines of July 2023 (Sec 27, 39 and 40);
- ▶ Addition of certain tax benefits from transparent entities ("qualified flow-through tax benefits") to the tax expense in conjunction with an authorization to issue an ordinance in accordance with pt. 2.9. of the OECD Administrative Guidance of February 2023 (Sec 39/5);
- ▶ Expansion of the excluded entities in accordance with Sec 4/1/7 to include certain subsidiaries of NPOs in accordance with pt. 1.6 of the OECD Administrative Guidelines from February 2023).

For an overview of the provisions of the MinBestG, please refer to the December issue of [Tax & Law Magazine](#) (German version only).

Start-up package enters into force, tax-free employee bonuses extended

Start-up Promotion Act

The Start-Up Promotion Act was published in the Federal Law Gazette I No. 200/2023 on 31 December 2023. With the Start-Up Promotion Act, among others, a new employee participation model was created which serves to mitigate the so-called "dry-income problem" and is intended to promote employee loyalty to the company (see our Tax Short Cuts No. 11/2023 of 31 May 2023).

In addition, the possibility of granting employees additional tax-free bonuses due to inflation was extended. This means that employee bonuses of up to EUR 3,000 per year can continue to be paid free of tax and social security contributions, provided they are granted on the basis of a collective agreement or company agreement and are "additional payments".

The Company Law Amendment Act 2023 (Gesellschaftsrechts-Änderungsgesetz 2023) was published in the Federal Law Gazette I No. 179/2023 on 30 December 2023. The introduction of the Flexible Corporation (FlexCo) as new legal form for companies shall take into account the specific needs of start-ups and founders (see our Tax Short Cuts No. 11/2023 of 31 May 2023).

In addition, the minimum nominal capital for limited liability companies (GmbHs) will be reduced from EUR 35,000 to EUR 10,000 as of 2024 onwards and the minimum annual corporation tax for GmbHs and FlexCos decreases from EUR 1,750 to EUR 500 p.a. as of 2024.

Start-up package enters into force, tax-free employee bonuses extended

The Start-Up Promotion Act can be accessed via the following link (German version only):

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_200/BGBLA_2023_I_200.pdf

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

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_179/BGBLA_2023_I_179.pdf

Non-Profit Reform Act 2023 and FAQs on tax relief for donations

Non-Profit Reform Act

The Non-Profit Reform Act 2023 (Gemeinnützigkeitsreformgesetz 2023) was published in the Federal Law Gazette I No. 188/2023 on 31 December 2023 (see also our Tax Short Cuts 22/2023 of 17 October 2023) and has thus entered into force. In addition, the MoF has published FAQs on the tax relief for donations as of 2024.

The Non-Profit Reform Act 2023 will, among other things, expand the list of beneficiary organizations and extend it to all non-profit and charitable organizations. As of 2024, a voluntary allowance for volunteers is introduced.

The Non-Profit Reform Act 2023 can be accessed via the following link (German version only):

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2023_I_188/BGBLA_2023_I_188.pdf

The FAQs can be accessed via the following link (German version only):

<https://www.bmf.gv.at/themen/steuern/spenden-gemeinnuetzigkeit/spendenbeguenstigung-neu.html>

Amendment to the Remuneration in Kind Ordinance

Income Tax Act

The amendment to the Remuneration in Kind Ordinance (Sachbezugswerteverordnung) was published in the Federal Law Gazette II No. 404/2023 on 20 December 2023. The amendments refer to interest-reduced employer loans and salary advances, as well as the reimbursement of costs for charging zero-emission vehicles.

As prerequisite for the employee not having to recognize the employer's cost reimbursements for charging an emission-free employer-owned vehicle as income, the verifiable allocation of the charging quantity to the vehicle must be ensured for wage payment periods ending after 31 December 2022 in case of the use of a non-public charging facility and the cost rate must be calculated in accordance with the Remuneration in Kind Ordinance. In future,

Amendment to the Remuneration in Kind Ordinance

however, the verifiable allocation does not necessarily have to be provided by the charging facility itself. The calculation of the cost rate is still based on the average total electricity price in cents per kWh published by Energie-Control Austria.

For the case that the charging quantity cannot be verifiably allocated to the non-public charging station, the cost reimbursement is not to be recognized as income as long as it does not exceed EUR 30.00 per month (applicable for wage payment periods beginning after 31 December 2022 and ending before 1 January 2026). For wage payment periods in calendar year 2023, this is also possible for public charging stations if they are verifiably unable to allocate the charging quantity to the vehicle.

In the previous version of the ordinance, no distinction was made between low fixed and variable interest rate employer loans and salary advances.

For fixed-interest employer loans or salary advances, 10 percent must now be deducted from the interest rate published by the Austrian National Bank for the month in which the loan was taken out as "interest rate for new business with private households for residential construction with an initial fixed interest rate over ten years". This percentage rate remains relevant for tax purposes for the entire period in which the interest rates are fixed. The difference between this interest rate and the actual interest rate is to be treated as remuneration in kind.

The treatment of low-interest employer loans and salary advances with a variable interest rate remains mostly unchanged. The actual interest rate is now to be calculated on the basis of the monthly average table of the last 12 months published by the European Central Bank, and not the European Banking Federation.

In the case of unchanging low-interest employer loans and salary advances, the new provisions of the ordinance are already applicable to employer loans and salary advances granted between 31 December 2002 and 1 January 2024. However, the employee can object to the application of the new regulation until 30 June 2024, then the remuneration in kind will be calculated in accordance with the previous regulation.

The ordinance can be accessed via the following link (German version only):
<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20001641/EuroStUV%202001%2c%20Fassung%20vom%2003.11.2022.pdf?FassungVom=2022-11-03>

Updated list of favored aircraft operators 2024

Value Added Tax Act

On 15 December 2023, the MoF published the updated list of favored aircraft operators as of 1 January 2024 (valid until 31 December 2024) (BMF-2023-0.887.707).

The entire list can be accessed via the following link:

<https://findok.bmf.gv.at/findok/resources/pdf/c137ebed-45c9-4b9c-ad1e-f24834858c76/82407.1.1.pdf>

MoF: List of countries with comprehensive administrative assistance

Income Tax Act

In the information dated 6 December 2023 the MoF published the list of all countries and territories with which comprehensive administrative assistance exists as of 1 January 2024 (BMF 2023-0.865.584). Compared to the MoF information dated 29 November 2022 (BMF 2022-0.855.354), Benin, Burkina Faso and Papa New Guinea have been added.

The MoF clarifies that the term "comprehensive" administrative assistance is to be understood in the sense of the "large-scale" exchange of information (Directive 2011/16/EU, multilateral administrative assistance agreement, DTA information clauses or agreement on the exchange of information - TIEA). The existence of comprehensive administrative assistance is, among other things, a prerequisite for the tax exemption of investment income from portfolio investments in third countries, for the inclusion of a foreign company in an Austrian tax group, as well as for the subsequent taxation of losses and for tax relief on donations.

As of 1 January 2024, comprehensive administrative assistance exists with the following countries and territories:

Albania, Algeria, Andorra, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Azerbaijan, Australia, Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bermuda, Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands, Brunei, Bulgaria, Burkina Faso, Chile, China (People's Republic of), Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, Czechia, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Eswatini, Faroe Islands, Finland, France, Georgia, Germany, Ghana, Gibraltar, Grenada, Greece, Great Britain, Greenland, Guatemala, Guernsey, Hong Kong, Hungary, India, Indonesia, Iceland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Cayman Islands, Cameroon, Canada, Cape Verde, Kazakhstan, Kenya, Colombia, Korea (Republic of), Kosovo, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat, Morocco, Namibia, Nauru, New Zealand, Netherlands, Nigeria, Niue, North Macedonia, Norway,

MoF: List of countries with comprehensive administrative assistance

Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Rwanda, Romania, Russia, Samoa, San Marino, Saudi Arabia, Sweden, Switzerland, Senegal, Serbia, Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, Spain, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, South Africa, Tajikistan, Taiwan (Chinese Taipei), Thailand, Tunisia, Türkiye, Turkmenistan, Turks and Caicos Islands, Uganda, Ukraine, Uruguay, Vanuatu, Venezuela, United Arab Emirates, United States of America and Vietnam.

Since March 2022, Austria has no longer exchanged information with Belarus and Russia.

The MoF information is available at the following link:

<https://findok.bmf.gv.at/findok?execution=e100000s1&segmentId=54eca594-d43c-4c58-8c05-afd8151b9792>

Digital Platform Reporting Act: DAC7-declaration by 31 January 2024

Digital Platform Reporting Act

The Digital Platform Reporting Act (Federal Law Gazette I No. 108/2022) to implement Directive (EU) 2021/514 introduces new tax diligence and reporting obligations for certain digital platform operators.

The DAC7 declaration must be submitted to the Austrian tax office (Finanzamt Österreich) via the online portal for digital platforms by 31 January 2024. If a platform has several operators (e.g. in group constellations), it is possible that only one of the operators submits the DAC7 declaration. In this case, however, the exempt platform operator must submit an exemption notification to the Austrian tax office by 15 February 2024.

EU: Amendments to the De minimis Regulation and the SGEI De minimis Regulation

De minimis Regulation

On 13 December 2023, the European Commission adopted two regulations amending the general rules on de minimis aid and the rules on de minimis aid for services of general economic interest (SGEI) such as public transport and healthcare.

The revised regulations exempt de minimis aid from EU state aid control, as it is assumed that it has no impact on competition and trade in the single market. Both regulations entered into force on 1 January 2024 and apply until 31 December 2030.

The most important changes to the de minimis regulation are that the maximum amount per business over a three-year period increases to EUR 300,000 and the introduction of safe harbours for financial

EU: Amendments to the De minimis Regulation and the SGEI De minimis Regulation

intermediaries. This will facilitate the granting of aid in the form of loans and guarantees, whereby the benefits no longer have to be passed on in full by the financial intermediaries to the final beneficiaries.

The most important change to the SGEI de minimis regulation is that the maximum amount per business increases to EUR 750,000 over a three-year period.

In addition, both regulations introduce an obligation for member states to record all de minimis aid starting 1 January 2026 in a central register set up at national or EU level.

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