

Tax Short Cuts

Current tax information for Austria by EY

Reporting obligation for certain payments

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Entrepreneurs and public corporations that made the payments listed below in the calendar year 2023 are obliged to submit an electronic report to the tax office via ELDA or Statistics Austria by 29 February 2024 at the latest. If electronic reporting is not possible, the report must be submitted in paper form by 31 January 2024 at the latest.

Reporting obligation pursuant to Sec 109a Austrian Income Tax Act (Einkommensteuergesetz, EStG)

Remuneration paid to individuals or associations of persons for services outside of an employment relationship, in particular payments for services provided by freelancers, supervisory or administrative board members, foundation directors, lecturers, teachers and instructors, officials of public corporations, private business intermediaries, home loan bank or insurance representatives and colporteurs or newspaper delivery staff, must be reported. The contractor must be provided with a copy. The contractor must report the income separately in his tax return.

A reporting may be omitted if the fee paid to a contractor in the calendar year (including any travel expense reimbursements) does not exceed EUR 900.00 in total and does not exceed EUR 450.00 per individual service (including any travel expense reimbursements).

Reporting obligation pursuant to Sec 109b EStG

Payments made abroad for services rendered in Austria from self-employment pursuant to Sec 22 EStG (in particular freelance professions, as well as supervisory board members, foundation board members and managing directors with a significant shareholding) must be reported,

Reporting obligation for certain fee payments

as well as intermediary services provided by persons with unlimited tax liability or relating to Austria, and commercial or technical advisory services in Austria, regardless of whether advisory or intermediary services are provided by the service provider within or outside his business. Commercial or technical advisory services require a physical presence in Austria.

A reporting is not required if the fee paid to a service provider in the calendar year does not exceed EUR 100,000.00, a tax deduction is made in accordance with Sec 99 EStG (but without relief at source), or in the case of payments to foreign corporations that are subject to a tax rate of at least 14% abroad (value for 2023). A tax rate of at least 13% applies for 2024; up to and including 2022, the minimum tax rate was 15%.

In the case of a reporting obligation pursuant to Sec 109a EStG and Sec 109b EStG, only a single notification pursuant to Sec 109b EStG must be submitted (e.g. for foundation board and supervisory board members).

Wage tax guidelines - Maintenance Decree 2023

Income Tax Act

The wage tax guidelines (Lohnsteuerrichtlinien, LStR) were updated by the MoF maintenance decree published on 15 December 2023 (2023-0.715.245, BMF-A V 2023/151). Legal changes and Supreme Court decisions were incorporated.

For further details please refer to the German version of our Tax Short Cuts No. 02/2024 of 23 January 2024.

DTC Austria-Germany: Amendments in force

Double Taxation Convention Austria - Germany

The protocol to amend the double taxation convention (DTC) between Austria and Germany was published in the Federal Law Gazette III No. 12/2024 on 16 January 2024 and has entered into force retroactively from 1 January 2024.

With the protocol to amend the DTC between Austria and Germany - in addition to the implementation of the internationally applicable standards for the avoidance of base erosion and profit shifting ("BEPS standards") - in particular regulations that create simplifications for cross-border commuters in both the private and public sector and enable the unrestricted use of a home office were introduced (see our Tax Short Cuts No. 18/2023 dated 7 September 2023).

The protocol is available under the following link (German version only): https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_III_12/Anlage_n_0001_435E5605_5DB7_4763_A261_3D4AE466CBCE.pdfsig

VAT guidelines - Maintenance Decree 2023

Value Added Tax Act

The final version of the maintenance decree of the VAT Guidelines 2023 was published on 15 December 2023. We have summarized the essential changes below.

Tokens as vouchers (no. 4)

A token may constitute a voucher; however, this must be examined on a case-by-case basis based on its respective qualification and use. Tokens that as such are not yet part of a regulated market in the EU and whose characteristics have not yet been determined are generally not regarded as vouchers.

Provision of a company bicycle or electric vehicle (nos. 8 and 75)

In the case of a salary conversion, a "salary increase" and a rental, the company bicycle must be assumed to be provided to the employee against consideration and therefore a taxable supply is at hand. The employer is entitled to deduct input VAT when purchasing the bicycle if the 10% limit for business use is reached. If the bicycle is provided for exclusively private use against consideration, this 10% limit is met and the bicycle is used exclusively for business purposes (supply of service in the form of renting). The extent of the input VAT deduction is to be determined according to the general principles on the basis of the business activity (not) entitling to input VAT deduction. These explanations apply mutatis mutandis to the provision of an electric vehicle to an employee, whereby the VAT rules for non-deductible expenses for income tax purposes must also be observed when examining the input VAT deduction.

If the bicycles are not provided against consideration for non-business purposes, this constitutes a taxable self-supply if the 10% limit for business use is generally met and there was no exclusion from input VAT deduction. Voluntary social expenditure is, however, not at hand.

Compensation payment by the insurance company for insured losses (no. 17)

Where the supplier insures himself against the risk of a loss of receivables and the insurance company compensates the financial loss in case of an insured event, the monetary compensation is remuneration for the insured, (originally) taxable supply from 1 January 2024. The loss of the receivable does therefore no longer result in an adjustment in accordance with Sec 16 Austrian VAT Act (Umsatzsteuergesetz, UStG)

Financial integration into the VAT group (no. 236)

Financial integration can also exist in the case of a 50% voting rights if the controlling company is able to exercise its control over the controlled company because the controlling company holds the majority in the share capital of the controlled company and the controlling company provides the sole managing director of the controlled company.

Recognition and reward program for employees (no. 480)

According to the draft of the maintenance decree, vouchers given free of charge in the course of a reward program to recognize and reward the most

VAT guidelines - Maintenance Decree 2023

deserving and high-performing employees were not regarded as subject to self-supply. However, this statement was deleted without replacement in the final version.

Tax-free payment transactions (no. 764)

With regard to outsourced services in the credit card business, it is stated that the core area of the (VAT exempt) money transfer transaction is the execution of the order to transfer a sum of money from one bank account to another or the direct debiting and/or crediting of an account or transfers between accounts. Activities that do not fulfil this core area do not relate to the execution of payments and transfers themselves, but to their "processing". In order to qualify for a VAT exemption, the service must be characterized by the transfer of funds.

Qualification as an invoice (no. 1557)

In order for a document to be recognized as an invoice, the invoice details required to determine whether the material requirements for the right to deduct input VAT are met must be stated on the document in addition to the VAT amount.

VAT owed by virtue of invoicing (nos. 1824 and 1825)

VAT owed due to being incorrectly shown on the invoice pursuant to Sec 11 (12) UStG cannot be deducted as input VAT from the outset. The incorrectly claimed input VAT must be corrected ex tunc, for which no invoice correction is required.

In the past, the administrative opinion (no. 1825) allowed VAT owed in accordance with Sec 11/12 UStG to be deducted as input VAT if the VAT was shown on the invoice, unless the recipient of the service is aware of circumstances from which he would have to conclude that the VAT shown was not paid by the supplier or it is recognizable to the recipient that the VAT shown is higher than the standard VAT rate. This simplification was cancelled without replacement. From 1 January 2024, an invoice stating an incorrect VAT amount for which the VAT is owed by virtue of invoicing will no longer entitle the customer to deduct input VAT.

Input VAT deduction in the case of an incomplete invoice (no. 1828)

An incomplete invoice, which in principle qualifies as an invoice (see no. 1557), entitles the supplier to deduct input VAT if the supplier corrects the invoice (input VAT deduction ex nunc) or if the tax authorities have all the data required to prove the material conditions for the deduction of input VAT.

Proof of transport for intra-Community supplies (no. 4006)

Proof of transport or dispatch for intra-Community supplies in accordance with Regulation BGBl. No. 401/1996 in its current version can now also be provided in electronic form, e.g. in form of a pdf document, and no longer has to be provided in paper form.

Austrian Supreme Administrative Court on the term "renting" of land by a municipality

Value Added Tax Act

In its decision of 20 September 2023, Ra 2021/13/0082, the Austrian Supreme Administrative Court dealt with the question of whether the rental of land (sports and leisure facilities) by a municipality fulfills the remuneration requirements of the rental concept within the meaning of Sec 2/3 Austrian VAT Act (Umsatzsteuergesetz, UStG). In this context it has to be noted that, according to the case law of the Austrian Supreme Administrative Court, the content of the term of "renting and leasing" in Sec 2/3 UStG differs from the general concept of renting in the UStG and must be interpreted more narrowly, in this respect the civil law criteria are decisive.

According to the statements of the Austrian Supreme Administrative Court, a transfer in return for mere interest or cost reimbursement is not sufficient to establish a civil law renting agreement. If a minimum rental fee, required under civil law for the recognition of a renting agreement, is not reached, it cannot be assumed to be a tenancy for consideration, hence the tenancy is to be assigned to the sovereign sphere of the public corporation. The Austrian Supreme Administrative Court in this regard refers to the case law of the Austrian Supreme Court (10 June 2015, 7 Ob 218/14f), which requires a comparison with a similar local rent at the time the contract was concluded. A tenancy for consideration is thus assumed if the agreed fee is at least 10% of the local rent.

The underlying decision thus shows that for the VAT interpretation of the concept of "renting and leasing" as defined in Sec 2/3 UStG, civil law standards apply. The method to be applied for the determining the necessary minimum rental fee deviates from the calculation method proposed in margin no 265 of the Austrian VAT Guidelines, which, in addition to covering the (ongoing or proportionate) operating costs (Sec 21 to 24 MRG), proposes for the consideration of an annual pro rata depreciation component amounting to at least 1.5% of the acquisition/construction costs, including land and ground plus mandatory capitalization costs and costs of major repairs.

Regulations on energy cost subsidies for non-profit organizations published

Energy cost subsidy

On 15 January 2024, the Energy Cost Subsidies-Non-Profit Organizations Guidelines Ordinance was published in the Federal Law Gazette II No. 12/2024. Based on Sec 3/1 of the Federal Act on Energy Cost Subsidies for Non-Profit Organizations, the ordinance sets out the guidelines for granting subsidies.

The aim of the subsidy is to mitigate consequences of increases in energy costs caused by the distortions on the international energy markets for non-profit organizations and, under certain conditions, for legally recognized churches, religious communities and other institutions by providing subsidies so that they can continue to perform their statutory tasks.

Regulations on energy cost subsidies for non-profit organizations published

Funding is processed via an electronic platform to be set up by the AWS. Applications for phase 1 (calendar year 2022) can be submitted from 22 January to 30 June 2024; applications for phase 2 (calendar year 2023) can be submitted from 1 July to 31 December 2024. The completeness and accuracy of certain information in the subsidy application must be verified by a competent expert (auditor, tax advisor or accountant) in accordance with Sec 17 of the ordinance.

The ordinance can be accessed via the following link (German version only):
https://ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_II_12/BGBLA_2024_II_12.pdf

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