

# Tax Short Cuts

Current tax information  
for Austria by EY

## Federal Government presents economic stimulus package "Housing and Construction Campaign"

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### Contents

- 01 Federal Government presents economic stimulus package "Housing and construction Campaign"
- 02 Employee bonus: Query response from the MoF dated 20 February 2024
- 02 OECD publishes final report on Pillar 1 Amount B

On 27 February 2024, the Austrian Federal Government presented the "Housing and Construction Campaign" economic stimulus package in a presentation to the Council of Ministers. The aim of the package is to address the declining investment rate in the construction industry and the associated negative effects on the labor market. It also aims to ensure sufficient availability of affordable housing. The package shall total around EUR 2 billion.

For new residential buildings completed between 1 January 2024 and 31 December 2026, a depreciation rate of 4.5% shall be applicable in the first three years after completion, provided the building meets a certain ecological standard ("Klimaaktiv Bronze-Standard"). Whether the residential building is held as business or private asset is not relevant.

For further measures and details please refer to the German version of Tax Short Cuts 5/2024 of 5 March 2024.

No draft legislation has yet been presented. Further legislation remains to be seen.

# Employee bonus: Query response from the MoF dated 20 February 2024

## *Income Tax Act*

For the calendar year 2024, employers have the option of granting a tax-free employee bonus (Mitarbeiterprämie) of up to EUR 3,000 per employee free of wage tax, subject to the formal requirements of Sec 124b/447 Austrian Income Tax Act (Einkommensteuergesetz, EStG). The employee bonus is considered the "successor" to the inflation bonus (Teuerungsprämie), but with stricter formal requirements.

In its response of 20 February 2024 on the new employee bonus, the Ministry of Finance (MoF) comments on the accuracy of statements made in connection with the employee bonus.

Specifically, the MoF provides information on the prerequisite of a "wage-determining regulation pursuant to Sec 68/5/5 and 6 EStG", on the payment of the employee bonus and on the admissibility of a factual differentiation in the granting of the bonus.

The query response of the MoF is available under the following link (German version only):

<https://www.bmf.gv.at/rechtsnews/steuern-rechtsnews/aktuelle-infos-und-erlaesse/Fachinformationen---Ertragsteuern/Fachinformationen---Lohnsteuer/Mitarbeiterpr%C3%A4mie-2024-gem%C3%A4%C3%9F-%C2%A7-124b-Z-447-EStG-1988.html>

# OECD publishes final report on Pillar 1 Amount B

## *Transfer Pricing*

The OECD released the final report on "Pillar One - Amount B" on 19 February 2024. The Amount B approach pursues the goal of a simplified and streamlined application of the arm's length principle for baseline activities in the area of marketing and distribution and is independent of the size of the company or group. The scope includes simple distribution activities, the compensation of which is determined based on a so-called one-sided transfer pricing method (e.g. Transactional Net Margin Method ("TNMM")), and which, among other things, do not involve the use of unique intangible assets.

The final report will be added as an annex to Chapter IV of the OECD Transfer Pricing Guidelines and will be applicable for the first time for financial years beginning on or after 1 January 2025.

The main aspects of the OECD report on Amount B are summarized as below:

### **Optional application of Amount B for countries**

1. Countries can decide not to apply the Amount B approach. In this case, the general principles of the OECD Transfer Pricing Guidelines or the existing local regulations will continue to apply in the countries concerned.

# OECD publishes final report on Pillar 1 Amount B

2. Countries can introduce Amount B as a mandatory regulation. This means that taxpayers and tax administrations are obliged to apply Amount B if the transactions meet the scope criteria.
3. Countries can grant taxpayers the option to opt for the application of Amount B if the scope criteria are met. This option should be valid for at least three years when exercised for the first time.

## Transactions in scope

The report provides that the following activities fall within the scope of Amount B:

- ▶ Buy-sell marketing and distribution transactions in which goods are purchased from affiliated companies for wholesale distribution to unrelated companies.
- ▶ Sales agency and commissionaire transactions that contribute to the wholesale distribution of goods to unrelated parties by related companies.

Activities relating to the sale of digital goods, raw materials or services are expressly excluded from the scope. The Amount B approach is not tied to turnover thresholds.

## Application of the most appropriate transfer pricing method

Under the simplified approach, the TNMM is applied to qualifying transactions to determine an arm's length remuneration, unless the application of the (internal) comparable uncontrolled price method is possible due to the availability of internal comparable transactions.

## Determination of the return under the Amount B approach

The report contains a pricing matrix that can be used to derive the return for in-scope transactions under the Amount B approach using a 3-step process:

1. Selection of the appropriate industry group.
2. Selection of the appropriate classification based on certain intensities - i.e. OAS (net operating asset intensity) and OES (operating expense intensity),
3. Selection of the appropriate EBIT margin.

## Documentation

The documentation requirements under Amount B align with the existing documentation requirements of Chapter V of the OECD Transfer Pricing Guidelines (particularly those pertaining the Local File). The report emphasizes that the following specific information is crucial in the context of implementing the Amount B approach: Delineation of the qualifying transaction (including a functional and risk analysis), written contracts, calculations required for the application of the pricing matrix, and information regarding possible segmentation and reconciliation of financial data.

## Restructurings

The report points out that there may be situations where multinational corporations restructure in order to fall within or outside the scope of Amount B. The report notes that multinational corporations are free to organize their business as they see fit and that tax administrations do not have the right to dictate to multinational corporations how to design their structure or where to

## OECD publishes final report on Pillar 1 Amount B

locate their business operations. Nevertheless, the report states that the tax administrations have the right to assess the tax consequences of the structure resulting from the restructuring, i.e. whether the provisions of Chapter IX of the OECD Transfer Pricing Guidelines on business restructuring apply.

### **Tax certainty and elimination of double taxation**

The report acknowledges that taxation conflicts arising from the different application or non-application of the Amount B approach can be eliminated in some countries by means of unilateral corresponding adjustments, while in other countries an adjustment is only possible through the initiation of a mutual agreement procedure (“MAP”).

For the sake of completeness, it is noted that agreements reached under Article 25 of the OECD Model Tax Convention (including bilateral or multilateral Advance Pricing Arrangements and MAP cases) prior to the introduction of the Amount B approach remain valid in relation to qualifying transactions.

### **Outlook**

As the Amount B approach is not subject to a turnover threshold, it is generally widely applicable. At the same time, it should be noted that the OECD indicates different implementation options for countries.

Accordingly, it is recommended to review whether transactions are carried out by a company that could fall within the scope of the Amount B approach and to assess the possible effects on these transactions.

At the same time, it must be monitored whether, when and how relevant jurisdictions implement the Amount B approach. This is particularly important as sales transactions may be carried out between jurisdictions that implement the Amount B approach differently or do not implement the Amount B approach.

EY's transfer pricing experts are happy to answer any questions you may have regarding Amount B and discuss possible effects on the group's transfer pricing strategy and possible planning options.

The report is available under the following link:

[https://read.oecd-ilibrary.org/taxation/pillar-one-amount-b\\_21ea168b-en#page1](https://read.oecd-ilibrary.org/taxation/pillar-one-amount-b_21ea168b-en#page1)

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