

# Tax Short Cuts

Current tax information for Austria by EY

## Federal Act on the disclosure of Country-by-Country Income Tax Information Reports (CBCR) - draft bill

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On 3 April 2024, the Federal Ministry of Justice (BMJ) sent the Federal Act on the disclosure of Country-by-Country Income Tax Information Reports (Country by Country Reporting Publication Act, Country by Country Reporting Veröffentlichungsgesetz - CBCR-VG) for review. The review period ends on 2 May 2024. The CBCR-VG is intended to transpose the Amending Directive (EU) 2021/2101 of the EU Accounting Directive into national law.

Amongst others the CBCR-VG is intended to increase the transparency of the activities of multinational undertakings with consolidated annual revenues of more than EUR 750 million and the public scrutiny of companies' income tax information.

Under the Transfer Pricing Documentation Act (Verrechnungspreisdokumentationsgesetz, VPDG; Federal Law Gazette I No. 77/2016), ultimate parent companies and surrogate entities based in Austria have been obliged for several years to prepare country-by-country tax reports (CBCRs) and submit them to the Austrian tax authorities if their group annual revenue exceeds EUR 750 million. According to the VPDG, it is sufficient to exceed the annual revenue threshold of EUR 750 million once. These reports are not accessible to the public. Based on the CBCR-VG, these reports will now also be accessible to the public.

The CBCR-VG provides for the following reporting obligations:

- ▶ Ultimate parent companies resident in Austria (companies that prepare the consolidated financial statements for the largest group of companies; according to the introduction of the draft law, there are currently around 82 ultimate parent companies in Austria)

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and non-affiliated companies exceeding the consolidated revenue threshold of EUR 750 million over two consecutive financial years, with subsidiary undertakings or branches abroad, must prepare a country-by-country income tax information report (CBCR) and submit it to the Commercial Register Court. The obligation does not apply to credit institutions and investment firms with corresponding disclosures in the notes to the financial statements, which notify the Commercial Register Court accordingly;

- ▶ Austrian medium-sized or large subsidiary undertakings of non-EU/EEA ultimate parent companies must submit the CBCR of their ultimate parent company to the Commercial Register Court;
- ▶ Austrian branches (whose turnover exceeded EUR 10 million in each of the last two financial years) of corporate groups of a non-EU/EEA ultimate parent company must submit the CBCR of their ultimate parent company to the Commercial Register Court.

Subsidiary undertakings and branches are exempt from filing the CBCR if the non-EU/EEA ultimate parent company makes the CBCR publicly available on its website free of charge in at least one of the official languages of the EU and in an electronic reporting format which is machine-readable. At least one subsidiary undertaking or branch in a member state of the EU or a contracting state of the EEA that has published the report must be stated in the CBCR. The use of the exemption must be reported to the Commercial Register Court.

According to the explanatory notes, revenue can be calculated in accordance with IFRS if companies based in the EU/EEA also prepare their financial statements in accordance with IFRS. Otherwise, companies in the EU/EEA are subject to national regulations.

In addition to the name of the ultimate parent company and information on the financial year and currency, the CBCR must contain the following information (separately for each EU member state and each non-cooperative tax jurisdiction, and in aggregated form for all other states):

- ▶ List of all subsidiary undertakings in the EU and in non-cooperative jurisdictions for tax purposes,
- ▶ A brief description of their activities,
- ▶ The number of employees on a full-time equivalent basis,
- ▶ Revenues,
- ▶ The amount of profit or loss before income,
- ▶ The amount of income tax accrued during the relevant financial year,
- ▶ The amount of income tax paid on a cash basis,
- ▶ The amount of accumulated earnings at the end of the relevant fiscal year.

As the tax CBCRs pursuant to the VPDG and CBCRs pursuant to the CBCR-VG are not identical, companies will be given the option of reporting the information from the tax CBCRs.

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The CBCR must be prepared using an EU template form in a machine-readable, electronic format. The CBCR must be submitted to the Commercial Register Court no later than 12 months after the end of the financial year, must be included by the court in the collection of documents and must be made publicly accessible free of charge.

One or more specific disclosures may be temporarily omitted if their immediate publication would be seriously prejudicial to the commercial position of the undertakings to which the report relates. If this is utilized, this must be indicated and justified in the CBCR. Information on non-cooperative tax jurisdictions may never be omitted. Omitted information must be disclosed in a subsequent CBCR no later than five years after the original omission. The Commercial Register Court may examine whether the requirements have been met ex officio in the event of doubt.

The statutory auditor must state in the auditor report whether the company was obliged to disclose a CBCR for the financial year preceding the financial year under audit and, if so, whether such disclosure was made. The statutory auditor is not required to perform a substantive audit.

The Commercial Register Court can impose fines of up to EUR 10,000 to enforce the obligations, which can be increased to up to EUR 100,000 in the event of a repeated offence for companies of public interest. Furthermore, administrative fines of up to EUR 100,000 may also be imposed.

From 2026, the Federal Ministry of Finance (BMF) must submit relevant data regarding the CBCRs according to the VPDG received in the prior year to the BMJ annually by 31 March. The BMJ must make the data received available to those courts that are responsible for monitoring compliance with the obligations under the CBCR-VG.

The CBCR-VG is to be applied for the first time to financial years beginning after 21 June 2024.

With the publication of the CBCRs, a broader public is given insight into tax-relevant company information for the entire group. Your EY experts will be happy to support you with analyzing the impact, the necessary processes and the subsequent preparation and submission of the reports.

The further development of the law remains to be seen.

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

[https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT\\_9F83BD16\\_C1FE\\_4223\\_8E03\\_4A9198AB5C34/BEGUT\\_9F83BD16\\_C1FE\\_4223\\_8E03\\_4A9198AB5C34.pdf](https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_9F83BD16_C1FE_4223_8E03_4A9198AB5C34/BEGUT_9F83BD16_C1FE_4223_8E03_4A9198AB5C34.pdf)

# Settlement of the Energy Cost Subsidy II for the 2nd half of 2023

## *Energy Cost Subsidy II*

Since 2 April 2024, companies entitled to settlement for the Energy Cost Subsidy II (Energiekostenzuschuss II, EKZ II) have been notified by email about their individual settlement period. There are at least seven calendar days between this notification and the start of the settlement period. The settlement period is at least four weeks. The first period starts on 15 April 2024 and the last period ends on 6 June 2024 at the latest.

Companies that received an EKZ II in subsidy period 1 (1st half of 2023) are eligible for settlement.

The involvement of an external tax advisor/statutory auditor/accountant is again required for accounting purposes.

EY is happy to support you with the settlement of the energy cost subsidy II for the second half of 2023.

# MoF: Income Tax Guidelines - Maintenance Decree 2024

## *Income Tax Act*

On 13 March 2024, the Ministry of Finance published the Income Tax Guidelines Maintenance Decree 2024 (2023-0.871.819), taking into account current case law and legal changes since the last amendment in March 2023.

Please refer to our German Tax Short Cuts No. 08/2024 for an overview of the main changes.

The full decree can be accessed via the following link (German version only): <https://findok.bmf.gv.at/findok/resources/pdf/6d60018f-8fa6-4153-90ed-c99e2f01fe06/82676.1.1.pdf>

# Notification of a donation entitlement from 2024

## *Income Tax Act Federal Fiscal Code*

In accordance with Sec 4a of the Austrian Income Tax Act (Einkommensteuergesetz, EStG), only donations to certain recipients that - if the requirements are met - are listed on the MoF website in the "List of beneficiary organizations (for donations, church contributions, etc.)" were previously deductible.

Until the Non-Profit Reform Act 2023 (Gemeinnützigkeitsreformgesetz 2023, GemRefG 2023 - see also our Tax Short Cuts No. 22/2023 from 17 October 2023 and No. 01/2024 from 10 January 2024) entered into force on

## Notification of a donation entitlement from 2024

1 January 2024, the material scope of Sec 4a EStG only included the institutions named in the law that pursued certain purposes.

The new regulation of Sec 4a EStG introduced with the GemRefG 2023 - in addition to the extension of the institutions named in the law - also extended the preferential treatment of donations to all purposes that are considered charitable or benevolent within the meaning of Sec 35 or 37 of the Austrian Federal Fiscal Code.

The main beneficiary charitable purposes include physical and mental sports, art, culture and music, health care, schooling and education, science and research, development aid cooperation, child, youth and family welfare, and care for the elderly, sick or infirm.

The main non-beneficiary purposes are, in particular, tourism, camaraderie, church and religious purposes, model making, political purposes, fundraising activities and savings associations.

With the exception of legally beneficiary organizations pursuant to Sec 4a/6 EStG, the granting of the donation entitlement must be applied for with the tax office Austria (Finanzamt Österreich) by a tax representative electronically via FinanzOnline. A distinction must be made between an initial application (from April 2024) and an extension (from 2025).

An initial application is only possible if the applicant is an organization that is not yet on the list of beneficiary organizations at the time of application.

If the application is submitted by 30 June 2024, the tax office Austria must issue a notice confirming the granting of the donation entitlement for the year 2024 and include the corporation in the list of beneficiary donation recipients. The entry in the list has retroactive effect for donations since 1 January 2024. All donations made in 2024 are then tax deductible, including those made before recognition.

An extension of the donation entitlement is only possible for a beneficiary organization (published on the MoF-list of beneficiary organizations). Donation entitlements for organizations with a valid donation entitlement notice as of 31 December 2023 are automatically extended by one year and no notices regarding the maintenance of the entitlement will be sent for 2024.

From 2025 onwards, in order to maintain the status, the tax office Austria must be notified annually within nine months of the end of the accounting or fiscal year, that the requirements for a donation entitlement are (still) met.

The MoF handbook on reporting a donation entitlement in accordance with Sec 4a EStG via FinanzOnline is available under the following link (German version only):

<https://www.bmf.gv.at/services/finanzonline/informationen-fuer-parteienvertreter/handbuecher-fuer-parteienvertreter.html%22>

# Grace Period Act - Government Bill

*Grace Period Act  
Federal Fiscal Code*

On 10 April 2024, the Council of Ministers passed the government bill on the Grace Period Act (Grace-Period-Gesetz), which is primarily intended to implement simplifications regarding business transfers within the family (see also our Tax Short Cuts No. 24/2021 from 10 November 2021).

The government bill was referred to the Parliament's Finance Committee for further parliamentary consideration on 10 April 2024.

Pursuant to Sections 153h et seq. of the Federal Fiscal Code, entrepreneurs should be given the opportunity to be accompanied by the tax authority during the process of a business transfer to relatives ("accompaniment of a business transfer").

The prerequisite for support is that an individual wishes to transfer a business, part of a business or a share in a partnership (in which only relatives of the applicant are partners) within two years of submitting the application to one or more persons from the circle of relatives.

If the requirements are met, the Austrian tax office must carry out a tax audit, which should cover the last three years prior to the application, for which a tax return has already been filed.

During the process, there will be an increased duty of disclosure on the part of the applicant and the acquirer, as well as intensified communication and an obligation to provide information on the part of the tax office Austria.

The monitoring should generally end with the filing of the last tax return relating to the calendar year in which the business transfer was completed. It should be possible to terminate the accompaniment prematurely either by application or ex officio due to interruption of the business transfer, opening of insolvency proceedings or lack of responsibility of the tax office Austria.

The regulations shall enter into force on 1 December 2024. Applications for accompaniment of a business transfer shall be able to be submitted via FinanzOnline from 1 January 2025 at the earliest.

Further legislation remains to be seen.

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

[https://www.parlament.gv.at/dokument/XXVII/I/2510/fname\\_1621928.pdf](https://www.parlament.gv.at/dokument/XXVII/I/2510/fname_1621928.pdf)

# Energy crisis contribution extended to 2024

*Energy crisis contribution-  
electricity*  
*Energy crisis contribution-  
fossil fuels*

The amendment of the federal laws on the energy crisis contribution for electricity and on the energy crisis contribution for fossil fuels was published in the Federal Law Gazette I No. 13/2024 on 27 March 2024 (see our Tax Short Cuts No. 28/2022 and No. 01/2023). The amendments are summarized below and entered into force on 1 January 2024.

## **Federal law on the energy crisis contribution - electricity**

The energy crisis contribution for electricity (EKB-S) will be used to skim off high revenues from electricity producers as a result of the crisis from 1 December 2022 onwards. The EKB-S has now been extended for a further year and the regulations will therefore also apply for 2024 (assessment period 2).

In the new assessment period 2, 75% (instead of the previous 50%) of the acquisition and production costs of eligible investments can now be deducted from the EKB-S. The deduction amounts to a maximum of EUR 72 (instead of EUR 36 previously) per MWh of electricity, based on the quantity supplied, which is included in the market sales. In assessment period 2, investments by an affiliated company that is itself liable for the contribution can also be included.

The EKB-S is due on the following dates:

- ▶ On 15 April 2024 (instead of 31 March 2024) for the period 1 July 2023 to 31 December 2023,
- ▶ on 15 October 2024 for the period from 1 January 2024 to 30 June 2024 and
- ▶ on 15 April 2025 for the period from 1 July 2024 to 31 December 2024

## **Federal law on the energy crisis contribution - fossil fuels**

With the energy crisis contribution for fossil fuels (EKB-F), high profits from oil and gas companies due to the crisis will be skimmed off in the second half of 2022 and in 2023. The EKB-F has now also been extended to 2024.

For the assessment period calendar year 2024, the assessment basis for the EKB-F is the amount by which the taxable profit is 5% (instead of 20% or 10% previously) above the average profit from the comparative period of the calendar years 2018 to 2021.

It is now possible to deduct 75% (instead of the previous 50%) of the acquisition and production costs of subsidized investments as a deduction from the EKB-F. The deduction still amounts to a maximum of 17.5% of the originally calculated levy. In the assessment period 2024, investments by an affiliated company that is itself liable for the contribution can also be included.

## Energy crisis contribution extended to 2024

An advance payment for the respective assessment period must be made by 15 June (instead of 30 June) of the following year.

The law can be accessed via the following link (German version only):  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2024\\_I\\_13/BGBLA\\_2024\\_I\\_13.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_I_13/BGBLA_2024_I_13.pdf)



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