

Tax Short Cuts

Current tax information for Austria by EY

Tax Amendment Act 2024 - Ministerial Draft

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On 3 May 2024, the Federal Ministry of Finance (MoF) published the ministerial draft of the Tax Amendment Act 2024 (AbgÄG 2024). The review period ends on 17 May 2024. If no specific date for entry into force is specified, the amendments will enter into force on the day after publication in the Federal Law Gazette, subject to further amendments in the legislative process. The draft provides for the following significant amendments, among others:

Income Tax Act

Tax-neutral switch to start-up employee shareholdings

Since 1 January 2024, a new tax regulation for employee shares in start-ups has been in force in accordance with Sec 67a Austrian Income Tax Act (EStG). If employees who own virtual shares (so-called "phantom shares") in start-ups wish to take advantage of this new regulation and therefore receive capital shares that fall under Sec 67a EStG (e.g. enterprise value shares or comparable participation rights) instead of virtual shares, the non-cash benefit from the redemption of the virtual shares would have to be assessed and taxed.

The AbgÄG 2024 provides that virtual shares that generally meet all the requirements for a start-up employee participation pursuant to Sec 67a/2 EStG can be converted until 31 December 2025 without the non-cash benefit having to be assessed and taxed immediately.

For further details on the other significant amendments to the Income Tax Act, please refer to the German version of our Tax Short Cuts No. 10/2024 of 14 May 2024.

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Corporate Income Tax Act

Low taxation of foreign corporations

As part of the ongoing international implementation of global minimum taxation, many countries have introduced national top-up taxes in addition to an income inclusion rule and undertaxed profits rule (for example in Austria in accordance with Sec 6 of Austrian Minimum Taxation Act (Mindestbesteuerungsgesetz - MinBestG). In addition to the national corporate income tax, a national top-up tax is intended to ensure an increase in the effective tax rate to 15% for resident business units that fall within the scope of the global minimum taxation.

Sec 10a/3 Austrian Corporate Income Tax Act (KStG) shall therefore be amended to include a recognized national top-up tax that can be proven to be payable by a foreign corporation when determining its actual tax burden.

It shall also be possible to take into account a recognized national top-up tax within the meaning of Sec 2/28 MinBestG when assessing low taxation in the case of non-deductibility of interest and royalty payments to low-taxed affiliated corporations pursuant to Sec 12/1/10 KStG. The burden of proof of the lack of low taxation shall lie with the paying Austrian corporation.

For further details on the other significant amendments to the Corporate Income Tax Act, please refer to the German version of our Tax Short Cuts No. 10/2024 of 14 May 2024.

Value Added Tax Act

No self-supply for food donations

Donations of food shall no longer be subject to a taxable self-supply but shall be treated as VAT exempt with right to input VAT deduction. The VAT exemption is to apply to food listed in appendix 1 Austrian VAT Act and donated to organizations assessed as charitable by notification (Sec 4a/1 indent 1 in conjunction with Sec 4a/2/2 Austrian Income Tax Act).

New small business regulation

Due to changes in EU law, entrepreneurs who operate their business in another EU Member State shall in future also be able to make use of the small business regulation ("cross-border small business regulation"); the small business regulation shall still not apply to entrepreneurs who operate their business in a third country, nor shall a permanent establishment in the EU be sufficient.

If the entrepreneur operates his business in another EU Member State, the following additional requirements are to be met in order to benefit from the (cross-border) small business regulation:

- ▶ the Union-wide annual turnover does not exceed the threshold of EUR 100,000 in the previous calendar year and does not yet exceed it in the current year and
- ▶ the entrepreneur has applied for exemption in another EU Member State within the framework of the procedure provided for this purpose (in Austria: Art 6a VAT Act, see below).

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Union-wide annual turnover is the total annual amount of supplies of goods and services excluding VAT by a taxable person in the territory of the EU, excluding certain exempt supplies and ancillary supplies.

The calculation of the domestic turnover threshold and the threshold of the Union-wide annual turnover shall no longer refer to VAT base under assumed VAT liability. Accordingly, the domestic turnover threshold is to be increased from EUR 35,000 to EUR 42,000. As under the current domestic small business regulation, local supplies with the exception of ancillary supplies and certain VAT exempt supplies shall be relevant for calculating the domestic turnover threshold. In future, the previous year's turnover shall be used as a basis. If the turnover threshold was not exceeded in the previous year, supplies in the current year up to reaching the threshold shall remain VAT exempt; only the supplies in excess of the threshold shall be subject to VAT. In case the domestic turnover threshold is not exceeded by more than 10%, the VAT exemption shall still be applicable until the end of the calendar year.

The "cross-border small business regulation" shall apply from the date of notification of the small business identification number, which is issued as part of a separate procedure and shall contain the suffix "-EX". If a small business identification number already exists, the VAT exemption shall apply from the day on which the other EU Member State confirms the small business identification number with regard to the VAT exemption.

It shall still be possible to waive the small business regulation. The modalities for this shall remain unchanged in the case of the domestic exemption. In the case of entrepreneurs from another EU Member State, the waiver is to be declared in writing via the portal of the other EU Member State. The binding effect of the waiver shall continue to be 5 years in both cases.

Entrepreneurs who are generally entitled to deduct input VAT in Austria are not entitled to deduct input VAT insofar as they make use of the VAT exemption for small entrepreneurs (both within Austria and in another Member State).

In future, small businesses shall have the option of issuing simplified invoices in accordance with Sec 11/6 VAT Act, irrespective of the invoice amount.

For domestic entrepreneurs, the application for the "cross-border small business regulation" is to be made via a portal to be set up by the tax authorities, whereby a preliminary notification is to be submitted containing information on the company, VAT ID numbers of other EU Member States and identification numbers for special regulations such as OSS, the name of the EU Member State(s) in which the tax exemption for small businesses is to be claimed, as well as certain information on annual turnover. Changes to this data are to be reported by the entrepreneur.

If the requirements are met, the small business identification number shall be issued within 35 working days of receipt of the preliminary notification. The entrepreneur shall have to report the supplies effected in the single EU Member States for each calendar quarter by the end of the month following the respective quarter. If the threshold is exceeded, this is to be reported within 15 working days together with the supplies effected from the beginning of the current calendar quarter until the threshold is exceeded. If the

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quarterly report is omitted or is incorrect or incomplete, the tax authorities are to assess VAT if the supplies are carried out locally.

The entrepreneur shall be able to voluntarily terminate the "cross-border small business regulation" or shall be excluded from it if, among other things, the requirements are not met.

Place of supply:

Sec 3a/13/b VAT Act shall determine the place of supply of the services listed in Sec 3a/11/a VAT Act and rendered to non-entrepreneurs at place of the service recipient, provided that the services are transmitted via streaming or made available virtually in another way. The mentioned services rendered to non-entrepreneurs include cultural, artistic, scientific, educational, sporting, entertainment or similar (such as services in connection with trade fairs and exhibitions, including the services of the respective organizers) services. According to the explanatory notes to the draft bill, interactive online language courses, for example, shall fall under this place of supply rule.

Margin taxation:

A reseller shall be able to declare that he also applies margin taxation to the supply of works of art, provided that no reduced VAT rate was applied to the supply to him or the importation by him and the goods were either (i) imported by him, (ii) supplied by the originator or his legal successor, or (iii) not supplied to him by a reseller.

All of the aforementioned changes in connection with VAT are to enter into force on 1 January 2025.

For details on the other amendments please refer to the German version of our Tax Short Cuts No. 10/2024 of 14 May 2024.

The ministerial draft of the AbgÄG 2024 can be accessed at the following link (German version only):

https://www.parlament.gv.at/dokument/XXVII/ME/338/fname_1626407.pdf

MoF inquiry response: Bronze building standard

Housing and Construction Campaign

On 6 May 2024, the Federal Ministry of Finance (MoF) published a response to an inquiry on its website regarding the accelerated building depreciation created as part of the implementation of the Housing and Construction Campaign (see also our Tax Short Cuts 09/2024 from 30 April 2024) and commented on the minimum requirement "bronze building standard".

For further details please refer to the German version of our Tax Short Cuts No. 10/2024 of 14 May 2024.

MOF inquiry response: Bronze building standard

The full inquiry response can be found at the following link (German version only):

<https://www.bmf.gv.at/rechtsnews/steuern-rechtsnews/aktuelle-infos-und-erlaesse/Fachinformationen---Ertragsteuern/Fachinformationen---EST-KSt/gebaeudestandard-bronze.html>

Housing and Construction Campaign: Publications in the Federal Law Gazette

Housing and Construction Campaign

On 30 April 2024, the amendment to the Federal Constitutional Act (Bundesverfassungsgesetz: BV-G) (Federal Law Gazette I No. 47/2024) was published in the Federal Law Gazette to enable the federal states to levy vacancy taxes, as well as the amendment to the Federal Act on the Promotion of Craftsmen Services (Federal Law Gazette I No. 51/2024) for the craftsmen's bonus.

The craftsmen bonus can be applied for from 15 July 2024 via <https://handwerkerbonus.gv.at>

The legal texts can be accessed via the following links (German versions only):

Craftsman services:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_I_51/BGBLA_2024_I_51.pdf

Federal Constitutional Law:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_I_47/BGBLA_2024_I_47.pdf

VAT Refund for Non-EU businesses until 30 June 2024

Value Added Tax Act

Businesses without a registered office or permanent establishment in the EU can submit a VAT refund application for the year 2023 to the Austrian tax office (Finanzamt Österreich) until 30 June 2024.

The application must include all original incoming invoices with Austrian VAT and a confirmation of business from the country of residence. Applications submitted after the statutory deadline will not be accepted by the Austrian authorities.

Austrian businesses who purchased supplies or other services subject to VAT in other EU member states in the calendar year 2023 can still apply for a refund of the related VAT until 30 September 2024.

Fraud Prevention Act 2024 (Part I) - Ministerial Draft

Financial Criminal Code

On 6 May 2024, the Federal Ministry of Finance (MoF) sent the ministerial draft of the Fraud Prevention Act 2024 - Part I (Betrugsbekämpfungsgesetz: BBKG 2024) for review. This is primarily intended to increase criminal liability in connection with data falsification, bogus companies and bogus invoices, as well as to provide for measures to speed up proceedings. The review deadline ends on 21 May 2024.

For details on the individual amendments please refer to the German version of our Tax Short Cuts No. 10/2024 of 14 May 2024.

The ministerial draft can be accessed via the following link (German version only): https://www.parlament.gv.at/dokument/XXVII/ME/341/fname_1626595.pdf

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