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Tax Short Cuts

Current tax information for Austria by EY

Teleworking Act - Ministerial Draft

Contents

On 6 May 2024, the Federal Ministry of Labour and Economy sent the ministerial draft of the Teleworking Act for review.

The Home-Office-Package 2021 has been in force since 1 April 2021. The term "home office" is now to be replaced by the term telework (“Telearbeit") in Sec 2h Labour Contract Law Amendment Act (Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG). Accordingly, teleworking occurs if work is performed regularly, in particular using the necessary information and communication technology, and if this takes place either in the employee's home or in a location of the employee's choice that does not belong to the business (Sec 40/4 Labour Constitution Act). In addition to the employee's home and the home of family members, coworking spaces or other locations of the employee's choice (e.g. internet cafe) also fall within the scope. A key criterion is that the work shall be performed regularly, i.e. repeatedly at certain intervals, as teleworking. The teleworking itself and the places where it can be performed must be agreed in writing between the employee and the employer.

An adjustment to the social security regulations on teleworking, including accident insurance coverage, is also planned.

The previous home office lump sum in Sec 26/9 Income Tax Act (Einkommen-steuergesetz, EStG) becomes the teleworking lump sum and is based on the definition of teleworking in Sec 2h/1 AVRAG. The lump sum applies to all employment relationships within the meaning of Sec 47/2 EStG and the conditions remain unchanged - the lump sum amounts to up to EUR 3 per exclusive teleworking day and applies for a maximum of 100 days per calendar year. New is that the permitted places of work have been extended.

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The teleworking days and the teleworking lump sum must be recorded in the payroll account and stated on the payslip. Expenses for ergonomically suitable furniture can still be claimed as income-related expenses (Sec 16/1/7a EStG), provided that there is no study recognized for tax purposes and the employee can provide evidence of at least 26 teleworking days in the calendar year.

The changes shall be applicable for the first time for salary payment periods from January 2025 or from the assessment for the calendar year 2025.

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.parlament.gv.at/dokument/XXVII/ME/337/fname_1626387.pdf

Initiative motion COFAG Omnibus Act for the dissolution of COFAG

COFAG Reorganization and Resolution Act

The Federal COVID-19 Financing Agency – COFAG for short – which was established in 2020, is to be dissolved from 31 July 2024. This is provided for in an initiative motion submitted to the National Council on the COFAG Omnibus Act. The core of the application is the COFAG Reorganization and Resolution Act.

COFAG is to be wound up as a company from 31 July 2024 and fully liquidated as soon as possible under the responsibility of its sole shareholder Abbaumanagementgesellschaft des Bundes (ABBAG). COFAG's current tasks include processing COVID-19 funding applications, defending against and prosecuting unjustified claims, as well as restructuring and collecting claims arising from guarantees and liabilities transferred to it by the Austrian Hotel and Tourism Bank (ÖHT) and Austria Wirtschaftsservice (AWS).

At the end of 31 July 2024, COFAG's powers are to end insofar as they do not serve its own liquidation, and all rights and obligations of COFAG under funding agreements will be transferred unchanged to the federal government.

By 31 July 2024, COFAG is to conclude as many outstanding COVID-19 funding applications as possible and complete all tasks from the "Allocation of Subsidies" division. Unresolved funding applications are to be transferred to the responsibility of the Federal Government and the Federal Minister of Finance for a decision as the processing agency. In this case, subsidies will continue to be awarded on a private economic basis. From then on, the tax authorities will be responsible for reclaiming COVID-19 aids wrongly received. Any claim for reimbursement therefore constitutes a claim under public law and is to be asserted in accordance with the provisions of the Federal Fiscal Code (Bundesabgabenordnung, BAO) and the other provisions regulating and securing taxes. Provisions in the COFAG Reorganization and Resolution Act are intended to ensure that COFAG’s contractual partners do not suffer an unobjective disadvantage as a result.

Initiative motion COFAG Omnibus Act for the dissolution of COFAG

Receivables that have been transferred to COFAG by AWS or ÖHT for the purpose of restructuring or enforcement are also to be transferred to AWS as soon as possible as of 31 July 2024.

The initiative motion also complies with the decision of the Constitutional Court of 5 October 2023 (G 265/2022-45). It found that the transfer of administrative tasks to a GmbH had been improper and that companies had wrongly not had a legal claim to financial aid and had repealed essential provisions of the ABBAG Act with effect from 31 October 2024.

The amendment by the COFAG Omnibus Act is also taken as an opportunity to clean up the ABBAG Act, the Guarantee Act 1977 and the SME Promotion Act from provisions enacted on the occasion of the COVID-19 crisis but now obsoleted.

The initiative motion is available at the following link (German version only): https://www.parlament.gv.at/gegenstand/XXVII/A/4070

New quota regime for tax returns

Federal Fiscal Code

With effect from the 2023 tax year, a reorganization of the so-called quota regime for professional party representatives (tax advisors) pursuant to Sec 134a BAO and the affilated regulation “Quotenregelungsverordnung” (Federal Law Gazette II No. 370/2023) will come into force in Austria.

The quota regime is a regulation that allows tax advisors to prepare and submit the tax returns of their customers for a specific tax year over a longer period of time. The regulation provides for minimum percentage completion levels up to certain submission deadlines. Those who are "taken on quota" benefit from an extension of the submission deadline for their annual tax returns.

In contrast to the previous quota regime, the new regime provides for stricter monitoring of submission deadlines and stricter consequences in the event of non-compliance with submission deadlines. Furthermore, the possibility of extending deadlines beyond the end of the quota period has been mostly eliminated.

The following annual tax returns are subject to the quota system:

- Income tax returns (E1, E7)
- Partnership income tax returns (E6)
- Corporate income tax returns (K1, K2, K3)
- Value added tax returns (U1)
- Annual tax returns regarding motor vehicle tax, electricity levy, natural gas levy and coal levy

This also includes declarations for income from employment without wage tax deduction (L1) for cross-border commuters and other international circumstances (these special circumstances must be known to the tax office

and noted electronically). The advertising tax return and the tax return for digital tax are not part of the quota system. All of the above-mentioned tax returns of a client together constitute a single quota return (= a single case).

In principle, annual tax returns must be submitted by 30 June of the following year (electronic submission). However, if a tax advisor has been commissioned with the submission, they can register the tax number for the quota regulation. As part of the quota regime, at least 20% of the quota returns must be submitted by 31 October of the following year, and then phased the other quote returns and finally 100% by 31 March of the second following year at the latest.

Shortened submission deadlines apply to cases involving partnership income tax returns including operating business profits: at least 50% of these quota returns must be submitted by 30 November of the following year and 100% by 31 January of the second following year.

Cases that are to be included in the quota must be registered actively for the quota regime by the tax advisor via FinanzOnline by 30 June 30 the following year at the latest (tax number required). The options for late registration after 30 June are strictly limited and time-barred (e.g. in the event of a change of tax representative, the issuing of a tax number after 30 June or a retroactive reorganization). It is no longer possible for taxpayers who already have a tax number but have not yet been represented by a tax advisor to be admitted late. Registration for the quota is now an annual repetitive process (no longer a permanent note).

In order to register the tax number on the tax advisor's quota, it is essential that the tax advisor has been commissioned to submit the tax returns and that there is a valid power of attorney (electronic notification of the power of attorney with the tax office is required).

In the event of repeated non-compliance with the quotas, we as tax consultants may be subject to mandatory penalties and may also be excluded from the quota system for all represented clients for subsequent years.

Increase in deferral interest from 1 July 2024

Federal Fiscal Code

Pursuant to Sec 212/2 BAO, deferral interest is charged for granted payment facilities (deferrals and instalment payments) for tax liabilities.

Due to the COVID-19 pandemic, a reduced deferral interest rate of 2%-points above the base rate has applied since 1 February 2022 pursuant to Sec 323c/13 BAO, which only applies until 30 June 2024. From 1 July 2024 the interest rate of 4.5% above the base rate will therefore apply again.

As a result, the effective interest rate will rise from 5.88% p.a. to 8.38% p.a.

The higher interest rate will also apply from 1 July 2024 for current and before 30 June 2024 approved payment facilities.

ECJ on vouchers in VAT law

Value Added Tax Act

In its decision of 18 April 2024, C-68/23, Finanzamt O, the ECJ states that the assessment of whether a single-purpose voucher exists is not influenced by whether the voucher is (further) transferred after it has been issued. It is not relevant whether the parties involved in further transfers are established in Member States other than the one in which the benefit securitized by the voucher will be carried out. The ECJ does not explicitly comment on the place of performance of the B2B transfer of a single-purpose voucher; it is therefore not clear whether the place of performance of the single-purpose voucher also has an impact on the B2B distribution chain and whether registration and reporting obligations hence may arise for traders selling single-purpose vouchers in the country in which the voucher is redeemed.

If a multi-purpose voucher exists, the resale of these vouchers may also constitute a distribution or sales promotion service. This service must be distinguished from the benefit securitized by the voucher.

VwGH on the calculation of chamber contribution 1 in case of a VAT group

Economic Chamber Act

In its decision of 20 February 2024, Ro 2022/15/0008, the Austrian Supreme Administrative Court had to decide for the first time on the calculation of the chamber contribution 1 in the case of a VAT group. In particular, the question to be assessed was whether the chamber contribution 1 should be calculated separately for each controlled company or as a whole for the VAT group.

According to the statements of the Austrian Supreme Administrative Court a VAT group is not to be regarded as a single company for the purposes of calculating chamber contribution 1, however the individual group companies are to be considered in isolation. The determination of a chamber contribution obligation and the calculation of any chamber contribution must be carried out at the level of each controlled company, although in the case of a VAT group, the controlling company is debtor of the chamber contribution 1.

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Business Tax

Markus Stefaner
+43 1 211 70 1283
markus.stefaner@at.ey.com

International Tax

Roland Rief
+43 1 211 70 1257
roland.rief@at.ey.com

Transfer Pricing

Andreas Stefaner
+43 1 211 70 1041
andreas.stefaner@at.ey.com

Indirect Tax

Ingrid Rattinger
+43 1 211 70 1251
ingrid.rattinger@at.ey.com

People Advisory Services

Regina Karner
+43 1 211 70 1296
regina.karner@at.ey.com

Global Compliance & Reporting

Maria Linzner-Strasser
+43 1 211 70 1247
maria.linzner-strasser@at.ey.com

Transaction Tax

Andreas Sauer
+43 1 211 70 1625
andreas.sauer@at.ey.com

Editor and owner of the medium:

Ernst & Young
Steuerberatungsgesellschaft
m.b.H. („EY“)
Wagramer Straße 19, IZD-Tower
1220 Vienna

Responsible Partner

Klaus Pfleger
+43 1 211 70 1179
klaus.pfleger@at.ey.com

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Ernst & Young
Steuerberatungsgesellschaft m.b.H.
1220 Vienna, Wagramer Straße 19
4020 Linz, Blumauerstraße 46
5020 Salzburg, Sterneckstraße 33
9020 Klagenfurt, Eiskellerstraße 5

ey.com/at