

Tax Short Cuts

Current tax information
for Austria by EY

Federal Act on the disclosure of Country-by-Country Income Tax Information Reports (CBCR) – Government Bill

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On 22 May 2024, the government bill of the Federal Act on the disclosure of Country-by-Country Income Tax Information Reports (CBCR-Veröffentlichungsgesetz - CBCR-VG) was published and submitted to the Parliament.

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.

Essentially, the provisions remained unchanged compared to the draft bill (see our Tax Short Cuts 08/2024 dated 16 April 2024), however, clarifications and additions were made in some sections. The main changes are highlighted as follows:

- ▶ Credit institutions and investment firms that are exempt from reporting obligations due to corresponding disclosures in the notes, according to the Governmental Bill, do not only have to notify the Commercial Register Court if they make use of the exemption but also the fact that the prerequisites for the exemption are fulfilled.
- ▶ The CBCR must contain the information specified in Sec 9, separately for each EU member state and each non-cooperative tax jurisdiction (Annexes I and II of the EU list of non-cooperative countries and territories for tax purposes as of 1 March of the reporting fiscal year are decisive), as well as additionally for each contracting state of the European Economic Area. Information for all other states is generally to be provided in aggregated form, but may also be reported separately on a voluntary basis. The explanatory notes clarify that the option of providing information in aggregated form for all other states also exists if the CBCR is prepared

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in line with the regulations of the Austrian Transfer Pricing Documentation Law.

- ▶ The Federal Act defines the determination of reportable revenues for companies that prepare their financial statements in accordance with the respective national law in line with the EU Accounting Directive, by referring to the relevant items in the EU Accounting Directive. In the explanatory notes, there is now a reference to the corresponding provisions of the Austrian Commercial Code.
- ▶ In Sec 18, the EU list of non-cooperative states for tax purposes was added. Additionally, the law contains an authorization for the Federal Ministry of Justice, to publish changes to the list of countries.

The further legislative process remains to be seen. The government bill can be accessed via the following link (German version only):
<https://www.parlament.gv.at/gegenstand/XXVII/I/2556>

Grace Period Act published in the Federal Law Gazette

Grace Period Act

The Grace Period Act was published in the Federal Law Gazette I No. 56/2024 on 5 June 2024 without any further amendments to the government bill. The act implemented simplifications regarding business transfers within the family (see also our Tax Short Cuts 08/2024 dated 16 April 2024). Applications for assistance with a business transfer by the Austrian tax office can be submitted from 1 January 2025 at the earliest.

The law can be accessed via at the following link (German version only):
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_I_56/BGBLA_2024_I_56.pdf

MoF decree on the suspension of the DTC with Russia

Double Taxation Convention Austria - Russia

On 8 August 2023, Russia issued a Presidential Decree partially suspending the double taxation convention (DTC) with Austria with immediate effect (see our Tax Short Cuts 17/2023 dated 22 August 2023).

On 6 December 2023, Austria also announced in the Federal Law Gazette III No. 200/2023 which parts of the DTC with Russia and which provisions of the protocol to this agreement are to be considered suspended until further notice. The MoF published a relating information on 6 December 2023 (2023-0.867.389), which has now been repealed and replaced by the decree dated 30 May 2024 (2024-0.317.354).

MoF decree on the suspension of the DTC with Russia

In particular, the suspension affects the provisions on permanent establishments, all allocation provisions including the associated protocol provisions, the provisions on equal treatment, administrative assistance and limitation of benefits and the protocol provision on Art 25 DTC Russia.

The suspension of these provisions is effective from 7 December 2023. Income earned after this date is therefore no longer eligible for the treaty. If the income cannot be allocated on a daily basis (e.g. in the case of accounting), an allocation pro rata temporis (monthly) is permitted.

The regulation Federal Law Gazette II No. 474/2002, which allows unilateral elimination of double taxation for persons with unlimited tax liability in Austria if a DTC is not applicable, does not apply, as the DTC with Russia is in principle still applicable.

In certain cases, a unilateral relief measure can be granted on application in accordance with Sec 48/5 Austrian Federal Fiscal Code (Bundesabgabenordnung, BAO) by offsetting the taxes levied in Russia, considering the maximum credit amount. This presupposes genuine international double taxation and is subject to a discretionary decision by the competent authority, which must decide based on fairness and expediency. There will be no significant inequity if the tax levied in Russia is only low in relation to the total tax burden of the taxpayer. In the context of expediency, the public interest in the collection of a tax must be examined. It is therefore not appropriate to unilaterally relieve individuals and companies affected by EU sanctions or not residents in Austria in context of a discretionary decision pursuant to Sec 48/5 BAO.

For income received from Russia, the Federal Minister of Finance delegates the processing of applications pursuant to Sec 48/5 BAO to the competent tax office as its authorized representative.

The entire decree can be accessed via the following link (German version only):
<https://findok.bmf.gv.at/findok/resources/pdf/540e8a7a-d625-464e-bff2-bd6e31be1a6a/82785.1.1.pdf>

Short-term reporting obligation in Belgium in connection with Pillar Two

*Global Minimum Taxation
Belgium*

Like Austria, Belgium has implemented Pillar Two legislation in its domestic legislation. On 29 May 2024, a short-term reporting obligation was introduced in Belgium for multinational and large domestic (Belgian) groups subject to Pillar Two. Accordingly, groups subject to Pillar Two, which are operating in Belgium and whose financial year began between 31 December and 13 June 2024, have time until 13 July 2024, to submit a Pillar Two notification form to the Belgian tax authorities. This notification is required to obtain a Pillar two tax identification number, which is necessary to meet other Pillar Two compliance requirements in Belgium.

Short-term reporting obligation in Belgium in connection with Pillar Two

In addition to more easily available information (name, address of the ultimate parent company, financial year, name of the company's representatives, etc.), further details on the Pillar Two group structure must also be reported (e.g. details on the ultimate parent company (UPE), intermediate parent companies (IPE) and certain other constituent entities), which require further processing. The reporting obligation also applies if the Transitional CbCR Safe Harbor requirements are met for Belgium.

The requested information is required for all multinational groups that are subject to Pillar Two and operate in Belgium, regardless of the size of the Belgian entities and regardless of the location of the ultimate parent company, whereby in the case of several Belgian entities, only one Belgian Pillar Two tax identification number needs to be requested and thus only one Pillar Two Notification Form needs to be submitted.

It should be noted that late or incorrect filing may result in a later registration, which cannot be invoked as a mitigating circumstance for any resulting sanctions (e.g. if a taxpayer is unable to (timely) file a qualified domestic minimum top-up tax (QDMTT) return or another Belgian obligation related to Pillar Two due to the lack of a Pillar Two tax identification number).

Austrian Supreme Administrative Court: Further request for preliminary ruling to the ECJ on VAT liability by virtue of invoicing

Value Added Tax Act

In case C-378/21, P-GmbH, of 8 December 2022, the ECJ concluded that a taxable business that has supplied a service and overstated the amount of VAT on its invoice is not liable for the wrongly invoiced VAT amount by virtue of invoicing if there is no risk of loss of tax revenue. The ECJ based this decision on the understanding that the service in question (indoor playground) was provided exclusively to non-taxable persons and therefore did not jeopardize the tax revenue.

With a further request for a preliminary ruling, the Austrian Supreme Administrative Court has now asked the ECJ to clarify whether there is also no VAT liability by virtue of invoicing if the taxable business has also provided similar services to other taxable persons, i.e. has not acted exclusively towards non-taxable persons.

Furthermore, the Austrian Supreme Administrative Court posed the question as to which criteria should be used to determine single incorrect invoices (by estimation if necessary), where there is a risk of loss of tax revenue, and whether only a non-taxable person is to be regarded as a "final consumer who is not entitled to deduct input VAT" or also taxable person who uses the service for private purposes.

The decision of the ECJ (pending under C-794/23) remains to be seen.

MoF: FAQs about the zero tax rate for photovoltaic modules

Value Added Tax Act

On 24 February 2024, the MoF published answers to frequently asked questions regarding the tax rate for photovoltaic modules and enquiries about the 0% tax rate for photovoltaic modules adopted with the Budget Accompanying Act 2024 (see our Tax Short Cuts 24/2023 dated 16 November 2023).

For further details please refer to the German version of our Tax Short Cuts 12/2024 dated 11 June 2024.

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

<https://www.bmf.gv.at/themen/steuern/fuer-unternehmen/umsatzsteuer/informationen/Steuersatz-f%C3%BCr-Photovoltaikmodule.html>

<https://www.bmf.gv.at/rechtsnews/steuern-rechtsnews/aktuelle-infos-und-erlaesse/Fachinformationen---Umsatzsteuer/Anfragen-zum-0-Steuersatz-f%C3%BCr-Photovoltaikmodule.html>

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