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Tax Short Cuts

Current tax information for Austria by EY

Inflation adjustment of marginal income tax rates

Contents

In accordance with Sec 33/1a Austrian Income Tax Act (Einkommensteuergesetz, EStG), the marginal tax rates and tax deductions are adjusted annually for inflation to the extent of two-thirds of the positive inflation rate. For the volume of one-third of the cold progression not covered by the automatic inflation adjustment, the federal government is obliged to pass a resolution on relief measures in accordance with Sec 33a/5 EStG.

The federal government passed the resolution on 4 July 2024.

The following measures are to be implemented from 1 January 2025:

- Adjustment of the first five tariff limits of the income tax rate by 0.5 percentage points each, in addition to the increase due to the automatic inflation adjustment;
- Increase of daily allowances for domestic travel to EUR 30.00 (currently EUR 26.40) and overnight allowances to EUR 17.00 (currently EUR 15.00);
- Increase in the mileage allowance to a uniform EUR 0.50/km for cars, motorcycles and bicycles (currently EUR 0.42 for cars) and EUR 0.15 (currently EUR 0.05) for each person transported, as well as doubling the upper limit for bicycles to 3,000 km (currently 1,500 km) and halving the lower limit for pedestrians to 1 km;
- Increase of the limit regarding the small business regulation (Kleinunternehmergrenze) to EUR 55,000.00 (currently EUR 35,000.00);
- Valorization of the exemption limit for other remuneration (in particular vacation and Christmas bonuses).

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For further details please refer to the German version of our Tax Short Cuts 14/2024 dated 9 July 2024.

The resolution can be accessed via the following link (German version only): https://www.bundeskanzleramt.gv.at/medien/ministerraete/ministerraete-seit-dezember-2021/104a-ulb-4-jul.html

Further legislation remains to be seen.

First MoF FAQ inquiry response to the Minimum Taxation Act

Minimum Taxation Act

On 20 June 2024, the Federal Ministry of Finance (MoF) published the first FAQ answers to questions on the Austrian Minimum Taxation Act (Mindest-besteuerungsgesetz, MinBestG). The FAQ process has created a communication channel to clarify questions about the MinBestG with the MoF. The process provides for the Chamber of Tax Advisors and Auditors (KSW) to act as a central point of contact for substantive questions and then forward these questions collectively to the MoF. Individual inquiries would be referred by the MoF to the KSW/Expert Senate.

The first round of these responses was published on the MoF website on 14 June 2024 and includes answers to the following topics:

1. Scope of application (Sec 2 to 4 MinBestG),
2. Safe Harbors (Sec 52 to 57 MinBestG), and
3. Transitional provisions and entry into force (Sec 80, 81 and 84 MinBestG)

In the context of questions related to the scope of application, thresholds in connection with the definition of the non-profit organization according to the MinBestG and the classification of an Austrian construction consortium for the purpose of the MinBestG are explained in more detail. Regarding safe harbors regulations, numerous questions are answered regarding the calculations, qualified data bases for the calculations, and qualified financial reporting. With regard to transitional provisions and entry into force, questions relating to the presentation of deferred tax assets, the use of the SES Safe Harbor, and the impact of current tax revenues relating to current tax expenses recognized in pre-MinBestG periods are primarily addressed.

The answers represent the current legal opinion of the MoF and have been published subject to any discrepancies due to future OECD documents and information. Later administrative guidelines adopted by the OECD/G20 Inclusive Framework on BEPS or versions of the commentary for the interpretation of the MinBestG must be consulted.

Your EY tax experts are always available to discuss any questions of doubt. We are happy to submit your questions as part of the FAQ process.

First MoF FAQ inquiry response to the Minimum Taxation Act

The response to the inquiry can be accessed via the following link (German version only):
https://www.bmf.gv.at/rechtsnews/steuern-rechtsnews/aktuelle-infos-und-erlaesse/Fachinformationen---Internationales-Steuerrecht/FAQ-zum-Mindestbesteuerungsgesetz-(Part-1).html

Tax Amendment Act 2024 – Additional changes of Austrian VAT Act

Value Added Tax Act

On 3 July 2024, the first chamber of the Austrian Parliament adopted the Tax Amendment Act 2024 (Abgabenänderungsgesetz 2024). Compared to the ministerial draft (see our Tax Short Cuts No. 10/2024 dated 14 May 2024), it contains two significant VAT-related changes. In addition, the possibility of VAT exempt donations of food and beverages shall come into force earlier than originally planned.

VAT-exempt beverage donations

In future, donations of food will no longer be subject to self-consumption VAT, but will be treated as VAT-zero rated, i.e. without loss of input VAT deduction. The VAT exemption is to apply to food in accordance with Annex 1 VAT Act donated to charitable institutions that have been granted a tax exemption notice (Sec 4a/1/1 in conjunction with Sec 4a/2/2 EStG). In addition to this, according to the government bill, non-alcoholic beverages, i.e. those with an alcohol content of no more than 0.5% by volume, should also fall under the VAT exemption for donations. According to the government bill, the measure shall apply already from 1 August 2024.

Removal of the "inter-bank exemption"

In contrast to the ministerial draft, the government bill includes the removal of the last sentence of Sec 6/1/28 VAT Act. This concerns the so-called inter-bank exemption for supplies of services that are provided between companies that predominantly carry out banking, insurance or pension fund transactions, insofar as these services are used directly to carry out these VAT-exempt transactions. Furthermore, the VAT exemption for the provision of personnel by these beneficiary entrepreneurs to their cost sharing groups would no longer apply. However, the VAT exemption for services supplied by cost sharing groups to their members is to remain in place in accordance with the current version. The changes are to come into force on 1 January 2025. For information on the request for a preliminary ruling from the Fiscal Court that has since been made, see the article below.

The text can be accessed via the following link (German version only):
https://www.parlament.gv.at/gegenstand/XXVII/I/2610

“Inter-bank exemption” (Sec 6/1/28 last sentence Austrian VAT Act): Fiscal Court has the ECJ examine the question of state aid

Value Added Tax Act

With the decision of 28 June 2024 (RE/7100001/2024), the Fiscal Court (Bundesfinanzgericht, BFG) addressed the question to the ECJ as to whether the so-called "inter-bank exemption" pursuant to Sec 6/1/28 last sentence VAT Act should be regarded as state aid (pursuant to Art 107/ 1 TFEU).

In the opinion of the BFG, the inter-bank exemption has no legal foundation under Union law. A direct application of the EU VAT Directive against the will of the taxpayer could be excluded. However, the BFG has concerns about the admissibility of the provision, as national law is more favorable in relation to Union law, while an interpretation in conformity with the EU VAT Directive contra legem in light of the case law of the ECJ does not appear possible. As a result, the BFG would have to apply the national legal provisions that are more favorable to the taxpayer, even though the coverage of the tax exemption under Union law is doubtful.

With regard to the question of state aid being at hand, the BFG assumes that the inter-bank exemption is a state measure which is likely to affect trade between Member States, which grants an advantage to the taxpayer and which distorts or threatens to distort competition. As a result, the BFG is requesting a preliminary ruling from the ECJ to clarify whether the inter-bank exemption constitutes state aid pursuant to Art 107/1 TFEU.

Should the ECJ assume the existence of state aid pursuant to Art 107/1 TFEU, the inter-bank exemption may no longer be applied by national courts and administrative authorities once the ECJ ruling has been passed. Therefore, open years or proceedings will be affected by the potential outcome of this case. In a further step, the assessment of such potential state aid for compatibility with the internal market including the possible consequence of a recovery decision will have to be performed exclusively by the EU Commission.

The request for a preliminary ruling can be accessed via the following link (pending before the ECJ under C-460/24) (German version only): https://findok.bmf.gv.at/findok/resources/pdf/3019ede1-1dc3-4eec-bee9-99e6743f4745/144740.1.1.pdf

Austrian Supreme Administrative Court on the recognition of a CIT group with a foreign group parent

Corporate Income Tax Act

In its decision of 27 March 2024 (Ro 2023/13/0018), the Austrian Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) made important clarifications regarding the recognition of CIT groups in accordance with Sec 9 Austrian Corporate Income Tax Act (Körperschaftsteuergesetz, KStG).

In accordance with Sec 9/3 KStG, both corporations with unlimited tax liability and companies with limited tax liability can be group parents, provided that the latter have an Austrian branch registered in the commercial register to which the shareholding in the group members is attributable. In accordance with national regulations, earnings are generally allocated vertically to the respective group parent. The law does not contain any provisions on a horizontal equalization of results. Sister companies with a foreign parent company (without a domestic branch to which the shareholdings are attributed) cannot form a CIT group under the current legal situation.

In the case at hand the complainant, a limited liability company based in Germany, applied for the establishment of a CIT group, whereby it was to act as the group parent and the two subsidiaries based in Austria as group members. The aim was to equalize the taxable results of the two domestic subsidiaries. The application was rejected by the tax office due to the lack of a domestic branch of the German company. An appeal to the tax office was also rejected. As a result, the Federal Fiscal Court (Bundesfinanzgericht, BFG) upheld the appeal and recognized the CIT group (31 March 2022, RV/7104573/2020). The BFG argued that the requirement of a domestic branch constitutes a restriction of the freedom of establishment that is inadmissible under EU law. However, an Austrian subsidiary company has the function of the group parent in the sense that the entire domestic group income resulting from the individual taxable results of the domestic group companies is attributable to it.

The VwGH ultimately overturned the BFG's decision on the grounds of illegality, although confirming the BFG's concerns in terms of a violation under EU law of the freedom of establishment, but contrary to the BFG's approach, assigned the group parent function to the foreign parent company, whereby the domestic group members would be treated as permanent establishments. Taxation of the group result is therefore the responsibility of the group parent, whereby Austria has the right to tax the overall result of the group. Losses from the overall result of the group members can be treated as losses of the foreign group parent that can be carried forward.

Both the BFG and the VwGH have determined that the current legal restriction of Sec 9/3 KStG, which prohibits the formation of a "sister group" and thus horizontal loss offsetting in the case of a foreign group parent, is contradiction to EU law. The possibilities of horizontal loss offsetting can be re-examined.

The reaction of the legislator remains to be seen.

The VwGH decision can be accessed via the following link (German version only):
https://ris.bka.gv.at/Dokumente/Vwgh/JWT_2023130018_20240327J00/JWT_2023130018_20240327J00.pdf

Reorganization Tax Guidelines - Maintenance Decree 2024

Reorganization Tax Act

With the MoF decree from 20 June 2024 (2024-0.457.392), the Reorganization Tax Guidelines (Umgründungssteuerrichtlinien, UmgrStR) were updated, and legal changes and supreme court decisions were incorporated.

For further details please refer to the German version of our Tax Short Cuts 14/2024 dated 9 July 2024.

Partial suspension of the DTC with Belarus also on the Austrian side

Double Taxation Convention Austria - Belarus

On 27 March 2024, Belarus suspended Articles 10 (dividends), 11 (interest) and 13 (capital gains) of the double taxation convention (DTC) with Austria by note verbale. The changes entered into force on 1 June 2024 and are initially limited until 31 December 2026.

In the Federal Law Gazette III No. 100/2024 of 27 June 2024, Austria has now also announced which parts of the DTC with Belarus and which provisions of the protocol to this agreement are considered suspended for the period 28 June 2024 to 31 December 2026.

The MoF published additional information on 27 June 2024 (2024-0.459.298). The provisions on dividends, interest and gains from the disposal of assets are affected by the suspension. In this respect, Austria and Belarus are no longer prevented from taxing the above-mentioned types of income in accordance with their national law without restriction. The tax on dividends and interest incurred in the source state is no longer credited in the residence state. A unilateral relief from double taxation on the part of Austria (pursuant to Sec 48/5 Austrian Federal Fiscal Code (Bundesabgabenordnung, BAO)) is possible in individual cases upon application.

The MoF decree can be accessed via the following link (German version only):
https://findok.bmf.gv.at/findok/resources/pdf/1f868e4a-e6d6-455c-8eaf-09f1054297e3/82924.1.1.pdf

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