

# Tax Short Cuts

Current tax information for Austria from EY

## Organizational Decree on the COFAG Reorganization and Resolution Act published

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On 1 August 2024, the organizational decree on the COFAG Reorganization and Resolution Act (COFAG-Neuordnungs- und Abwicklungsgesetz, COFAG-NoAG) was published. With the COFAG-NoAG, the responsibilities of COFAG regarding COVID-19 subsidies were transferred to the MoF.

The provisions of the COFAG-NoAG replace the claim for repayment against the contractual partner, which can be enforced by COFAG in civil law until 1 August 2024, with a claim for reimbursement under public law. In principle, the reimbursement claim exists to the same extent and under the same conditions as COFAG's previous civil law claim for repayment.

The granting of outstanding subsidy applications will continue to be based on civil law. The Federal Fiscal Code is not applicable in this area. From 1 August 2024, outstanding subsidy applications will be granted by the MoF, who commissioned the Tax Office for Large Companies as the processing agency.

The decree also deals with the following topics:

- ▶ Determination of reimbursement claims and their interest
- ▶ Recording of payments to refund notices in the subsidy manager
- ▶ Notifications to the Transparency Database and the European Transparency Database
- ▶ Granting of financial measures regarding open subsidy applications from COFAG and their recording in the subsidy manager

## Organizational Decree on the COFAG Reorganization and Settlement Act published

The decree can be accessed via the following link (German version only):  
[https://findok.bmf.gv.at/findok/volltext\(search:standardsearch\)?dokumentId=bac70eb8-d013-4072-a34b-a7d7a19fed4c&segmentId=4e71023c-6ee1-468c-973e-2179026566dc&indexName=findok-bmf&konsehId=8832c9aa-0f1f-47a7-bfdd-7fbfdf15280d&recordId=4e71023c-6ee1-468c-973e-2179026566dc](https://findok.bmf.gv.at/findok/volltext(search:standardsearch)?dokumentId=bac70eb8-d013-4072-a34b-a7d7a19fed4c&segmentId=4e71023c-6ee1-468c-973e-2179026566dc&indexName=findok-bmf&konsehId=8832c9aa-0f1f-47a7-bfdd-7fbfdf15280d&recordId=4e71023c-6ee1-468c-973e-2179026566dc)

## Tax Reporting Regulation published in the Federal Law Gazette

### *Income Tax Act*

The Tax Reporting Regulation (Steuerreportingverordnung) was published in the Federal Law Gazette II No. 213/2024 on 31 July 2024. The regulation enters into force on 1 January 2025 and is therefore applicable for the first time for tax reports prepared for the 2025 calendar year.

The Tax Amendment Act 2022 (Abgabenänderungsgesetz 2022) introduced a new tax reporting system for domestic custodian institutions for capital income of individuals with unlimited tax liability in Austria with a regulation authorization.

Tax reports must be issued at the request of the taxpayer by 31 March of the following year (for the first time for the calendar year 2025 by 31 March 2026). At the request of the taxpayer, a report must be issued for the five previous years. Tax reports must only contain capital income that is subject to capital gains tax. Income for which capital gains tax was paid voluntarily must also be included in the tax report. Tax reports must contain standardized information on how to correctly declare the specified data in the tax return.

Sec 96/5 of the Austrian Income Tax Act (Einkommensteuergesetz) contains an exhaustive list of the information that must be included in the tax reporting. The tax reporting must contain the relevant data for the taxpayer on the transactions relating to them and the capital assets managed for them in a calendar year and must be prepared in accordance with the template in Annex 1 to the regulation.

Sec 3 of the Tax Reporting Regulation defines the consideration of foreign withholding taxes in more detail. Sec 4 contains extensive regulations on income from investment funds and real estate investment funds.

The regulation can be accessed via the following link (German version only):  
[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2024\\_II\\_213/BGBLA\\_2024\\_II\\_213.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_II_213/BGBLA_2024_II_213.html)

# Austrian Supreme Administrative Court: No additional double acquisition for an IC supply subject to VAT within a chain transaction

## *Value Added Tax Act*

In its decision of 27 May 2024, Ra 2021/13/0056, the Austrian Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) confirms the view of the Federal Fiscal Court (Bundesfinanzgericht, BFG), whereby no double acquisition can be added to the intra-Community supply in a chain transaction that is subject to local VAT due to the lack of a foreign VAT ID number of the purchaser. However, no input VAT deduction for the intra-Community supply that is subject to VAT is granted.

In the underlying case, there was a chain transaction with three parties, in which the first and second party used their Austrian VAT ID number and where it was wrongly assumed that the VAT exempt intra-Community supply took place between the second and third party. Due to using the Austrian VAT ID number, the supply to the second party was invoiced with Austrian VAT. As this supply in the specific case actually constituted an intra-Community supply, the tax authority assessed a double acquisition without the right to deduct input VAT in Austria.

As in the ruling of 19 October 2022 (Ro 2021/15/0034), the VwGH concluded, with reference to the ECJ ruling of 7 July 2022 (B, C-696/20), that taxation (by way of intra-Community acquisition) may not take place if the intra-Community acquisition of goods deemed to have taken place in the territory of that member state is accompanied by an intra-Community supply of goods that has not been treated as an exempt transaction in that member state.

# Federal Fiscal Court: 5% VAT rate to be interpreted narrowly due to conflict with EU law and not applicable to activities falling under Sec 111/2 Trade Law

## *Value Added Tax Act*

A self-service bakery offers baked goods in display cabinets for take-away by the customer and hot drinks for self-filling by the customer at vending machines. If the baked goods are filled and/or heated, this is done before they are placed in the display cases by the employees. Customers can take commercially packaged drinks (e.g. cans, PET bottles) and chilled food in disposable packaging from refrigerated shelves themselves. The purchased products can be taken away or consumed at eight available seats (without place setting) in the bakery. The bakery had subjected all of these sales in the

## Federal Fiscal Court: 5% VAT rate to be interpreted narrowly due to conflict with EU law and not applicable to activities falling under Sec 111/2 Trade Law

disputed period to the reduced VAT rate of 5%, which was introduced for a limited period due to Covid-19.

The Federal Fiscal Court (BFG, RV/6100392/2023 of 20 June 2024) had to clarify whether there was an actual serving of food and beverages within the meaning of Sec/111/1 Trade Law (Gewerbeordnung, GewO) or mere trading activity, the latter not being accessible to the reduced VAT rate of 5%. The BFG concluded that Sec 28/52/1 Austrian VAT Act (Umsatzsteuergesetz, UStG), which codifies the reduced VAT rate of 5%, is not in line with EU Law. This EU VAT Directive does not provide for more than two reduced VAT rates in the period in question; in Austria these are 10% and 13%. Since that Sec 28/52/1 UStG favors the taxable person and the EU VAT Directive does not have priority of application to the detriment of the taxable person, the 5% VAT rate is generally applicable, but must be interpreted as narrowly as possible in the light of the conflict with EU law.

In the opinion of the BFG, the sale of food and drinks for take-away, regardless of whether it is hot food or prepared cold food, is therefore not considered "serving food" or "serving drinks". In addition, types of business pursuant to Sec 111/2 GewO, for which no certificate of competence for the hospitality industry is required, are not covered by the reduced VAT rate of 5%. In conclusion, the BFG clarifies that the self-service bakery in the specific case only carries out activities covered by Sec 111/2 GewO and that the VAT rate of 5% cannot be applied regardless of whether food and beverages were sold for consumption on site.

Note: According to the FAQ published by the MoF, the delivery or collection of hot food including salads and open drinks is subject to the 5% VAT rate, provided that the entrepreneur's activity is based on the fact that they are consumed on site and therefore a business license pursuant to Sec 111/1 GewO is required for this.

The FAQs can be accessed via the following link (German version only): <https://www.bmf.gv.at/themen/steuern/fuer-unternehmen/umsatzsteuer/information/faq-ermae%C3%9Ffigter-tax-rate-hospitality,-culture-and-publications.html#100>

## FAQ on the Digital Platforms Reporting Obligations Act

### *Digital Platforms Reporting Obligations Act*

The MoF recently published a compilation of answers to frequently asked questions on the Digital Platforms Reporting Obligations Act (Digitale Plattformen-Meldepflichtgesetz). The FAQs (GZ 2024-0.523.504) deal with individual aspects relating to the scope of the "relevant activity" (e.g. in the case of consulting and brokerage services), the treatment of vouchers, cancellations or returns, the requirements for exemptions, the information to be reported and its verification as part of the platform operator's duty of care.

## FAQ on the Digital Platforms Reporting Obligations Act

The FAQs can be accessed via the following link (German version only):  
[https://findok.bmf.gv.at/findok/volltext\(suche:Standardsuche\)?dokumentId=d7017254-3a56-4040-b5aa-e2927b404caf&segmentId=4ac6b19c-c3d0-4f8f-8698-6035d1d7813d&konsehId=0eb1b6d9-1369-4c68-a5b5-bf1c1bf63a70&searchRequest=%7B%7D](https://findok.bmf.gv.at/findok/volltext(suche:Standardsuche)?dokumentId=d7017254-3a56-4040-b5aa-e2927b404caf&segmentId=4ac6b19c-c3d0-4f8f-8698-6035d1d7813d&konsehId=0eb1b6d9-1369-4c68-a5b5-bf1c1bf63a70&searchRequest=%7B%7D)

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