

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

COVID-19: Support measures for the repayment of tax deferrals

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As of 30 June 2021, the COVID-related deferral of levies and tax arrears will end. If the arrears cannot be paid immediately, affected taxpayers have the option to apply for payment in installments. The installment payments can be applied for via FinanzOnline from 10 June 2021 to 30 June 2021 and cover a maximum term of 36 months over two phases. The model is available for all taxpayers for whom more than half of the tax arrears (including CIT prepayments or already assessed income tax) were due after 15 March 2020.

On 3 June 2021, the Federal Ministry of Finance announced further support for those affected in repaying previously deferred levies. During a flexible initial phase (so-called safety car phase; which covers the first three months, i.e. July to September 2021), affected taxpayers have the option to only repay a minimum amount as an installment (monthly installments of 0.5% or 1% of the total tax arrears). If the safety car phase is to be used it must be noted in the application for payment by installments.

Affected taxpayers with tax arrears of more than EUR 100,00 will shortly receive the relevant information from the tax office either via FinanzOnline or by mail.

Further information can be found under the following link:
<https://www.bmf.gv.at/public/informationen/ratenzahlung.html>

The installment payment calculator can be used to calculate the expected repayment:
<https://onlinerechner.haude.at/BMF-Ratenzahlungsrechner>

COVID-19: Budget for investment premium increased; guidelines updated

Investment premium The amendment to the Investment Premium Act (Federal Law Gazette I No. 95/2021) increased the budgetary resources for the COVID-19 investment premium from the previous EUR 3 billion to EUR 7.8 billion (see our Tax Short Cuts No. 11/2021 of 26 May 2021). This should enable all outstanding investment premium applications to be processed by aws (austria wirtschaftsservice).

Furthermore, an adapted version of the Investment Premium Guideline and FAQs was published on 28 May 2021. The deadline for setting an initial measure by 31 May 2021 was included in the guideline. In addition, all invoices submitted by 30 September 2021, will be exempt from the 3-month submission deadline.

The guideline, alterations to the guideline and FAQs can be found under the following link:

<https://www.aws.at/corona-hilfen-des-bundes/aws-investitionspraemie/>

COVID-19: Tax issues related to vaccination and testing centers

COVID-19 Special Purpose Grant Act The Federal Ministry of Finance has published FAQs regarding the tax assessment of expense allowances relating to vaccination and testing centers. In particular, the FAQs address the assessment of expense allowances under VAT and income tax in accordance with the COVID-19 Special Purpose Grant Act.

Other services that are closely related to COVID-19 in-vitro-diagnostics and COVID-19 vaccines (e.g., the performance of tests) are exempt from VAT (i.e., with input tax deduction) pursuant to § 28 (53) Z 3 Value Added Tax Act.

Expense allowances to non-professional supporting persons are exempt from income tax up to EUR 20 (for medically trained persons) or up to EUR 10 (for other persons) per hour.

The entire FAQs can be found under the following link:

<https://www.bmf.gv.at/public/informationen/faq-zweckzuschussgesetz.html>

VAT changes for mail order and platform sales as of 1 July 2021

Value Added Tax Act On 1 July 2021, the VAT package for e-commerce will come into effect and will bring significant changes for mail order businesses:

- The delivery threshold will be eliminated without replacement, so that mail order businesses will be subject to VAT starting with the first sale made to a customer without a VAT number in the country of destination, with the exception of so-called microbusinesses (businesses who do not have a permanent establishment abroad and make mail order sales and cross-border services to private customers throughout the EU of no more than EUR 10,000 per year).
- The concept of mail order is broadened to include cases where the supplier is only indirectly involved in the shipment of the goods.
- Businesses who operate an electronic interface (e.g. a marketplace or platform) are treated as the supplier of the goods for VAT purposes in certain situations and must collect and pay VAT on sales through such an electronic interface.
- Special rules are introduced for import mail order. The place of supply for import mail order is to be shifted to the place of completion of the transport, if the goods are imported in another EU Member State than the Member State where the transport is completed or if the special regulation for import mail order (introduction of a VAT import one-stop-shop) from a third country is applied.
- In order to avoid VAT registrations in the countries of destination, the EU one-stop-shop or the import one-stop-shop can be used, through which mail order sales can be processed via one Member State.
- The current VAT exemption for the import of goods in small consignments with a value up to EUR 22 will be eliminated.

EY will be happy to support you with VAT-related questions regarding this topic as well as with the implementation in your ERP system.

ECJ: Mere ownership of real estate in Germany does not constitute a fixed establishment for VAT purposes

Value Added Tax Act On 3 June 2021, in the case C-931/19 (Titanium), the ECJ reaffirmed its case law that the concept of a fixed establishment for VAT purposes requires a minimum level, which is formed by the permanent interaction of personnel and material resources required for the provision of certain services. In particular, a structure without its own personnel cannot constitute a fixed establishment. According to the ECJ, this case law is in accordance with Article 11 EU Implementing Regulation (EU-DVO) 282/2011. Although this EU Implementing Regulation is not applicable in the case at hand, its recitals state that, among

ECJ: Mere ownership of real estate in Germany does not constitute a fixed establishment for VAT purposes

other things, the concept of a fixed establishment is to be clarified based on case law of the ECJ.

The background of this Austrian case is the legal opinion of the Austrian tax authorities, according to which businesses resident abroad who have a taxable income from renting out real estate located in Austria, are treated to be domestic businesses in this respect (Rz 2601b Value Added Tax Directive). Therefore, even in the case of foreign landlords, the reverse charge procedure would not apply.

The ECJ has now clearly rejected this view. According to the ECJ, a real estate which is not equipped with any personnel, capable of acting autonomously, obviously does not meet the criteria for the concept of a fixed establishment. Therefore, if the owner of the real estate does not have its own personnel for the rental service, a fixed establishment cannot be constituted - and consequently, in the case at hand, no Austrian VAT liability exists. The ECJ did not elaborate in detail on what is meant by "own personnel" and to what extent purchased services are to be attributed to the landlord. The decisive factor in the case at hand, was that administrative tasks were outsourced by the landlord to third parties (property management), but the landlord reserved all rights to make important decisions regarding the leased property.

ECJ: Entitlement to interest in the case of VAT credits due to a reduction in the tax base and in the case of an input tax credit

Value Added Tax Act In the case C-844/19 (CS and technoRent International) of 12 May, 2021, the ECJ decided with reference to the relevant provisions of the EU VAT Directive in connection with the principle of fiscal neutrality, that a refund resulting from an adjustment of the tax base is subject to interest in the same way as a refund of an input tax credit, if it is not made within a reasonable period of time. The disadvantageous (financial) situation of the taxpayer due to the untimely refund is thus to be compensated by payment of interest.

Since the case at hand is an Austrian case, the implementation of the ECJ decision by the Austrian Supreme Administrative Court (VwGH) remains to be seen. The domestic court has to examine whether it is possible to ensure the full effectiveness of European Union law by considering the national law and applying provisions of national law by analogy. The direct application of European Union law is not possible, as the EU VAT Directive does not provide a sufficiently clear and unconditional legal basis.

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Business Tax

Dr. Markus Schragl
+43 1 211 70 1268
markus.schragl@at.ey.com

International Tax

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

Transfer Pricing

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

Indirect Tax

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

People Advisory Services

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

Global Compliance & Reporting

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

Transaction Tax

Mag. 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

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

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1220 Vienna, Wagramer Straße 19
4020 Linz, Blumauerstraße 46