

EY Tax Short Cuts - English

Latest tax news for Austria
by EY

COVID-19: Protective shield for events

Content

- 01 COVID-19: Protective shield for events
- 02 VfGH: Restrictions on the utilization of losses in the case of income from capital assets are constitutional
- 03 Determination of national VAT rates in connection with Mail order and EU OSS
- 03 Equal Pay - Amendments to the Wage and Social Dumping Prevention Act

Due to uncertainties regarding the planning of events (congresses, trade fairs, occasional markets, cultural events, sporting events, B2B and B2C events) because of the COVID-19 crisis, the so-called Protective Shield for Events I was put into effect by the Federal Ministry of Agriculture, Regions and Tourism on 26 January 2021 by means of a directive. Eligible to apply are organizers who bear the economic risk of the event, regardless of legal form, location and size.

The purpose of the grant is to compensate the financial disadvantage resulting from a COVID-19-related cancellation or significant restriction of an event in Austria. Within the scope of the funding, the absorption of costs that have already been incurred prior to the submission of the application is excluded. The expected revenue of the event must be at least EUR 15,000.00. The prerequisite is the presentation of a conclusive implementation and financing concept and the draft of a COVID-19 prevention concept. Furthermore, damage-reducing measures must be taken. The fund under the Protective Shield for Events I covers up to 90% of the sustained and proven financial disadvantage, up to a maximum of EUR 2 million.

On 12 July 2021, a directive (Protective shield for Events II) based on the SME Promotion Act (BGBl. 432/1996) increased the liability to up to EUR 10 million in case of an absorption of up to 80% of the financial disadvantage. The legislative basis for the grant is Art 107 (2) (b) TFEU - European aid law to eliminate the damage caused by natural disasters or other exceptional occurrences).

COVID-19: Protective shield for events

Simultaneous use of both protective measures for the same event is not possible. It is however possible to switch to the Protective Shield for Events II.

An application for the Protective Shield for Events II can be submitted to the Austrian Hotel and Tourism Bank (ÖHT) from 12 July 2021 until 31 October 2021, whereby this must be done at least eight weeks before the date of implementation. The events in question must be held by 31 December 2022. In contrast to the Protective Shield I, the ÖHT charges a one-time processing fee of 1% as well as a liability commission (for large businesses 0.5% p.a. (aliquot) in the first year and 1% p.a. (aliquot) in the second year; for small and medium-sized businesses 0.25% p.a. (aliquot) in the first year and 0.5% p.a. (aliquot) in the second year).

The entire policy can be found under the following link:

<https://www.oehrt.at/produkte/schutzschirm-fuer-veranstaltungen-ii/>

VfGH: Restrictions on the utilization of losses in case of income from capital assets are constitutional

Income Tax Act In the case E 1722/2020 of 2 March 2021, the Constitutional Court (VfGH) had to decide on whether the existing restrictions on the utilization of losses from capital assets held as private assets are justified, particularly considering the principle of equality.

Since the Budget Accompanying Act of 2011, income from capital assets has been taxed under a special regime (separate tariff rates, special rules such as restrictions on offsetting losses by splitting them into different pots).

In the proceedings, the Constitutional Court explained that it is not constitutionally questionable if losses from income subject to a special tax rate cannot be offset against other income. Accordingly, the exclusion of vertical loss compensation pursuant to Sec. 27 (8) no. 4 Income Tax Act is within the legislative legal policy leeway and thus does not violate the principle of equality.

With respect to a loss carryforward, the Constitutional Court has stated that it is also justified that losses from capital assets that have not been offset, may not be deducted as a special expense in subsequent years within the scope of Section 18 (6) of the Income Tax Act, as such a deduction would undermine the prohibition of vertical loss offsetting. The legislative provision, limiting the offsetting of losses subject to the special tax rate against income from capital assets subject to the special tax rate and limiting the offsetting to the calendar year in which the loss incurred, is in fact as well acting within the scope of its legal policy leeway.

VfGH: Restrictions on the utilization of losses in the case of income from capital assets are constitutional

Principally, the Constitutional Court requires the legislative to treat income taxpayers equally. Nevertheless, the Constitutional Court grants the legislative a wide leeway, which is based on the diversity (also of a fiscal nature) of individual types of income and thus justifies a differentiated treatment, if it is objective. Accordingly, unrestricted loss compensation or general loss carryforwards are not required under constitutional law.

The full text of the decision can be found under the following link:

https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20210302_20E01722_00/JFT_20210302_20E01722_00.pdf

Determination of national VAT rates in connection with mail order and EU OSS

Value Added Tax Act Since 1 July 2021, the new regulation of intra-Community mail order applies. This also includes the introduction of the EU-One Stop Shop (EU-OSS). As part of the use of the EU-OSS, it must be determined, among other things, which VAT rate the respective product is subject to in the country of destination. For this purpose, the EU Commission has set up the "Acces2Markets - My Trade Assistant" tool. By entering the product name or HS code (according to the Harmonized System HS) as well as the country of origin and destination, the corresponding VAT rate of the country of destination is determined.

The application "Acces2Markets - My Trade Assistant" is available under the following link:

<https://trade.ec.europa.eu/access-to-markets/de/home>

Equal Pay - Amendments to the Wage and Social Dumping Prevention Act

Wage and Social Dumping Prevention Act In order to implement the amended EU Posting Directive (Directive (EU) 2018/957), the National Council passed an amendment to the Wage and Social Dumping Prevention Act (hereinafter "LSD-BG") on 7 July 2021. The amendment includes

- ▶ extended entitlements of employees,
- ▶ some simplification measures in the area of reporting and documentation obligations as well as
- ▶ new EU-compliant penalty frameworks based on relevant ECJ case law.

The new regulations will be effective on 1 September 2021 and apply to postings starting after 31 August 2021. Due to the non-treatment by the Federal Assembly, the effectiveness of the regulation will probably be delayed.

Despite some simplifications, the implementation is associated with some additional administrative work, hurdles and risks in practice. The main planned innovations are as follows:

Comprehensive applicability of Austrian employment law from 12 months onwards

The implementation of the EU Posting Directive is intended to ensure that employees posted or leased to Austria are generally treated the same way as domestic employees regarding working and employment conditions after a period of 12 months.

The amendment now provides that as of the time when the posting exceeds the duration of 12 or 18 months, the Austrian statutory employment standards and employment standards stipulated by ordinance or collective agreement apply in their entirety, as far as these standards are more favorable than the corresponding standards of the posting country.

The amendment will particularly have an impact on claims under employment law, e.g. in the case of absence from work and leave of absence.

In practice, it will be extremely challenging to examine and document whether the Austrian provisions are more favorable in individual cases than those of the posting country, as this requires detailed knowledge of employment law in both the posting and host countries.

Entitlement to reimbursement of expenses

A completely new provision is that a posted employee - irrespective of the applicable employment law - is entitled for the duration of the posting to at least the statutory reimbursement of expenses regarding travel, accommodation or subsistence costs incurred in Austria during the posting, which comparable domestic employees of comparable employers are entitled to at the place of work.

This reimbursement of expenses covers costs incurred by the travels of an employee from one domestic workplace to another.

Due to this obligation of comparison, an additional administrative burden is to be expected, as well as additional costs for any compensation payments.

Not only the determination of travel expenses according to Austrian regulations, but also the procedural integration into the approval and payroll processes will be associated with considerable difficulties for foreign employers.

As already stated in the previous regulation, all remuneration components such as bonuses, allowances as well as Christmas and vacation pay are to be guaranteed to the posted or leased employees in accordance with the applicable Austrian employment law and collective agreements.

Facilitation of reporting and documentation requirements

Some of the planned simplifications for the reporting and documentation requirements for employees posted or leased to Austria are however pleasing.

Particularly relevant in practice are the extension of the validity period for so-called framework notifications from 3 to 6 months as well as the possibility to have the required documents also ready in English.

Restriction of the scope of application - new exceptions

There will also be new regulations in the area of exemptions, whereby those for top earners and trainees will be of particular interest in practice.

Penalties

Completely new is the model of punishment - the punishment per employee, representing a departure from the previous principle of accumulation.

The range of penalties for violations of the provisions now extends up to EUR 400,000.

Despite the freedom to provide services within the EU, the cross-border employment is still associated with considerable compliance risks.

We will be happy to assist you in implementing these complex changes.

Further respective law has yet to be published.

The amendment can be found under the following link:

https://www.parlament.gv.at/PAKT/VHG/XXVII/I/I_00943/fname_983054.pdf

Contact

Feedback

If you have any questions or suggestions or if you would like to be contacted please send an e-mail to: [Feedback](#)

Website

Get more information about our services, activities and events on our website: ey.com/at

Archive

Find our previous issues of this newsletter on our [website](#) or send us an inquiry to newsletter@at.ey.com.

Unsubscribe

If you want to unsubscribe from this newsletter please send an e-mail that contains your name and your e-mail address to ey.crm@ey.com.

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

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

The integrated service portfolio of EY is complemented by comprehensive legal advisory services provided by the international network of EY Law, in Austria represented by Pelzmann Gall Groß Rechtsanwälte GmbH.

In this publication, “EY” and “we” refer to all Austrian cont firms of Ernst & Young Global Limited. Each EYG member firm is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

Information according to § 25 Austrian Media Act (MedG) can be accessed here.

In Austria, EY has 4 locations.

© 2021 Ernst & Young

Steuerberatungsgesellschaft m.b.H.
All Rights Reserved.

Ernst & Young

Steuerberatungsgesellschaft m.b.H.

1220 Vienna, Wagramer Straße 19
4020 Linz, Blumauerstraße 46