No. 22/2021 | 14 October 2021

EY Tax Short Cuts - English

Latest tax news for Austria by EY

MoF publishes further details on tax reform

Content

The MoF has published further details on the planned tax reform on its website. We have already reported the key points in our Tax Short Cuts No. 21/2021 of 5 October 2021.

CO_2 pricing is to be implemented as an independent levy. It is not the emitters (e.g. drivers) who are obliged to pay the CO_2 price, but rather those companies which bring fuels and heating fuels into circulation (trading participants, e.g. manufacturers of fuels and heating fuels). This coincides with the group of taxpayers of the existing energy levies (mineral oil tax, natural gas levy and coal levy). For this purpose, national emission certificates are to be issued and a trading system is to be created. The distributor must purchase national emission certificates for the CO_2 emissions and surrender them at the end of the respective period. For companies that are particularly highly affected by the introduction of the CO_2 price, a hardship provision is to be introduced, cushioning the impact of the CO_2 price with up to EUR 100 million.

No additional information was published on the most important items: The reduction of the corporate income tax in two steps to 23% in 2024 and the reduction of the wage and income tax by lowering two rate-levels. However, the MoF has published further details on the following topics:

- Exemption from own-generated electricity tax: As of 1 July 2022, no electricity tax is to be levied on electric energy produced and consumed by a business itself, provided the electricity comes from a renewable energy source. The current limitation on the tax exemption of 25,000 kWh per year is therefore to be abolished for e.g. small hydropower plants, biogas and wind energy, as it is already the case for electrical energy from photovoltaic plants.

Building a better working world

- In the future, a surcharge will be added to the price of groceries depending on their place of origin. The aim will be to record and price any additional greenhouse gas emissions caused by transport routes on a flat-rate basis. The feasibility and implementation of pricing for groceries that have traveled a long way are to be examined first.
- Reduction of health insurance contributions for small incomes as of July 2022: The contributions are to be reduced by up to 1.7 percent for employees and self-employed persons up to a gross monthly income of EUR 2,500 and for pensioners up to a gross monthly income of EUR 2,200.
- The Family Bonus Plus will be increased from 1 July 2022, the bonus will increase from EUR 1,500 in 2022 by EUR 250 and as of 2023 by EUR 500 per year to EUR 2,000 per year.
- For children age 18 and older, the Family Bonus Plus is to increase from the current EUR 500 per child per year to EUR 650 per child per year. In 2022, the bonus will be increased by EUR 75, and as of 2023 by EUR 150 per year.
- Also in the case of the increase of the additional child allowance, the increase will be EUR 100 in 2023 and to achieve the full EUR 200 per child per year there will be an increase from EUR 250 to EUR 450 as of 2024.
- Lease-purchase model: Starting in 2023, the input tax adjustment period for the purchase of rental apartments with an option to buy from non-profit developers is to be shortened from 20 to 10 years.
- The taxation of cryptocurrencies is to be embedded in the existing system of taxation of capital assets. If there is no interest-bearing investment in the private assets, capital gains on cryptocurrencies are currently only subject to tax as speculative transactions, if the period between acquisition and sale does not exceed one year. If taxed as capital assets, the realized capital gains would be taxed at the 27.5% special tax rate regardless of the holding period.

Draft legislation has not yet been published. It remains to be seen how the legislation will develop.

MoF: Final Transfer Pricing Guidelines 2021 (TPG 2021) published

Transfer Pricing Documentation Act

The MoF published the final Transfer Pricing Guidelines 2021 (TPG 2021) on 7 October 2021. The final version of the TPG 2021 largely corresponds to the draft assessment published on 4 December 2020. The TPG 2021 therefore contain the following significant changes (excerpted presentation in comparison to the TPG 2010) as well as the MoF Info regarding the Transfer Pricing Documentation Act (TPDA) in the latest version:

- Cost basis when applying the transactional net margin method and treatment of pass through costs;
- Statements on conditions under which year-end adjustments are permitted;

- Benefits test as a prerequisite when it comes to charging services in principle;
- The charging of routine services is now oriented towards the EU-JTPF report (profit mark-up between 3% and 10%);
- Simplified application of the arm's length principle with regards to charging of low-value-adding intra-group services (LVAIGS-approach);
- Application of the arm's length principle regarding financial transactions (intercompany loans, cash pooling, guarantees, hedging transactions, captives);
  - Art 9 OECD-MTC also serves as basis to distinguish between equity and debt;
  - Effect of implicit credit support on creditworthiness (adjusted stand-alone rating);
  - Necessity of a two-sided analysis (also with regards to options realistically available); comparable uncontrolled price (CUP) method generally applicable, other methods;
  - Control-over-risk functions in relation to group financing;
  - Compensation of cash pool members by allocating synergy effects in addition to the compensation of the cash pool master;
  - Determination of the guarantee fee based on the CUP method or "yield approach";
- In the case of hard-to-value intangibles (HTVI), the tax authorities may use ex-post results as circumstantial evidence to assess the appropriateness of a pricing arrangement if the reliability of the information on which the ex-ante pricing arrangement is based cannot be confirmed;
- Location savings are to be allocated between the companies involved; the Austrian research premium can also constitute a location saving;
- Group synergies are to be allocated between the companies contributing to the origin of the benefit; incidental benefits are generally not to be compensated;
- The minimum content of transfer pricing documentation (outside the scope of the TPDA) is specified;
- Documentation of certain minimum information as well as the search steps applied for the determination of a margin by way of a benchmark studies, benchmark studies are to be renewed every three years.

Nevertheless, the TPG 2021 contain some changes worth mentioning compared to the draft assessment (excerpted presentation):

- If the LVAIGS approach is not applied, a net profit markup between 3% and 10% on routine services is considered to be appropriate, even without a database study;
- The LVAIGS approach is not only applicable to services after 1 January 2021, but also to periods prior to 1 January 2021;
- Transfer prices do not have to be adjusted to the median of an arm's length range mandatorily if they are outside the range;
- The benefits test is not mandatory for low-value-adding services;

- A credit offer from a bank that is based on a detailed check of the creditworthiness may be considered appropriate evidence for intra-group interest rates;
- Right of estimation for the tax authorities in case of material and serious formal deficiencies of the transfer pricing documentation;
- Generally permissibility of transfer pricing documentation in English;
- Elimination of country-by-country notification for years beginning after 31 December 2021, provided there have been no changes with regards to the prior year.

We recommend analyzing whether and, if so, what kind of actions have to be taken by your company due to the publication of the TPG 2021. Your EY transfer pricing specialists are happy to answer any questions you may have on TPG 2021.

COVID-19: New FAQs for Relief Measures

Investment premium
Loss compensation subsidy
Fixed cost subsidy I
Fixed cost subsidy 800,000

Updates have recently been made to the following COVID-19 relief measures:

Investment premium

Update of the FAQs on calculation of the premium as of 29 September 2021 to include an item 13 regarding the eligibility of incidental acquisition costs.

The updated FAQ's can be found under the following link:

https://www.aws.at/fileadmin/user_upload/Downloads/Sonstiges/FAQ_Investitionspraemie_v._29.09.2021_fachlich_abgenommen_AEnderungsmodus.pdf

Loss compensation subsidy

As of 6 October 2021, the FAQs have been updated. In addition to the revision of the table of contents, the following points, among others, were added:

- 1.15.: Calculation of the loss of revenue in the absence of comparables
- 2.5a.: Timing of depreciation of current assets (inventories)
- 2.6: Additions to the timing of the allocation/reversal of provisions
- 2.10.: Consideration of a loss participation of the partner in a partnership
- 3.20. to 3.23.: Explanations on the (inadmissible) distribution of profits pursuant to item 6.2.2. of the Directive, regarding profit distribution resolutions, on the moderate dividend and profit distribution policy and on claims to bonus payments

The updated FAQ's can be found under the following link:

https://www.fixkostenzuschuss.at/wp-content/uploads/2021/10/FAQs-Verlustersatz_06102021-nach-BMF-ok-final.pdf

Fixed cost subsidy I

As of 6 October 2021, the FAQs have been updated to include the following:

- A.4. and B.I.5b: Additions to (non) repayment obligation of the 1st tranche in the event of subsequent discontinuation of operations
- C.II.5: Clarifying addition regarding the interpretation of "moderate dividend policy
- E.1. a d E.4.: Additions to the determination of depreciation for seasonal and perishable goods

The updated FAQ's can be found under the following link:

https://www.fixkostenzuschuss.at/wp-content/uploads/2021/10/FAQ-FKZ_I-_Wartung_06102021_final.pdf

Fix cost subsidy 800,000

As of 6 October 2021, the FAQs have been updated to include the following:

- B.I.32.: No application permissibility for shareholding Managing Directors (see also pt.: 1.11. of the FAQ loss bonus)
- D.II.25.: Addition concerning the qualification of personnel expenses
- C.II.6.: Clarification regarding the interpretation of the term moderate dividend policy acc. To pt. 2.2.6 of the Directive

The updated FAQ's can be found under the following link:

https://www.fixkostenzuschuss.at/wp-content/uploads/2021/10/FAQs-FKZ800k_06102021-nach-BMF_final.pdf

COVID-19: Consultation agreement on the DTA Germany-Austria extended

Double taxation agreement Germany-Austria

On 4 October 2021, the Federal Ministry of Finance published an extension of the consultation agreement between Germany and Austria regarding the double taxation treaty between Germany and Austria (BMF 2021-0.677.478). This consultation agreement supersedes the agreement of 17 June 2021. (cf. our Tax Short Cuts No. 14/2021 of 6 July 2021) expires. There were no substantive changes.

The Consultation Agreement has been extended until 31 December 2021, and will be automatically renewed on a monthly basis thereafter unless terminated in advance in writing by the competent authority of a Contracting State.

Basically, the agreement regulates the following:

Permanent establishment (Article 5, para. 1 DTA)

An employee who only carries out his activities in his home office due to the measures to combat the COVID 19 crisis does not establish a permanent establishment for the employer within the meaning of Article 5.

Working days in the home office (Article 15, para. 1 DTA)

Days on which employees perform their work in the home office due to COVID-19 are deemed to be performed in the Contracting State in which the employees would normally have performed their work. By notifying and disclosing the circumstances to the employer and the competent tax office (in the employee's country of residence), the employee agrees that the wages will be taxed in the contracting state in which his activity would have been carried out without COVID-19.

Cross-border commuter regulation (Article 15, para. 6 DTA)

Working days for which wages are drawn and on which cross-border commuters perform their activities at home due to COVID-19 are not considered days of non-return.

Employees in the public sector (Article 19, para. 1 DTA)

The above-mentioned fictions concerning working days in the home office apply accordingly to remuneration of public service employees.

Short-time allowance and short-time work support (Article 18, para. 2 DTA)

Short-time allowance paid in Germany and short-time allowance paid in Austria for lost working hours as well as similar payments which were paid by the employer and are reimbursed by the state of one of the contracting states due to COVID-19 are to be qualified as payments from the statutory social insurance of the respective state.

The full decree on the extension can be found under the following link:

https://findok.bmf.gv.at/findok/resources/pdf/736d4cf9-4480-49a3-a3a3-2f7a27491565/80422.1.1.pdf

EU: Update on the blacklist of tax havens

European Union

The Council of the European Union regularly publishes a list of non-cooperative third countries (and territories) for tax purposes (see our Tax Short Cuts No. 06/2019 of 19 March 2019). In doing so, the Council aims to promote good governance in tax matters and to combat tax fraud and tax evasion.

The blacklist currently (as of 5 October 2021) includes the following nine countries: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

COVID-19: Consultation agreement on the DTA Germany-Austria extended

According to the Council countries on the blacklist have not taken significant action to address the deficiencies identified, and are encouraged to make appropriate changes. The next revision of the list is scheduled for February 2022.

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

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

International Tax

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

Transfer Pricing

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

Indirect Tax

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

People Advisory Services

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

Global Compliance & Reporting

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

Transaction Tax

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

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 Größ Rechtsanwälte GmbH.

In this publication, “EY” and “we” refer to all Austrian member 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.

Ernst & Young
Steuerberatungsgesellschaft m.b.H.
1220 Vienna, Wagramer Straße 19
4020 Linz, Blumauerstraße 46
5020 Salzburg, Sterneckstraße 33
9020 Klagenfurt, Eiskellerstraße 5

ey.com/at