

[International Newsletters](#) ▾[Tax News](#)[Defining Issues](#)[International Brochures & Surveys](#) ▸[Library - International Newsletters - Tax News -](#)

Tax payments and notifications as from April 1, 2016

As from April 1, 2016 payment transactions with the tax office have to be made via electronic banking whereby the respective ordinance stipulates two possibilities to effect payments. Furthermore, payment orders and notifications from the tax authority will no longer be delivered to the tax payers in paper but only electronically via "FinanzOnline". If a tax payer cannot make use of an electronic banking system, the tax payer may request that payment orders are still delivered in paper.

Sabrina Kainz

Avoidance of WHT liability for dividends paid abroad

According to the current administrative practice, the exemption of profit distributions to EU parent companies from dividend withholding tax requires both a zero declaration (KA1) and a form ZS-EUMT that has to be submitted to the competent tax office proactively. Failing to implement these formalities runs the risk of being held liable for the tax not withheld. At present it cannot be ruled out that the obligation to proactively submit documents could be extended to the forms ZS-QU1 / ZS-QU2 necessary for tax relief due to tax treaties.

Florian Rosenberger

Draft ordinance on consequences of company reorganizations on account of accumulated profits/losses

Distributions of an Austrian company can either be qualified as a repayment of capital or a dividend from a tax perspective. A repayment of capital is not subject to withholding tax but reduces the tax book value of the participation on shareholder level whereas a dividend – in principle – triggers withholding tax. According to new rules introduced in the course of the tax reform 2015/2016, an Austrian company needs to provide evidence accounts regarding contributions of capital and accumulated profits/losses for tax purposes. Previously, it was in particular questionable how company restructurings such as mergers or demerges impact the account of accumulated profits/losses. Recently, the Austrian Ministry of Finance published a draft ordinance dealing with the consequences of company reorganizations on the account of accumulated profits/losses.

Christoph Plott; Markus Vaishor

Austrian Constitutional Supreme Court: Cash register obligation does not violate the constitution

The Austrian Supreme Constitutional Court (VfGH) has decided that the general cash register obligation (in case of a yearly turnover exceeding TEUR 15 with more than TEUR 7.5 cash turnover), which has been introduced with the Austrian tax reform 2015/2016 does not violate the Austrian constitution. However the cash register obligation cannot come into force prior to May 1st, 2016.

Roland Willinger

Draft Implementing Regulation regarding the Law establishing an Account Register

The Austrian Ministry of Finance has published a draft for an implementing regulation regarding the Law establishing an Account Register. The regulation provides for detailed rules on the data to be transmitted to the Ministry of Finance, specifically treating joint accounts, escrow accounts, and anonymous accounts. The commissioning date for the account register, the due date for the first transmission of data and the due date for the regular monthly data transmissions are specified.

The regulation also specifies the information rights of taxpayers regarding the data about their accounts kept in the register as well as the right to be informed about a search in the register by the tax authorities.

Philipp Peter Rümmele

Draft Implementing Regulation regarding the Law on the Reporting of Capital Outflows and Inflows

The Austrian Ministry of Finance has published a draft for an implementing regulation regarding the Law on the Reporting of Capital Outflows and Inflows. The regulation provides for detailed rules on the data to be transmitted to the Ministry of Finance. It sets due dates for the Bundesrechenzentrum to technically enable the reporting of capital outflows and capital inflows.

Further, certain specific issues are dealt with like how capital outflows and capital inflows are to be determined, the treatment of partnerships earning only passive investment income, or the implications of a settlement payment that does not cover all the capital inflows subject to reporting.

Philipp Rümmele

ECJ Finanzamt Linz case on goodwill depreciation: Decision of the Austrian Supreme Administrative Court in the continuing procedure

In the view of the Austrian Supreme Administrative Court, Art 9 para 7 of the Austrian Corporate Income Tax Act in its version before the amendment in 2014, has to be interpreted in the light of EU-law thus allowing goodwill depreciation also in case of acquisitions of foreign participations. Goodwill depreciation upon the acquisition of a foreign share can be claimed irrespective of whether the parent company has exercised the option to tax liability (according to the Austrian international participation exemption, capital gains/losses, depreciation are tax-neutral, however, the tax payer may exercise an option to tax liability in the year the respective participation is acquired).

Lisa Paterno

Austrian Ministry of Finance: Unilateral correction of accounting errors due to tax audit

In a recent publication, the Austrian Ministry of Finance stated that accounting errors leading to a deductible expense (e.g. non-deductible input VAT) detected in the course of a tax audit have to be considered in the year the (additional) tax claim materializes and not in the year the respective error was accounted for.

Gerald Gagstädter

Austrian Federal Fiscal Court: 75 % tax loss carry forward utilization restriction applies also for non-resident companies

According to Austrian tax law, tax loss carry forwards can be carried forward indefinitely. However, only a maximum of 75 % of the taxable profit realized in a specific year by a company can be offset with tax loss carry forwards. This means that at least 25 % of the taxable positive group result realized in a specific year has to be taxed. Modified rules apply in case of tax groups.

According to a recent decision by the Austrian Federal Fiscal Court the 75 % loss utilization restriction also applies for non-resident companies that are only subject to limited tax liability in Austria.

Franz-Stefan Stockbauer

German Fiscal Supreme Court allows VAT group with a partnership

The German Bundesfinanzhof (Fiscal Supreme Court "BFH") allows partnerships to become a member of a German VAT group although the wording of the German law (in this respect equal to the Austrian wording) restricts the members of a VAT Group to corporate legal entities (BFH December 2, 2015, V R 25/13). This is contradictory to previous decisions of the German BFH. The extension to partnerships shall be allowed in case the partners of the partnership are only the VAT group head and other persons, that are financially integrated in the VAT group head (VAT group members). A broader extension, i.e. a general inclusion of partnerships in a VAT group, cannot be derived from the EU law (key word: ECJ "Larentia+Minerva" and "Marenave Schifffahrt").

Andreas Helnwein

International newsletter

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[<- Back to: Tax News](#)