



The deductibility of interest expenses related to the acquisition of participations from an affiliated entity was denied despite the Austrian Tax Group Regime

The Austrian Federal Finance Court (BFG) has recently decided another verdict (BFG 10.06.2016, RV/7102088/2013) on the deductibility of interest expenses within the Austrian Tax Group Regime. According to this decision interest expenses paid by the group parent for debt provided by a group member in order to acquire a participation formally from an affiliated entity, but indirectly from a third party, are not tax deductible. The BFG doesn't see reasons for a teleological interpretation of the relevant tax provisions and therefore accepts the resulting double taxation of interest payments within the Austrian Tax Group Regime. A reference to a similar but not fully comparable case, decided in 2015 was rejected due to the absence of legally binding character. Notice of appeal has been filed and clarification by the Austrian Administrative Supreme Court remains to be seen.

Flora Matkovits, Jan Knesl

New real estate transfer tax rules and company restructurings: New implications as from 2016

The Austrian Real Estate Transfer Tax was subject to major changes during the past few years. In the course of the tax reform 2015/2016 the latest changes (effective as from Jan 1, 2016) came into force. The most important changes include that the tax base is now determined by the "real estate value" rather than the (comparatively low) "tax value" in certain cases and furthermore the real estate transfer tax rules for the pooling of shares were extended. In Austria, not only the direct acquisition of real property is subject to real estate transfer tax, but also the indirect acquisition in the course of e.g. a share deal may be subject to real estate transfer tax, if (according to the new rules) at least 95% of the shares in a real estate owning company are pooled in the hands of one shareholder or a tax group. These new rules also have an impact on standard company restructurings covered by the Austrian Reorganization Tax Act, which should be considered in practice.

Lukas Andreaus, Markus Vaishor

Merger of tax group parent into non-group company leads to dissolution of tax group

The Austrian Administrative Supreme Court concluded that a merger of a tax group parent company as the transferring company into a non-group company leads to the dissolution of the tax group. If the minimum holding period for the tax group of three years is not fulfilled at the time of the effective date of the merger, the claw back rules may apply.

Markus Vaishor

Update on Cash register obligations

On August 1, 2016 the "EU-Abgabenänderungsgesetz 2016", BGBl I 77/2016, was published in the Federal Law Gazette, which contains amongst others amendments to the General Fiscal Code regarding the cash register obligation. Based on this law the amendments to the "Barumsatzverordnung 2015" and the "Registrierkassensicherheitsverordnung" were published in the Federal Law Gazette on August 3, 2016 (BGBl II 209/2016 bzw 210/2016) and the Ministry of Finance issued a new decree regarding the item-by-item recording, the cash register and voucher issuing obligations („Erlass zur Einzelaufzeichnungs-, Registrierkassen- und Belegerteilungspflicht") on August 4, 2016. Furthermore, in an information letter dated August 3, 2016, BMF-010203/0225-VI/6/2016, the Ministry of Finance delivers its opinion to questions related to the cash register premium according to sec 124b no 296 of the Austrian Income Tax Act.

Wolfgang Hornich, Lukas Zarits

Right of proportional input VAT deduction related to immovable property

This request for a preliminary ruling concerns the interpretation of Articles 167, 174 and 185 of Directive 2006/112/EEC, which has been made in proceedings between Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR ('Rey Grundstücksgemeinschaft') and Finanzamt Krefeld (Tax Office, Krefeld) concerning the method of calculating the deduction entitlement for value added tax ('VAT') due or paid in respect of goods and services used for the construction, maintenance, use and conservation of a mixed-use building that serves, in part, to carry out transactions in respect of which VAT is deductible and, in part, to carry out transactions in respect of which VAT is not deductible ('a mixed-use building').

The European Court of Justice decided that in case of a "mixed-use building" input VAT has to be allocated to the respective sales to determine the proportion. After the allocation to tax exempt and taxable sales input taxes can be split by using the of a derogation method. In case of complex "mixed-use" buildings, Member States are entitled to establish a different method of calculation than the turnover based allocation method, in case this method leads to a more precise result. In case the derogation method is amended according to national legislation, an input tax adjustment may occur. Furthermore the ECJ ruled that this does not preclude the principles of legal certainty and the protection of legitimate expectations.

Esther Freitag, Andreas Helnwein

Formation of groups with regard to the application of exemption from taxes and social security contributions

Numerous exemptions from taxes and social security contributions are subject to the condition that the benefit concerned is granted to at least a group of employees. Now the Austrian Administrative Supreme Court has decided, that the kind of benefit and the purpose of the exemption are to be considered when it comes to the formation of such a group. Thus, contrary to the view taken by the finance administration and the Federal Finance Court, the exemption for stock options that were granted before April 1st, 2009, can be made use of, even if the inclusion into the stock option program is dependent on a job evaluation system ("Hay Group").

Alfred Shubshizky, Tatjana Schrefl

New regulations regarding international assignments to Poland in the framework of provision of services

On June 18, 2016, the provisions of the Seconded Persons Act in Poland entered into force, which affects non-Polish employers seconding individuals to Poland. This new legislation imposes a range of obligations on companies sending their staff to Poland. Please refer to the [GMS Flash Alert 2016-091](#) for information about the obligations, deadlines and penalties.

Christiane Ute Bischoff