



Austrian Ministry of Finance publishes draft bill (Tax Amendment Act 2016)

The Austrian Finance Ministry issued a draft bill for a tax amendment act 2016 which includes several selective amendments. For companies, however, most changes are not very significant. Credit institutions which change the calculation method regarding the allowances for receivables (change from a tax deductible allowance to a not tax deductible lump sum allowance), a certain tax rule may apply which spreads the resulting tax liability over five years. Moreover, the definition of the term "property" in the Austrian VAT act will be adapted to be in line with the according EU-directive and the very short term (up to 14 days) rental of property should become subject to VAT (up to now a VAT exemption applied under certain circumstances).

Losses realized from certain property used for business purposes (by individuals) can be set off against other positive income only up to 60 %. According to the draft bill, also losses resulting from extraordinary write offs fall within the scope of this rule. Furthermore, deemed taxable income resulting from business cars used also for private purposes by the general manager who holds also an interest of more than 25 % in the company has to be calculated in line with an existing tax ordinance which was previously only applicable for employees.

Christoph Schirmbrand

Ministry of finance publishes information on calculation of 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. The evidence account regarding accumulated profits/losses in principle needs to be developed based on a calculation formula starting with the foundation of the company. Since this may not be practical in case of companies which were established a long time ago, the law also allows a lump-sum calculation as of the last balance sheet before August 1,

2015 which then needs to be carried forward with the exact formula. The Austrian Ministry of Finance now published an information that the lump-sum calculation of the first evidence account may also be based on the last balance sheet date before August 1, 2006.

Ferdinand Kleemann, Markus Vaishor

Transfer of shares within a tax group may trigger real estate transfer tax

In the course of the Austrian tax reform 2015/2016 also the real estate transfer tax act was changed. In Austria not only the direct acquisition of Austrian real estate but also the indirect acquisition via the acquisition of shares of a company owning real estate is subject to 3.5 % real estate transfer tax, if at least 95 % of the shares are pooled in the hands of one shareholder or within members of an Austrian tax group. Furthermore, there are special rules for partnerships.

One major change also included the introduction of a group clause, i.e. real estate transfer tax is also triggered, if the shares are pooled within a tax group. It should be noted that either a single group member or the tax group can be the "shareholder" for the purposes of pooling of 95 % of shares within the meaning of Austrian real estate transfer tax act. Furthermore, there is also a transition provision for structures existing as of Dec 31, 2015 that did not trigger real estate transfer tax. Therefore, in practice also intra-group transfers of shares or other transactions (such as company reorganizations) may trigger Austrian real estate transfer tax. Thus, any contemplated steps should be thoroughly planned and analyzed from an Austrian tax perspective.

Markus Vaishor

Harmonization of depreciation rates regarding company buildings since 1 January 2016

The Tax Reform 2015/2016 led to a harmonization of the depreciation rates regarding company buildings. Since January 01, 2016 a depreciation rate of 2.5 % is applicable for all buildings other than residential buildings which may be depreciated with a rate of 1.5 %. For the application of the depreciation rate stipulated by the law, the useful life of the company building needs not to be substantiated. The general principle is that a useful life differing from the statutory depreciation rate can only be substantiated (by means of an expert opinion) in the moment when first putting the company building to use. As an exception, in the first financial year beginning after December 31, 2015 a shorter useful life of a company building can be substantiated even when the building had already been put to use earlier. We would like to point out that the Austrian Ministry of Finance published an information on May 12, 2016 containing numerous examples and cases regarding the depreciation of company buildings.

Marlene Truschneegg

Austrian Administrative Supreme Court on taxation of own shares

Previously, it was questionable whether the acquisition of own shares by a joint-stock company should be qualified as a tax-neutral repayment of capital or an (ordinary) acquisition of shares. This is in particular relevant in case of a re-sale of the shares. If the acquisition is deemed as a repayment of capital any capital gains or losses from the re-sale are tax-neutral whereas the capital gains or losses are taxable should the acquisition be qualified as an (ordinary) acquisition of shares. Based on Austrian company law, in particular Art 65 sec 1 subsec 8 joint-stock company act allows the acquisition of own shares whereby the exact motives need not be specified. According to a recent decision by the Austrian Administrative Supreme Court (VwGH 21.9.2016, 2013/13/0120 – bitte Link einfügen), such acquisition can only be deemed as a tax-neutral repayment of capital if there are no sensible business reasons to acquire the own shares and the acquisition is only done for the sole benefit of the shareholders. In all other cases, i.e. even if the acquisition may also be done for business reasons, the acquisition and re-sale of own shares is qualified as a taxable event.

Markus Vaishor

EU-Commission publishes plans to re-launch CCTB

In October 2016, the EU Commission proposed to re-launch the Common Consolidated Corporate Tax Base. The re-launched CCCTB will be implemented through a two-step process and will be mandatory for the largest groups in the EU. KPMG's EU Tax Center summarized the proposal (see [here](#)).

Ferdinand Kleemann, Markus Vaishor

Ministry of Finance on triangulation transactions that fail due to formal requirements

The third letter of the Federal Ministry of Education and Research (BMF) dated October 19, 2016 provides for a simplification in the case of failed triangular transactions due to formal requirements. Based on the information, which the BMF received in the course of a request to the Member States, for almost all the Member States of the Union (except for Denmark, Malta and the Czech Republic) the abstract confirmation of application of the triangular transaction rules by the financial administration is not necessary. The correct taxation in the country of destination is assumed in case the invoice or the intra-community sales listings have been corrected and there is no evidence of fraud or abuse. In Ireland and Latvia, the abstract confirmation of the financial administration is also not required under specific requirements.

Esther Freitag, Andreas Helnwein

Financial Investments of Private Individuals: Non-Deductibility of Incidental Acquisition costs in conformity with the Austrian Constitution?

In contrast to business investors, private investors must not deduct incidental acquisition costs when determining the tax base for capital gains of financial investments. The Austrian federal fiscal court (BFG) has challenged the conformity of that restriction with the constitution and passed this question on to the Austrian Constitutional Court ([BFG 27.09.2016, RN/7100005/2016](#)).

Nicole Tuechler

Registration of safety devices and cash registers via FinanzOnline

The registration of the signature and seal creating devices, as well as the registration of the related cash registers, is available via FinanzOnline since August. This registration is mandatory ("Registrierkassensicherheitsverordnung", RKSv) and has to be completed for existing cash registers until March 31, 2017 at the latest."

Gerald Punzhuber, Ernst Müller

Cancellation of the daily marginal earnings threshold

Due to the cancellation of the daily marginal earnings threshold for all employment relationships beginning with 2017, only the monthly marginal earnings threshold in the amount of EUR 425.70 (2017) has to be considered. If, in the case of fixed-term employments with an agreed duration of at least a month, or for employments of indefinite duration, the employment starts or ends in the course of the respective calendar month, the income due for the whole calendar month is relevant.

Alfred Shubshizky

Obligation to pay municipal tax in the case of hiring-out of employees

In the Wage Tax Protocol 2016, it is clarified that, regardless of the duration and the nature of the assignment (commercial assignment or intra-group assignment) in the case of out-bound hiring-out of employees, no municipal tax is due. In this respect, changes in legislation are expected starting with 2017.

Alfred Shubshizky, Katharina Daxkobler

Obligation to pay non-wage labor costs for employee social security contributions borne by the employer in the context of partial retirement agreements

According to a recent decision of the Austrian Administrative Supreme Court non-wage labor costs have to be paid for employee social security contributions that are borne by the employer in the context of partial retirement agreements.

Alfred Shubshizky, Katharina Daxkobler

Mutual Administrative assistance becomes effective in relation to China as from Jan 1, 2017

The Austrian tax law demands the existence of a comprehensive mutual administrative assistance in various cross-border tax cases (e.g. integration of foreign non-EU group members in tax groups within the meaning of section 9 para 2 of the Austrian corporate income tax act). The mutual assistance can inter alia be derived from the OECD Convention on Mutual Administrative Assistance, which – in respect to China – will be valid as from Jan 1, 2017 onwards.

Gerhild Bednar, Thomas Hahn

Mexican tax residence certificates on Austrian forms

In the course of a mutual agreement procedure based on article 24 of the Austrian-Mexican DTT both tax authorities agreed upon the fact that Mexican tax residence certificates required for a direct relief of withholding taxes at source or a tax refund of withholding taxes in Austria respectively may be obtained on the relevant Mexican forms. This agreement represents an administrative simplification for taxpayers, since previously Austrian tax authorities were only obliged to accept tax residence certificates issued on the relevant Austrian forms (e.g. ZS-QU1 or ZS-RE1).

Florian Rosenberger, Thomas Hahn

International newsletter

Tax newsletters from various countries in the KPMG-network can be found [here](#).