



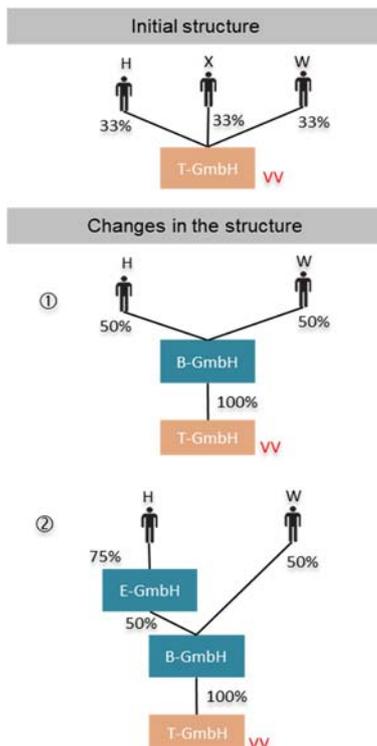
Austrian Ministry of Finance published draft changes to Austrian Corporate Income Tax Guidelines

Recently, the Austrian Ministry of Finance published a 168-page draft changing the Austrian Corporate Income Tax Guidelines. Mainly, information letters issued by the Ministry of Finance and recent jurisdiction by the Austrian Administrative Supreme Court are incorporated into the Corporate Income Tax Guidelines.

Ferdinand Kleemann / Markus Vaishor

Austrian Administrative Court: loss-trafficking rule not applicable upon change of indirect shareholder

As a general rule, a company's tax loss carry-forwards can be utilized indefinitely. However, tax loss carry forwards are disallowed, if the identity of the taxpayer changes following a significant change of the organizational, economic and shareholder structure. All three requirements must cumulatively be fulfilled in order that tax loss carry-forwards are disallowed.



A 75 % change in the shareholder structure is deemed as significant, unless the change results from a heritage or a gift.

Recently, the Austrian Federal Finance Court (BFG) came to the conclusion that the above-describe loss trafficking rules do not apply, if the indirect shareholder structure did not change even though the direct shareholder changed.

However, the Austrian Administrative Supreme Court confirmed that in the case at hand a significant change of the shareholder structure was made. Thus, the tax loss carry-forwards ceased to exist since the other two criteria were fulfilled, as well. According to the Austrian Administrative Supreme Court there is no "look through" approach for the purposes of the Austrian loss trafficking rules.

As a consequence also transactions within a group of companies may lead to the dissolution of the tax loss carry-forwards, if the direct shareholder changes significantly. However, if e.g. a whole group is acquired by a new shareholder, no adverse tax consequences for the tax loss carry-forwards of any indirect Austrian subsidiaries should be triggered.

Markus Vaishor / Lena Unterluggauer

Is there a permanent establishment also in cases of joint use?

The Austrian Ministry of Finance recently commented a case in which a German company carries out warranty work on the premises of its Austrian customer. Although the German company has no authority to dispose over the premises, the Austrian Ministry of Finance no longer wanted to rule out the fact that the mere right of joint use of the premises might constitute a permanent establishment in the light of recent OECD developments.

Florian Rosenberger / Nicolas Mitteregger

Consignment stock rules in relation to Germany

A few EU-member states (amongst others Austria) apply simplification rules in regard to consignment stocks, according to which the intra-community supply is effected at the time of withdrawal of the goods from the consignment stock. Generally, the simplification rule is not applicable in relation to Germany as there is no comparable simplification rule in Germany. As of 1st January 2018, the German VAT Guidelines decree will be amended as follows:

In case that the recipient of the supply of goods is known as of the beginning of the transport, the economic ownership is transferred at this time, as well. Even in case the goods are delivered to a warehouse and after a short period withdrawn by the recipient, the supply of goods (and not a deemed intra-community supply) is effected.

Consequently, it is now questionable if this is a comparable rule and if consequently the simplification rule in regard to consignment stocks is also applicable in relation to Germany.

Esther Freitag

Amendments to the Hungarian VAT Act – obligatory daily electronic transfer of domestic invoices as of 1st July 2018.

As of 1 July 2018, new invoicing and reporting regulations will be introduced in Hungary. This data provision obligation will be introduced in relation to outgoing invoices (domestic sales invoices only), provided that they are issued by an invoicing software (i.e. not only e-invoices but all invoices issued by an invoicing software will be in the scope of the new legislation) and exceeding a HUF 100.000 threshold.

Esther Freitag / Norbert Ungar

Stamp duty for rental for residential purposes was abolished

According to the Austrian Stamp Duty Act, written contracts on the rental of real estate are subject to a 1 % duty whereby the tax base depends on the fees, the length and conditions of the contract. Recently, the stamp duty was abolished for the rental of properties for residential purposes. However, rental for other purposes (e.g. office, logistics etc) is still subject to stamp duty.

Markus Vaishor

Energy tax rebate also for service providers? – Austrian Supreme Administrative Court refers questions on State aid to the EU Court of Justice for a preliminary ruling

It continues to remain undecided until when service providers can claim an energy tax rebate. In the course of an appeal by the tax authorities, the Austrian Supreme Administrative Court decided to ask the Court of Justice several questions about the EU State aid rules. Service providers can only request an energy tax rebate for 2012 until the end of 2017.

Ferdinand Kleemann / Kasper Dziurdź