

Government Approves Draft Tax Amendment Act 2023

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On 14 June 2023, the government approved the draft Tax Amendment Act 2023 (*Abgabenänderungsgesetz 2023*) amending various Austrian tax laws. Key elements of the draft bill are as follows:

New rules regarding the attribution of dividends and the crediting and refunding of capital gains tax

To create legal certainty and improve enforcement options, the draft bill provides explicit statutory provisions for attributing dividends and the crediting and refunding of capital gains tax in the case of centrally held shares. For attributing dividends, in deviation from the general rules and the former practice, in the future the economic ownership on the "record date" is to be used per stock exchange practice. This is the date when the central securities depository determines the entitlement, i.e. the first trading day after the day on which the shares are traded for the first time without entitlement to payment.

The draft bill further provides that the full credit or refund of capital gains tax withheld on the income requires that, in the case of timely transfers around the record date, the taxpayer bears a reasonable economic risk and complies with a minimum holding period. During this period the taxpayer is the uninterrupted beneficial owner of the underlying shares. A reasonable economic risk presupposes that the taxpayer bears the risk of a decline in the value of the shares to at least 70%. The minimum holding period will be 45 days and must be reached within 45 days before and 45 days after the record date. Failing to do so, taxpayers can only credit the tax or receive a refund if the transfer does not result in a tax benefit. However, this will not apply if the income for which the credit or tax refund is granted does not exceed EUR 20,000 in the assessment period.

Withdrawing land, buildings and building rights at book values

The government extends the existing rules on the withdrawal of land from business assets to also cover buildings and building rights. From 2024, taxpayers must perform such withdrawals from business assets at tax book value instead of market value. This amendment aims to facilitate the non-business use of vacant business buildings, e.g. for residential purposes.

Comparison of types in the context of the corporate income tax liability

For legal certainty, foreign legal entities that are comparable to domestic legal persons under private law shall be explicitly mentioned in section 1(2) No 1 of the Corporate Income Tax Act. This is to ensure that the classification of foreign legal entities as corporate tax subjects for limited and unlimited corporate tax liability is carried out equally under the comparison of legal types.

Directive on cross-border conversions, mergers and divisions (Mobility Directive (2019/2121))

The draft bill expands the Reorganisation Tax Act by tax regulations which, based on the existing regulations for mergers, consider a possible restriction or creation of the taxation right of the Republic of Austria because of the demerger. These accompanying tax regulations will apply for the first time to reorganisations decided after 31 January 2023.

During the implementation of the EU Mobility Directive on cross-border transformations (seat transfers), mergers and demergers through the EU Reorganisation Act, accompanying tax measures in the Reorganisation Tax Act are also necessary. While the general income tax rules on relocation apply to the cross-border transfer of the registered office, the incorporation of the cross-border demerger into the Reorganisation Tax Act is provided for by the draft Tax Amendment Act 2023. The Austrian Reorganisation Tax Act will now also apply to cross-border splits and spin-offs for new formations. Therefore, the Amendment Act 2023 intends to supplement the Reorganisation Tax Act with provisions regarding a possible restriction of Austria's right to tax (in the case of an export demerger) as well as provisions for a possible accrual of the right to tax (in the case of an import demerger). The new regulations are strongly oriented towards the already existing regulations on cross-border mergers in section 1 of the Reorganisation Tax Act.

Implementation of findings in case C-378/21

Based on the ECJ decision in P GmbH (Case [C-378/21](#)), a trader who has shown a tax amount in an invoice that was calculated based on an incorrect tax rate is not liable for the wrongly invoiced amount under certain conditions. The draft bill amends the VAT Act not to require the correction of the invoice for eliminating the tax liability in such constellations.

Extinction of the customs debt does not lead to the extinction of the import VAT debt

In its decision of 7 April 2022 in Kauno teritorinė muitinė (Case [C-489/20](#)), the ECJ ruled that extinguishing customs debt for the reason provided for in Article 124(1)(e) of the Customs Code does not also lead to the extinguishment of the VAT debt for goods unlawfully imported into the customs territory of the European Union. The reason is that VAT law unlike customs law does not recognize an extinguishment of the tax debt. The draft bill amends section 26(1) of the VAT Act clarifying that Article 124(1)(e) of the Customs Code does not apply to import VAT.

Obligation to submit ruling requests electronically

As of 1 January 2024, taxpayers can submit information notices under section 118 of the Tax Code only via FinanzOnline.

The draft bill is still subject to approval by the parliament and the Federal Council.

