

Tax Amendment Act 2022: Digital Platforms Reporting Act (DAC 7) and other significant tax changes

On 19 July 2022 the Austrian Tax Amendment Act 2022 (*Abgabenänderungsgesetz 2022, "AbgÄG 2022"*) was published in the Austrian Federal Law Gazette.

With this newsletter, we would like to give you an overview of the most important legislative changes with regard to the implementation of the Digital Platforms Reporting Act (*Digitale Plattformen-Meldepflichtgesetz*), and amendments to the Income Tax Act (*Einkommensteuergesetz*), the Corporate Income Tax Act (*Körperschaftsteuergesetz*), the Reorganization Tax Act (*Umgründungssteuergesetz*) and the Value Added Tax Act (*Umsatzsteuergesetz*).

DIGITAL PLATFORMS REPORTING LAW

The Austrian Digital Platforms Reporting Obligations Act implements the Council Directive (EU) 2021/514 of 22 March 2021 (DAC 7). The Act obliges certain so-called platform operators that have their seat, place of management or permanent establishment in Austria, as well as platform operators that enable the exercise of a relevant activity in Austria or the leasing of property located in Austria, to report certain information.

Platform means any software, including a website or part thereof and applications, which is accessi-

ble to users and which enables providers to connect with other users for the purpose of directly or indirectly carrying out a relevant activity for those users. This includes any arrangement for the collection and payment of a consideration related to a relevant activity. Software that allows only the following without further intervention in the performance of a relevant activity however does not qualify to be a platform: processing of payments in relation to a relevant activity, users to list or advertise a relevant activity and redirecting or transferring of users to a platform.

Relevant activity means an activity carried out for consideration, which is either the letting and leasing of immovable property (including residential and commercial property as well as any other immovable property and parking spaces), a personal service, the sale of goods or the rental of any mode of transport. Personal service means a service involving time-based or task-based work performed by one or more individuals, acting either independently or on behalf of an entity, and which is carried out at the request of a user either online or physically offline after having been facilitated via a platform.

The reportable information includes inter alia data on the platform operator, such as in particular name, address, registered office, tax identification number, business names of the platforms and others) as well as on each reportable provider (in particular name, address, tax identification number, identification of the tax office account, information on remuneration and activity and others). This information obligation is aimed

to prevent tax fraud, tax evasion and tax avoidance through undisclosed income obtained via online platforms.

The respective information report must be submitted electronically by 31 January of the calendar year following the reporting period (calendar year). This information is to be exchanged with EU Member States and also with third countries with which a qualified agreement exists. In addition to the reporting obligations, the law also establishes numerous due diligence obligations, under which the platform operator is obliged to in particular collect certain information on other providers.

Violations of the obligation to register, the obligation to report or the due diligence obligations may be punished as a financial offence or a financial regulatory offence.

INCOME TAX ACT

Research premium

Until now, no research premium was available for the research work of sole proprietors, partners in a partnership or unpaid shareholders of a corporation. With the AbgÄG 2022 this is being amended and a fictional entrepreneurial wage in the amount of EUR 45 per hour of research performed (maximum EUR 77,400 per person and business year) can be taken into account when determining the research premium (14%). For this, the research activity demonstrably carried out in research and experimental development must be proven based on detailed documentation on the activity of the sole proprietor, partner or shareholder.

In addition, the application deadline for the research premium is to be redefined and detached from the legal validity of the tax return. Furthermore, in the case of research premiums that relate to several projects it will also be possible to settle a delimited part of a premium application by means of a separate notice.

Operating expenditure for public transport tickets

The expenses for weekly, monthly or annual tickets for means of mass transport, which are used for business-related and private journeys, can be deducted in the amount of 50% without further proof, if it can be credibly shown that the respective ticket is also used for business-related journeys. The possibility of taking into account the actual cost of as operating expense remains (keeping accurate records).

Other

For photovoltaic systems, the feed-in of up to 12,500 kWh of electrical energy is to be tax-free if the power of the respective system does not exceed the limit of 25 kWp.

Also in the calendar year 2022, a flat-rate supplement of 15% is to be taken into account in the calculation of the annual sixth salary (*Jahressechstsel*) in the case of short-time work, regardless of how long the respective employee was on short-time work.

CORPORATE INCOME TAX ACT Refund possibilities for corporations with limited tax liability

Corporations subject to limited tax liability that are resident in a third country shall in future have the possibility to have capital gains tax on portfolio dividends refunded upon application if comprehensive administrative assistance exists with the country of residence. The amendment is made in light of recent case law of the Austrian Higher Administrative Court.

REORGANISATION TAX ACT

No withdrawal tax on securities account transfers in the course of reorganizations

At present, despite the applicability of the Reorganization Tax Act, security account withdrawals or transfers in the course of reorganizations result in a tax on withdrawals and applicability of capital gains tax. With the AbgÄG 2022, a separate exception is being implemented, according to which a transfer in the course of a reorganization covered by the Reorganization Tax Act does not result in withdrawal taxation. In order for the custodian to refrain from deducting capital gains tax and to notify the tax office accordingly, the existence of a reorganization within the meaning of the Reorganization Tax Act must be substantiated by means of suitable documents.

New cause for determination of tax in the case of cross-border contribution of capital shares to EU/EEA corporations

Under the current legal situation, tax-dependent capital shares can be contributed to EU/EEA corporations by individuals and taxpayers subject to limited tax liability under the Reorganization Tax Act without this resulting in immediate taxation of the hidden reserves. In these cases, a determination of tax is only made upon, for example, the actual sale of the consideration shares granted for the contribution.

With the AbgÄG 2022 a new trigger for determining tax in case of such cross-border contribution of capital shares is being implemented. The new provision shall prevent undesirable arrangements after an exchange of shares with non-assessment through a combination of contribution and withdrawal measures. The tax liability shall thus be determined if the contributed capital shares are sold by the acquiring corporation and in a temporal connection with this, a tax relocation with respect to the consideration shares takes place.

VALUE ADDED TAX ACT

Railway traffic

Passenger transport in cross-border rail transport is also to be exempted from value added tax and thus treated equally with cross-border passenger transport by aircraft or ship.

Transfer of tax liability in the case of property rental

In accordance with the decision of the ECJ of 3 June 2021, C-932/19, *Titanium*, foreign entrepreneurs, who rent out domestic real estate in a country are not automatically deemed to be resident in that country. The previous administrative practice of the Austrian tax authorities, according to which foreign lessors of domestic real estate were treated as entrepreneurs resident in Austria, thus needed to be amended. Following this change in view, in cases in which domestic real estate was rented by foreign entrepreneurs to entrepreneurs in Austria the reverse charge system (transfer of tax liability to the recipient of the service) was applied.

Following the AbgÄG 2022, the reverse charge system shall no longer apply in case of renting out a property located in Austria for business purposes by an entrepreneur who does not operate his business in Austria. Instead, the foreign entrepreneur shall declare value added tax by way of assessment. Since no specific date is set for the amendment to enter into force, the amendment is deemed to enter into force on the day following its publication in the Federal Law Gazette.

Interest on value added tax

In light of EU and Austrian case law, interest on value added tax is to be introduced. The applicable interest rate shall amount to 2% above the base rate per year and shall be applied to tax credits as well as to tax claims. Interest begins to accrue 90 days after the submission of the advance value added tax return or annual return in the case of tax credits, or

from the 91st day after the due date in the case of tax claims. Interest on tax claims arising from annual returns is calculated from October 1 of the following year. Interest below EUR 50 will not be charged.

Other

The simplification rules for triangular transactions are extended to cover also chain transactions involving more than three persons. This is intended to help avoid disparities in relation to other member states.

The tax rate of 0% for supplies and intra-community acquisitions of protective masks is to be extended until 30 June 2023.

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