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Renewed COVID-19-related Measures to defer Tax Payments

Due to the current COVID-19 situation and the new protective measures to prevent an emergency situation in the intensive care units ("4th lockdown"), the Federal Ministry of Finance (BMF) expects that in many economic areas a sudden decrease in sales and a liquidity shortage will occur. In order to prevent these negative economic consequences of the COVID-19 pandemic and to enable entrepreneurs to bridge the current situation, the government enacted new COVID-19-related measures to defer tax payments.

This new legislative package includes special tax deferral arrangements (simplified application; no deferral interests until 31/1/2022) and the possibility of tax credits repayments despite tax liabilities until 31/12/2021. Furthermore, the option to redistribute the installments according to the COVID-19 installment payment model in phase 1 for a total of two times (previously this was possible once only) will be granted.

Simplified tax deferrals

Already in previous periods of the COVID-19 pandemic deferrals of tax liabilities could be applied under simplified conditions to prevent negative economic effects (as already reported: **Extension of COCID-19 Payment Facilities**). Due to the current critical situations, deferrals of tax liabilities shall be granted under the same terms and conditions – based on previous tax deferral arrangements, which were applicable until 30/6/2021. Therefore, tax authorities are supposed to grant all tax deferrals filled between 22/11/2021 and 31/12/2021 mandatorily (no discretion) until 31/1/2021, regardless of whether the immediate payment of the taxes constitutes a significant hardship for the taxpayer or whether the collectability of the taxes would be endangered by the deferral. Those deferral applications that have already been submitted since 22/11/2021, but before the new arrangements entered into legal force, must also be accepted mandatorily by the tax offices.

In addition, interest on tax deferrals will not be imposed until 31/1/2022. From 1/2/2022 to 30/6/2024 the interest rate on tax deferrals will be 2 % above the applicable base rate, which currently is at 1.38 % per year.

COVID-19 installment payment model

According to the currently applicable regulations regarding the COVID-19 installment payment model, a redistribution of the installment payments in the first phase (1/7/2021 until 30/9/2022) could be requested once. In order to enable all entrepreneurs to fulfill their obligations regarding the monthly installment payments, an additional request to redistribute the installment payments will be granted. Thus, taxpayers should be able to redistribute their installment payments through the first phase two times.

In addition, taxpayers who have applied for the COVID-19 installment payment model by June 2021 will – in line with the tax deferral interests – not be obligated to pay interest from 22/11/2021 until 31/1/2022.

Repayment of tax credits

Furthermore, as was already possible before 1/10/2020, taxpayers will be allowed to request a repayment of tax credits between the period from 22/11/2021 to 31/12/2021, regardless of tax deferrals and tax liabilities in their tax account. However, a repayment request regarding self-assessment taxes (e.g. tax credit regarding monthly VAT return) has to be filed via FinanzOnline on the same day the tax return is filed. In the case of other tax credits (e.g. assessed income tax credits) the repayment request can be filed within one month after the tax credit was assessed.

Summary

In order to prevent the COVID-19-related negative economic consequences, renewed arrangements to defer tax payments have been granted. The tax offices are supposed to grant all tax deferral requests filed between 22/12/2021 and 31/12/2021 – regardless the legal requirements regarding Sec 212 Fiscal Federal Code – mandatorily until 31/1/2022. In addition, interest on tax deferrals will not be imposed until 31/1/2022.

Furthermore, taxpayers now have an additional option to redistribute their installment payments regarding the COVID-19 installment payment model in the first phase. As a result, the installment payments can in total be redistributed two times within the first phase. This measure should help the entrepreneurs to bridge liquidity shortages and to ensure they can fulfill their payment obligations.

Last but not least, the taxpayers will be allowed to request a tax credit repayment until 31/12/2021 regardless of a tax liability in the tax account and regardless of a tax deferral.

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New Turnover Loss Bonus III ("Ausfallsbonus III")

The already familiar turnover loss bonus has been extended for the periods November 2021 until March 2022. In comparison to the turnover loss bonus I ("Ausfallsbonus I") for the periods November 2020 until June 2021 and to the turnover loss bonus II ("Ausfallsbonus II") for the periods July 2021 until September 2021 the turnover loss bonus III ("Ausfallsbonus III") has some new requirements in addition to the already known. These are described below:

Who is entitled to apply for the turnover loss bonus III?

Companies can request the turnover loss bonus III with a turnover loss of at least 40 %, whereby for the calendar months November and December 2021 a loss of 30 % is sufficient.

In addition, the following requirements must be fulfilled:

- Headquarter or establishment in Austria;
- Operational activity in Austria with income from self-employment or business income;
- no insolvency proceedings and no fiscal penalties due to intentional tax evasion in the last five years (unless it is only a fine not exceeding EUR 10.000 or it only concerns a minor fiscal offense which is called a "Finanzordnungswidrigkeit");
- Not more than 3 % of the workers are dismissed (only applies to companies with over 250 workers), unless there is an appropriate explanation;
- Execution of damage-reducing measures to minimize the turnover loss;
- No profit distributions between 1 December and 30 June 2022.

As with the turnover loss bonus II, there is also an exclusion criterion for companies that, despite having the opportunity of short-time work and maintenance of the business model, have reduced the number of employees with the aim to lower the turnover and maximize the turnover loss bonus. What is new, is that penalties due to the failure to comply with corona measures lead to the loss of the turnover loss bonus III (eg repeated failure of entry checks).

How to calculate the loss of turnover?

The turnover loss is calculated by determining the difference between the turnover of the period under observation and the comparison period. The period under observation includes the calendar months between November 2021 and March 2022. For the months of November 2021, December 2021 and March 2022, the corresponding calendar months from 2019 are considered as comparison period. For the months of January and February 2022, the corresponding months from 2020 are considered as comparison period.

How high is the replacement rate?

The replacement rate depends on the industry and is between 10 % (e.g. car dealers) and 40 % (e.g. gastronomy). The turnover loss bonus III is capped at EUR 80,000 per calendar month. However, the amount from the turnover loss bonus and short-time work cannot exceed the turnover of the comparison period.

The maximum amount paid-out per company is capped at EUR 2,3 Mio. Certain corona-grants must be deducted from this bonus (see below). For companies that were in financial difficulties on 31 December 2019 special regulations apply (except for small-/ micro-businesses). In such cases, the general maximum amount is EUR 200.000.

How and until when is it possible to request the turnover loss bonus III?

The turnover loss bonus III can be requested from the 10th of the observation period following month until the 9th of the observation period fourth following month. Hence, for November 2021 the filing of the application is already possible since 10 December 2021.The application may be filed by the company itself or the tax advisor.

Which corona-grants reduce the maximum amount of EUR 2,3 Mio?

The following corona-grants must be taken into account:

- Turnover replacement (II);
- Fix cost bonus 800.000;
- Turnover loss bonus I and II;
- Covid-19-loan guarantees to the extent of 100% that have not yet been repaid;
- Covid-19-grants from federal states, municipals or regional economic or tourism funds;
- Certain Covid-19 grants from the Non-Profit-Organization-fund.

Those grants must be added up and are reducing the maximum amount of EUR 2,3 Mio.

It is not required to consider the short-time work bonus, fix cost bonus I, 90 %- and 80 % guarantees of the AWS or the ÖHT and grants from the hardship fund. It is now also clarified that the turnover loss bonus III does not reduce the maximum amount of an already granted fix cost bonus 800.000 as well as an already granted turnover loss bonus II in the amount of EUR 1,8 Mio.

Is the turnover loss bonus III also granted to start-ups?

Companies that have already achieved a turnover before 1 November 2021 are entitled to apply. There are exceptions to this rule if an existing business is transferred for certain reasons (eg retirement of previous owner and handover to close relatives) after the specified deadline. In cases of a handover of existing businesses, the comparison turnover is based on the respective comparable economic unit. In case of start-ups without having revenues in the comparison period, the average of the monthly revenue from the first-time revenues were achieved is used as a basis for comparison.

Where can I find more details?

More details can be found in the relevant **guideline** as well as under the **FAQ** of the BMF, which are continuously updated and expanded (only available in German).

Conclusion

The turnover loss bonus III is intended to provide new liquidity relatively easily and quickly to companies affected by decrease in turnover. In case the turnover loss amounts to 40 % (or 30 % for the months of November and December 2021), a replacement rate of between 10 % and 40 % applies. The turnover loss bonus is capped at EUR 80,000 per month. Caution is advised concerning new specifications (eg profit distributions between 1 December 2021 and 30 June 2022 are harmful as well as certain penalties due to the failure to comply with Corona measures).

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New Tax Regulations for Christmas Vouchers, Meal Vouchers and the Corona Bonus

On December 16, 2021, tax regulations regarding Christmas vouchers instead of a Christmas party, meal vouchers as well as the Corona bonus were either decided or extended. The following overview is intended to provide a brief summary of these issues

Christmas vouchers instead of a Christmas party

If the Christmas party in 2020 was cancelled due to corona, employers had the option of granting their employees vouchers of up to EUR 365 instead, with tax relief. However, this only applied if the benefit from participation in company events, such as a summer party, could not be used or could not be used in full due to the Covid pandemic.

Essentially, this tax benefit was only valid for the year 2020, but was recently extended for the year 2021 by resolution of the National Council. Due to the fourth Corona wave and the subsequent lockdown, many company Christmas parties had to be canceled this year as well, so companies once again have the option of converting this tax allowance into a voucher campaign (cf. § 124b Z 382 Austrian Income Tax Act (AITA)).

The vouchers can be issued retroactively from November 1, 2021 to January 31, 2022. The purpose of the vouchers is to support the domestic economy, so they must be redeemable in trade, gastronomy or other service providers of the economy. The pro rata costs of any company event held nevertheless (summer party, company outing, etc.) must be deducted from the maximum amount of the voucher for each participant. In addition, it is still possible to give employees gifts or vouchers up to a value of EUR 186,- tax-free as part of a "company event". As is well known, the issuance of vouchers itself is be considered as a company event.

Meal vouchers now also in the home office

Changes will also be made regarding meal vouchers provided by the employer (cf. § 3 (1) Z 17 AITA). From 2022 onwards, the tax exemption for vouchers in the amount of EUR 8,- per day shall also apply to those meals of the employees that are prepared or delivered by a restaurant or a delivery service and consumed at the employees' home. Meals prepared by supermarkets and delivered by a delivery service on the other hand are not covered by this exemption. Also covered by the exemption is the pick-up of meals from a business (take-away).

Extension of tax-free Corona bonus

It was also decided that bonuses and allowances for employees in connection with the Covid crisis will continue to be exempt from tax and social security contributions up to an amount of EUR 3,000 this year, provided that this benefit was not already paid before the pandemic (cf. § 124b Z 350 lit a AITA). There is no restriction on the tax exemption to certain industries or professions. The payment of the premium can also be made in the form of vouchers as well as on a one-off basis or in partial amounts. It should be noted that this regulation only applies if the payment is made by February 2022.

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Amendments in the Government Bill regarding the Taxation of Cryptocurrencies in the Eco-Social Tax Reform Bill 2022

The government bill of the ecosocial tax reform law 2022 part I (Ökosoziales Steuerreformgesetz 2022) published on December 15, 2021 includes extensions compared to the draft, especially with regard to the definition of cryptocurrencies and related terminology. Furthermore, the obligation to deduct the capital yield tax (KESt) is postponed by one year to income realized as of January 1, 2024, the group of persons obliged to deduct KESt is extended and transitional regulations are added.

Definition of cryptocurrency

The notes to the government bill state that non-fungible tokens (NFTs) which qualify as non- transferable assets, and asset tokens, which are based on real assets (e.g. securities and real estate), shall not to be subsumed under the fiscal definition of a cryptocurrency. Stablecoins, whose value is intended to depend on the value of an underlying legal currency or other asset, shall qualify as cryptocurrency.

Staking und Hardfork

It is clarified that only cryptocurrency units acquired through classical staking - i.e., through the use of units to enable the confirmation of a transaction in the course of the (delegated) proof of stake - shall fall under the tax exemption regarding current income from cryptocurrencies. Taxation shall occur at a later date upon disposal or equivalent event (in particular in case of exit tax). Other transactions, even if they are referred as staking, shall not generate current income from cryptocurrencies.

Furthermore, the exemption criteria have been expanded to include the receipt of cryptocurrencies in the context of a spin-off from the original blockchain, the so-called hardfork. Acquisition costs of zero shall be assumed for the cryptocurrencies received, which shall result in a tax liability in the event of a subsequent sale.

Deadlines and transitional regulations

The new taxation regime for income from cryptocurrencies shall enter into force on March 1, 2022 and shall apply to cryptocurrencies acquired after February 28, 2021 ("new assets").

Cryptocurrencies acquired before March 1, 2021 ("old assets") and used after February 28, 2022 to generate current income from cryptocurrencies under the new taxation regime shall be taxed at the special income tax rate of 27.5 %. This shall apply in case the exception of tax exemption regarding current income for Staking, Airdrops, Bounties or Hardforks does not apply. In addition, it is clarified that the cryptocurrencies thus acquired shall constitute "new assets" in any case.

Upon request of the taxpayer, the special income tax rate of 27.5% shall be applied for income from cryptocurrencies realized after December 31, 2021 and before March 1, 2022 instead of the progressive income tax rate of up to 55%. Losses incurred as a result can be offset against other capital income subject to the special income tax rate of 27.5 %.

Capital yield tax withholding obligations

The obligation to withhold capital yield tax shall be mandatory for domestic capital income that accrues as of January 1, 2024. However, agents obliged to deduct capital yield tax should be free to opt to withhold voluntarily the tax on capital income and gains starting already in the calendar years 2022 and 2023, provided that the special tax rate of 27.5 % is applicable.

There shall also be a new possibility of a voluntary capital yield tax deduction as of March 1, 2022 for income from uncertificated derivatives, which may also relate to cryptocurrencies, also in those cases in which investment firms make use of a licensed payment service provider, an e-money institution or a credit institution with regard to capital yield tax withholding and payment. Foreign investment firms, payment service providers and e-money institutions are also affected, provided they are domiciled in a country with comprehensive mutual administrative assistance on tax matters and a tax representative has been appointed.

Conclusion

The government bill contains some clarifications and amendments regarding cryptocurrencies. We are looking forward to the final law, which shall be announced in January 2022. Furthermore, it remains to be seen in which form and at what exact date the regulations regarding taxation of crypto funds and the associated tax reporting (distributions and deemed distributed income) will be implemented. We will keep you informed on further developments in the course of the legislative process.

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The most important new Provisions of the Austrian Act against Wage and Social Dumping

As of 1 September 2021, the amendment to the Austrian Act against Wage and Social Dumping ("Lohn- und Sozialdumping Bekämpfungsgesetz – LSD-BG"), which had been expected for quite some time, entered into force. The modifications are intended to eliminate existing ambiguities and contradictions with the case law of the European Court of Justice (ECJ) as well as the EU-Posted Workers Directive and the corresponding amending legislation. Moreover, the changes are also intended to consider the experience gained in practice in connection with the application of the provisions. The new legal provisions are applicable to postings and labor leasing assignments that began after 31 August 2021.

The following is an overview of the most significant changes:

Service contract and ongoing employment relationship

According to the amendment of the LSD-BG, a corresponding service contract between the posting company and the service recipient in Austria as well as a valid employment relationship between the posting company and the posted worker are now required for cross-border postings.

Extension of the exceptions

Furthermore, the exceptions with regard to the scope of application of the LSD-BG were extended. The following provides a summary of categories of work activities which are excluded from the scope of application of the LSD-BG:

- employment relationships with entities of the public law;
- postings within the framework of a company group: the list of services that can be performed within the scope of the exemption has been extended;
- operations for training purposes;
- posting and leasing of employees with specific income levels (monthly gross wage in the last two remuneration periods before and during the posting or leasing, on average at least 120 % of 30 times of the daily maximum valuation basis pursuant to the General Social Security Act [Allgemeines Sozialversicherungsgesetz – ASVG; amount in 2021: EUR 6,660, expected amount in 2022: EUR 6,804])
- mobile employees;
- postings or leasing on the basis of exchange, training, continued education or research programs, or as a seconded or leased lecturer at universities without a time limit;
- posted employees of a seller or lessor for the delivery or of the buyer or lessee for the collection of goods;
- posting or leasing for the initial commissioning or use of delivered goods.

Equal treatment with domestic employees

Employees posted and leased to Austria are now treated the same as Austrian employees if the actual posting or leasing from the EEA or Switzerland exceeds a period of 12 months (or 18 months in exceptional cases). From this time on, the Austrian labor law standards are applicable in their entirety, insofar as these are more favorable than the corresponding standards of the posting country. Exceptions exist with regard to the regulations of the Corporate Staff and Self-Employment Provision Act and the Corporate Pension Act , as with regard to the formalities and conditions for entering into and the termination of employment contracts.

Entitlement to travel, accommodation and meal expenses

The new provisions now clarify that posted employees are entitled to travel, accommodation and meal expenses incurred during the posting in Austria. The amount of the reimbursement is based on the standard compensation amount for comparable employees of comparable employers in Austria.

Simplifications of notification requirements

It is now not an infringement of administrative law to mistakenly use an incorrect form for the notification of a posting or leasing now (for postings, the ZKO3 form has to be used, and for secondments, the ZKO4 form).

Framework notifications ("Rahmenmeldungen")

Framework notifications can be submitted for employees who are repeatedly engaged across borders for the performance of service or service procurement contracts or within a company group. In the past, a framework notification was only possible for a maximum period of three months. Since the amendment entered into force, framework notifications can be submitted for a maximum period of up to six months.

Maintenance of wage records

Simplifications were implemented in connection with the provision of the necessary wage documents in the event of a posting or leasing. It is now possible to provide the employment contract, the employee registration for social insurance, as well as other wage documents in German or English. If employees – who are not mobile employees – are not posted for more than 48 hours, it is sufficient to provide the employment contract as well as the working time records.

Length of availability of wage records

In the course of the amendment of the "LSD-BG", the powers of the financial police were also extended. The latter can now demand the provision of the wage documents up to one month after the end of the posting or leasing. Therefore, it is necessary to keep the relevant documents available even after the termination of the posting or leasing.

Aggravation of administrative penalty provisions

With the entry into force of the amendment, the so-called "accumulation principle" was repealed. Accordingly, there is now one single violation of administrative law regardless of the number of employees affected by the infringement. At the same time, however, new penalty ranges without minimum penalties were implemented. Accordingly, penalties of up to EUR 400,000 are possible, depending on the type and severity of the violation of administrative law. The conditions for imposing a payment stop, a payment ban and the provision regarding security payments have also been amended.

Information requirements for leasing

It is now stipulated that the foreign employer (lessor) of a worker leased across borders to Austria has the duty to inform the local employer (lessee) and the employee with regard to the applicable statutory labor law provisions and the provisions of the collective bargaining agreement applicable regarding the remuneration of the employee.

Conclusion

The amendment made some necessary changes to make the application of the "LSD-BG "easier from a practical point of view. Nevertheless, cross-border postings and leasings to Austria continue to be very complex issues with numerous ambiguities and pitfalls, where employers are recommended to consult legal experts. The Deloitte Legal team will be happy to assist you with any questions you may have.

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The Austrian Consumer Warranty Act

On 7 July 2021, the Austrian National Council passed the new Austrian Warranty Directive Implementation Act ("Gewährleistungsrichtlinien-Umsetzungsgesetz"), which, in addition to amendments to the warranty provisions in the Austrian Civil Code ("Allgemeine bürgerliche Gesetzbuch"; "ABGB") and the Austrian Consumer Protection Act, primarily introduces a new Austrian Consumer Warranty Act ("Verbrauchergewährleistungsgesetz "; "VGG"). The new VGG will enter into force on 1 January 2022. This article first deals with the scope of application of the VGG and then summarizes the most important amendments the Act foresees.

Scope of Application

The VGG is generally only applicable to contracts between entrepreneurs and consumers for (i) the purchase of movable objects (goods) and for (ii) the provision of digital services. Also covered by the VGG are contracts for the sale of goods that are yet to be manufactured, hence also contracts for work and services similar to sales contracts. In addition, contracts for the provision of digital services are also covered by the VGG if the consideration does not consist of a payment but of the transfer of personal data. One cannot agree to deviating provisions than to those of the VGG if the deviating provisions are to the detriment of consumers.

The most important innovations of the VGG

Definition of deficiency

Forthcoming, in addition to the contractually agreed characteristics, the entrepreneur is also responsible under warranty law for ensuring that the goods or the digital service have the objectively required characteristics. These objectively required characteristics are – in contrary to the usually required characteristics in the ABGB – listed in the VGG: the goods or the digital service must (i) be suitable for the purposes for which such goods or digital services are usually used, (ii) correspond to a sample or a specimen or a test version or "preview", (iii) be equipped with the accessories that the consumer can "reasonably expect," and (iv) have the quantity, quality, durability, functionality, compatibility, accessibility, continuity, security, and other characteristics that are customary for such goods or digital services. Any deviation from this provision requires the express and separate consent of the consumer.

Updating obligation of the entrepreneur

Another new provision in the VGG is the obligation of the entrepreneur to update goods with digital elements (eg navigation devices or smartphones) and digital services, which as an exception also applies to contracts concluded between entrepreneurs. The entrepreneur must provide those updates that are necessary to ensure that the goods or digital services continue to comply with the contract. Due to the obligation to provide updates, the entrepreneur may now be subject to a warranty obligation by reason of a failure to provide updates, even if the quality of the service object was in conformity with the contract or free of defects at the time of transfer. The contractor must therefore provide the necessary updates (during certain periods).

Extension of the presumption period of defectiveness

As provided in the ABGB, the VGG also recognizes the presumption of defectiveness upon handover of the object of performance if the defect becomes apparent within a certain period of time after handover. However, in contrast to the regulations in the ABGB, the presumption period under the VGG is one year from handover and thus twice the period of six months applicable under general warranty law.

Distinction between warranty period and limitation period

A practice-relevant new regulation relates to the time limit regime of the VGG, which for the first time distinguishes between warranty periods and limitation periods. The former refers to the period within which the defect must have occurred in order to trigger warranty claims by the transferee against the transferor. The limitation period, on the other hand, is the period of time available to the transferee to assert his warranty claims in court. The warranty period is two years and begins with the transfer of the goods or with the provision of the digital service. What is new is that after the warranty period has expired, an additional limitation period of three months is provided for, within which the defect must be asserted (in court if necessary).

Conclusion

As a result, the VGG improves the rights of consumers, in particular due to the extension of the warranty to digital services and the extension of the presumption period of the defectiveness of the performance object to twelve months. For entrepreneurs - due to the difference in the scope of application of the ABGB and VGG - it is now recommended to make a distinction with regard to consumer status and the type of contract.

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Administrative High Court decides on Evaluation Principles for Non-Profit Entities

The Administrative High Court has recently decided on questions of the valuation of shares in non-profit limited liability companies and the admissibility of partial write-downs by their shareholders. Moreover, the Administrative High Court dealt with some fundamental questions in connection with tax-privileged (non-profit) legal entities (Administrative High Court 10. June 2021, Ro 2019/15/0007).

Facts

A holding company (owned by a religious order) held 100% of the shares in two non-profit limited liability companies, which were operating hospitals. The holding company also provided management services to the two companies which constantly generated losses. Due to the loss situation of the companies, the holding company wanted to partially write-down the investments and offset these write-downs with taxable income (resulting from its function as the parent company of a tax group with other for-profit subsidiaries). The tax office and later also the Tax Appeals Court did not accept the partial write-downs on the participations in the non-profit subsidiaries.

Decision of the Administrative High Court

In its decision, the Administrative High Court addressed several fundamental questions:

Participations as business assets?

The tax office did not accept the write-down, inter alia, with reference to the lack of the business asset status of the investments. The Administrative High Court stated that there is in any case a relevant factual connection between the provision of services for consideration (management services) and the shareholdings and that the shareholdings must therefore be regarded as necessary business assets of the holding company. According to the Administrative High Court, however, even in the absence of services rendered by the holding company to its subsidiaries the shares could at least be qualified as arbitrary business assets, so that in this case the status as business assets would also be achieved.

Participations as a hobby-activity?

The Administrative High Court also rejected the qualification of the participations as a hobby-activities ("Liebhaberei") which was argued by the tax office. In the opinion of the Administrative High Court, the management services carried out by the holding company and the shareholdings must be viewed together. An isolated view of the (profitable) management services on the one hand and the (profitless) shareholdings on the other hand is not permissible. Rather, the overall activity of the holding company must be considered.

Proof of impairment?

Finally, the Administrative High Court commented on the question of the valuation of the shares in a non-profit limited liability company. Preliminary, it must be stated that non-profit limited liability companies must not be profit-oriented due to the tax requirements for non-profit legal entities on the one hand and on the other hand they are not allowed to make profit distributions to their shareholders. The methods usually used for the valuation of the shares in limited liability companies, which focus on the future cash inflows resulting from the shares (profit distributions), can therefore not be applied to non-profit limited liability companies. Instead, according to the Administrative High Court, the so-called substance value or reconstruction value can be used. This is the amount that would have to be spent on (re-) establishing the assets of the subsidiary. In the present case, these were the current replacement costs of the assets of the hospitals operated by the subsidiaries (i.e. in particular the current construction prices for the buildings owned by the companies and the current market prices of the medical equipment). A potential interest of competing market participants in the shares in the company must also be considered in the valuation. In any case, a mere reference to the sum of the subsidiary's assets at book values (less liabilities) or a reference to the net loss for the year does not constitute adequate proof of an impairment of the shares.

Result

The statements of the Administrative High Court are generally to be welcomed and offer an indication of the question of the valuation of shares in non-profit limited liability companies, which has not yet been conclusively clarified.

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Amendments to Intrastat Declarations as of the Reporting Year 2022

Intrastat declarations via RTIC

As of the reporting year 2022, the previously available reporting applications IDEP/KN8.NET, the transmission via EDIFACT as well as the submission of an Intrastat declaration via paper are no longer available. Thus, from the reporting year 2022 onwards, the reporting tool RTIC (Reporting Tool Intra Collect), which is embedded in the Statistics Austria portal, will be the only interface for submitting Intrastat declarations. The decisive factor for the change in the reporting modalities are the foreign trade regulations by the European Business Statistics (EBS), which will enter into force throughout the EU as of the reporting year 2022.

RTIC test

The reporting tool RTIC, which was introduced several years ago, can be tested by means of the test application "RTIC-Test" in the Intrastat portal of Statistics Austria. The application, which was developed solely for test purposes, offers the opportunity to familiarize with the reporting tool RTIC, which will be mandatory as of the reporting year 2022. Within the scope of the RTIC test application, no Intrastat declarations can be submitted, and it is further not possible to transfer the prepared declarations into the actual RTIC reporting tool. However, within the test application, the preparation of Intrastat declarations under the EBS-amendments can already be tested before the implementation of the below mentioned amendments.

Increase of the assimilation threshold

In general, businesses are required to file Intrastat declarations in case that their shipments of goods to EU Member States or their receipts of goods from EU Member States exceeded the assimilation threshold of EUR 750,000 in the previous year. In case the threshold is exceeded in the current calendar year, reports must be submitted to Statistics Austria as of the corresponding month in which the threshold is exceeded. As of the reporting year 2022, the assimilation threshold for Intrastat will presumably be increased from EUR 750,000 to EUR 1,200,000 based on the European Business Statistics (EBS). Due to the presumed increase of the assimilation threshold as of the reporting year 2022, businesses subject to reporting requirements are encouraged to re-examine their respective reporting obligations.

Content amendments starting reporting year 2022

In order to meet the requirements of the European Business Statistics (EBS) as well as the EU-wide mandatory exchange of microdata, the following amendments in the content of Intrastat declarations will take place in Austria at the beginning of the reporting year 2022:

- The reporting of the statistical procedure and the mode of transport will be omitted on both the import and the export side.
- A two-digit code must be entered in the Intrastat declaration for the type of transaction. In this context, it is further crucial to take the adaption of the respective codes as of the reporting year 2022 into consideration.
- The recipient UID is mandatory for export declarations.
- As of the reporting year 2022, the country of origin must be reported not only for imports but as well for exports.
- The variables invoice amount ("Rechnungsbetrag") and statistical value ("Statistischer Wert") are no longer to be rounded to full euros as of the reporting year 2022 as they are to be declared specifying two decimal digits.
- The quantity variables special unit of measurement ("Besondere Maßeinheit") and net mass ("Eigenmasse") are to be reported with three decimal digits.
- The invoice amount as per invoice must be reported for all transactions of goods starting the reporting year 2022. However, if no invoice is available, the market price must be stated in the corresponding Intrastat declaration.

Technical amendments in connection to the reporting tool RTIC

For the purpose of submitting declarations via the RTIC tool, solely files with the extensions .csv, .txt or .asc can be processed in order to import data records into the Statistics Austria portal. Furthermore, merely files with permanent column allocations of variables can be used for data imports from the reporting year 2022 onwards. Additionally, the number of reporting lines per data import transaction will be increased from 50,000 to 200,000.

Moreover, it is important for businesses to note that an online access to the Statistics Austria portal is required to fulfill the Intrastat reporting obligation as of the reporting year 2022. In this context, businesses should bear in mind that in case online access has to be applied for first, there may be delays of up to two weeks before access to the Statistics Austria's web portal is granted.

The expected go live date of the RTIC reporting tool including the above-mentioned EBS-amendments is 3 January 2022.

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Draft of Eco-Social Tax Reform 2022: National Emissions Trading System and Electricity Tax Act

A large part of the announced eco-social tax reform 2022 is dedicated to the pricing of CO2. This is intended to contribute to climate protection and achieve the EU-wide regulations on the reduction of greenhouse gas emissions. Furthermore, the eco-social tax reform also provides minor changes regarding tax exemptions in the Electricity Tax Act.

National Emission Trading Act 2022

An essential part of the eco-social tax reform is the pricing of energy-specific greenhouse gases in sectors (buildings, transport, etc) that are currently not covered by the European emissions trading system as the building and transport sector. The energy industry, energy-intensive industries and commercial aviation are already covered by the European emissions trading system. To achieve the climate protection targets and reduce greenhouse gas emissions, a national emissions certificate trading system is to be introduced in Austria as of 1 July 2022.

To introduce the national emissions trading system as quickly and unbureaucratically as possible, the national emissions trading system is linked to the existing system for levying energy taxes. In the initial phase, energy-related greenhouse gas emissions resulting from the use of coal, gas and petroleum products are to be linked to the issuance of emission certificates. If trading participants bring fossil fuels into circulation, the obligation to surrender national emission certificates also arises with the incurrence of tax liability under the energy taxes. With the purchase of emission certificates, the trading participant receives the right to place certain substances (mineral oils, fuels, natural gas and coal) on the market and thus indirectly cause greenhouse gas emissions. Depending on the actual emission output, the trading participant has to dispose of the corresponding number of emission certificates. For the administration of the national emission trading system, the Office for National Emission Trading will be established in Austria. It will be integrated in the Federal Ministry of Finance.

The introduction is divided into a fixed price phase (1 July 2022 to 31 December 2025) and a market phase (from 1 January 2026). In the fixed-price phase, the emission allowances are not yet freely tradable, but are issued at fixed prices. The fixed price is EUR 30 in 2022 per ton CO2 equivalent and increases to EUR 55 by 2025. For 1 liter of gasoline, which has a greenhouse gas emission factor of 2.38 kg/liter, 7 cents must therefore be paid in 2022.

During the introductory phase (1 July 2022 to 31 December2023), simplified regulations apply to the registration and monitoring of the national emission trading system. All those trading participants who are already registered as tax debtors of an energy tax before 1 July 2022, will be registered automatically. Separate registration for the national emission allowance system is not required. From the transition phase onwards, a monitoring plan must be submitted during registration. This is also not yet required during the introductory phase.

Once a year, each trading participant must submit a greenhouse gas emissions report. In this report, the national emission allowances which are to be disposed have to be reported and exemptions and reductions may be claimed. From the transitional phase (1 January 2024 to 31 December 2025), the greenhouse gas emission report must be accompanied by a verification report from an independent verification body. As a relief measure to maintain cross-border competitiveness, in particular the avoidance of carbon leakage, affected parties may receive (proportionate) relief. Relief measures can be claimed primarily by agriculture and forestry as well as by energy-intensive economic sectors.

In the transitional phase, the organizational requirements for a trading system with emission certificates at national level or the transfer to a European system are to be prepared. A national emission allowance trading registry will be introduced, through which the purchase and disposal of emission allowances will be managed.

Depending on the design of the EU emission trading system and the effectiveness of national emission trading, the market phase, in which emission allowances are to be freely traded and which is to start on 1 January 2026, will be prepared at the end of the transitional phase. If the EU emissions trading system also includes the buildings and transport sectors from 2026, the national emissions trading system will be adapted accordingly and transferred to the EU-wide system. The further design of the market phase has not yet been specified at the present time.

Conclusion

In the introductory phase, the National Emission Trading Act 2022 and thus the obligation to purchase and disposal of national emission allowances will affect companies that already bring fossil energy sources into circulation and pay mineral oil tax, natural gas tax or coal tax in Austria. As the first phase of national emission trading is scheduled to start on 1 July 2022, companies affected by the new law should analyze the new legal requirements and the respective consequences for its businesses at an early stage.

Changes in the Electricity Tax Act

The already existing tax benefits for "self-produced electricity" will be extended to all renewable energy sources. As of 1 July 2022, no electricity tax will fall due on

self-produced and used electrical energy, provided it comes from a renewable energy source. This means that the exemption limit of 25,000 kWh per year for small hydropower plants, biogas and wind energy, for example, will no longer apply.

Furthermore, it is specified that traction current produced from renewable energy sources by railroad undertakings themselves is tax-exempt, provided that it is used by the producing railroad undertakings themselves or by other railroad undertakings for the propulsion and operation of railroad vehicles.

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ECJ on Vat Exemption for Fund Management Services in case of Outsourcing

In two related cases (C-58/20 K and C-59/20 DBKAG), the European Court of Justice ("ECJ") recently ruled on questions submitted by the Austrian Tax Appeals Court ("BFG") concerning the VAT exemption for outsourced services in connection with the management of investment funds. The decision of the ECJ on 17 June2021 dealt with the requirements relevant for the application of the VAT exemption for the management of special investment funds. Even if the ECJ did not finally decide on the specific facts, the Court was open to the application of the exemption – repeating known criteria from previous decisions.

Facts

In Case C 58/20 "K", management companies outsourced to a third party ("K") services for the calculation of the taxable income of unitholders from the funds. Based on the audited fund accounting, K determined the figures accordingly for various groups of investors. The management companies were still responsible for carrying out the standardized declarations to the reporting office.

In Case C 59/20 "DBKAG", the third party granted the management company a right to use software which was essential to risk management and performance measurement in return for the payment of a fee. The third-party software processed the data entered by the management company's own IT environment. The responsibility for the accuracy of the automated calculations of risk and performance figures based on this data, which were used by the management company to fulfill its legal reporting obligations, was borne by the third party.

Legal Assessment

The management of special investment funds defined as such by the member states is exempt from VAT. The Directive does not restrict the exemption neither regarding the person providing the service nor regarding the recipient of the service. What is essential is the concept of "special investment funds" defined by the member states as well as the definition of "management". In analogy to the Directive, the Austrian Value Added Tax Act does not define the management service in more detail.

For the final answer to the question whether the outsourced services at hand meet the requirements of the VAT Directive, the ECJ refers to the examination by the national courts. However, the tax exemption will (only) be granted if the services provided by third parties "are intrinsically connected to managing special investment funds" and are "provided exclusively for the purposes of managing special investment funds". For this purpose, the ECJ formulates the standard of review in repetition of decisions already rendered as follows:

- Management services provided by third parties (and outsourced by the management company) may in principle be tax-exempt.
- The prerequisite is that these "viewed broadly, form a distinct whole" fulfill in effect "the specific, essential functions" of the management of special investment funds.
- "Distinct character" does not require the complete outsourcing of the qualified service: According to the ECJ in Case "K", the fact that the declaration to the reporting office resulting from the calculation of the third party is the responsibility of the management company (which outsources the calculation) is not in itself decisive for the assessment of the outsourced service. Similarly, in Case "DBKAG", the necessity of the usage of the software provided by the third party in conjunction with the technical infrastructure (and the resulting database) of the management company is not in itself decisive for the assessment of the outsourced service.
- "Specific and essential character" requires examining whether the service provided by that third party is intrinsically connected to the activity characteristic of a management company: In Case "K", it would have to be examined whether the tax work for special investment funds constitutes specific – and precisely not also inherent in any other type of investment – obligations under Austrian law; the fact that a service is not explicitly mentioned in Annex II to the UCITS Directive (Undertakings for Collective Investment in Transferable Securities Directive) would therefore be irrelevant. In Case "DBKAG", it would also have to be examined whether the service is provided exclusively for the purposes of managing special investment funds, and not to other funds; the mere fact that a service is performed by electronic means does not in itself preclude the application of the exemption to that service insofar as the service in itself is not of a purely material or technical nature.

Conclusion

The ECJ emphasizes the need for a narrow interpretation of the tax exemption but is open to its application even in the case of outsourcing to third parties. However, the ECJ leaves the final assessment to the local courts.

The Court focuses on the concepts of "distinct/autonomous character" and "specific/essential character" of the service under outsourcing. A partial outsourcing or the purely electronic performance of a service does not prevent the exemption. Specific/essential character within the meaning of the provision requires a close connection to the legally binding duties of the management company. In this context, the ECJ basically refers to Annex II of the UCITS Directive and thus, on the one hand, to the functions of investment management, which also include risk management and performance measurement. On the other hand, this also concerns the "administrative services" mentioned therein, whereby the lack of mention of a specific type of administrative service in the cited catalogue is not in itself a reason for exclusion.

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Cash Register Obligation: Mandatory Generation of the "Annual Receipt" at Year End

At the end of 2021, we would like to remind you about the obligation to generate and verify the annual receipt if your company is subject to the cash register obligation.

Overview

For each cash register, the preparation of an annual receipt is required at the end of the calendar year. The receipt must be printed out as an "annual receipt", checked by using the "BMF Belegcheck"-App and kept for seven years. Certain cash registers can alternatively create the annual receipt electronically and transmit it to FinanzOnline via the cash register web service. You need the annual receipt, which depending on the type of cash register has to be checked manually or is checked automatically, for the mandatory check of the tamper protection of your cash registers.

The following steps are required to generate and verify the annual receipt, which in the majority of cases corresponds to the monthly receipt for December:

Step 1: Preparation of the annual receipt.

The annual receipt must be prepared by 31 December of the calendar year, even in the case a deviating fiscal year. Like any other monthly voucher, the annual receipt is a zero voucher, which is created by entering the value 0 (quantity "zero (0)", amount of cash payment "zero (0)", as a commercial term "annual receipt"). This receipt must then be printed and kept for seven years.

If your cash register creates the annual receipt electronically and sends it to FinanzOnline for verification via the cash register web service, it is not necessary to print out and retain the annual receipt. In this case, it must be ensured that the cash register has an interface to FinanzOnline so that manual checking and storage can be omitted. Your cash register manufacturer can answer this question for you.

A functioning signature creation unit that has been properly activated at FinanzOnline is required for the creation of the annual receipt. In case your signature creation unit is not functioning on 31 December, the annual receipt must be created and verified after the end of the outage immediately.

Step 2: Verification of the annual document

For the purpose of tamper protection, a mandatory check of the annual receipt must be performed, which can be done either manually using the "BMF Belegcheck"-App or automatically via the cash register web service. If the cash register has a FinanzOnline interface, the check is performed independently by the cash register.

It should be noted that the verification of the annual receipt (whether manual or automated) must be performed no later than 15 February 2022. If the check is carried out after 15 February 2022, this may fulfill a fiscal offence ("Finanzordnungswidrigkeit") and result in a fine of up to EUR 5,000 per offender.

Special cases

If you operate a business that generates cash sales beyond midnight on 31 December, you may prepare the annual receipt after the last cash sale on 31 December 2021 or immediately before the start of the following business day if you still allocate the sales after midnight to 31 December 2021 in your accounting.

If you run a seasonal business and your last cash sale for this calendar year was, for example, already in September, the monthly receipt from September (i.e. the zero receipt September) can be used as the annual receipt. This receipt can already be checked manually in advance if there is no automatic check via FinanzOnline.

Apart from the generation of the annual receipt, it should also be noted that the complete data capture log of the cash register must be backed up on an external data carrier every quarter and thus also at the end of the year. Each backup must also be kept for at least seven years. The backup must contain the annual receipt, which ensures the immutability of the entire data capture protocol by way of signature, as the last receipt.

Verification of existing cash registers

In practice, often the registration of the cash register and the signature creation device via FinanzOnline has not been carried out correctly, and thus the documents have not been signed in accordance with the law. Under certain circumstances, this may be due to a lack of verification of the start document. Therefore, we advise you to check again whether the cash register is functioning properly in accordance with the specific provisions and has been activated via Finanzonline. Otherwise, you may be subject to further fiscal offences.

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Tax Deadlines in January 2022

On 17 January 2022 the following declarations/payments are due:

- **Advance VAT declaration** for November 2021.
- **Standardized Consumption Tax** for November 2021.
- **Capital Gains Tax for capital gains on debt securities** for November 2021.
- **Tax on energy, coal and natural gas** for November 2021.
- **Advertising Tax** for November 2021.
- **Digital Tax** for November 2021.
- **Wage Tax** for December 2021.
- **Employer-Contribution to the family allowance compensation fund** for December 2021.
- **Surcharge to the Employer-Contribution** for December 2021.
- **Municipal Tax** for December 2021.
- **Social insurance payments for employees** for December 2021.
- **„U-Bahn Steuer" for Vienna** for December 2021.
- **Withholding Tax defined according to Sec 99 ICTA** for December 2021.
- **Intrastat declaration** for December 2021.

On 31 January 2022 the following declarations/payments are due:

- **Recapitulative statement („Zusammenfassende Meldung")** for December 2021.
- **Stability charge** for the first quarter of 2022.

On 15 January 2022 the following declarations/payments are due:

- **Application for turnover loss bonus II** for September 2021

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