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Mandatory cash register rules in line with Austrian Constitution but delayed to 1 May 2016

The Tax Reform Act 2015/16 provides for a duty to establish **electronic cash registers**, which affects almost every business in Austria. The Austrian Constitutional Court recently had to rule on three individual complaints submitted in this matter and had to determine whether the duty is in accordance with the Austrian constitution (VfGH 9.3.2016, G 606/2015, G 644/2015, G 649/2015).

The **petitioners** considered their constitutional rights to be violated and requested the mandatory cash register rule to be revoked. Essentially they argued that the duty to establish electronic cash registers created a disproportionate infringement of the freedom of business in particular for small businesses, had retroactive effect and furthermore that the classification of payment by debit and credit cards as cash sales was a breach of the Austrian constitution.

Mandatory cash register rule

The Constitutional Court stated that the duty to establish electronic cash registers for the purpose of registering cash sales as well as the duty of issuing receipts was appropriate to reduce the possibility of manipulation and thus avoiding tax evasion. It is therefore the legislator's right to prevent tax evasion by introducing special provisions to record cash sales. Consequently **the mandatory cash register rule is**

in the public interest and particularly suitable for achieving the before-mentioned goal.

The Constitutional Court held that the new rule **did not create any disproportionate infringement for small businesses**. The argument of the Federal Government that the mandatory cash register rule aims at preventing tax evasion and therefore supports the realization of the principle of taxation equality is a key factor that also justifies including small business or entrepreneurs with only small amounts of cash transactions, particularly as the risk of tax evasion also exists with them.

Regarding the equal treatment of payment by debit and credit cards with cash payment the Constitutional Court states that correspondingly the aim is preventing manipulation. Because of the fact that each and every payment is subject to registration it can be assured no cover up bank accounts are used.

Delayed entry into force

At the same time however, entrepreneurs will be pleased to read that the Constitutional Court ruled that the mandatory cash register rule may not come into force on

1 January 2016. Due to the clear wording in the Federal Fiscal Code the first year of reference with regard to sales thresholds (annual sales exceeding EUR 15,000; cash payments exceeding EUR 7,500) is 2016. The duty to establish electronic cash registers is obligatory as of the fourth month after the VAT reporting period in which these thresholds were exceeded. **Consequently, the mandatory cash register rules will in fact be delayed to 1 May 2016 at the earliest.**

Your Deloitte Tax Advisor will be happy to answer your questions.