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Amendments to Federal Tax Law 2014 – Governmental Bill

In our [BTN No 1/2014](#) we reported on the initial draft for legal appraisal of the amendments to federal tax law („Abgabenänderungsgesetz 2014“). On 29 January 2014 the governmental bill was made public. We have outlined the most significant changes with regard to the initial draft:

Tax allowance for business profits (Sec. 10 Income Tax Act, “EStG”)

As already set out in the initial draft, the **purchase of securities** shall be excluded from the list of **beneficial assets** for the tax allowance for business profits. However, there shall be a temporary relief in case of early redemption of the securities: If securities were acquired during years that ended before 1 July 2014, subsequent taxation can be avoided by acquiring other securities.

Golden Handshakes

There shall be a **limitation** for the taxation of benefits for “golden handshakes” at a **reduced tax rate of 6 %** (Sec. 67 para. 6 EStG). The limitation amounts to the ninefold of the monthly maximum contribution to social security according to “ASVG” (“Höchstbeitragsgrundlage”). Benefits exceeding this limitation can also be taxed at the beneficial tax rate of 6 %, but only to a multiple of the maximum contributions to social security depending on the individual duration of employment in the company. Further payments will be subject to the progressive tax rate on individual income. The tax deductibility for expenses shall be limited as well: Benefits not subject to the fixed tax rate of 6 % at the level of the recipient shall not be deductible for the paying company (Sec. 20 para. 1 subpara. 8 EStG).

Interest income shall partly be subject to limited tax liability (Sec. 98 para. 1 subpara. 5 EStG)

Currently, interest income from bank deposits and from securities can be obtained tax free from recipients who are not resident in Austria. The **limited tax liability shall henceforth also include income from capital assets** according to Sec. 27 EStG, if it is “interest” according to the EU Withholding Tax Act and if capital income tax had to be withheld.

However, there shall be a tax exemption if the **recipient was a natural person resident in an EU Member State** (“persons, falling under the EU Withholding Tax Act”) or if the **debtor of the capital income does neither have his domicile nor place of management nor seat** in Austria nor is a **domestic branch** of a foreign bank. Compared to the first draft, this wording shall now create the domestic nexus that corresponds to the general principle of limited tax liability. The amendments shall be applicable on interest paid from 1 January 2015 onwards.

Deductibility of interest and royalties (Sec. 12 para. 1 subpara. 10 Corporate Income Tax Act, “KStG”)

Expenses resulting from interest and royalty payments made to intragroup companies shall be **non-deductible** if the corresponding income is **not subject to tax at the receiving company** or if the applicable **tax rate is lower than 10 %** respectively if the overall tax burden is lower than 10 %. The limitation of the deductibility according to the first draft (deductibility of half of the expenses if there was taxation of the income between 10 % and 15 %.) is not included in the governmental bill.

Amendments to group taxation regime (Sec. 9 KStG)

The amendments to group taxation according to the first draft have been taken over to the governmental bill (foreign corporations only to become group members if they are residents of an EU Member State or of a state that grants Austria extensive administrative assistance; limitation on deductibility of foreign losses to 75 % of the Austrian group income; abolishment of the appreciation of goodwill according to Sec. 9 para. 7 CITA). The depreciation of goodwill for shareholdings that have been acquired before 1 March 2014 has, however, been clarified: There will only be an entitlement to a depreciation of goodwill if the respective company becomes member of the tax group by 2015 at latest and if this could have had an effect on the purchase price.

Privileged foundation and lowering of minimum corporate income tax for limited liability companies („GmbHs“)

The minimum share capital shall again be raised to EUR 35,000. The relevant capital increase has to be made within ten years after the new provision entered into force. Newly founded GmbHs can still be founded with a minimum share capital of EUR 10,000 (**privileged foundation**). Moreover, companies founded under the privileged regime will only have to pay an **annual minimum corporate income tax of EUR 500** during the **first five years** and EUR 1,000 in the following five years.

The amendment “gründungsprivilegiert” (“privileged at foundation”) to the company name that has been planned according to the initial draft will not be applied; nevertheless the amendment must be shown in official documents, order forms and websites of the company.

No maximum tax rate for standard fuel consumption tax (“NoVA“)

The **maximum tax rate of 30 %** that had been foreseen in the first draft for the amendments to federal tax 2014 is **no longer part of the governmental bill**. The calculation of the tax rate is made according to the following formula: (CO₂-Emissions in grams per kilometer minus 90 grams) divided by five.

As the Amendments to Federal Tax Law 2014 are not enacted yet, the further adoption remains to be seen. We will keep you informed.

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