

Breaking Tax News Tackling taxes



Amendments to Federal Tax Law 2011 – First Draft

The Austrian Ministry of Finance has recently published the first draft of the amendments to Federal Tax Law 2011 („Abgabenänderungsgesetz 2011“). We have outlined the most significant high-lights:

Income Tax Act

Construction work abroad

The former tax exemption for construction work abroad has been abolished by the Austrian Constitutional Court and has been replaced by a transitional rule. The amendments to the Income Tax Act 2011 should now provide for a permanent provision in line with constitutional law as well as EC-law.

50% of the current income from construction assignments abroad (after deduction of social security contributions), limited with 75% of the maximum social security determination base (i.e. 2011: EUR 3,150) should qualify as beneficial income provided that several prerequisites are fulfilled:

- Employer is an EU/EEC or Swiss resident or a resident of another jurisdiction assigning employees from a permanent establishment located within the EU/EEC or Switzerland.
- The assignment involves aggravating conditions, i.e. at least 600 km distance to the location of the construction site from the Austrian border and other circumstances such as climate, infrastructure and generally poor living conditions.
- The recipient of the assignment services must not be a permanent establishment of the employer or an affiliated group entity. The assignment must not be shorter than one month but must not be of permanent nature either.

- The employer must not pay any supplementary bonuses tax-exempt under Sec 68 Income Tax Act. Travel expenses for only one trip home per calendar month can be covered by the employer. Certain expenses relating to the assignment such as travel expenses, trips home and additional housing costs must not be deducted in the personal income tax return of the employee.

The new provision shall cover non-wage labor costs as well (i.e. community tax, employer contribution and additional employer contribution).

Beneficial recipients of donations

The list of organizations qualifying as beneficial recipients of donations should be extended including organizations dedicated to the protection of the environment, nature and species, animal shelters, volunteer fire brigades and regional fire fighter associations.

Fines

It should be clarified that fines and penalties, tax surcharges under fiscal penal law and payments comparable to punitive out-of-court settlements are not tax deductible.

Withholding tax on capital investments – exit taxation

The obligation under Sec 94/7 Income Tax Act to withhold exit tax (i.e. Sec 27/6/1/b Income Tax Act: notional disposal of capital investments) should only kick-in if the taxpayer explicitly notifies the party obliged to withhold tax on capital investments of his/her expatriation. Exit taxation should be based on the fair market value at the time of the expatriation.

Corporate Income Tax Act

Tax Exemption for Portfolio Dividends from Third Countries

The participation exemption under Sec 10/1 CIT Act should be extended to international portfolio dividends from third countries following the ECJ's judgment in the joint cases Haribo / Salinen (see Breaking Tax News no. 4/2011). The requirement of the existence of a comprehensive agreement of mutual assistance with regard to enforcement should be abolished.

A switch-over to the credit method under Sec 10/5 CIT Act should be applicable to portfolio dividends from third countries as well (i.e. no comparable actual taxation in the foreign jurisdiction, foreign CIT rate below 15%, extensive foreign tax exemptions). The carrying forward of foreign CIT exceeding Austrian minimum CIT should be possible upon application of the taxpayer without time limitation.

Foreign CIT should be credited "prior-ranking". The wording is somehow unclear. It can, however, be assumed that foreign withholding taxes can still be credited but only after foreign CIT. If the entire credit potential has, thus, been depleted by foreign CIT, foreign withholding taxes would be idle with no carry forward available.

VAT Act

Reverse charge for supply of goods

Sec 19/1 VAT Act should be amended applying the reverse charge mechanism to all kinds of supplies of goods, not only work supplies. The new provision should replace the current Sec 27/4 VAT Act providing for domestic recipients of supplies to transfer the VAT amount in the name and on the account of the foreign supplier to the tax office Graz-Stadt. Instead, the tax liability should now be passed over to the domestic recipient with instant input VAT deductibility.

No reverse charge for admission fees

Services under Sec 3a/1 1a VAT Act (i.e. admission fees to events such as trade fairs, exhibitions, conferences, seminars, concerts etc.) are taxable where the event takes place. Currently, the reverse charge mechanism is applied when foreign service recipients are involved with the service provider being liable for the VAT amount. Under the new provision admission fees to events should instead be excluded from Sec 19/1 VAT Act with the service provider still being liable for the VAT amount.

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