PwC Austria
Tax

PwC Austrian Tax News*

Issue 17, June 2008

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Tax treatment of "Hospitality Tickets" for EURO 2008

The Austrian Ministry of Finance has published its view on the VAT and income tax treatment of hospitality tickets for EURO 2008 in an Austrian tax journal. They decided that 50% of the expenses for hospitality tickets can be deducted for corporate income tax purposes.

The organizers of the UEFA European Football Championships 2008 offer "hospitality tickets", which do include not only the entrance fee to the matches but also services like gourmet catering, car parking, a special programme of entertainment before and after the match and access to the hospitality area.

In many cases, companies buying these tickets then add additional services to the hospitality tickets, e.g. accommodation, transport to the stadium etc.

Input VAT deduction

According to the Austrian Ministry of Finance the VAT included in hospitality tickets can be deducted as input VAT

- if the tickets are provided to the companies' customers for sales promotion purposes and
- if the general record requirements are fulfilled.

Companies which are registered for VAT purposes in Austria can claim the VAT by including the input VAT in their monthly Austrian VAT returns. Companies which are not registered for VAT purposes in Austria can claim the VAT by filing 8th/13th EC Directive VAT refund claims. The provision of hospitality tickets free of charge are not considered to be a deemed taxable supply.

In addition, 50% of the expenses for hospitality tickets can be deducted for corporate income tax purposes.

If normal tickets without hospitality services are bought to entertain business guests, the expenses cannot be deducted for corporate income tax purposes and therefore no input VAT deduction is allowed. If the tickets are raffled during an advertising event, the expenses can be deducted for (corporate) income tax purposes and therefore the input VAT deduction is allowed.

Resale of "Hospitality Tickets"

The Austrian Ministry of Finance also commented on the VAT treatment of the resale of hospitality tickets for EURO 2008.

Where the resale of the hospitality tickets is to an affiliated company, the Austrian Ministry of Finance assumes that

- 60% of the costs can be allotted to the entrance to the match and the other services (other than the catering services);
- 40% of the costs can be allotted to the catering services (60% thereof for meals and 40% for beverages).

Accordingly, 25% of the costs for the resale of hospitality tickets are subject to the reduced Austrian VAT rate of 10% and 75% are subject to the general VAT rate of 20%.

As for the place of supply the Austrian tax authorities' view is that the supply of hospitality tickets by an Austrian taxable person is subject to Austrian VAT. If the service is supplied by a foreign taxable person the reverse charge mechanism applies.

Switzerland

The Ministry of Finance in Switzerland has not yet commented on the VAT treatment of hospitality tickets so far. The VAT treatment depends on the general statutory provisions and the VAT deduction depends on the proved effectiveness of advertising. However, a ruling could be obtained to give more certainty on this issue.

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Schenkungsmeldegesetz 2008 – Gift Announcement Law 2008

In 2007 the Austrian Supreme Court took the decision that the Austrian Gift and Inheritance Tax Act was not in line with the Austrian Federal Constitution. Therefore the tax law will be abolished with effect from 1 August 2008 and no new taxation regime was introduced in its place. Instead the Austrian government decided to introduce an information system for donations in order to avoid a reduction of tax revenues, particularly in income tax receipts. The information system is now part of the Gift Announcement Law 2008 which already has passed the council of ministers and will be approved in June 2008 by parliament.

The information system in the Gift Announcement Law 2008 is merely an instrument to monitor asset transfers and does not lead to the taxation of transfers. The law requires the declaration, to the Austrian tax authorities, of transfers of assets arising from gifts, where either of the parties is resident in Austria. This disclosure requirement applies for securities, cash, shares in companies, tangible and intangible assets transferred after 31 July 2008.

Asset transfers between relatives up to a fair market value of EUR 50,000 per year, are exempt from the general announcement obligation. The definition of relatives is very wide and includes spouse, children, parents, grand parents, sisters, brothers, cousins and also domestic partners. In case where a person receives several gifts within one year the aggregate value of all transferred assets is used in determining whether the threshold has been exceeded. If the threshold has been exceeded all gift transactions in the year have to be declared. For transactions between unrelated parties this limit is reduced to EUR 15,000 which has to be applied over a period of five years.

For common gifts up to a value of EUR 1,000 per asset exists also an exemption.

The declaration to the tax authorities has to be made electronically within 3 months after the transfer. There will be an electronic form available on the website of the Ministry of Finance. The obligation for the declaration falls on the donor and also the donee, as well as lawyers and notaries who participated in the transaction.

If the announcement is not made within 3 months the tax authorities can impose a penalty of 10% of the value of the transferred assets, although only where the person acts deliberately. If the announcement is made after 3 months but within one year after the transfer of the assets the tax authorities will not impose a penalty.

The transfer of real estate need not be

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reported to the tax authorities because each transfer has to be documented through notarial deed and registered in the land register. The transfer of real estate by the way of a gift or a heritage is now subjected to a real estate transfer tax of 2% (between relatives) or 3.5% (between non-relatives). Basis is the triple standard tax value of the real estate. Some exemptions from the old Gift and Inheritance Tax Law will still be available for the purposes of the new Act. The transfer of real estate used in a business as a result of the retirement of the business owner is tax exempt up to a value of EUR 365,000.

Several new provisions concerning the taxation of foundations will also come into force together with the Gift Announcement Law 2008. For more details see the other article in this issue.

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New rules for the taxation of foundations

In 2007 the Austrian Supreme Court repealed the Inheritance and Gift Tax Law with effect from 1 August 2008, resulting in the abolition of gift taxation on donations to foundations. This law is replaced with the enactment of a new Gift Announcement Law (Schenkungsmeldegesetz 2008). The new law is scheduled to become effective from 1 August 2008.

In the future, donations inter vivos, as well as by reason of death, to foundations and comparable trusts are subjected to a new Foundation Entrance Tax which is regulated in the new Foundation Entrance Tax Law (Stiftungseingangssteuer-Gesetz).

The entrance tax will be triggered, if the settlor has his domicile or habitual abode in Austria or the receiving foundation has its domicile or place of management in Austria. Comparable foreign foundations are treated similarly to Austrian foundations, if they are comparable to Austrian foundations.

Under the previous Inheritance and Gift Tax Law, donations to foundations are subjected to gift tax at a rate of 5%. This tax will be replaced by the entrance tax. From 1 August 2008, foundations are subject to the new entrance tax with a general rate of 2.5% and is applicable as well for donations to charitable and religious institutions as well as donations between foundations.

If Austrian real estate is donated to a foundation 3.5% real estate transfer tax will fall due in addition to the entrance tax. The tax basis of real estate is the triple standard tax value, which is in general much lower than the fair market value.

The new law stipulates an increased tax rate of 25%, if a foreign foundation is not comparable with a foundation under Austrian foundation law; or the documents and by-laws of the foundation are not disclosed to the tax office; or the country of residence of the foundation has no existing extensive administrative and enforcement agreement with Austria. As a consequence of that new regulation, e.g. donations to Liechtenstein foundations are subject to the 25% rate.

In addition, there will be a new rule concerning the current taxation of foundations from 2008 on. Distributions by foreign foundations or trusts, which are comparable to Austrian foundations, are taxed as investment income which is subject to a 25% flat tax income rate.

Distribution of the assets

In the past, distributions of the donated assets to beneficiaries were subject to the standard 25% withholding tax.

From 1 August 2008, according to the new regulations, distributions of the assets are not further taxable. A tax exempt distribution of assets is assumed to the extent the distributions exceed the cumulated profits (including revenue reserves) recognized in the statutory books of the foundation.

The new regulations for a distribution of the assets are also applicable in the case of a cancellation of the foundation. But only for assets which are donated to the foundation after 31 July 2008.

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Tax optimization using the favorable DTT between Austria and Argentina

The Double Tax Treaty (DTT) between Argentina and Austria offers beneficial provisions which can help to reduce the effective tax rate of multinational investors. The DTT removes Argentina´s right to tax any interest payments received from Austria. According to Article 11 of the treaty, Austria has the exclusive right to tax interest payments from an Austrian company to a person resident in Argentina.

Based on these regulations, an Argentine individual or company might inject assets (i. e. portfolio investment) into an Austrian company. In exchange, the Argentine investor receives a jouissance right under which he will receive a pro-rata share in the profit of the Austrian company. The profit share may differ from case to case but can be up to 95% of the profit.

Income deriving from the portfolio investment held by the Austrian company is subject to Austrian corporate income tax and thus taxable at the standard rate of 25%. Provided the jouissance right is structured as a debt instrument under Austrian tax law, interest payments would be treated as deductible expenses in Austria. Interest payments to the holder of the jouissance right could then be offset against the taxable portfolio income.

As a consequence, only the remaining spread (i.e. 5% or more of the profit) would be taxed in Austria. The effective tax rate in Austria would be reduced to less than 2%.

Aside from Austrian corporate income tax, no further Austrian tax is levied as the interest paid to the holder of the jouissance right is not subject to Austrian withholding tax under domestic law. Therefore, this structure is also an interesting option for investments in Austrian holding companies, generating income from own (foreign) shareholdings. Though this income would not be subject to Austrian corporate income tax under the Austrian participation exemption regime, dividend payments to the Argentine shareholder would suffer Austrian dividend withholding tax at a treaty-rate of 15%. The qualification of payments under the jouissance right as interest thus facilitates the repatriation of cash to Argentina without withholding tax leakage.

With regard to the investment in the Austrian corporation, a 1% Austrian capital duty might fall due. However, certain techniques allow for mitigation of this transfer tax by careful structuring.

Argentine corporate income tax rate on net taxable business profits is 35%. Argentine individuals are liable to income tax at a progressive tax rate of up to 35%. Because of the treaty, Argentine residents with shares and/or bonds of an Austrian company can avoid paying the Personal Assets tax (1.25% per year) and also income tax on dividends and/or interest received from the Austrian Company. According to the regulations of the DTT, Argentina has no right to tax income deriving from interest and dividend payments received from Austria. The Argentine investor thus can repatriate the profits out of the investment business held via Austria at a very low effective tax rate.

The structure has already been established in several cases and is a well-tested tax planning tool. However, to be on the safe side, a ruling from the tax office competent for the Austrian company is recommended. The ruling ensures that the interest payments under the jouissance right are treated as tax deductible in Austria, as this is the crucial point in the given structure.

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Obligatory Electronic filing of Austrian statutory financial statements

As part of the process of reforming Austrian Commercial Law, electronic filing of statutory financial statements (SFS) of public and private corporations became mandatory.

The Austrian Companies' Register Law (Para. 35b) permits electronic filing of all judicial applications, inquiries and attachments with the respective bodies of the Ministry of Justice. Austrian Commercial Law (para. 277 Section 6) now stipulates electronic filing of SFS with the Companies' Register. Basically, small corporations must file only their balance sheet together with specific notes, whereas mid-size and large companies, which generally are also subject to an audit, must file their full SFS comprising balance sheet, income statement, notes to SFS, management's report as well as the audit opinion issued. The due date for the filing is nine months after fiscal year end.

The electronic filing is mandatory for annual financial statements for fiscal years ending on 31 December 2007 or later. Companies with sales of less than EUR 70,000 during the twelve months preceding the end of the fiscal year may continue to file their financial statements in hard copy.

Statutory accounts subject to a statutory audit can only be filed by certified public accountants (tax advisors or auditors) or accounting firms. The system for the electronic filing of tax returns is to be used also for the filing of SFS. Specific software programs must be used to convert the data into XML-documents. An exception to file SFS in the pdf-format is allowed insofar the structured filing is not possible (e.g. banks, insurance companies, groups or in case the financial statements differ from the given format as prescribed in paragraphs 224 and 231 of the Austrian Commercial Law).

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Summary of the Company Law Amendment Act 2008

Stricter times ahead for Austrian companies

On 7 May 2008 the Unternehmensrechts-Änderungsgesetz 2008 (Company Law Amendment Act) was published in the Federal Law Gazette (BGBl. I Nr. 70/2008). The Company Law Amendment Act 2008 ensures that legislative guidelines passed by the EU are implemented, the outcome of which should be increased levels of confidence in financial reporting and corporate governance. The Company Law Amendment Act 2008 has ushered in improvements not only in the field of commercial and corporate law, but also with regard to cooperative societies, banks and insurance companies. This article will discuss some of the changes that will impact commercial and corporate law.

The Company Law Amendment Act 2008 means that the provisions of the Eighth Council Directive (2006/43/EC) and of the Company Reporting Directive (2006/46/EC) will be implemented into Austrian law, with amendments made to the following pieces of legislation: the Commercial Code, the Corporation Act, the Limited Liability Company Act, the Banking Act, the Insurance Supervision Act, the European Company Statute, the Co-operative Societies Act, the Amended Cooperative Societies Act and the Aviation Act.

The changes made to the Commercial Code, the Limited Liability Company Act and the Corporation Act come into force as of 1 June 2008. The Company Law Amendment Act 2008 is principally to be enforced for fiscal years beginning after 31 December 2008. Only two exceptions apply here, these being in relation to changes to size classifications and the imposition of time-limited restrictions upon auditors that govern the execution of their work on behalf of companies they have previously audited.

New arrangements concerning company reporting procedures

Changes affecting size classifications:
An increase in threshold values of up to 30% of the balance sheet total (individual accounts: small companies EUR 4.84m and medium sized companies EUR 19.25m; consolidated accounts 21m) and turnover (small companies EUR 9.68m and medium sized companies EUR 38.5m; consolidated accounts EUR 4m). In the case of fiscal years beginning after

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31 December 2007 the lifting of size classifications already applies.

Changes to notes to the financial statements: para. 237 of the Commercial Code provides for the inclusion of three new separate notes to the financial statements. These changes also apply to consolidated accounts:

- There is the obligation to disclose off balance sheet business operations (para. 237 line 8a) which are not already accounted for in the balance sheet, are not a contingent liability pursuant to para. 199 of the Commercial Code or which are other financial obligations pursuant to para. 237 line 8 (small limited liability companies are exempt).
- In all cases of business operations carried out with related parties and which are not customary in the particular market, large limited companies and corporations are obliged to disclose the nature of the relationship as well as the transaction amount (para. 237 line 14).
- There must be a disclosure of expenses for all benefits flowing directly to the auditor (para. 237 line 14).

Extension of management report obligations: Corporations which have issued listed securities (equity and contingent liabilities) will in future be obliged to include details in their management reports summarising the major components of their internal control and risk management systems applied to accounting processes (para. 243a (2), para. 267 (3b) Commercial Code).
Introduction of a corporate governance report: The introduction of para. 243b to the Commercial Code means that corporations listed on the stock exchange will, in future, be obliged to disclose the principles of their business management practices and management controls within their corporate governance reports.

Changes regarding the signing of annual accounts: As from now, financial statements as well as the management report and, where applicable, the corporate governance report, are to be signed by all legally authorized representatives.

Changes affecting corporate law

Capital market oriented companies and large scale corporations as defined by para. 271a of the Commercial Code are obliged to appoint an audit committee to the supervisory board, which must include one so called financial expert. The auditor must attend meetings held for the purpose of preparing or auditing the consolidated accounts or the annual accounts. The newly established right of the auditor to speak at audit committee meetings means that the auditor will also be obliged to report on the auditing process (para. 92 (4a) Corporation Act, para. 30g (4a) Limited Liability Company Act, para. 51 (3a) European Company Statute).

The Company Law Amendment Act 2008 sets out a number of duties and responsibilities with regard to comprehensive monitoring and auditing obligations which the audit committee must comply with. New duties imposed upon the audit committee include, among others:

- the supervision of accounting practices;
- the supervision of the effectiveness of an internal control system and, where applicable, the internal auditing system as well as the risk management system of the corporation;
- the supervision of the audit and of the consolidated annual accounts;
- the examination and supervision of the independence of the (group) auditor; and
- the examination – insofar as is appropriate – of the corporate governance report.

New auditing procedures

Appointment of auditors and audit agreement: The duties of the supervisory board – where one is in place – are to be extended to include the appointment of auditors. The supervisory board will in future be responsible for taking major decisions in the initial phase of the audit assignment. It is also to be responsible for concluding the audit agreement with the auditor. A further obligation that is to be explicitly adhered to is to ensure that remuneration for audit related activities be paid at an appropriate level. This should be set according to the basis of the depth and scope of the audit assignment and must not be subject to any conditions.

Extension and redefinition of conditions of independence:

- The independence of the auditor is strengthened through new provisions stipulating the bias and exclusion of the auditor (para. 271). This is achieved through the introduction of offences relating to the suspicion of bias, and focussing on relations held on a commercial, financial or personal level in relation to the business undergoing the audit. It is further achieved through the introduction of regulations governing the network and the "independence of the network" of the auditor.
- The new time-limited restriction imposed upon the auditor that prevents him from further involvement with the company he has audited (para. 271c) also serves to safeguard the independence of auditors. For the two year period following the completion of his audit (the so called 'cooling off' period), the auditor is prohibited from taking on any elementary functions or leading roles within the company that he has audited. This restriction applies in the case of all employment contracts entered into after 31 May 2008.

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Obligation to disclose and auditor's opinion: The newly created obligations above all result in the extension of responsibilities held by the auditor. In addition, there is an expansion of his reporting duties (para. 273 Commercial Code) to the executive body members of the organization, including:

- The auditor is obliged to make immediate notifications in the following three situations: where it is obvious that there is a risk of bankruptcy of the group, where serious violations caused by employees are apparent, and where there are major shortfalls in the internal control mechanisms of the accounting system.
- In future, the audit report carried out by the auditor is to include a statement referring to whether a compulsory corporate governance report was also compiled.
- From now on the group auditor is to bear full responsibility for the audit of group accounts (para. 274).

International Standards on Auditing: Requirements governing the procedure of an audit have, until now, largely been subject to national laws and regulations. At present concerted efforts are being made at EU level towards establishing a harmonised approach. To this end, para. 269a of the Commercial Code stipulates that once international auditing standards have been assumed by the EU they will also be enforced in Austria.

Finally, we would like to draw your attention to the special edition of tipps&trends from April 2008 on the Company Law Amendment Act 2008. You can either download it online or request a copy (in German) by going to http://www.pwc.at/uraeg2008/literatur.html.

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Filing deadline for VAT refund claims 2007: 30 June 2008!

Austrian Tax Facts & Figures

Taxation of corporations

Corporate income tax rate (Basis – adjusted statutory accounts)	25%	Non-deductible expenses (examples)	
Dividend withholding tax	25%	Long-term accruals	20%
Witholding tax on licences/royalties	20%	Business meals	50%
Interest	0%	Excessive car expenses for luxury cars	
Significant allowances		**Tax loss carry forwards**	
Research & Development (R&D) (Alternatively premiums in cash: 8%)	up to 35%	Losses may be carried forward for an indefinite period of time	
Learning & Education (L&E) (Alternatively premiums in cash: 6%)	up to 20%	Usage of tax losses: 75% of taxable income	

Double taxation agreements
with 68 countries – mainly exemption method

International participation exemption for holding companies	
Conditions: Investments >10%, 1 year holding	
Dividends	0%
Capital gains	0%
Thin capitalization rules	None
CFC rules	None

Group taxation
valid from January 2005

Consolidation of tax losses with taxable profits
Conditions: Qualifying participations > 50%
Group agreement and agreement on allocation of cost
Losses of foreign participations may be offset against profits of group leader

Annual taxable		Income Tax		Effective Tax Rate	Marginal Tax Rate
to	€ 10,000	€ 0		0%	0%
over / to	€ 10,000 / € 25,000	$\frac{(EK - 10{,}000) \times 5{,}750}{15{,}000}$		0 - 23%	38.333%
over / to	€ 25,000 / € 51,000	$\frac{(EK - 25{,}000) \times 11{,}335}{26{,}000}$	+ 5,750	23 - 33.5%	43.596%
over	€ 51,000	(EK - 51,000) x 50%	+ 17,085	> 33.5%	50%

Social security on monthly earnings up to EUR 3,930			
Employer's share	up to 21.9%	Payroll related taxes	approx. 8.0%
Employee's share	up to 18.1%		
Income cap for social security contributions, social security totalisation agreements with various states			

Value added tax
in line with the 6th EU directive

Standard rate	20%
Reduced rate (Food, rent, public transportation etc.)	10%
VAT refund for foreign enterprises – available up to June 30 of the following year.	

Other taxes

Real estate transfer tax	3.5%
Capital tax	1.0%
Stamp duties - Loan agreements	0.8%
Rent agreements	1.0%

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We encourage feedback on the newsletter and the content. Equally, we welcome any of your thoughts on topics that you would like to see addressed in future issues.

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Copyright & Publisher: PwC PricewaterhouseCoopers GmbH, Erdbergstrasse 200, 1030 Vienna, Austria

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