

# Tax Short Cuts - English

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## Transfer Pricing Guidelines 2021 - Maintenance decree 2025

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The Maintenance Decree 2025 of the Transfer Pricing Guidelines (ATPG) 2021 was published on 13 March 2025 (2025-0.159.492). The decree amends the ATPG 2021 based on the publication of the OECD Transfer Pricing Guidelines (OECD-TPG) 2022 and based on ongoing maintenance.

The draft, which was sent out on 14 June 2024, was already addressed in the Tax Short Cuts No. 13/2024 of 27 June 2024. Changes made in comparison to the draft essentially concern the following points:

- No. 42: In example 2, the final Maintenance Decree only refers to an "arm's length" mark-up for the remuneration of a contract researcher and not a mark-up of 15% as in the consultation draft.
- No. 74a: Regarding the required comparability of the accounting standards of comparable companies identified in database studies, it was added that sufficient comparability should generally be assumed for comparable companies that prepare their accounts in accordance with EU accounting standards.
- No. 102a: This newly added paragraph clarifies that costs for "shareholder activities" are to be charged to the shareholder in whose interest the activities are performed.
- No. 115a: The explanations have been revised regarding the circumstances and extent to which the rating of a group company can, in exceptional cases, be better than the group rating.
- No. 123: In the example assessing when a cash pool deposit may be reclassified as a long-term financing transaction, the "current ratio" is now only mentioned as an example.



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## Transfer Pricing Guidelines 2021 - Maintenance decree 2025

- No. 148: The draft stated that the application of the cost-plus method in connection with contract research and development services would not be appropriate if the client does not have the qualified technical personnel necessary for the execution, design and supervision of the research service. In the final version, only “in particular, design and supervision” are mentioned, while “execution” is not included.
- No. 185a: The functional and risk profile of the involved group companies can also have an influence on whether restructuring or closure costs as part of a change in group structure give rise to a claim for compensation.
- No. 199: The transfer of benefits from the Austrian research premium between group companies is not automatically considered a breach of the arm's length principle in every case but requires proof through appropriate documentation, which is likely subject to very high requirements.
- No. 259 and 262: Additions based on Austrian Supreme Administrative Court case law and EAS regarding the creation of permanent establishments.

The ATPG 2021 - Maintenance Decree 2025 can be accessed via the following link (German version only):

[https://findok.bmf.gv.at/findok/volltext\(suche:Standardsuche\)?dokumentId=854ad504-40f7-41ee-9447-3ebc08478261](https://findok.bmf.gv.at/findok/volltext(suche:Standardsuche)?dokumentId=854ad504-40f7-41ee-9447-3ebc08478261)

## Federal Fiscal Court: Non-deductibility of low-taxed interest contrary to EU law (Sec. 12/1/10 KStG)

### *Corporate Income Tax Act*

In its decision of 7 March 2025 (RV/7102685/2022), the Federal Fiscal Court (BFG) dealt with the question whether the deduction of business expenses for intra-group interest payments to a low-taxed foreign affiliated company should be denied in accordance with Sec. 12/1/10 Corporate Income Tax Act (Körperschaftsteuergesetz, KStG). Controversial was the deductibility of interest expenses for the years 2014 to 2017, which an Austrian group company had paid to its parent company in Liechtenstein.

In the underlying case, an Austrian corporation had taken out an intra-group loan from its parent company in Liechtenstein. The loan resulted in interest expenses, which were claimed by the Austrian company as business expenses. The parent company was subject to a nominal corporate income tax rate of 12.5%. By claiming a notional interest deduction permitted in Liechtenstein, only the minimum tax of around EUR 1,000 p.a. was payable in the recipient country. The Austrian tax office therefore qualified these interest payments as expenses to a low-taxed affiliated company and denied the deduction of the interest in accordance with Sec. 12/1/10 KStG.

With reference to ECJ case law (e.g. C-196/04, *Cadbury Schweppes*; C-484/19, *Lexel AB* and C-585/22, *X-BV*) the BFG determined that the Austrian rule denying interest deduction in its current interpretation would be contrary to

## Federal Fiscal Court: Non-deductibility of low-taxed interest contrary to EU law

EU law and therefore violates the freedom of establishment (Art. 49 TFEU). In principle, the ECJ considers a ban on interest deductions to be a restriction on the freedom of establishment if it puts cross-border business relationships at a disadvantage compared to domestic business relationships. To combat abuse, a restriction on the freedom of establishment is permissible under EU law under certain conditions. In this case, the tax authorities did not allege that the loan was structured in a way that was unusual for third parties or that it was an abuse pursuant to Sec. 22 of the Federal Fiscal Code (Bundesabgabenordnung, BAO).

An appeal against the above mentioned BFG decision is permissible. It therefore remains to be seen whether the tax authorities will file an appeal.

In all open proceedings based on a similar case, reference should be made to this BFG decision and, if necessary, an appeal should be filed. However, if there is already a legally binding assessment, a possible amendment of the assessment in accordance with Sec. 299 BAO (within one year of notification of the assessment) should be examined.

The BFG decision can be accessed via the following link (German version only):

<https://findok.bmf.gv.at/findok/resources/pdf/8d5a0bf1-3228-486f-8043-9d3a52529965/147299.1.1.pdf>

## Budget Consolidation Measures Act 2025 published in the Federal Law Gazette

### *Government program*

On 18 March 2025 the Budget Consolidation Measures Act 2025 (Budgetsanierungsmaßnahmengesetz, BSMG) was published in the Federal Law Gazette I No. 7/2025. The BSMG 2025 includes the new federal government's first budgetary consolidation measures (see Tax Short Cuts No. 05/2025 dated 3 March 2025). Key points include the early abolition of the zero VAT rate for photovoltaic systems, an increase in the stability levy for credit institutions, a location contribution from the energy industry, the extension of the motor-related insurance tax to electric vehicles and an increase in betting fees and the tobacco tax.

The law can be accessed via the following link (German version only):

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2025\\_I\\_7/BGBLA\\_2025\\_I\\_7.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2025_I_7/BGBLA_2025_I_7.pdf#sig)

# Federal Fiscal Court: Foreign currency losses at tax-free investment income, subsequent taxation of losses

## *Corporate Income Tax Act*

In its decision of 13 December 2024 (RV/7103249/2021), the Federal Fiscal Court (BFG) dealt with two questions relating to the corporate income tax. The first concerned the tax treatment of a foreign exchange loss in connection with a tax-free profit distribution and the second concerned the subsequent taxation of losses incurred by a foreign group member.

In the underlying case, the appellant company (GM GmbH) held a 90% stake in a Hungarian subsidiary. Profit distributions from this shareholding are generally tax-free in accordance with Sec. 10/1 Corporate Income Tax Act (Körperschaftsteuergesetz, KStG). The distribution resolved for 2014 was capitalized under corporate law in the same financial year (2014), as of 31 December 2014, as a receivable from the Hungarian subsidiary (phase-congruent profit distribution). For tax purposes, the distribution amount was recognized as tax-free investment income at GM GmbH on the date of the distribution resolution in March 2015. The payment was received in August 2015 following the devaluation of the Hungarian forint in the meantime. This resulted in a foreign currency loss between the resolution and the payment.

In the opinion of the BFG, the currency loss that occurs - after the dividend has been realized - depends on the development of the foreign currency and has no causal relationship to the distributing corporation that is relevant for the definition of investment income. Consequently, exchange rate gains and losses that occur after their realization (date of the distribution resolution) are no longer subject to the provisions of Sec. 10 KStG, but instead are tax-effective.

As a second point the following facts were considered:

GM GmbH was a member of an Austrian corporate income tax group and had included a Czech subsidiary as a foreign tax group member. Its losses were temporarily utilized in Austria during its membership of the group in accordance with Sec. 9/6/6 KStG. In 2016, GM GmbH sold this investment, and the resulting capital gain was tax-free in accordance with Sec. 10/3 KStG. As the Czech subsidiary left the group in the course of 2016, all losses attributed in previous years but not yet taxed in Austria had to be taxed in the year of leaving (retroactively as of 31 December 2015, Sec. 9/6/7 KStG).

According to the BFG, the attribution of the subsequent taxation amount does not increase the domestic group member's own income. Consequently, this does not result in an additional offsetting option for the pre-group losses - these can still only be used up to the amount of the profit generated by GM GmbH itself, which remains unchanged by the subsequent taxation.

An official and a party appeal were lodged against the BFG decision. It therefore remains to be seen how the Austrian Supreme Administrative Court will finally rule on both issues.

# Federal Fiscal Court: Foreign currency losses at tax-free investment income and subsequent taxation of losses

The BFG decision can be accessed via the following link (German version only):

<https://findok.bmf.gv.at/findok/resources/pdf/b96a6e6c-4800-4672-9ae6-f552fef14710/146414.1.1.pdf>

## Interest rate adjustments

### *Federal Fiscal Code*

The MoF has published the decree on the adjustment of interest rates for deferral, late payment, suspension, appeal and VAT interest (2025-0.183.205) on 10 March 2025, which replaces the decree 2024-0.893.729 of 16 December 2024. Due to the reduction of the base rate by the ECB, the Austrian base rate also decreased from 2.53% to 2.03% p.a.

The following interest rates apply as of 12 March 2025:

- Deferral interest: 6.53% (previously 7.03%)
- Late payment interest: 4.03% (previously 4.53%)
- Suspension interest: 4.03% (previously 4.53%)
- Appeal interest: 4.03% (previously 4.53%)
- VAT interest: 4.03% (previously 4.53%)

The decree can be accessed via the following link (German version only):

<https://findok.bmf.gv.at/findok/resources/pdf/0a314d5c-4936-4b80-b864-c1e0c3bbd092/83492.1.1.pdf>

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## Contact

### Business Tax

Markus Stefaner  
+43 1 211 70 1283  
[markus.stefaner@at.ey.com](mailto:markus.stefaner@at.ey.com)

### International Tax

Roland Rief  
+43 1 211 70 1257  
[roland.rief@at.ey.com](mailto:roland.rief@at.ey.com)

### Transfer Pricing

Manuel Taferner  
+43 1 211 70 1104  
[manuel.taferner@at.ey.com](mailto:manuel.taferner@at.ey.com)

### Indirect Tax

Ingrid Rattinger  
+43 1 211 70 1251  
[ingrid.rattinger@at.ey.com](mailto:ingrid.rattinger@at.ey.com)

### People Advisory Services

Regina Karner  
+43 1 211 70 1296  
[regina.karner@at.ey.com](mailto:regina.karner@at.ey.com)

### Global Compliance & Reporting

Maria Linzner-Strasser  
+43 1 211 70 1247  
[maria.linzner-strasser@at.ey.com](mailto:maria.linzner-strasser@at.ey.com)

### Transaction Tax

Andreas Sauer  
+43 1 211 70 1625  
[andreas.sauer@at.ey.com](mailto:andreas.sauer@at.ey.com)

### Editor and owner of the medium

Ernst & Young  
Steuerberatungsgesellschaft  
m.b.H. („EY“)  
Wagramer Straße 19, IZD-Tower  
1220 Vienna

### Responsible Partner

Klaus Pfleger  
+43 1 211 70 1179  
[klaus.pfleger@at.ey.com](mailto:klaus.pfleger@at.ey.com)

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