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# Austrian Tax News

**Latest tax news by EY**

## Amendment to the Austrian CIT Act: increase of the low taxation threshold to 15%

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On 10 December 2025, the first chamber of the Austrian Parliament adopted an amendment to the Austrian Corporate Income Tax Act (German version only; Körperschaftsteuergesetz, KStG) aimed at harmonising and increasing the thresholds for low taxation abroad to a uniform tax rate of 15% (as provided for under the global minimum taxation – Pillar Two) as of 2026.

Currently, interest and royalty expenses of corporations paid to affiliated corporations are not tax-deductible in Austria if the foreign recipient is not subject to a tax burden or tax rate of at least 10% (Sec 12/1/10 KStG). Under the amendment, this threshold shall increase to 15% (without any further substantive changes).

Profit distributions and capital gains from international intercompany participations (internationale Schachtelbeteiligungen) are exempt from CIT. If the foreign corporation derives passive income, income from this international intercompany participation is not exempt from CIT in cases of low taxation abroad, but is instead subject to Austrian taxation (with credit of foreign tax; switch-over to the credit method). Currently, under Sec 10a/3 KStG, low taxation exists if the effective foreign tax burden does not exceed 12.5%. Under the amendment, the low taxation threshold shall increase to 15% (again, without further substantive changes).

As a result of the increase in the low taxation thresholds, more foreign corporations will in future be considered low taxed, in particular where they are resident in tax jurisdictions that have not implemented the global minimum tax rate of 15%.

The amendments to Sec 10a KStG shall apply for the first time to fiscal years beginning after 31 December 2025, while the amendments to Sec 12/1/10 KStG shall apply to expenses incurred after 31 December 2025.

Further legislative developments remains to be seen.

# Home office PE: 2025 Update to the OECD Commentary

*OECD Model Tax Convention*

On 19 November 2025, the OECD published an update to the OECD Model Tax Convention (OECD MTC) as well as a comprehensive update to the Commentary on the Model Convention (OECD MC). A key focus of this update is the treatment of cross-border home office permanent establishments (PE). In the context of the 2025 update to the OECD MC, increasing cross-border work from home and from other private locations was a central consideration. The update provides employers with additional guidance for assessing the existence of a potential PE in cross-border work arrangements.

The new guidance does not only address work performed from a traditional home office, but also work carried out from other relevant places, in particular second homes, holiday rentals, or the homes of friends or relatives (para. 44.1 OECD MC). These places are characterised by the fact that control over the premises lies with the individual rather than the employer and that they are generally not accessible to other employees of the enterprise. The OECD MC clarifies under which conditions a home or other relevant place may constitute a PE within the meaning of the OECD MTC 2025.

Under the definition of Article 5/1 OECD MTC, a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on. A place of business must therefore have a certain degree of permanence.

For purposes of determining the relevant time thresholds, contractual home office arrangements may, pursuant to para. 44.9 OECD MC, be taken into account, provided that they reflect the actual working arrangements and working time. Where work performed from a home or other relevant place accounts for less than 50% of the individual's total working time, a PE should generally not arise, absent other relevant facts and circumstances (paras. 44.8 and 44.10 OECD MC).

If at least 50% of the total working time is spent working from a home office or another private location, a case-by-case assessment is required. The focus is on whether physical presence in the home office State supports the conduct of the business. Commercial reasons specifically mentioned include engaging with customers or suppliers, access to professional expertise in the same region, or continuous service availability due to different time zones. In such cases, cross-border home office work may give rise to a PE.

The mere fact that customers or suppliers are located in the home office State does not, by itself, constitute a commercial reason for establishing a home office PE. Likewise, a PE does not arise if the employee's activities abroad are solely due to personal preferences or if the work in the home office State is carried out purely for cost-reduction reasons (para. 44.16 OECD MC).

A different assessment may apply where the individual working abroad is the only person or the primary person conducting the business of the enterprise (para. 44.20 OECD MC). In such cases, a PE may arise irrespective of the 50% working-time threshold.

The Austrian Transfer Pricing Guidelines 2021 (para. 262, as amended in March 2025) focus, in the context of home office PE, primarily on sufficient permanence and the employer's factual power of disposal. Where the share of total working time is below 25%, sufficient permanence is deemed not to exist. By contrast, the updated OECD MC now applies a 50% threshold and explicitly places emphasis on commercial reasons for performing activities in the other State. The OECD MC is significantly more detailed and includes a number of illustrative examples.

To date, there have been no statements by the Austrian tax authorities regarding the amendments to the OECD MC. It therefore remains to be seen how the Austrian tax authorities will respond to these developments. Enterprises with employees working from a home office or other private locations in other States should review the potential implications of the OECD MC update. EY tax specialists are happy to assist in this regard.

In addition to further explanations and clarifications, the updated OECD MC also introduces a new alternative provision in Art. 5 OECD MTC concerning the taxation of the extraction of natural resources in the State of extraction.

# CJEU on the VAT assessment of tool deliveries

*Value Added Tax*

In the case of *Brose Prievidza* (C-234/24) of 23 October 2025, the CJEU dealt with the intra-Community supply of components by a Bulgarian company (BG) to a Slovak company (SK). A German affiliated company (DE, registered for VAT in Bulgaria) ordered a special tool from BG for the production of the aforementioned components. Ownership of the tool was transferred to DE, which then sold the tool to SK, while the tool remained in Bulgaria with BG. The tool was invoiced by DE to SK with Bulgarian VAT. SK subsequently applied for a refund of the Bulgarian VAT paid, which was denied by the competent administrative court on the grounds that the tool constituted an ancillary service to the tax-exempt intra-Community supply.

The CJEU stated in its ruling that it could not be considered an intra-Community supply within the meaning of Art. 138/1 of the VAT Directive, as the item did not leave the Member State. Furthermore, it noted that even if the sole purpose of the tool is the production of the components, this does not necessarily mean that it constitutes a single delivery. Rather, in this specific case, there are two separate deliveries, as these deliveries were provided by two independent service providers (components from BG, tool from DE).

# CJEU on formal requirements for tax-free intra-Community supplies

*Value Added Tax*

In its judgment in the case of *Flo Veneer d.o.o.* (C-639/24) concerning the legal situation following the amendments to the VAT Directive by the so-called Quick Fixes (Directive (EU) 2018/1910 of 4 December 2018), the CJEU stated that the exemption for intra-Community supplies cannot be denied solely due to the absence of formal requirements if the substantive conditions are met. The VAT exemption for intra-Community supplies cannot be denied simply because the evidence required under Art. 45a VAT Implementing Regulation for the existence of an intra-Community supply has not been provided. National tax authorities must consider all evidence submitted to demonstrate, outside the scope of the presumption under Art. 45a/1 VAT Implementing Regulation, that goods have been dispatched or transported from one Member State to a destination in another EU Member State.

The principle of tax neutrality requires that the exemption for intra-Community supplies be granted when the substantive conditions are met, even if the taxpayer has not complied with certain formal requirements. However, it is important to note that a taxpayer who intentionally participates in tax evasion cannot invoke the principle of tax neutrality for the purposes of the exemption. Furthermore, violations of a formal requirement may lead to the denial of the exemption if they prevent the secure proof that the substantive conditions are met.

# CJEU on VAT liability for factoring

*Value Added Tax*

In its ruling of 23 October 2025 (*Kosmiro*, C-232/24), the CJEU confirmed its previous case law and clarified that factoring fees constitute remuneration for a taxable service.

In the underlying case, a Finnish financial services provider provided factoring in the form of pledging and in the form of receivables sale. The CJEU ruled that in both cases, there is a taxable factoring, as the collection of receivables should be broadly interpreted as an exception to the VAT exemption for transactions involving receivables. The Court also clarified that the exception for debt collection is directly applicable and therefore has direct effect even without any national implementation.

# 2025 year-end: mandatory preparation of an annual cash register receipt

*Federal Fiscal Code*

At the end of each calendar year (even if the fiscal year differs), an annual cash register receipt must be prepared, which also represents the monthly receipt for December. This annual receipt must be signed, printed, reviewed (via the MoF's receipt review app; "BMF Belegcheck") and stored (Sec. 8/3 Cash Register Security Ordinance (Registerkassensicherheitsverordnung)).

Further information can be found in the MoF Cash Register Manual (German version only).

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