

Draft of the Austrian Tax Amendment Act 2023 published on 21 April 2023

The draft of the Tax Amendment Act 2023 (AbgÄG 2023) published on 21 April 2023 provides for new regulations on the attribution of dividends from Austrian shares, which are intended to comply with international standards for the capital market.

In the decision published on 28 June 2022, the Austrian Supreme Administrative Court (VwGH) ruled that for tax purposes, dividends are attributable to the person who was the owner of the shares at the time of the dividend resolution (date of the Annual General Meeting) (VwGH 28 June 2022, Ro 2022/13/0002). Consequently, according to this decision, Austrian withholding tax (KESt) is also only to be refunded to the person who held the shares on the day of the Annual General Meeting. As this attribution rule for dividends does not comply with international standards for capital markets, the Tax Amendment Act 2023 (AbgÄG 2023) is intended to create new rules that comply with stock market practices (new paragraph 4 in Section 32 of the Austrian Income Tax Act).

Beneficial Ownership of Austrian Dividend Income

The following changes are envisaged with regard to the attribution of dividends in terms of refunding of KESt in the case of listed shares:

- Deviating from the general attribution principles for distributions (VwGH 28.06.2022, Ro 2022/13/0002) and the former administrative practice (BMF information from 18.09.2014, BMF-010203/0314-VI/1/2014), going forward the dividends shall be attributed to the person who is the beneficial owner of the shares on the record date according to the stock exchange practices.

- The record date is the date on which the Central Securities Depository (CSD) determines the entitlement. This is the first trading day after the day on which the shares are traded for the first time without entitlement to divided (cum day+2 or ex day+1).

According to the draft law, beneficial ownership of the shares on the record date is attributed to the person holding the shares in their securities account at the end of the record date.

A clear legal provision is intended to create legal certainty and clearly rule out the possibility of multiple reimbursement of KESt, which has also not been possible under the law to date.

Prevention of abuse of law

In order to support the existing administrative practice and to prevent arrangements that do not aim at multiple realization but at avoiding KESt, explicit provisions for the refund of KESt in case of trading close to the record date are to be created in line with the German legal situation:

If shares are transferred to a taxpayer close to the record date without the taxpayer bearing an appropriate economic risk (e.g. in the context of an appropriately structured securities lending) and if a minimum holding period of 45 days around the record date is not met, a refund of the KESt shall not be possible insofar the transfer leads to a tax advantage (e.g. because in the

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context of a securities lending the borrower – unlike the lender – would be entitled to a full refund of KEST).

However, this shall only apply if the dividends for which the reimbursement of the KEST is to be made exceed € 20,000 in the calendar year.

Entry into force

The draft law does not contain separate provisions on the effective date of the new provisions. Therefore, according to the current draft, the new para 4 in Sec 32 of the Austrian Income Tax Act shall enter into force upon publication of the AbgÄG 2023 in the Federal Law Gazette (probably before July 2023).

Do you have questions? We are happy to assist.

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