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Parliament Reviews Supplemental Budget Act

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COUNTRY DIGEST

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Parliament Reviews Supplemental Budget Act

The first chamber of the Austrian parliament (Nationalrat, or National Council) on November 17 concluded its review of the supplemental budget act (received by the chamber November 3) for 2011-2014, which would considerably lower public spending and increase tax revenues.

Austria did not experience a housing bubble, its unemployment rate (structural) is below 5 percent compared with the average EU rate of 10 percent in the European Union, economic growth for 2010 is predicted to amount to 1.3 percent compared with 1 percent for the EU, and the state deficit amounts to 3.2 percent of GDP compared with an average of 6.8 percent in the eurozone. Despite these comparably positive figures, Austria was affected by the financial crisis, largely because of its dependency on the global economy as a small country that reaches out to the Central and Eastern European economies but is still strongly linked to the German economy.

The budget calls for cutting €1.6 billion in costs and raising €1.2 billion in new revenue.[1] Following the close of the review period, the National Council will discuss the proposal and any proposed changes. The goal of the government is to have the proposal passed as law before year-end. After being passed by the National Council, the proposal must pass the second chamber of parliament (Bundesrat, or Federal Council) and be signed by the president.

Corporate Income Tax Act

Under the Austrian participation exemption, dividends received from foreign corporate participations of 10 percent or more (within the EU, below this threshold) are exempt from taxation. To avoid excessive benefits from this holding privilege, the Corporate Income Tax Act (Körperschaftsteuergesetz) would be amended so that the exemption would not be granted if the underlying distribution is tax deductible.

Under an explicit statutory provision, interest payments made for financing obtained to acquire a corporate participation are deductible. This deductibility applies even though income generated from corporate participations is largely exempt from taxation (domestic and EU dividends, as well as dividends and capital gains related to foreign participations of 10 percent or more. Under the proposed amendment, deductibility would be denied if the participation was acquired within the group. This should prevent the accumulation of artificial debt within the group that leads to additional tax expenses without negative consequences on the tax base.

The act also proposes a minor change important to nonresident corporate investors regarding the refund of withholding tax on dividends (and an extension of the proposed change on earnings from jouissance rights and on dividend-like income from collective entities). Corporate investors resident within the EU or the European Economic Area would have to ask for the refund of the withholding tax at the finance office responsible for the payer of the respective income; currently, the refund has to be applied for at the finance office Bruck Eisenstadt Oberwart.

Income Tax Act

Under the current income tax law (Einkommensteuergesetz), capital gains from shares (representing a participation in the respective company of less than 1 percent), securities, and other investments are only taxable if the disposition takes place within one year after acquisition (10 years in the case of real estate). Under the proposed amendments, capital gains related to shares, bonds, and other investments (including derivatives) would be taxable irrespective of the holding period. The same rate would apply whether or not the shares are held for more than one year. Under the proposed rules, the consequences of a disposition (taxation of capital gains) would also be triggered upon leaving the country or moving investments from one deposit to another without specific notifications vis-à-vis the fiscal authorities.

[1]The German text of the supplemental budget act, *available at* http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00234/index.shtml.

Under the proposed new regime, the final withholding tax rate of 25 percent currently applicable to interest received from securities that are publicly offered and to dividends received by individuals or minority corporate shareholders (that is, those with holdings below 25 percent) would also apply to capital gains from shares and portfolio investments. For individuals, the 25 percent withholding tax would be final, meaning the capital gains could not be included in the overall income or loss of the taxpayer, regardless of whether the assets were held privately or in a business.

Under the proposed rules, losses related to investment income and capital gains could only be used to offset income from the same category and the same tax period. Observers see the limitation to the same tax period as disproportionate because the amount of taxation may vary substantially because of random occurrences.[2]

A proposal on the taxation of investment funds would eliminate the currently applicable exemption for capital gains realized upon the disposition of investment funds units. Because this general elimination does not take into account capital gains taxed at the level of the funds itself, observers believe it could sometimes lead to double taxation and may need to be revisited.[3]

The revenue increase from the taxation of capital gains should amount to €30 million during 2011 and up to €250 million in 2014.

Private Foundations

Currently, investment income earned by a private foundation (Privatstiftungen) is taxed at a rate of 12.5 percent. Under the proposed changes, the rate would increase to 25 percent; taxes imposed at the level of the foundation would still be credited against the taxation of beneficiaries charged upon distributions from the foundation. The increased taxation at the foundation level represents a change from the perspective of time value of money.

Capital gains from a private foundation's disposition of real estate after a 10-year period is currently tax exempt. Under the proposed changes, this benefit would no longer apply if at least one of the founders (or grantors) is a typical (that is, bookkeeping) corporation. This would only apply to real estate acquired after December 31, 2010.

The revenue increase from these changes should amount to €100 million.

Bank Tax

The proposed legislation would introduce a bank tax referred to as the stabilization charge (Stabilitätsabgabe). The stabilization charge would comprise a tax on an amount derived from the banks' balance sheet total and a tax on certain derivatives of the trading books. The tax on the balance sheet total — reduced by the bank's nominal capital and reserves as well as by funds from typical customers' saving accounts — would be assessed at 0 percent on the first €1 billion, 0.055 percent on the amount between €1 billion and €20 billion, and 0.085 percent on the amount exceeding €20 billion. The tax rate for derivatives would be 0.015 percent.

The revenue increase from the bank tax should amount to €500 million. According to the government, only the largest Austrian banks would be affected.

The bank tax has already resulted in tremendous discussion. One bank manager who stated that the tax would be passed on to customers received a rather pointed response from officials, who advised customers to change banks if that happens.[4] On the technical front, constitution lawyers raised concerns that the new tax would violate fundamental freedoms because the 2010 balance sheet is relevant for the first three years of the newly imposed tax[5] (thereafter, the balance sheet from the previous year would be used).

Abolishment of Stamp Duty

The Austrian Stamp Duty Act (Darlehensgebühren) imposes a charge of 0.8 percent or 1.5 percent on loan and credit agreements; the rate depends on the underlying terms and conditions. The proposed legislature would abolish the stamp duty payable on loan and credit agreements as of January 1, 2011. The government believes lifting the tax burden on debt financings will strengthen Austria as a financial center in light of introducing a new bank tax. The proposal would also abolish the stamp duty currently payable on security and discharge transactions pertaining to loan agreements and on assignments of claims in the context of factoring transactions. Stamp duty has regularly been avoided through the use of complex structures such as execution of agreements abroad, entering into loans by an offer-acceptance mechanism, or oral agreements that were only put into writing by lawyers. Abolishing

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[2]Comments on the government proposal made by tax professor Reinhold Beiser, *available at* http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00234_02/index.shtml (German text).

[3]*See* http://diepresse.com/home/wirtschaft/economist/606970/Chaos-bei-Steuer-fuer-Investmentfonds?from=suche.intern.portal (German text).

[4]*See* ''Schieder: Abwälzung der Bankensteuer nicht verhinderbar,'' *Der Standard*, Nov. 4, 2010.

[5]Heinz Mayer and Theo Öhlinger as cited in ''Bankensteuer im Visier der Verfassungsjuristen *Die Presse*,'' Nov. 5, 2010, http://diepresse.com/home/wirtschaft/economist/608086/print.do.

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the stamp duty would therefore make more straightforward transactions possible, reducing legal uncertainties and risks as well as costs.

The decrease in revenue from abolishing the stamp duty on loan and credit agreements should amount to €150 million.

Other Changes

Major revenue increases are also expected from proposed changes to the following: the tobacco tax (Tabaksteuer, projected revenue increase of €100 million to €150 million); a charge on flight tickets (Flugticketabgabe, projected revenue increase of €60 million to €90 million); the mineral oil tax (Mineralölsteuer, projected revenue increase of €480 million to €530 million); and the gasoline usage tax (Normverbrauchsabgabe, projected revenue increase of €25 million to €55 million to be offset by a tax bonus of €15 million to commuters, included as a countermeasure).

Enforcement Measures

Finally, the government believes that a more efficient pursuit of tax matters in general, especially preventing tax abuse, should bring additional revenue of up to €120 million in 2011 and up to €520 million from 2012 onward.

Comments

The supplemental budget act has received substantial criticism from all sides since its publication. The government has responded by stating that only minor changes will be possible in light of the financial goals set. In a country that does not impose an inheritance tax, the taxation of capital gains related to investments does not come as a surprise. However, imposing a bank tax, thereby imposing a burden on domestic banks that compete in a tough central and eastern European environment, is somewhat astonishing. ◆

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