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Austria

Tax Reform Effectively Ends Bank Secrecy in Austria

By Jabeen Bhatti

July 31 — Measures that combat tax evasion and effectively abolish banking secrecy are among the most significant enacted among a raft of tax reform laws adopted by Austria's second legislative chamber, the Bundesrat, attorneys told Bloomberg BNA.

The Tax Reform Act 2015, which passed the final legislative hurdle July 23 with its Bundesrat approval, introduces changes to income tax brackets and the real estate transfer tax (RETT), in what the Federal Ministry of Finance (BMF) called the "biggest financial relief" since World War II in March (75 ITM, 4/16/15). It also reduces the tax burden on lower and middle income families, and boosts the tax authority's powers to fight tax evasion, especially by businesses. However, attorneys said that measures to combat tax evasion, including the effective abolition of bank secrecy, are among the more significant developments.

"Austria was — alongside Luxembourg — one of the last two European Union states that still had bank secrecy," Christoph Urtz, tax attorney at Baker & McKenzie — Diwok Hermann Petsche Rechtsanwälte LLP & Co KG in Vienna and a tax professor at Salzburg University, told Bloomberg BNA July 29. "It has now basically been abolished. This is really positive in order to fight against tax evasion and tax fraud," he said.

The reform will allow authorities to access to bank accounts, but only with a court order. Urtz said that only tax and financial authorities can apply for a court order if the request is made as part of an investigation into possible tax fraud or evasion.

According to the legislation, access to accounts will only be granted if the tax authorities have legitimate concerns over the accuracy of a tax declaration, and the authority has already introduced an investigation under section 161, paragraph 2 of the Austrian Fiscal Code (BAO). Further, the taxpayer being investigated has to be allowed time to comment after the investigation is launched and any comments received from the taxpayer then have to be appraised and put on the record.

However, Gerd Krusche, a Bundesrat lawmaker with the opposition Freedom Party of Austria (FPÖ), labelled the abolition of bank secrecy as the government's "biggest mistake" during the July 23 parliamentary debate. Krusche said many of the new measures to fight tax evasion put citizens and businesses under "general suspicion" and have privacy implications.

In a June 8 statement, the FPÖ said the abolition of bank secrecy was a "license to snoop" and that it brands all Austrians as potential tax evaders in one fell swoop. The party argued that it was an invasion of people's financial private sphere and "a further step in the direction of a surveillance state."

Increased Workload in Fighting Tax Evasion

Meanwhile, measures introduced to fight tax evasion include a central register of all Austrian bank accounts, an obligation for banks to report to the BMF capital inflows of more than 50,000 euros ($55,000) into the bank accounts of natural persons and Lichtenstein-based foundations, as well as capital outflows of more than 50,000 euros ($55,000) from accounts held by natural persons — business accounts are exempt — and an obligation for companies earning more than 15,000 euros ($16,000) in cash annually to use cash registers or cash balance sheets.

While attorneys welcomed the changes, they said the move may prove difficult to implement, particularly as many of the finer points still need to be finalized.

"The introduction of a central registry for bank accounts, the more stringent reporting requirements and significantly simplified procedures to gain access to entire private financial assets through the tax administration will lead to increased administrative and time costs," Siegrid Rosenauer, international tax law advisor at law firm Viehbacher Rechtsanwälte in Vienna, told Bloomberg BNA July 30.

"Unfortunately, as many questions are still open, numerous uncertainties connected to requirements for documentation and proof in individual tax proceedings are expected," according to Rosenauer.

'Inheritance Tax by Backdoor'

Political party FPÖ also argued against the changes introduced to the RETT, saying the amendments constituted a "gift and inheritance tax through the back door," a notion shared by Rosenauer, who said that tax advisors are already observing "pre-emptive effects" with regards to intra-family real estate transfers because passing on or gifting property is about to become more costly.

According to the new regulations, which will come into effect at the beginning of 2016, intra-family property transfers will no longer be calculated using the so-called threefold standard value (dreifacher Einheitswert) system, but will follow the more expensive system based on the fair market value of the property. Under the new regulations, real estate worth less than 250,000 euros ($273,000) will be taxed at 0.5 percent, while property worth between 250,000 and 400,000 euros ($436,000) will be subject to a 2 percent tax and anything above this threshold will be taxed at 3.5 percent.

According to Urtz, the changes to the RETT are positive. "I really am encouraged by the raising of the RETT. I think that wealth taxes or inheritance taxes are pretty much necessary for financing the budget," Urtz said, noting that an anti-avoidance clause will be introduced.

"RETT was — under the previous RETT regime — only triggered if basically 100 percent of the shares of a company owning real estate property had been transferred, it is now sufficient if 95 percent of the shares are transferred," Urtz said.

Income Tax Rate to Fall, Capital Gains to Increase

The main legislative changes in the tax reform included a reduction of the income tax base rate from 36.5 percent to 25 percent on incomes between 11,000 euros ($12,480) and 18,000 euros ($19,650). The reform will also raise the threshold of the former maximum income tax rate of 50 percent from 60,000 euros ($65,500) to 90,000 euros ($102,000). Incomes topping 1 million euros ($1.1 million) will be taxed at a new 55 percent rate starting in 2016.

To fund the tax relief, value-added tax (VAT) will be increased from 10 percent to 13 percent for specific industries from Jan. 1, 2016. However, for the tourism and hotel sectors, as well as tickets for theatres and musical performances, the new rates will apply from May 1, 2016.

Other changes will mean capital gains tax on real estate sales will be increased from 25 percent to 30 percent.

Further, withholding tax on interest and dividend payments will also be increased from 25 percent to 27.5 percent, although interest on bank accounts will be exempt. Meanwhile loopholes for avoiding tax on dividend payments have been closed, Urtz said, referring to past opportunities that allowed dividend payments to be treated as a capital repayment in order to prevent triggering withholding tax.

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For More Information

The Tax Reform Act 2015 can be found, in German, at http://goo.gl/8obTC8.
