

INFORMATION - Austria

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Austria, there is a use and enjoyment rule applicable to telecommunications and broadcasting services provided to taxable and non-VAT taxable persons. Accordingly, if the place of supply is in a non-EU country and the service would not be subject to a comparable tax in that non-EU country, it will be taxable in Austria if used and enjoyed in Austria. However, the MOSS system is only available to report telecom broadcasting and electronic services to non-VAT taxable persons (Sec. 25a and Art. 25a Austrian VAT Code).

Reference to the above may be found in Sec. 3a (16) Austrian VAT Act in connection with the regulation enacted through BGBl II Nr. 383/2003 as amended by BGBl II 2009/221 by the Federal Minister of Finance and in MN (Margin Number) 643 of the (non-legally binding) Austrian VAT guidelines which reflect the opinion of the Austrian tax authorities.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

General Rule:

In Austria, services usually become taxable at the end of the calendar month during which the service is provided. If an invoice is issued after that date, VAT becomes chargeable at the end of the second month following the service, at the latest. The latter does not apply to services subject to the reverse charge system.

Reference to the above may be found in Sec. 19 (2) Austrian VAT Act.

If an invoice is issued incorrectly with VAT, VAT becomes still due at the end of the month in which the invoice is issued.

Reference to the above may be found in Sec. 19 (3) and Sec. 11 (12) and (14) Austrian VAT Act.

If VAT is paid before the service/supply is rendered, VAT becomes due within the assessment period (monthly or quarterly) in which the payment was received (Sec. 19 (2) last sub-paragraph Austrian VAT Act).

The cash accounting scheme is available in Austria for some taxpayers. This does not apply to services declared via the MOSS. Reference to the above mentioned may be found in Sec. 17 (1) Austrian VAT Act.

Rules concerning the MOSS:

Telecommunications, broadcasting and electronic services provided to non-VAT taxable persons have to be reported under the MOSS quarterly. Under MOSS, VAT becomes due at the end of the month during which the service is rendered. Deferral through later invoicing is not possible (Art. 25a (13) Austrian VAT Act).

For e.g. telecommunications services, taxpayers may assume that the service is provided when the invoice is issued (or the customer is charged). This applies only to continuous services (MN 2619 and 2620 Austrian VAT guidelines).

Please note that no cash accounting scheme is available with respect to services declared via the MOSS.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In the Austrian VAT Act, there is no specific regulation as to when VAT becomes chargeable for continuous supplies. However, according to MN 2619 and 2620 Austrian VAT guidelines for continuous supplies of services (e.g. telecommunication), VAT may become chargeable when the relevant invoice is issued or the payment is made i.e. the VAT liability arises at the end of the calendar month during which the invoice was issued/the payment was made. Although not legally required (regarding non-VAT taxable persons), in practice, telecommunications operators usually issue an invoice with respect to continuous supplies in order to gain certainty as to when VAT is chargeable.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In Austria, the consideration for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may be deemed to be the open market value when provided to persons with personal, legal or financial ties (including employees) for non-business related reasons provided that:

- the consideration is lower than the open market value and the recipient of the service does not have the right or full right to input VAT recovery;
- the consideration is lower than the open market value and the supplier does not have the right or full right to input VAT recovery and the supply is subject to a VAT exemption according to Sec. 6 (1)(7) to (26) or Sec. 6 (1)(28) Austrian VAT Act (includes certain e-learning and gambling activities);
- the consideration is higher than the open market value and the supplier does not have the right or full right to input VAT recovery.

Reference to the above may be found in Sec. 4 (9) Austrian VAT Act.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief is available in Austria. There are no specific rules in the Austrian VAT Act stipulating what evidence or proof is to be provided. Whether bad debt relief is available has to be ascertained on a case by case basis. It has to be certain that the debt will never be paid (which is the case for instance if the debtor is bankrupt or if the taxable amount was reduced by a court decision or a comparison agreement). In any case input and output VAT have to be corrected accordingly. The mere non-payment of a debt does not constitute an irrecoverable debt. Reference to the above may be found in Sec. 16 (3) (1) Austrian VAT Act and MN 2388 Austrian VAT Guidelines.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Austria, a reduced VAT rate (10%) is applicable to services provided by broadcasting companies. Services provided by Cable TV companies that broadcast simultaneously, full and unmodified radio and television programmes, are also subject to 10% VAT provided that these services are rendered for the general public and for continuing consideration. For any other MOSS services the standard rate of 20% applies.

Reference to the above may be found in Sec. 10 (2) no. 5 Austrian VAT Act.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Austria the standard VAT rate is 20%. Reference may be found in Sec. 10 (1) Austrian VAT Act.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Austria has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

According to the Austrian VAT Act, there is no obligation to issue an invoice for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Reference to the above may be found in Sec. 11 (1) Austrian VAT Act.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

Austria has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. Nevertheless, the general anti-avoidance rule to be found in Sec. 22 of the Austrian Federal Fiscal Code and which generally applies to VAT should be taken into account.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

There are no provisions which are applicable under a Stand-still Scheme in the Austrian VAT legislation or subject to common practice in Austria that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Treatment of vouchers

There are no concrete rules in the Austrian VAT Act with respect to vouchers, multi-purpose cards and phone cards. A distinction between different types of vouchers for different types of supplies is made in practice and in some instances a card or a voucher may be seen as e-money outside the scope of VAT. The VAT treatment is usually determined on a case by case basis.

Reference to the above may be found in MN 4 of the VAT guidelines of the Austrian tax authorities.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

In Austria, general and vocational education provided by private schools and other comparable institutions are VAT exempt if the services are comparable to those provided by public schools. Services provided by private teachers who teach in public schools or comparable private schools are also VAT exempt. Basically, the VAT exemption is also applicable to certain e-learning activities.

Reference to the above may be found in Sec. 6 (1) (11) Austrian VAT Act and MN 874 ff. Austrian VAT guidelines.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

In Austria, the exemption applicable to certain gaming and gambling activities also applies to gambling provided electronically. The exemption applies to:

- bets not falling under the Austrian Gambling Act and
- draws (according to Sec. 2 (1) Austrian Gambling Act) defined as games of chance which an entrepreneur arranges, organises, offers or makes accessible; for which players or others provided monetary benefit or benefit in kind to participate; and in which the prospect of monetary benefit or benefit in kind is offered by the entrepreneur, from players, or from others.

Gambling services performed with gambling machines and Video Lottery Terminals (centrally connected Terminals used for electronic lotteries) are excluded from the scope of the exemption.

Reference to the above may be found in Sec. 6 (1) no. 9 (d) Austrian VAT Act.

The taxable basis for supplies made with gambling machines or Video Lottery Terminals exclude paid out wins (reference can be found in Sect 4 (5) Austrian VAT Act). There is no specific guidance in the Austrian legislation regarding the VAT treatment of bonus points/credits earned as part of e-gambling activities and such treatment should be analysed on a case by case basis.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

The services provided by e-brokers may fall under the VAT exemption according to Sec 6 (1) 8 Austrian VAT Act in case the services provided by the e-brokers could constitute, change or expire rights and obligations for the parties in relation to securities. In case the e-broker only provides material, technical or administrative services, which do not lead to legal or financial changes, the VAT exemption would not be applicable.

There is no further exemption in the Austrian VAT Act under which the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may fall.

VAT Registration Process

The registration for the MOSS (EU scheme) is available electronically via FinanzOnline (<https://finanzonline.bmf.gv.at>), the online portal of the Austrian tax authorities.

The registration for the MOSS (non-EU scheme) can be done through another portal (<https://non-eu-moss-evat.bmf.gv.at>) of the Austrian Ministry of Finance.

Access to web-portal and contact details of the local VAT authorities

In Austria MOSS returns have to be filed via the online portal of the Austrian Federal Ministry of Finance called FinanzOnline: <https://finanzonline.bmf.gv.at> (EU Scheme) or <https://non-eu-moss-evat.bmf.gv.at> (non-EU Scheme). The access codes to FinanzOnline are obtained via a special registration form. Please note that in some cases the access codes are not sent to foreign countries.

The web portal can be accessed with an identification number, the user identification and a PIN code. The Austrian tax authorities allocate the respective codes for an administrator. It is however possible to subsequently create further user and administrator accounts.

General contact:

Mr Ernst Radlwimmer

e-mail: ernst.radlwimmer@bmf.gv.at

Tel: +43 50 233 553305

Fax: +43 50 233 5953305

Contact for MOSS „VAT obligations and reimbursements“:

The tax office Graz-Stadt is responsible for MOSS-related queries from persons who are not established in Austria:

Finanzamt Graz-Stadt

Conrad von Hötzendorfstraße 14-18

8018 Graz, Austria

Tel. +43 50 233 333

Fax +43 50 233 5938041 or + 43 50 233 5938042

Further information specific to the MOSS may be found in Sec. 25 a and Article 25a Austrian VAT Act as well as on the website of the Federal Ministry of Finance (www.bmf.gv.at and <http://english.bmf.gv.at/taxation/moss.html>).

Appointment of a VAT Agent

In Austria, it is possible for agents to file returns on behalf of a taxpayer.

Penalties for non-compliance (Failure to register and late registration)

In Austria, the penalty for failure to register for VAT if done with intent can be up to EUR 5,000. No penalties according to the Austrian Fiscal Criminal Law Code apply if failure to register was due to mere negligence. Reference to the above may be found in Sec. 51 of the Austrian Fiscal Criminal Law Code.

Penalties for non-compliance (Non-payment and late payment of VAT)

The Austrian tax authorities generally impose penalties of 2% of the VAT due for late payment of VAT (overall up to 4% of the VAT due).

The Austrian tax authorities can initiate fiscal criminal law proceedings.

A voluntary disclosure can mitigate penalties according to Fiscal Criminal Law.

Reference to the above may be found in Sec. 217 of the Austrian Federal Fiscal Code.

Penalties for non-compliance (Non-submission and late submission of VAT returns)

For late submission of VAT returns a penalty (up to 10% of the VAT due) may be charged at the discretion of the tax authorities.

Reference to the above may be found in Sec. 135 of the Austrian Federal Fiscal Code. Fiscal criminal law implications may also apply.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

Periodic VAT returns which are incomplete and/or contain incorrect information can be corrected during the relevant fiscal year. In case the amended periodic VAT return or the annual VAT return results in additional VAT being due, the Austrian tax authorities generally impose a penalty for late payment of VAT. Fiscal criminal law implications may also apply.

Mitigation is possible when filing a voluntary disclosure.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

Furthermore, if accounts are not kept in accordance with VAT requirements, VAT may be assessed based on the auditor's estimation. According to Sec. 111 (3) Austrian Federal Fiscal Code penalties can be assessed up to EUR 5,000 by the tax authorities. Additionally, fiscal criminal law implications may also apply. Documents relating to turnovers declared via MOSS have to be kept on file for 10 years.

Reference to the above may be found in Sec. 25a and Art. 25a Austrian VAT Act and Sec. 184 Austrian Federal Fiscal Code.