

International Tax Austria Highlights 2017



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No restrictions are imposed on the import or export of capital. Repatriation payments may be made in any currency. Both residents and nonresidents may hold bank accounts in any currency.

Accounting principles/financial statements – UGB (Austrian Commercial Code), IAS/IFRS. Financial statements must be prepared annually.

Principal business entities – These are the public/private limited liability company, partnership, sole proprietorship and branch of a foreign corporation.

Corporate taxation:

Residence – A corporation is resident if it is incorporated in Austria or managed and controlled in Austria.

Basis – Residents are taxed on worldwide income; nonresidents are taxed only on Austrian-source income. Branches are taxed in the same way as subsidiaries.

Taxable income – Corporation tax is imposed on a company's profits, which consist of business/trading income, passive income and capital gains. Normal business expenses may be deducted in computing taxable income. Interest on debts obtained for the acquisition of a participation is not deductible if the participation is acquired within a group of companies. Interest and royalties paid to intragroup companies that are subject to an (effective) tax rate below 10% are not deductible.

Taxation of dividends – Dividends received from an Austrian resident company are tax exempt. Portfolio dividends (i.e. where there is a participation of less than 10%) received from a company listed in the EU parent-subsidiary directive, or a nonresident company

comparable to an Austrian company that is resident outside the EU in a case where there is a broad exchange of information clause in a tax treaty between Austria and the nonresident's country, are exempt from corporate tax (domestic/EU/non-EU portfolio dividend exemption).

Dividends received from a nonresident company that do not satisfy the above criteria are tax exempt if the following criteria are met (international participation exemption): (1) the nonresident is a company comparable to an Austrian company or a company listed in the EU parent-subsidiary directive; (2) the parent company holds directly or indirectly at least 10% of the equity capital of the subsidiary; and (3) the minimum 10% shareholding is held continuously for at least one year.

Capital gains – Capital gains generally are taxed at the same rate as ordinary income. Under the international participation exemption, gains from the sale of a participation in a nonresident company are exempt unless the resident company has exercised an option to have capital gains treated as taxable income.

Losses – Losses may be carried forward indefinitely, but generally may be offset against only 75% of the profits of a given year. The carryback of losses is not permitted.

Rate – 25%

Surtax – No

Alternative minimum tax – There is an annual minimum corporate income tax of EUR 1,750 for a limited liability company and EUR 3,500 for a joint stock company.

Foreign tax credit – Foreign tax paid may be credited against Austrian tax, but the credit is limited to the amount of Austrian tax payable on the foreign income.

Participation exemption – Intercompany dividends are exempt under the domestic/EU/non-EU portfolio dividend and international participation exemptions (see under "Taxation of dividends").

As noted above, under the international participation exemption, capital gains on the sale of qualifying participations are tax-exempt unless the resident company has exercised an option to have capital gains treated as taxable income.

The EU/non-EU portfolio dividend exemption does not apply if the foreign company is (1) not subject to a tax comparable to the Austrian corporate income tax; (2) subject to a tax comparable to the Austrian corporate income tax at a tax rate of less than 15%; or (3) tax exempt in its state of residence.

The international participation exemption (for dividends or capital gains) does not apply if the nonresident company generates passive income and pays tax at a rate of less than 15%.

The EU/non-EU portfolio dividend exemption and the international participation exemption do not apply if the dividends are tax deductible at the level of the distributing nonresident entity.

Holding company regime – See under "Taxation of dividends" and "Participation exemption."

Incentives – Various incentive programs are available, such as a 12% cash premium on certain R&D expenses.

Withholding tax:

Dividends – Dividends paid to another Austrian company are exempt. Dividends paid to a nonresident company are subject to a 27.5% withholding tax, unless the rate is reduced under a domestic provision or a tax treaty or the dividends are exempt under the EU parent-subsidiary directive. A refund of the withholding tax is possible for EU/EEA parent companies if the withholding tax cannot be credited in their residence state under a tax treaty.

Interest – No withholding tax is levied on loan interest paid to a nonresident company. However, certain publicly issued corporate bonds may trigger withholding tax. Payments made to a nonresident silent partner in an Austrian company are subject to 27.5% withholding tax, unless the rate is reduced or the payments are exempt under a tax treaty.

Royalties – Royalties are subject to a 20% withholding tax, but the rate may be reduced or the payments may be exempt under a tax treaty or the EU interest and royalties directive.

Technical service fees – Fees for technical services are subject to a 20% withholding tax, unless the rate is reduced or the payments are exempt under a tax treaty.

Branch remittance tax – No

Other taxes on corporations:

Capital duty – No

Payroll tax – Municipalities levy a general payroll tax of 3% on total salaries and wages paid monthly by permanent establishments based in Austria. Further payroll-related taxes between 5.99% and 6.07% also have to be paid.

Real property tax – Municipalities impose an annual real estate tax of up to 0.2% on up to five times the assessed value of property.

Social security – The employer is required to make payroll-related social insurance contributions. The employer's contribution generally amounts to 21.48% of an employee's salary. The employee's corresponding contribution of 18.12% must be withheld by the employer and remitted to the social insurance agencies.

Stamp duty – Stamp duty is levied at a rate ranging from 0.8% to 2% on various transactions (e.g. the assignment of receivables, rent and lease contracts) if the transaction is evidenced in a stamp duty relevant deed in Austria. Loan/credit contracts no longer are subject to stamp duty.

Transfer tax – Transfers of real estate are subject to an acquisition tax of 3.5% of the consideration (plus a 1.1% registration fee with the land register). If there is no consideration, the real estate transfer tax and registration fee usually are based on the fair market value (with a tax rate between 0.5% and 3.5%). For certain privileged transactions (e.g. reorganizations or transfers of at least 95% of the shares in a company holding Austrian real estate), a real estate transfer tax of 0.5% and the registration fee are based on the lower of (i) three times the assessed value of the land plus the value of the building, (ii) standardized values provided by the Ministry of Finance or (iii) the fair market value.

Other – Austrian banks and foreign banks with an Austrian branch are subject to a banking tax based on the balance sheet total, reduced by equity and covered contributions. The banking tax is starting with a tax base of more than EUR 300 million-0.024% to 0.029%. It is not tax deductible for corporate income tax purposes. Additionally, a special contribution of 0.211% to 0.258% is levied. Cap and floor sets apply.

Anti-avoidance rules:

Transfer pricing – In the course of the BEPS project, Austria has introduced "standardized" transfer pricing documentation-i.e. a master file, local file and country-by-country report-which generally is applicable for fiscal

years starting on or after 1 January 2016. Penalties of up to EUR 50,000 can be assessed if documentation requirements are not met. Apart from that, no special transfer pricing provisions exist, but the Ministry of Finance has issued guidance based on the OECD guidelines. Transactions between affiliated companies must be at arm's length. Taxpayers may obtain binding rulings on transfer pricing issues.

Thin capitalization – There are no specific thin capitalization rules, but, in accordance with case law, interest may be reclassified as a dividend in certain situations. The tax authorities usually accept a debt-to-equity ratio of 4:1 in tax audits, although this is not considered a safe harbor.

Controlled foreign companies – No

Disclosure requirements – No

Other – Under the statutory general anti-avoidance rule, the tax authorities can make adjustments if there has been an abuse of legal form and methods to achieve a tax benefit.

Compliance for corporations:

Tax year – The tax accounting period generally may not exceed 12 months.

Consolidated returns – Companies may form a consolidated group in Austria. To be eligible to file a consolidated return, a parent company must hold more than 50% in the affiliated company. Nonresident companies resident in the EU or in countries with broad mutual assistance agreements with Austria also may participate in a tax group, and their losses may be used in Austria. However, foreign losses of nonresident companies are subject to a recapture rule if the nonresident leaves the Austrian tax group, changes its business significantly compared to the year in which the losses were incurred or subsequently is liquidated. An annual corporate income tax return must be filed for each member of the group subject to unlimited tax liability in Austria, as well as for the head of the group.

Filing requirements – Austria operates a self-assessment regime. Advance payments of corporate tax are required in four installments. The tax return must be filed electronically by 30 June of the year following the tax year. Filing deadlines may be extended if the corporation is represented by a tax advisor.

Penalties – Penalties apply for failure to comply.

Rulings – Taxpayers may request a nonbinding ruling on the tax consequences of a proposed transaction, and a binding ruling on issues relating to restructurings, tax groups and transfer pricing. For a binding ruling, the

taxpayer will be charged a fee of up to EUR 20,000 by the tax authorities.

Personal taxation:

Basis – Austrian resident individuals are taxed on their worldwide income; nonresidents are taxed only on Austrian-source income.

Residence – An individual is resident if he/she is domiciled or has a habitual abode in Austria. A habitual abode is presumed if the individual stays in Austria for more than six months.

Filing status – Each taxpayer must file a return; joint filing is not permitted.

Taxable income – Taxable income is the sum of income from all sources, including income from employment, the carrying on of a business or profession and income from investments.

Capital gains – Capital gains relating to investments are subject to a 27.5% capital gains tax, and capital gains from real estate are subject to a 30% tax. The alienation of participations of less than 1% in a corporation or participations in an investment fund acquired before 1 January 2011, bonds or derivations acquired before 1 April 2012 and real estate acquired before 1 April 2002 usually is subject to more favorable rules.

Deductions and allowances – Deductions from income are available for various losses, special and exceptional expenses and disabled individuals, and to farm and forestry workers. Allowances based on a taxpayer's personal circumstances are replaced by tax credits (for sole earners, sole educators and employees).

Rates – Rates are progressive up to 55%.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duty is levied at a rate ranging from 0.8% to 2% on various transactions (e.g. the assignment of receivables, rent and lease contracts) if the transactions are evidenced in a stamp duty relevant deed in Austria. Loan/credit contracts are not subject to stamp duty (nor are securities for such loans).

Capital acquisitions tax – No

Real property tax – Municipalities impose an annual real estate tax of up to 0.2% on up to five times the assessed value of property.

Inheritance/estate tax – There is no inheritance tax. There is a statutory notification requirement for gifts. Transfers of real estate are subject to an acquisition tax of 3.5% of the consideration (2% for transfers of

agricultural and forestry land between close family members), with the fair market value being the minimum (plus a 1.1% registration fee with the land register). If there is no consideration, the real estate transfer tax and the registration fee generally are based on the fair market value of the real estate.

Net wealth/net worth tax – No

Social security – Employed and self-employed individuals must make social security contributions in an amount determined based on the individual's salary or income from self-employment.

Other – A flight tax is levied on all passengers departing from an airport within Austria. The tax ranges from EUR 7 to EUR 35, depending on the distance flown.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Tax on employment income is withheld by the employer. Certain types of investment income are not included in the computation of the taxpayer's income but are subject to a special withholding tax of 25% or 27.5%. Other income is self-assessed (a special tax rate of 30% applies for capital gains from real estate); the taxpayer must pay advance income tax in four installments. The tax return must be filed electronically by 30 June in the year following the assessment year. Filing deadlines may be extended if the individual is represented by a tax advisor.

Penalties – Penalties apply for failure to comply.

Value added tax:

Taxable transactions – VAT is levied on the sale of goods and the provision of services.

Rates – The standard rate is 20%. A lower rate of 13% applies to—among other things—accommodations and cultural services; a 10% rate generally applies to foodstuffs, pharmaceuticals, agricultural products, rent for residential purposes and entertainment. Banking transactions are exempt, and a zero rate applies to exports.

Registration – Austrian entrepreneurs whose annual turnover exceeds EUR 30,000 must register for VAT purposes.

Nonresidents that make taxable supplies of goods or services in Austria also are required to register.

Filing and payment – VAT returns are filed electronically on a monthly/quarterly basis. Annual returns must be filed electronically by 30 June of the year following the tax year. Filing deadlines may be extended if the entrepreneur is represented by a tax advisor.

Source of tax law: Austrian Income Tax Act 1988, Corporation Tax Act 1998, Value Added Tax Act 1994, Stamp Duty Tax Act 1957, Real Estate Tax 1955, Real Estate Transfer Tax 1987, Capital Duty Tax Act 1934, Inheritance and Gifts Tax Act 1955, Stability Tax Act 2010, Flight Tax Act 2010, Transfer Pricing Documentation Act 2016

Tax treaties: Austria has concluded over 90 tax treaties.

Tax authorities: Revenue offices of the Austrian Ministry of Finance

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