KPMG

Tax in Austria

Key tax aspects for businesses

Austria is a member of the EU. The currency is EUR. International Income tax specifics, many regulatory requirements and especially VAT, are basically based on EU-Directives binding for all EU member states. Furthermore, there are Double Tax Treaties (**DTT**) between Austria and 89 countries in place (Annex 1), which are mainly based on the OECD Model Tax Treaty.

Topics

I. Setting up a Business

Foreign ownership in Austrian companies is not restricted (100 % ownership possible). The most frequent utilized legal forms for Austrian investments of foreign companies are:

(i) Austrian legal entity (company with limited liability)
(ii) Registered branch
(iii) Non-registered permanent establishment

Joint investment vehicles with other investors are also possible and often set up as tax-transparent partnerships.

II. Taxation of Corporations

1. Corporate Income Tax

Corporations
The most common legal entities in Austria are Companies with limited liability („Gesellschaft mit beschränkter Haftung", **GmbH**, minimum capital EUR 10k, prevalent structure for Austrian subsidiaries of non-resident companies, less suitable for wide-spread ownership or frequent transfers of shares) and Stock Companies („Aktiengesellschaft", **AG**, minimum capital EUR 70k, the board must report to the obligatory supervisory board). At least 50 % of the share capital must be paid in cash before registration, 25 % in case of a Stock Company.

In 2023 a new flexible company („Flexible Kapital-gesellschaft", **FlexCo** or FlexKapG) designed for start-ups has been implemented. The FlexCo provides for a simplified form of employee participation via enterprise value shares („Unternehmenswert-Anteile") providing for limited shareholder rights. In principle, they are entitled to a share in the net profit but have no voting rights.

Tax-Residence
Tax-residency of a company determines applicable taxation. If a company is tax-resident in Austria, its worldwide income is taxable, whereas only Austrian sourced income of non-resident companies is taxable in Austria. Non-resident corporations are liable to CIT (Corporate Income Tax) on taxable profits attributable to an Austrian permanent establishment, registered branch or (depending on

the Tax Treaty) real estate-income in Austria.

A company is tax-resident in Austria if either its legal seat or its place of effective management is in Austria. The legal seat of a corporation is defined in its articles of association. The place of effective management is the place where day-to-day management of the corporation (decision making) effectively takes place.

Tax Rate
The standard Corporate Income Tax Rate is 23 % (from 2024 onwards). There is a minimum CIT payment if no taxable profits are earned. Paid minimum CIT can be carried forward without time limitation and credited against future CIT payable. Minimum CIT equals 5 % of one quarter of the statutory minimum level of the nominal or share capital for each full calendar quarter, which is EUR 500 p.a. for FlexCo and GmbH, EUR 3.500 p.a. for AG.

Tax System
Profits of a corporation are taxed at the Corporate Income Tax (**CIT**) rate in the year earned. Income tax is imposed on a net income tax basis, i.e. gross income less allowable deductions. Resident entities are taxed on their worldwide income. CIT must be computed and paid annually. Quarterly prepayments are required (based on the income of the latest assessed year).

Tax-deductible expenses
Ordinary business expenses are tax-deductible. Expenses directly relating to exempt income are non-deductible. Interest expenses relating to debt-financed third-party share acquisitions are tax-deductible. If the shares are acquired from a related party / controlling shareholder, interest expenses are non-deductible. Interest and royalties paid to foreign related parties are non-deductible if the interest-/royalty-income is not (effectively) taxed at a rate of at least 10 % at the level of the recipient.

An impairment of shares to the lower fair value is obligatory if the reduction in value is expected to be permanent. Impairments are tax-deductible but have to be spread over a period of 7 years. No deduction is allowed for write-downs resulting from profit-distributions. Participations must be written up if the fair value increases (up to the acquisition price at the maximum).

There are several rules providing for interest-deduction limitation (see below).

Dividends are not deductible from taxable income. They are subject to Withholding Tax when distributed to and received by the shareholders (obligation of paying corporation). Dividend income is taxed at a recipient's level at the rates applicable based on their status (corporation, trust or individual). For corporations receiving dividends, there are tax exemptions available.

Withholding Taxes
– Dividends paid to non-resident companies: 23 %. Exemption at source for EU-parent based on the Parent/Subsidiary Directive. Reduction/ Exemption based on applicable DTTs.
– Interest to non-resident companies: 0 %.
– Royalties for the use of patents or copyrights by non-resident companies: 20 %. Exemption at source based on EU Interest and Royalties Directive.
– There is no branch Withholding Tax.

Tax Exemptions
National participation exemption
– **Dividends** from Austrian resident companies are tax exempt on the level of the receiving Austrian parent company. Dividends which an Austrian tax resident corporation receives through a direct or indirect (e.g. held via a partnership) participation in an Austrian corporation are exempt from Austrian Corporate Income Tax, regardless of the extent of the participation and regardless of the length of time during which the participation in the subsidiary has been held by the parent.
– **Capital gains** from the sale of an Austrian resident company, by contrast, **are taxable** at the regular CIT rate.

International participation exemption
– **Qualifying dividends** from an EU-resident subsidiary are exempt from Withholding Tax based on the EU Parent/Subsidiary Directive
– Requirements:
  - Holding period of at least one year
  - Minimum equity interest of 10 %
  - The payment received is not tax-deductible at the level of the payor (anti-hybrid rule)
– Dividends derived from subsidiaries resident outside the EU are exempt under the same preconditions if the foreign subsidiary is comparable to an Austrian resident company (mainly in terms of the existence of a separate legal foreign entity which is separate from that of the shareholders, fixed share capital, liability of shareholders for debts of the company is limited, decisions are made by the management).
– **Capital gains and write-ups** are also covered by the international participation exemption, whereas capital losses and write-downs are non-deductible (**tax neutrality** of international participations). Capital losses resulting from the liquidation or insolvency of a non-Austrian subsidiary still can be deducted to the extent they exceed the amount of any tax-exempt dividend received during the last five business years.
– **Option for tax-effectiveness:** In the year of the acquisition of the international participation, the Austrian parent company may opt for treating all capital gains and capital losses in connection with a sale or write-down of shares in an international participation as tax-effective. In such cases, capital gains are taxable at regular

rates, while capital losses are tax-deductible. The deductible loss/write-down still is to be spread over a period of seven years. Dividends are always tax exempt (even if the option has been exercised). The option for tax-effectiveness may be exercised separately for each participation. Once the option is exercised, it cannot be withdrawn.

Portfolio participation exemption

– Dividends received based on cross-border portfolio participations (equity interest less than 10 %) are also tax exempt if the dividends are derived from:
  - a listed EU company in the EU Parent/ Subsidiary Directive, or
  - a third country subsidiary, if the foreign subsidiary is comparable to an Austrian resident company and if a comprehensive agreement on mutual assistance for the exchange of tax information with the company's state of residence has been concluded.
  - The payment received is not tax-deductible at the level of the payor (anti-hybrid rule).
– Capital gains from a sale of portfolio shares are subject to CIT at the regular rate.

There is an anti-avoidance clause for shareholdings in low-taxed companies earning passive income in place. Dividends paid out by these companies to Austrian corporate recipients are not exempted but there is a switch over applicable (taxation of dividends in Austria, tax-credit available for foreign CIT paid by the distributing entity).

Furthermore, CFC-rules apply if low-taxed (direct and indirect) foreign subsidiaries and permanent establishments of controlling Austrian-resident corporate shareholders earn passive income. This foreign income is allocated to the Austrian parent and subjected to CIT in Austria.

Tax Losses

Tax Losses may be carried forward (**TLCF**) indefinitely. They can be set off against future positive taxable income. Still, only 75 % of the annual income can be sheltered by TLCF, whereas 25 % are subject to immediate taxation. There is no tax loss carryback available.

TLCF are lost after a substantial change in the commercial identity. Three characteristics are considered to evaluate whether the commercial identity has substantially changed: change in ownership in the company's share capital (sale of 75 % of the shares), change in economic structure (reduction/ close-down of business activities, setting up of new business), change in organizational structure (new management). TLCF may also be lost upon a restructuring if the loss-causing assets do no longer assist.

Group Taxation

If a qualifying tax group parent holds more than 50 % of the shares as well as voting rights in a qualifying subsidiary (group member) throughout the whole fiscal year of this subsidiary, a tax group can be formed (application required). A tax group must remain in place for at least 3 years. Otherwise, it will collapse retroactively (retroactive taxation on a stand-alone basis).

– Qualifying group parents: Austrian corporations, foreign corporations listed in the EU Parent/ Subsidiary Directive or seated in EEA countries if they are comparable to Austrian corporation.
– Qualifying group members: Austrian corporations, corporations resident in an EU Member State or in a third country provided a comprehensive agreement on mutual assistance for the exchange of tax information has been concluded by this country and Austria.

In a tax group, Tax Losses of resident group members or the group parent can be fully offset against positive income of other resident group members / the group parent. Losses of non-resident members can only be offset against a maximum of 75 % of the profits of all resident members. Throughout the tax group, losses of the tax group result in TLCF of the tax group parent only. These TLCF of the group parent can be offset against future tax group profits, but only at 75 % of the taxable income of the group. Pre-group Tax Losses of group members can only be offset against positive stand-alone income of this group member but at 100 %. Throughout the existence of a tax group, impairments of shares in group members are non-deductible.

Each group member files a CIT-return on a stand-alone basis. CIT is only assessed at the level of the group parent. CIT is shared among the group members based on a tax-allocation agreement.

Tax Holidays

There are no Tax Holidays available in Austria.

Transfer Pricing

The Ministry of Finance published Transfer Pricing Guidelines based on OECD Guidelines. These guidelines are not legally binding for taxpayers, but for the Austrian tax authorities.

According to an EU Directive and a BEPS Action, large Multinational Enterprises (MNEs) are required to prepare a public Country-by-Country Report (CbCR) with aggregated data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which they operate. The rules apply to MNEs with annual consolidated group revenue equal to or exceeding EUR 750,000,000 in the preceding year. A Master File and a Local File have to be prepared by an Austrian group-company if it had a turnover exceeding EUR 50,000,000 in each of the two preceding years.

Thin Capitalization
There are no explicit Thin Capitalization rules in place. Intra-group financing must comply with general arm's length requirements. The administrative practice tends to accept a debt-equity ratio of approximately 4:1 to 5:1 (depending on branch and business risk). Otherwise, intra-group loans are qualified as deemed equity resulting in non-deductible interest.

Interest Deduction limitation
Net interest expenses are non-deductible if they exceed 30 % of the tax-EBITDA (no limit up to EUR 3m, carryforward of interest possible). Furthermore, related party interest expenses are non-deductible based on subject-to-tax legislation as well as if they relate to intra-group share acquisitions or to capital repayments.

Controlled Foreign Company Rules (CFC)
CFC rules are applicable in Austria if:
– an Austrian corporation holds a direct or indirect participation of more than 50 % in the capital or voting rights, or a share in profit of more than 50 % in a foreign entity or PE,
– the income of the CFC consists of more than 1/3 of passive income and
– the effective tax burden of the CFC does not exceed 12.5 % (foreign tax is compared to CIT that would have been due if it were subject to Austrian tax law).

There are exceptions applicable (e.g. significant substance test).

Anti-avoidance rules
There is anti-avoidance legislation included in CIT law and there is a general anti-avoidance rule included in the Federal Fiscal Code providing for a substance-over-form approach.

Tax Compliance
Corporations have to keep books and records (basically for 7 years), have to notify the tax office of tax-relevant issues, have to file annual tax returns, generally, until June 30th of the following year (extension granted if the entity is represented by a tax advisor up to March 31st of the 2nd following year at the latest).

Horizontal Monitoring
Large corporations that fulfill certain requirements can apply for Horizontal Monitoring with the tax authorities. Through the implementation of an internal control system, verified by tax advisors or auditors and extended disclosure requirements, Horizontal Monitoring can replace traditional tax audits.

2. Value Added Tax (VAT)

VAT is levied at all levels of the chain of supplies of goods and services. At the level of VAT-taxpayers, input VAT is tax-deductible. The standard VAT tax rate is 20 %, a reduced rate of 10 % and zero-ratings as well as tax exemptions (loss of input VAT-deduction) are applicable for certain supplies of goods and services. VAT returns have to be filed monthly (self-assessment), VAT becomes due and payable by 15th of the second month following the month when the supplies have been performed.

3. Other relevant Taxes and Information

Transfer taxes
The transfer of immovable property is subject to a Real Estate Transfer Tax (RETT) if real estate (immovable property) is directly transferred or if at least 95 % of company shares (the company owning immovable property) are transferred to one share-holder or a group of companies. The tax rate is 3,5 % of the consideration if real estate is directly transferred. If there is a transfer of 95 % to one share-holder or a group of companies, the tax base is calculated by the real estate value (usually below the fair market value) and a reduced tax rate of 0.5 % applies.

There are no transfer taxes on share-transfers.

Stamp Duties
The conclusion of specific agreements in written form is subject to Stamp Duty. The most important ones are lease and rental agreements, guarantee agreements, compromise and settlement agreements and assignment agreements (e.g. assignments of receivables) and bills of exchange.

4. Austrian entity as employer

If an Austrian entity acts as employer, there are payroll- as well as social security- and wage tax-withholding and payment obligations. Furthermore, the employer has to pay a certain amount of social security contributions for each employee as well as payroll-related taxes and duties (amounting to approx. 30 % of the gross wages in total).

The annual salary of employees is paid in 14 instalments. Usually in May/June and November/December, employees receive two monthly salaries. The 13th and 14th salary payments are taxed at a very favorable tax rate (flat rate of 6 % for approx. EUR 25k in total, 27 % for further EUR 25k and 35,75 % for further approx. EUR 33k). If the total amount exceeds approx. EUR 83k, progressive tax rates are applicable on the exceeding amount.

5. Social Security

Austrian Social Security is obligatory and covers accident-, health-, pension- and unemployment insurance. There are obligatory contributions of both employers and employees amounting to more than

37 % in total (2024). There is still a cap of the basis for contributions which amounts to approx. EUR 85k p.a. (2024). If the annual income exceeds this threshold, exceeding amounts do not give rise to additional contributions.

6. Trade law regulations

There are strict trade law regulations in Austria, certain businesses require special proof of qualifications. Carrying out a business usually is also subject to an obligatory membership of the trade chamber resulting in specific additional duties.

III. Taxation of Individuals

1. Personal Income Tax

Private individuals with a domicile or habitual place of abode within Austria are subject to unlimited income tax in Austria taxed on their worldwide income. A domicile is any place where an individual has the right to use (and/or uses) an apartment/ house for their residential purposes. The habitual place of abode is the place where an individual is present under circumstances that indicate that the individual will stay at that place not just temporarily. Physical presence in Austria in excess of 6 months results in unlimited income tax liability in Austria on worldwide income in any case.

If individuals are not subject to unlimited tax liability in Austria, they are only subject to Personal Income Tax in Austria for Austrian sourced income (subject to limited tax liability in Austria).

There is no joint taxation of individuals (i.e., not for spouses or households). However, allowances are available for families and child-care.

If the individual is also subject to unlimited income tax liability in other countries, Double Tax Treaties are of importance allocating the right to tax-specific income to one of the contracting countries. In such a scenario, the center of vital interests of the taxpayer is decisive for the allocation of rights to tax income resulting from specific sources.

2. Tax Rates

Tax Rates for private individuals are progressive. Income up to approx. EUR 13k p.a. is not taxed at all. Tax Rates are 20 %, 30 %, 40 %, 48 % (income from EUR 66k–EUR 99k), 50 % (income from EUR 99k–EUR 1m) and 55 % for income above 1m.

3. Taxable Income

Taxable Income is the total income from all categories of income set off against losses arising from these categories as well as after deduction of special expenses, extraordinary expenses, and certain exempt amounts. Net income is computed (separately) for the following seven categories: income from agriculture and forestry, income from professional services, income from trade or business, income from employment, income from capital investments, income from rents, lease payments and royalties and certain other income (including income such as annuities and capital gains from the disposition of privately held property).

4. Withholding Taxes

Apart from wage-tax withholding, specific categories of income are subject to Withholding Taxes as well:

Dividends
Dividends and other profit distributions to resident individuals are subject to a final Withholding Tax at 27.5 % (flat). This income does not have to be included in an income tax return (voluntary inclusion possible if progressive tax rates are lower).

Interest Income
Interest on deposits and other debt claims with certain banks are also subject to a final Withholding Tax at 25 %. A final Withholding Tax at a rate of 27.5 % is applicable, if the Interest Income is derived from interests on certain securities (bonds, investment funds). Other Interest Income is subject to taxation at progressive tax rates.

Capital Gains
Capital Gains relating to a sale of shares are generally also finally taxed at a rate of 27.5 %.

Sale of real estate
There is a special form of taxation of sales proceeds from the sale of real estate. This specific form of income tax will be withheld and paid to the tax office by the relevant legal counsel (notaries, lawyers). This tax is basically also final (no inclusion in a tax return). The applicable tax rate is 30 %. A reduced taxation applies for immovable property, that has already been bought before 31st March 2002.

5. Tax Compliance

Personal income tax is assessed on an annual basis based on tax returns to be filed with the tax office. If income received is subject to Withholding Tax, no tax return must be filed. Annual tax returns must be filed until June 30th of the following year (extension granted if the entity is represented by a tax advisor up to March 31st of the 2nd following year at the latest).

Abbreviations

CFC	Controlled Foreign Company
CIT	Corporate Income Tax
DTT	Double Taxation Treaties
EU	European Union
EUR	Euro
EUR k	EUR 1.000
i.e.	id est
m	Million
MNE	Multinational Enterprise
OECD	organization
p.a.	per anno
RETT	Real Estate Transfer Tax
TLCF	Tax Loss Carryforwards
TP	Transfer Pricing
VAT	Value Added Tax
VPDG	Verrechnungspreisdokumentationsgesetz

Annex 1 - DTT countries

Albania, Algeria, Argentina, Armenia, Azerbaijan, Australia, Bahrain, Barbados, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hongkong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Lybia, Malaysia, Malta, Macedonia, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Serbia, Singapore, Slovakia (CSSR), Slovenia, Spain, South Africa, Sweden, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, USA, USSR, Uzbekistan, Venezuela, Vietnam

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