TAX ASPECTS OF INDUSTRIAL INVESTMENT IN AUSTRIA

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Foreword

Why should a foreign investor make a commitment to Austria? Should he do so because of its favourable geographic location in the middle of Europe, bordering the fast growing markets of Middle and Eastern European countries? Or should he do so because of the positive business climate, ranked among the best rated in the OECD countries, or because of its thriving business with its highly developed infrastructure, strong personal security as well as political and economical stability? Or for the reason of Austria's strong economic performance and it's high level of education and the good skills of the workforce? Foreign investors will decide on setting up in Austria for business reasons in particular and, not least of all, in order to be able to enjoy its unique and diversified culture and lifestyle.

Since the fall of the Iron Curtain, Austria has been viewed as the ideal springboard for lucrative business operations in the booming markets of Eastern and South East Europe. Hit hard by the global financial and economic crisis, the overly extensive involvement of Austrian firms, banks and service providers in Eastern Europe was critically scrutinized internationally for a short time.

The Vienna Institute for International Economic Studies (WIIW) concludes that the economic downswing in Eastern Europe already bottomed out at the beginning of 2009. Since then, there have been clear indications of a stabilization or an economic turnaround. As of the year 2011, economic growth in Eastern Europe will reach an average level of three percent in the upcoming years, once again above the EU average.

Future-oriented Eastern European companies are increasingly choosing Austria as their EU foothold. The CEE businessmen are looking for a reliable partner in their search for an optimal business location in the EU – with the required know-how and competent service providers. Austria is the pre-eminent choice in this regard.

This brief brochure should provide an introduction to Austria's tax system and has been updated to take account of recently made changes in Austrian commercial and tax law. However, the brief summary only offers an overview and basic information for interested entrepreneurs. The engagement of specialist assistance is therefore recommended before any decisions are made.

All information in this brochure has been carefully collected and basically corresponds to applicable regulations. However, it may not be applicable to each specific case. Therefore no warranty is assumed in this regard.

1. Overview

As a result of the tax policy of the last decade Austria definitely seems to be attractive as a business location in particular for holdings as well as for research and development activities.

Additional changes in the tax law became necessary as a result of the reform of the Austrian business law (UGB). The main changes for 2007 and future years are results of the so called „Abgabenänderungsgesetz 2007" (general adjustments), the „Gesellschaftsrecht-Änderungsesetz 2007", the „Budgetbegleitgesetz 2007", the „Abgabensicherungsgesetz 2007", as well as the „Betrugsbekämpfungsgesetz 2006" (Anti Fraud Law).

The changes are dealt with in detail in the chapters that follow. Since the overwhelming portion of commercial and industrial investment in Austria is concentrated on Austrian corporations, it is mainly the taxation of such companies that will be described and, sub-sequently, the main features of incorporation and corporate financing, the VAT system as well as taxation of individuals will be explained. In this first section the most important taxes will be surveyed briefly.

1.1 Taxation of corporate income

Corporate income tax

In Austria companies, in particular corporations (GmbH, AG), are subject to corporate income tax on their entire income. Profits are taxed at the standard tax rate of 25 per cent. For corporations sustaining losses there is an obligation to pay minimum corporate income tax. The latter is currently at a quarterly rate of € 437.50 for limited liability companies (GmbH) and € 875 for joint stock companies (AG). To support start-ups minimum corporate income tax for both types is reduced to € 273 during the first four quarters of the company's existence. Minimum corporate income tax is credited to taxable earnings in the future.

Subject to taxation is all income that the taxpayer has earned during a business year. Income consists of the total amount of income after deducting business expenses and after considering investment incentives as well as tax losses carried forward.

Corporate residence

For the purpose of taxation in Austria, a corporation is deemed to be resident and thus taxable in Austria for its worldwide income if it has its seat or effective place of management in Austria. If a corporation has neither its seat nor its effective place of management in Austria, it is subject to limited tax liability in Austria.

Holding companies

Under certain conditions, Austria grants the international participation exemption for investments in foreign companies held by Austrian holding companies (see item 2.6). Therefore, a minimum participation of ten per cent is necessary. The exemption applies both to dividends as well as to capital gains of such investments. The advantages of setting up Austrian holding companies are therefore very much comparable to those of Dutch, Swiss or Luxembourg.

1.2 Taxation of individuals

Income tax

Individuals maintaining residence or habitual abode in Austria are subject to personal income tax. Unlimited tax liability is extended to all domestic and foreign sources of income (worldwide income). Otherwise individuals are subject to limited tax liability for Austrian source income. An individual has his habitual abode in Austria if he is not just staying in the country temporarily. If the stay in Austria does exceed six months, in any case unlimited tax liability in Austria is applicable.

Income tax is based on such income as the taxpayer has earned within a calendar year from the seven types of income listed in the Income Tax Act. Sources of income not included in these seven types of income are thus not taxable. Losses may in principle be compensated for both within a specific type of income as well as between the different types of income, however with certain restrictions. In addition, in the context of determining income, personal ability to earn is taken into account by individual deductions and the progressive tax rate currently reaching from nil to 50 per cent.

1.3 Other taxes

VAT

VAT is charged on the sale of most goods as well as on services. The standard tax rate is 20 per cent. A limited number of goods and services are taxed at ten per cent. As a rule, input VAT is fully recoverable for companies with the exception of some companies operating in special business fields, e.g. banking, insurance and holding companies.

Capital transfer tax

Capital transfer tax at a rate of one per cent is imposed on initial contribution of capital as well as other contractual or voluntary contributions in cash or kind (and certain hybrid forms of financing) to corporations. In 2007, the Court of Justice of the European Communities of 7 July 2007 confirmed in a decision, that capital transfer tax is not levied on the relocation of the registered office of a corporation from one member state to another, particularly in relation to states which do not impose Capital transfer tax. Capital contributions made by grand parent companies to Austrian companies are, as the financial authorities confirmed , not subjected to capital duty. In contrast, capital contributions made by grand parent companies to Austrian companies can be subject to capital transfer tax, if the contribution was dedicated to raise participation rights in the Austrian company and if this rise was primarily in the interest of the parent company who is the sole shareholder of the Austrian corporation. The question, to whom this contribution can be credited, must be viewed under economic and not under formal criteria.

Real estate transfer tax

Real estate transfer tax at the rate of 3.5 per cent (reduced tax rate two per cent) calculated on the basis of the acquisition price is levied on the acquisition and transfer of title of real estate located in Austria. In the case of corporate restructuring under the Restructuring Tax Act and in case of real estate transfers free of charge, the value established for tax purposes (or a multiple thereof) is taken as assessment base.

Stamp duties

Stamp duties (of which there are two kinds) basically are incurred for certain documentation and legal transactions for which a contract or notarially certified document has been signed (e.g. lease contracts, loan agreements, bills of exchange, assignments, etc.). Stamp duty liability arises from legal acts that were put into effect according to civil law if in that case such duties are intended by law and a document is established and signed within Austria. Therefore fees can be avoided by the conclusion of a legal act that would not cause stamp duty or by setting up the document abroad or by avoiding a (signed) document. (e.g. by contract inferred from acts of parties , by correspondence of lawyers only, or through video or audiotape supported recording of the verbal agreement about the contract). However, it should be regarded that a substitute document is established if e.g. a document is drawn which renders the material points of the contract.

Excise taxes

Excise taxes are taken out on certain products including petroleum, tobacco products and alcoholic beverages.

2. Taxation of corporations

2.1 General provisions

Corporate income tax is applied to the income of companies, essentially meaning legal entities in private law (and primarily corporations such as GmbH, AG or SE) and equivalent formations. Due to such recognition of corporations as independent tax subjects, a distinction must always be made between tax ramifications at the level of the company and those at the level of the shareholder. This means that at the level of the company profits are taxed at the standard tax rate of 25 per cent while at the level of the shareholder (individuals) the profit distributions basically are taxed with 25 per cent withholding tax. As an alternative to the withholding taxation, individuals as recipients of profit distributions have the possibility to apply for a taxation based on half of their average tax rate (for details see item 2.7). Since the highest possible tax rate is 50 per cent for income tax, application of half of the average tax rate entails ultimately that a corporation's distributed earnings are taxed at a maximum of 43.75 per cent.

2.2 Scope of tax liability

Corporations are subject to unlimited taxation in Austria for their entire (domestic and foreign) income if they have their seat or place of effective management in Austria. If a corporation has neither its seat nor its place of effective management in Austria, it is subject to limited tax liability on certain sources of income in Austria.

2.3 Tax rates and tax deductions

The corporate income tax rate basically amounts to 25 per cent and applies to all corporations regardless of whether they retain earnings or distribute them. There is an obligation to pay minimum corporate income tax for every full calendar quarter for which unlimited tax liability obtains and, essentially, at five per cent of one quarter of the minimum statutory amount of nominal or registered capital (i.e. € 1,750 per year for a GmbH and € 3,500 per year for an AG). This amount is raised to

€ 5,452 for banking institutions and insurance companies. Also the European Corporation (SE) – having a minimum statutory amount of nominal capital of € 120,000 – has the obligation to pay minimum corporate income tax amounting to € 6,000 per year. With all newly incorporated corporations, as a "young entrepreneur incentive" minimum corporate income tax at only € 273 per quarter (i.e. € 1,092 per year) must be paid. Minimum corporate income tax amounts can be set off against actual corporate income tax liabilities for an unlimited period of time.

Corporate income tax losses incurred by a domestic corporation may be carried forward without limitation (see item 2.12 as well).

Regarding minimum corporate income tax in case of a "tax group" refer to item 2.4 last sentence.

2.4 Group taxation

If two or more companies exercise the option to form a tax group, the taxable results of the domestic "group members" will be attributed to their respective top-tier (so called parent) company and finally taxed balanced on top-tier company level. Tax losses of group companies can be consolidated with taxable profits of other group companies. As far as the utilization of tax losses accumulated by group members prior to their participation in the tax group is concerned, special conditions have to be taken into account. Profits are only attributed for tax purposes, there is no requirement for a statutory profit/loss takeover agreement. Economic and organizational integration is not required.

The group consists of a top-tier company and at least one financially affiliated domestic or foreign based subsidiary (so called "group member").

Beside tax resident corporations and cooperatives, also certain joint-venture structures as well as certain tax resident or non-tax resident EU (or EEA) companies with registered branches in Austria (where the respective investment can be attributed to) may act as group parent.

Moreover, beside tax resident corporations and cooperatives, also "comparable" foreign corporations can act as group member.

The conditions to be met in order to form a tax group between a group parent and group members are:

- A qualifying participation of more than 50 per cent (directly or indirectly) while the qualifying participation must exist during the whole fiscal year during which the group taxation scheme shall apply as well as
- a written application to form a tax group (legally binding for at least three years) – signed by each of the group members – which has to be filed with the competent tax office and has to contain an agreement on the allocation of tax costs.

A tax group can also include foreign group members. Losses of foreign subsidiaries within a tax group (only the losses generated by the "first tier" of foreign subsidiaries of Austrian group members or parents) can be offset against Austrian profits – the amount of tax losses to be deducted depends on the stake in the particular participation. The foreign tax losses have to be calculated according to Austrian tax law. Profits realized by foreign subsidiaries will not become subject to taxation in Austria. Foreign tax losses previously offset against profits at the level of the Austrian group parent – in order to avoid "double-utilization" of tax losses – have to be subjected to recapture taxation in Austria at the time they are effectively offset or could be offset by the foreign group member in the source state. The recapture taxation has to be effected by increasing the profit of the particular group member to which the foreign tax losses previously have been allocated to. The recapture taxation also has to be applied in case of the withdrawal of a foreign group member. The 2009 Tax Reform Act (Abgabenänderungsgesetz 2009) introduced a new provision which states that as from 1 July 2009, recapture taxation also applies to those cases where the scope of economic activities of a foreign group member belonging to a tax group is reduced, compared to the year in which the losses were incurred, to such an extent that in view of the company's overall economic situation, economic comparability is no longer given (this is usually the case where the scope of economic activities has been reduced by 75 per cent). In other words, lack of economic comparability is subject to the same treatment as would be applicable in the event of the foreign group member's withdrawal from the tax group.

In the case of a domestic tax group, the attribution of profits and losses is effected at 100 per cent, even in the case the actual amount of holding is less than 100 per cent. In order neither to advantage nor disadvantage minority shareholders, an appropriate system of tax allocations between the group companies has to be established.

Upon acquisition of a participation in an Austrian company that should be a group member a goodwill has to be deducted as

well as a badwill has to be added tax effectively over a period of 15 years, if certain conditions are met (the company has to meet the active business test when it is acquired). The goodwill has to be calculated by deducting the equity and the hidden reserves in non-depreciable assets from the taxable acquisition costs of the respective participation. The goodwill is limited up to 50 per cent of the taxable acquisition costs of the participation. As the goodwill amortization results in a decrease of the book value of the amortized participation the previous claimed amortization is taxed in the case of a later disposal of the participation. This taxation cannot be avoided through a tax neutral reorganisation according to the Austrian Reorganization Tax Act. If a participation for which a goodwill amortization was claimed is reorganised (e.g. merged) and therefore the participation does not exist anymore on the level of the top-tier company the previously claimed amortization rates have to be taxed. However, if an absorbing participation takes the place of the amortized participation in the case of a reorganisation the amortized goodwill rates are not taxed as long as the participation in the absorbing company does not cease to exist because of a reorganisation. The amortization rates decrease respectively increase the taxable book value.

Current-value depreciations of participations within a tax group are tax neutral, since losses are directly attributed to the group parent. Also losses incurred in connection with the disposal of group-participations are treated as tax neutral.

If a group member withdraws from the tax group within the commitment-period of three years (the minimum commitment-period of tax groups is three years – each of the years with 12 months), all the tax effects derived from its group participation have to be reversed. However, the preterm withdraw of one group member does not effect the existence of the rest of the group. Withdrawals after the commitment period do not affect the allocation of results by the withdrawing group member to its top-tier company during its group-participation. If foreign group members withdraw from the tax group before all the foreign tax losses – previously allocated by them to the group parent – have been subjected to recapture taxation in Austria, the outstanding difference has to be taxed by increasing the profit of the particular group member or parent to which the foreign tax losses previously have been allocated to. As from 1 July 2009, lack of economic comparability of a group member corresponds to this member's withdrawal from the tax group (see above). In the case of liquidation or insolvency of the foreign group member (followed by the real and definitive loss of assets) the foreign losses to be subjected to recapture taxation as described above have to be reduced by the previously tax-neutral depreciation on the particular participation if any.

The minimum corporate income tax has to be calculated for each group member as well as for the group parent and to be paid by the group parent if the total result of the group does not exceed the "minimum profit". Minimum corporate income tax accumulated by group members prior to their participation in the tax group can be forwarded to superior group members or to the group parent under certain conditions.

2.5 Exemption for income from investments

Dividends received by an Austrian corporation on (but not gains from disposal of) domestic investments are, regardless of the extent of investment and duration of ownership, exempted from corporate income tax. Any withholding taxes (investment extent of less than 25 per cent) are credited against corporate income tax. The 2009 Tax Reform Act provided for the extension of tax exemption to certain foreign dividends. This means that dividends from corporations located in Member States of the European Union as well as dividends from corporations which are located in those EEA countries which have agreed to provide legal and administrative assistance to Austria (currently only Norway) are exempt from corporate income tax, if the foreign corporations are comparable to corporations taxable under § 7(3) Corporate Income Tax Act.

However, dividends from investments in EU/EEA subsidiaries are not exempt from taxation if the foreign subsidiary is not subject to any tax comparable to Austrian corporate income tax or if it is taxed at a low rate (below 15%) or if it is subject to tax exemption in the country where it is located. In those cases, foreign corporate income tax can be credited against Austrian corporate income tax. This new provision is to be applied to all fiscal years yet to be assessed.

Dividends received from international participation (investment amounts to at least ten per cent of the company`s capital, minimum holding period one year) were deemed exempt from corporate income tax even before the 2009 Tax Reform Act became effective (see 2.6.).

2.6 International participation exemption

Dividends received from shares in foreign corporations and capital gains from disposals of investments are treated neutral with respect to corporate income tax (International participations exemption), if

- the direct or indirect investment amounts to at least ten per cent of the foreign company's capital;

- the Austrian parent company or the foreign corporation is both subject to unlimited taxation and in addition is equivalent to a company taxable under § 7 Section 3 of the Corporate Income Tax Act (dual resident company), and capital shares have been owned uninterruptedly for a period of at least one year;
- the foreign (subsidiary) company is comparable to a domestic corporation;
- no suspicion of abuse exists;
  A suspicion of abuse is assumed if the foreign subsidiary company is taxed at a low rate (below 15 per cent), does not meet an active-trade-or-business test and does not meet the subject-to-tax condition and largely earns passive income.

Usually interest, royalties (in connection with patents and licensing), capital gains from the disposal of non-exempted participations, etc. have to be considered as passive income. Dividends and other profit distributions have not to be considered as passive income unless they are distributed by companies generating mainly passive income. A managing holding company is not to be considered as a company which generates passive income as specified above.

In case of suspected abuse, the participation exemption for dividends is replaced by a tax credit.

Prerequisites for the international participation exemption

Extent of investment: at least 10%
Period Holding: 1 year
Directness required: no
Shareholders
under § 7 Section 3 Corporate Income Tax Act.
Corporate rights
all forms of capital shares (e.g. including rights to share in fund assets)

Also permanent establishments of corporations from EU Member States located in Austria can apply the domestic and the international participation exemption.

In principle, capital gains or capital losses (originating from current-value depreciations or appreciations as well as from the disposal of participations) are not taken into account in taxation. However, for new acquisitions the opportunity is available to exercise an option for full taxation, when submitting a corporate income tax declaration for the year of acquisition or for the year in which the international participation exemption is applicable the first time. This option is irrevocable and extends as well to additional acquisitions of the particular investment. Unless the option for full taxation is exercised, profits and losses in principle are treated tax-neutral. However, if real and definite losses are sustained (e.g. in the case of insolvency or liquidation), they are allowed to be deducted for tax purposes also if no option for full taxation was submitted.

Due to this international participations exemption, Austria is a very attractive place to incorporate holding companies.

2.7 Dividends

Dividends are basically subject to withholding tax of 25 per cent. If the recipient is an individual, income tax is considered to be paid (final or definitive taxation). However, if dividends will be included in income tax assessment, they are subject to half of the average tax rate. Dividend payments to corporations are exempted from corporate income tax, as already mentioned (see "Exemption for domestic investments"). For foreign shareholders, the 25 per cent withholding tax at source is reduced on the basis of double taxation conventions (see Section 2.17).

In accordance with the Parent-Subsidiary Directive, profit distributions of Austrian subsidiaries to their EU parents (having at least a stake of ten per cent) are either under certain conditions (one year's uninterrupted ownership) completely exempt from withholding tax or relief may be granted by the application of the refund procedure.

The Tax Reform Act 2009 sets out that if the preconditions of the Parent-Subsidiary Directive are not fulfilled, thereby making dividends made in Austria liable to tax, the deducted withholding tax has to be repaid upon request where the foreign dividend recipient is located in the EU or in Norway and where the double taxation treaty does not allow the crediting of the Austrian withholding tax. The taxpayer has to prove that the withholding tax can not be claimed abroad. This new provision is applicable for all fiscal years which are yet to be assessed.

2.8 Taxation of branch offices of foreign corporations

Profit calculation and tax rate

The permanent establishment (e.g. branch office) of a foreign corporation is liable to taxation in Austria for its attributable income. The tax rate is likewise 25 per cent. Here the permanent establishment is to be attributed such profits as it could have

earned if it had exercised the same or a similar activity under the same or similar conditions as an independent company (the "dealing at arm's length" principle). Attribution may be made by either the direct or the indirect method:

- Direct method: Profits are calculated on the basis of the permanent establishment's financial statements, taking into account all expenses attributable to the permanent establishment, including costs of management and general administration of the company but excluding deemed profit transfers.
- Indirect method: In exceptional cases, the company's total profits can be split up among the various permanent establishments according to specific allocation schemes.

For transactions between the permanent establishment and other parts of the company, appropriate arm's length transfer prices must be applied.

Compensation for losses

A loss deduction for permanent establishments is only possible to a limited extent. Losses incurred in a permanent domestic establishment can only be carried forward if they exceed the company's remaining positive worldwide income. The loss deduction for taxpayers with limited tax liability therefore only exists subsidiarily, unless sufficient foreign income for loss compensation has been earned. Moreover it has to be taken into consideration that the taxation of permanent establishments of a company of a contracting state (a state, a double taxation agreement has been concluded with) located in Austria must not be more unfavourable than in respect to Austrian companies provided they do the same business.

2.9 Foreign income of domestic companies

Companies resident in the domestic jurisdiction are subject to taxation in Austria with their worldwide income. Where a double taxation convention exists, double taxation is avoided by applying the exemption or the credit method (at most up to the amount of the foreign withholding tax). However, if the income is derived from a country Austria has no double taxation treaty with, crediting is effected on the basis of unilateral measures.

In order to avoid double taxation of a resident certain foreign income (business income as well as income from independent personal services which accrue from foreign permanent establishments, etc.) is exempted from taxation as far as Austria has not concluded a double taxation convention defining rules for the specific case. A precondition is that the foreign income is subject to a taxation comparable with the Austrian corporate income tax with a tax rate above 15 per cent on average. Nevertheless profits, which are exempted from taxation, increase the tax base (proviso safeguarding progression).

Dividends from foreign subsidiaries are subject to the standard tax rate unless they relate to EU/EWR portfolio dividends (see item 2.5) or they are exempted from taxation according to the international participation exemption (see item 2.6) or a double taxation convention. Concerning so called portfolio dividends (participation extent < ten per cent of the shares) foreign corporate tax can be credited against Austrian corporate tax up to the maximum amount of Austrian corporate tax related to the dividends. Withholding tax can also be credited against Austrian corporate tax on the basis of double taxation conventions. This new legislation is only valid for dividends originating from EU member states and Norway. Withholding tax deducted from third country dividends cannot be credited against Austrian corporate tax.

To the extent to which outbound dividends consist of prior shareholders' contributions, that portion of the dividend is not subject to a withholding tax at source. There are only special provisions in regard to taxation of retained earning income of foreign subsidiaries in the case of foreign investment funds.

2.10 Losses incurred in foreign permanent establishments

Losses incurred in a foreign permanent establishment of Austrian companies can be offset against their domestic positive income within the same financial year. This concept can also be applied if the respective double taxation agreement stipulates the exemption method. To prevent the company from deducting losses several times, losses already deducted are subject to recapture taxation in Austria as soon as the company has the possibility to deduct the respective losses in the country of origin.

2.11 Stock dividends

The conversion of retained earnings of the company into capital does not entail any taxable income for the owner. However, capital reductions are treated as taxable income if the capital increase cited above was accomplished with the company's own funds within the last ten years prior to the capital reduction. Otherwise, they are exempted from taxation.

2.12 Deductible operating expenses

Depreciation and depletion

For tax purposes, only the straight-line depreciation method is allowed. Accordingly, costs are distributed evenly over the asset's useful life. For certain types of assets depreciation rates are stipulated as follows by the Tax Code:

Buildings (for industrial and farming&forestry purposes)	3.0%
Buildings (banks, insurance companies and similar services)	2.5%
Other buildings	2.0%
Motor vehicles	12.5%

Goodwill from the acquisition of a company must be depreciated over 15 years by agricultural and forestry companies and tradesmen businesses. Goodwill resulting from a merger of companies cannot be depreciated tax effectively.

Tax depreciation need not be the same as business law depreciation. Where assets already depreciated are disposed of, the difference between their book value and the proceeds of sale are taxed as profits or losses in the year when the disposal occurs.

In the year of purchase, immediate full depreciation can be taken out on assets which purchase costs did not exceed € 400.

Tax loss carry forwards

Tax losses may be carried forward for an unlimited period of time and set off against earnings from later years. A general restriction on the deductibility of losses from loss investment models exists. Losses from such investment models may neither be set off nor carried forward. They may only be set off against later profits derived from the same investment.

The Tax Reform Act of 2001 created an additional restriction on the deductibility of operating losses. From fiscal year 2001 onwards deductible losses may only be set off in the amount of 75 per cent of the total amount of the annual taxable income. The remaining losses however are not lost but are deductible in future business years (again, within the 75 per cent limit).

Accruals

Certain accruals (such as provisions for liabilities and impending losses) running for more than twelve months as of the closing date of the accounts are accepted for tax purposes at 80 per cent of their value. Exempted from this reduction are provisions for personnel benefits (severance payments, pensions, vacations and anniversary awards) for which specific reduction and computation methods have been provided. In general, lump-sum accruals and accruals for deferred repairs and maintenance are not allowed for tax purposes.

Interest for the acquisition of participations

From 2005 onwards interest on loans taken out to acquire domestic or foreign participations will generally be tax deductible as long as the arm's length principle is considered. Interest will be deductible regardless of whether the involved companies are part of a tax group or not. Expenditures for cost of money, exchange losses and bank charges related to the loans taken out to acquire participations are not tax wise regarded deductible. Merely interest expenditures are deductible.

Payments to affiliated foreign companies

There are basically no restrictions in regard to the deductibility of royalties (licences), interest payments and payments for services to affiliated foreign companies provided that they meet arm's length standards. Payments to affiliated companies not meeting arm's length standards are treated as a hidden distribution of earnings, i.e. they are not tax deductible and withholding tax is usually triggered at source.

With domestic law implementation of a new EU Interest Directive, withholding taxes on cross-border payments of interest and licence fees (regardless of whether taken out by deduction or by assessment) between affiliated companies in the Member States has been abolished. According to amount, exemption from withholding tax is limited to the extent of arm's length payments. Companies qualify as affiliated companies if a direct investment of at least 25 per cent exists or if the companies have the same parent company, which one directly owns at least 25 per cent of each of them. The recipient of the interest payments or of the license fees also has to be the beneficial owner. Permanent establishments of affiliated companies – acting as beneficial owner or as debtor of the payments – are also comprised by the exemption from withholding tax. The investment must be owned for a longer period than twelve months in order to be able to benefit from the exemption as described above.

There are basically no regulations stipulating the minimum equity required by a company ("thin capitalisation rules"). Nonetheless, the fiscal authorities may under special circumstances rule that an owner loan is an equity replacement. Furthermore, the Austrian commercial law basically requires a minimum equity ratio of eight per cent. If the equity ratio of the company falls below eight per cent and its earning power (virtual period for debt redemption) at the same time does not meet certain requirements, the management has to deal with consequences as far as its responsibility is concerned.

Costs of debt financing regarding distribution of profits

Interest payments in context with debt financed profit distributions are tax deductible. However, interest payments in connection with debt financed repayments of capital contributions are not deductible as business expenses.

Taxes

Taxes on income and other personally related taxes as well as VAT, where they do not relate to deductible expenses, may not be deducted. Other taxes, for instance capital transfer tax, may be claimed as operating expenses.

Other essential points

Expenditures in connection with the conduct of one's personal life are basically not deductible. Deductibility of the costs of a business meal is generally reduced to 50 per cent of the expenses actually incurred if considered advertising expenses.

2.13 Transfer pricing

Austria has implemented the TP-guidelines set forth in the OECD model convention. According to these guidelines, all legal transactions between affiliated companies must be carried out according to the arm's length principle. Where a legal transaction is deemed not to correspond to that arm's length principle, the transaction price is adjusted for corporate income tax purposes. Such an adjustment constitutes either a constructive dividend or a capital contribution. There is the option of obtaining in advance a non-binding ruling of advice (EAS) from the tax authorities.

2.14 Tax incentives

Research incentives

Research and development expenses are fully deductible at the time when incurred. There is an option to deduct 25 per cent of these expenses (without administration and distribution costs as well as expenses of fixed assets) in the form of a so called "research allowance" in addition to de facto research expenses. The research allowance can only be granted for expenses that can be assigned to a company or to a permanent establishment located within the European Union or the European Economic Area. The economic value of the research program (in process or already completed) has to be proved. An extended allowance of 35 per cent is possible up to the extent to which the research expenses of the company are beyond the average of the last three years or when a company makes research investments for the first time.

Moreover there is an additional option of taking advantage of a so called research allowance II ("Frascati-allowance") in the amount of 25 per cent of expenses for research and experimental development activities "systematically carried out by the company itself using scientific methods" – the economic value of the research program has not to be proved. The allowance II also takes administration and distribution costs as well as expenses of fixed assets into consideration. This allowance may not be claimed for those expenditures that have already been included in the basis for research allowance I. Furthermore, the allowance can only be claimed for expenditures that can be assigned to a company or to a permanent establishment located within the European Union or the European Economic Area.

As an alternative to research allowance II a research premium in the amount of eight per cent may be availed of. The research premium is credited directly to the tax account and therefore is advantageous when losses have to be sustained.

Furthermore it is possible to take advantage of a research allowance in the amount of 25 per cent (or as an alternative of a premium of eight per cent) of the expenses for research and experimental development activities assigned to particular institutions (e.g. to universities, the Austrian Academy of Sciences, etc.). However, this allowance is limited to € 100,000 of the company's research expenses of the fiscal year. This is important in particular for mid-sized and small-sized companies in order to enable them to benefit from the research allowance (or premium) without having to carry out expensive research activities by themselves.

Other tax incentives

An education allowance is granted in the amount of 20 per cent of training expenses paid to specific extern institutions. The training expenses subject to this education allowance have to accrue in context with training measures (for employees), which are in the company's interest.

Moreover, an education allowance is granted to cover internal education and training measures if the latter are taken by internal research and education institutions comparable to a separate division that does not offer its educational programme to third parties (apart group members). The internal education allowance may only be claimed if the expenses per education or training measure do not exceed € 2,000 per calendar day.

Alternatively, an education premium to the extent of six per cent of education expenses can be claimed for. The premium is credited to the taxpayer on its tax account.

An apprentice training premium is applicable for apprenticeship employments which began before 28 June 2008 . It amounts to € 1,000 and provides entitlement for every fiscal year in which the apprenticeship is maintained.

A new incentive program for apprenticeship was introduced in 2008. It is applicable for apprenticeship employments which begin from 28 June 2008 onward and enables a more flexible promotion of apprenticeships. Its contribution is based on the actual compensation of the apprentice.

Investments in human capital

Designation	Amount	Prerequisites	In force / time limit
Education allowance	20% of direct education expenses § 4 Section 4 No 8 Income Tax Act	For computation of the education allowance expenses of certain external training and ongoing training institutions can be taken into account.	Expenses as of calendar year 2002
	20% of direct education expenses § 4 Section 4 No 10 Income Tax Act	Expenses for internal training and ongoing training institutions can be used as an evaluation basis. For the internal training, the allowance is limited to € 2,000 per calendar day in an internal division.	As of assessment 2003
Education premium § 108c Income Tax Act	6% of external direct training and ongoing training expenses	For expenses invoiced to the employer by external training and ongoing training institutions and not constituting the basis of an education allowance, an education premium can be applied for.	As of calendar year 2002
Apprentice training premium § 108f Income Tax Act	€ 1,000 per every apprenticeship maintained	The premium is available in every year in which an apprenticeship is maintained.	As of assessment 2002 Applicable for apprenticeship employments which began before 28 June 2008.
New incentive program for apprenticeship	Based on the year of apprenticeship	1. year of apprenticeship: 3 apprentice salaries 2. years of apprenticeship: 2 apprentice salaries 3. and 4. years of apprenticeship in each case one apprentice salary rather for 3.5 years – a half apprentice salary.	Applicable for apprenticeship which begin after 27 June 2008.

Investment in research and development

Designation	Amount	Prerequisites	In force / time limit
Research allowance § 4 Section 4 No 4 Income Tax Act ("Frascati allowance")	25% of (own) research expenses	Expenses can be included for research and experimental development carried out systematically and by using scientific methods. There is no evidence required. Excepted are expenses that were the basis of the research allowance I.	As of assessment 2004
Research allowance § 4 Section 4 No 4a Income Tax Act	Basically 25% of research expenses; in addition 35% for above-average research	Affected are expenses serving the development or enhancement of inventions of value to the national economy. The economic value must be proved by attestation or by a patent.	As of assessment 2004
Research allowance § 4 Section 4 No 4b Income Tax Act	25% of research expenses (assigned research)	Granted in connection with research and experimental development activities assigned to particular institutions and carried out systematically and by using scientific methods (no evidence required). (Limited to € 100,000 of the research expenses per year.)	As of assessment 2005
Research premium § 108c Section 2 No 1 Income Tax Act	8% of research expenses	Evaluation basis for research premium are expenses within the meaning of the research allowance pursuant to § 4 Section 4 No 4 or § 4 Section 4 No 4b Income Tax Act. Expenses already considered as the basis for one of the research allowances above are barred. An application has to be filed.	As of assessment 2004

2.15 Restructuring measures

The Restructuring Tax Act allows to change the legal form of a company with almost any form of incorporation largely without any tax impact. This is achieved in the field of taxes on income by waiving the taxation of hidden reserves of assets to be reincorporated (continuation at book value). Existing loss carry-forwards can be transferred under certain conditions. The act covers corporate mergers, special conversions, contributions, demergers, consolidations and spin-offs. In accordance with the EU Merger Directive cross-border restructuring also includes EU companies of other Member States. As a result, it is possible to modify a company's form of incorporation at any time without an impact on taxes. With 8 October 2005 the Austrian act governing the formation of "European Corporations" (Societas Europaea, SE) entered into force. This act forms the legal basis for outbound cross-border mergers (so called "export merger") as well as for inbound cross-border mergers (so called "import merger"). Such restructuring measures now are covered and facilitated by the Restructuring Tax Act. The EU Merger Directives of 15 December 2005 regulates mergers of corporations who were founded according to the law of a member state of the European Union and who have their registered office, their head office or their headquarters within the European Union, as long as at least two of them underlie the law of different states. The Directives are not applicable in cases of cross-border mergers that involve a company whose function is to pay off contributions that were granted according to the idea of diversification of risk and whose shares must be repaid immediately after demand of the shareholders and on debt of the capital of the company itself. Furthermore, basically the national law that is effective for each company involved in a cross-border merger is applicable. So, cross-border mergers are only possible between companies, who would be allowed to merge according to their individual national law. Based on this Directive the Austrian legislator introduced the „EU Merger Act" on 15 December 2007. This Act legalises international mergers also according to national law.

2.16 Taxation of private foundations

A private foundation is a legal entity of private law to which the founder has dedicated assets to achieve the purpose of the foundation. The foundation purpose need not be charitable but can, for instance, be the support of members of a family or of descendants (so called "family foundations"). Payments by such foundations to beneficiaries and ultimate beneficiaries (individuals) are subject to a withholding tax of 25 per cent (as with dividends). Until their distributions, certain types of income (e.g. certain capital earnings and investment earnings) are subject to so called "interim taxation" in the amount of 12.5 per

cent. This reduced 12.5 per cent tax is subsequently credited to withholding tax incurred by payments made to beneficiaries. All in all there is no increase in taxes (which means that an average tax rate of 25 per cent is applied for certain capital yields) but the partial taxation of the capital income cited above is brought forward in time. Payments by the foundation to corporations do not fall under the remit of the participation exemption but are taxable in the usual manner.

Payments (inter vivos and upon death) by the founder to his private foundation have since 1 August 2008 (the Austrian Inheritance and Gift Tax Act was abolished by 31 July 2008) been subject, regardless of the amount of the resources paid, to the fixed tax rate of 2.5 per cent (before that date to the fix rate of five per cent). Since 18 June 2009 payments to non-profit, charitable or churchly foundations, which are not established according to the private foundations law, have also been subject to the reduced tax rate of 2.5 per cent. In the case of allocation of real estate property this rate is raised by 3.5 per cent of the value of the real estate.

In succession to the abolition of the Inheritance and Gift Tax Act the contribution taxation (payments by such foundations to beneficiaries) was amended by the new Gift Announcement Act 2008. According to the old legal situation payments by such foundations to beneficiaries are subject to a withholding tax of 25 per cent (as with dividends). According to the new legal situation payments originating from the contributed substance are not subject to taxation. Only considerations originated from the generated profits are to be subject to 25 per cent taxation. Payments originating from the contributed substance made after 31 July 2008 are exempt from taxation. However, these payments are only exempted from taxation, if they exceed the total of balance sheet profit of the financial year (increased by deductions made according to the fair market value approach), earned surplus and tax based hidden reserves of the capital contributed. Moreover, the balance sheet profit shown in the annual financial statement must be confirmed by an auditor.

2.17 Withholding taxes

Withholding taxes under double tax treaties

Recipient	Dividends [1, 2] in %	Interest [3] in %	Royalities, licenses [4] in %
Resident corporations	Nil/25 [5]	Nil/25	Nil
Resident individuals	25 [6]	Nil/25	Nil
Nonresident individuals:			
Non-treaty			
Nonresident corporations and business enterprises	25	Nil	20
Individuals	25	Nil	20
Treaty			
Albania [7]	15 / 5*	0	5
Algeria	15 / 5+	0	10
Argentina – DTC was recalled by Argentina in 2008 [8]			
Armenia	15 / 5+	0	5
Azerbaijan	5 / 10 / 15 [9]	0	5 / 10 [10]
Australia	15	0	10
Barbados [11]	15 / 5+	0	0
Belarus (White Russia)	15 / 5*	0	5
Belgium	15	0	0 / 10**
Belize	15 / 5*	0	0
Brazil	15	0	25 / 15 / 10 [12]
Bulgaria	0	0	0
Canada	15 / 5+	0	10
China	10 / 7*	0	10 / 6 [13]
Croatia	15 / 0+	0	0
Cyprus	10	0	0
Czech Republic [14]	10 /0+	0	5

Recipient	Dividends [1, 2] in %	Interest [3] in %	Royalities, licenses [4] in %
Cuba	15 / 5*	0	5 / 0 [15]
Denmark [16]	15 / 0+	0	0
Egypt	10	0	0 / 20 films
Estonia	15 / 5*	0	10 / 5 [17]
Finland	10 / 0+	0	5
France	15 / 0+	0	0
Georgia	10 / 5+ / 0** [18]	0	0
Germany	15 / 5+	0	0
Greece [19]	15 / 5*	0	7
Hungary	10	0	0
India	10	0	10
Indonesia	15 / 10*	0	10
Iran	10 / 5*	0	5
Ireland	10	0	0 / 10**
Israel	25	0	10
Italy	15	0	0 / 10**
Japan	20 / 10**	0	10
Kazakhstan	15 / 5+	0	10
Kyrgyzstan	15 / 5*	0	10
Korea	15 / 5*	0	10 / 2 [20]
Kuwait	0	0	10
Lativa [21]	10/15*	0	10/5 [22]
Liechtenstein	15	0	10 / 5 [23]
Lithuania	15 / 5*	0	10 / 5 [24]
Luxemburg	15 / 5*	0	0 / 10**
Macedonia [25]	15 / 0+	0	0
Malaysia	10 / 5*	0	10 / 15 films
Malta	15	0	0 / 10 [26]
Mexico	10 / 5+	0	10
Moldova	15 / 5*	0	5
Mongolia	10 / 5+	0	5 / 10 [27]
Morocco [28]	10 / 5*	0	10
Netherlands	15 / 5*	0	0 / 10**
Nepal	15 / 10+ / 5*	0	15
New Zealand [29]	15	0	0
Norway	15 / 5*	0	0
Pakistan [30]	15 / 10+++	0	10
Philippines	25 / 10+	0	15
Poland	15 / 5+	0	5
Portugal	15	0	5 / 10 [31]
Romania	5 / 0*	0	3
Russia	15 / 5+ [32]	0	0
Russian Federation [33]	0	0	0
San Marino	15 / 0+	0	0
Saudi Arabia [34]	5	0	10
Singapore	10 / 0+	0	5
Slovakia [35]	10	0	5
Slovenia	15 / 5*	0	5
South Africa	15 / 5*	0	0
Spain	15 / 10**	0	5
Sweden	10 / 5*	0	0 / 10**
Switzerland	15 / 0+++ [36]	0	0
Thailand	25 / 10*	0	15
Tunesia	20 / 10*	0	10 / 15 films
Turkey	25	0	10
Ukraine	10 / 5+	0	5

Recipient	Dividends [1, 2] in %	Interest [3] in %	Royalities, licenses [4] in %
UK	15 / 5*	0	0 / 10**
United Arab Emirates	0	0	0
USA	15 / 5+	0	0 / 10 films
Uzbekistan	15 / 5+	0	5
Venezuela [37]	15 / 5++	0	5

Notes:

[1] Dividends – Dividend distributions attributable to a prior release of paid-in surplus or other shareholder contributions (classified as capital reserves) are deemed to be a repayment of capital, i.e. no withholding tax is incurred. At the shareholder's level, dividends received and those classified as contribution refund will reduce the tax basis assessment for investments. To the extent to which the tax basis would become negative, such dividends are treated as taxable income (unless taxation is eliminated by a tax treaty). Further, according to the Parent/Subsidiary Directive, an exemption from withholding tax is granted for the distribution of profits by an Austrian corporation to an EU parent company if the parent holds a participation of at least 10% subject to the condition of reciprocity during an uninterrupted period of at least one year.

[2] Under certain treaties the amount of the withholding tax is dependent on the extent of the proportion of issued share capital held by the recipient. Where this is the case, all rates are given. Those marked with + refer to an investment of 10%, ++ to 15%, those marked with +++ refer to an investment of 20%, those marked with * refer to an investment of 25% and those marked with ** refer to an investment of 50%.

[3] Interest – Interest on cash deposits in Euro or foreign currency in bank accounts and fixed interest bearing securities in foreign currency (issued after 31 December 1988) and on fixed interest bearing securities denominated in Austrian Schillings or Euro (issued after 31 December 1983) are subject to a 25% withholding tax. If the recipient is an individual, this withholding tax is final (no further income taxation and inheritance taxation). Companies receiving interest payments may obtain an exemption from withholding tax if they provide the bank or other custodial agent with a written confirmation from the recipient that such interest payments constitute a part of the recipient's operating revenues (exemption statement). Interest payments to nonresidents without a permanent establishment in Austria are generally not subject to withholding taxation, if the capital investment is unsecured in Austria. Because of the non-taxation according to domestic tax law, the withholding tax rates have not been listed.

[4] Royalties, etc. – In case of payments to countries marked with "**" the rate is nil unless more than 50% of the issued share capital of the company paying the royalties is held by the recipient, in which case the rate given applies. At royalty payments between affiliated companies the regulations stipulated by the EU Interest Directive have to be taken into consideration (see item 2.12).

[5] If the recipient holds a participation of less than 25% in the distributing company, the dividends are subject to a 25% withholding tax. Since dividends distributed by an Austrian corporation to another Austrian corporation are generally not subject to taxation (see "Determination of income"), the withholding tax is credited against corporation income tax upon assessment of the recipient corporation for the respective tax year.

[6] Withholding tax on dividends from Austrian companies is final, i.e. no further income tax is collected from the recipient (provided an individual).

[7] The treaty was signed on 14 December 2007 and entered into force on 1 September 2008. It is applicable by the beginning of the fiscal year 2009.

[8] The treaty was recalled by Argentina in 2009. Austrian tax citizens are protected by § 48 BAO against double taxation. Austria will try to enter into new negotiations with Argentina.

[9] 5% for shares of at least 25% and worth at a minimum of USD 250,000, 10% for shares of at least 25% and worth at least USD 100,000. 15% in all other cases.

[10] 5% for industrial licenses and know-how not more than three years old. 10% in all other cases.

[11] The treaty entered into force on 1 April 2007 and will be applicable by the beginning of the fiscal year 2008.

[12] 10% for copyright license fees in connection with literature, science and art; 25% for trademarks license fees. 15% in all other cases.

[13] Industrial, commercial or scientific equipment – 6%. 10% in all other cases.

[14] The treaty was entered into force on 22 March 2007 and will be applicable by the beginning of the fiscal year 2008.

[15] 0% for license income from industrial, commercial and scientific use, if this income is subject to taxation in the country of residence. 5% in all other cases.

[16] The new treaty was signed on 25 May 2007 and entered into force on 27 March 2008. It is applicable by the beginning of the fiscal year 2009.

[17] 5% for leasing of mobile goods and 10% for other licences.

[18] 0% for shares of at least 50% and worth at a minimum of € 2,000,000, 5% for shares of at least 10% and worth at least € 100,000. 10% for shares in all other cases.

[19] A new double tax treaty with Greece entered into force on 1 April 2009 and will be applicable by the beginning of the fiscal year of 2010. In 2009 following withholding tax rates apply: dividends 25, interest 0, royalties-licenses 0 / 10**.

[20] 2% for license income from industrial, commercial or scientific use and 10% for other licences.

[21] The treaty entered into force on 16 May 2007 and will be applicable by the beginning of the fiscal year of 2008.

[22] For the use of commercial or scientific equipment. 10% in all other cases.

[23] 5% in case of direct (or indirect over a patent realization company) payments of royalties by companies of the other member state (with an industrial establishment in the other member state) and 10% for other licences.

[24] 5% in case of license income from industrial, commercial or scientific use and 10% for other licences.

[25] The treaty was signed on 7 September 2007 and entered into force on 20 January 2008. It is applicable by the beginning of the fiscal year 2008.

[26] 0% for copyright license fees in connection with literature, art and scientific use and 10% for other licences.

[27] 10% for the right of use of copyrights to artistic, scientific or literary as well as cinematographic works and 5% for other licences.

[28] The new treaty entered into force on 13 November 2006. It was applicable by the beginning of the fiscal year 2007.

[29] The treaty was signed on 21 September 2006 and entered into force on 1 December 2007. It is applicable by the beginning of the fiscal year 2008.

[30] The treaty entered into force on 1 June 2007 and will be applicable by the beginning of the fiscal year 2008.

[31] For Portugal, the rate of withholding tax is 5%, but 10% if more than 50% of the issued share capital is owned by the recipient.

[32] 5% if capital share amounts to at least 10% and worth at least USD 100,000. 15% in all other cases.

[33] The treaty applies to Tajikistan and Turkmenistan. With Russia a new treaty has been ratified.

[34] The treaty entered into force on 1 June 2007 and will be applicable by the beginning of the fiscal year 2008.

[35] Until a new treaty will be established, the treaty with Czechoslovakia remains applicable.
[36] For dividend distributions retroactive as of 1 January 2000.
[37] The treaty entered into force on 17 March 2007 and will be applicable by the beginning of the fiscal year of 2008.

Relief-at-source ordinance

If the income of a non-resident is to be relieved fully or partially from Austrian withholding tax in accordance with a double taxation agreement, such relief can be effected through the immediate application of the provisions of the double taxation agreement (relief-at-source) provided certain conditions are met. Examples of payments qualifying for relief-at-source are dividends, interest, license fees, consulting fees, distributions by Austrian private foundations and payments to supervisory board members. To claim relief at source the payee has to provide a certificate of residence issued by the foreign tax administration using the forms provided by the Ministry of Finance (form ZS-QU1 for natural persons and ZS-QU2 for legal persons). If the payment to a foreign payee does not exceed € 10,000 (USD 12,600) a year the certificate of residence can be replaced by a statement from the payee giving the details of his residence and confirming that he is the beneficial owner of the payments received and that he is not passing on the payments to a third party. Alternatively, the non-resident payee can claim relief-at-source if he has successfully applied for a refund of Austrian withholding tax within the three preceding years. The ordinance became effective on 1 July 2005 and is applicable for all Austrian double tax conventions.

2.18 Purchase of a corporate shell

If the identity of a corporation no longer exists because of material changes in the organizational and economic structure in connection with a considerable change in the structure of the shareholders on a remunerational base, the corporation no longer is allowed to offset prior losses (so called „purchase of a corporate shell"). In the past such procedures had to be considered only within a specified period of time of one year. This means, only those organizational and economic structural changes which were relevant for the fiscal evaluation of an acquisition of shares/stakes of a corporation and which took place within this year, had to be considered. After the conclusion of the supreme administrative court of 22 December 2005, only the losses prior to the year of the structural changes were affected by the prohibition to offset losses.

2.19 Tax administration

In Austria the fiscal year is equivalent to the calendar year. Companies can apply for deviating fiscal year. In such case the basis for the calendar year's tax assessment is the different fiscal year ending during that calendar year. Assessment occurs by means of a decision announced by the tax office after filing the tax return.

Payment of taxes

Corporate income tax is paid in quarterly advance payments during the year and a final payment is made when the assessment decision is available. The quarterly advance payments usually are calculated on the basis of the most recently assessed corporate income tax year.

The difference between income tax or corporate income tax as per the final assessment and prepayments is interest bearing, from 1 October of the year subsequent to the year when the tax claim arose up to the date when the assessment is released.

Sample of a corporate income tax calculation

(Calculation for the business year ending of 31 December 2008)

Premises

Below you will find a sample calculation of corporate income tax for a GmbH (limited liability company) based on the following premises:

1. The GmbH's income is estimated at € 100,000 after deducting all expenditures and taxes, excluding corporate income tax.
2. Research expenses amount to € 10,000; an allowance of € 2,500 can be claimed in addition to deducting the research expenses.
3. Losses carried forward from 1991 onwards are € 80,000.

Tax computation	€	€
Net income before taxes		100,000
minus:		
Research allowance	-2,500	-2,500
plus:		
Compensation for members of the Supervisory Board (50% of € 8,000)	4,000	
Donations and advances	2,400	
Setting aside of general provisions	4,000	10,400
Taxable income before losses are carried forward		107,900
thereof 75%		80,925
Losses creditable		-80,000
Taxable income		27,900
thereof 25% corporate income tax		6,975

2.20 Electronic filing of annual corporate income tax returns

The annual corporate income tax return has to be filed by electronic means. Just in the case the company cannot reasonably be expected to file tax returns electronically due to the lack of technical prerequisites and of a tax representative in Austria, filing of the tax return may be done with preprinted forms.

3. Incorporation and financing of a company

3.1 Incorporation

The most important types of companies in Austria are the limited liability corporation (GmbH), and the joint stock corporation (AG). Foreign investors generally choose the GmbH since it provides a higher degree of corporate law control and allows for lower equity provision. We will therefore largely concentrate on the GmbH here below.

As a legal entity the GmbH exists upon registration with the Companies' Register. The application for registration must contain the notarised signatures of all managing directors. The articles of association must be drawn up in the form of a notarial deed (written document executed by a public notary) and must as minimum requirements include the name of the company as well as its seat, the business purpose, the amount of registered capital and the capital contribution of each of the various owners.

Since 2004 the company type Societas Europea (SE) can be chosen in Austria. The SE is a stock corporation based on community law, which means that its legal form is accepted throughout the EU. The advantages of this legal form are the simplification of organizational structures (in particular for international groups), the possibility of cross-border transfers of corporation seats without loss of the legal identity as well as the possibility of making cross-border mergers. The SE allows the choice of a business location under an economic point of view as well as the choice of the most favourable legislation. The minimum share capital required for the incorporation of a SE is € 120,000 while the statutory seat of the corporation must be located in the same country where the place of management is located in.

3.2 Startup Subsidisation Act

Under certain conditions corporate start-ups as well as already existing companies involved in the transfer of small-sized and medium-sized companies do not have to pay stamp duties and federal administration fees, various payroll fees, real estate transfer tax for the contribution of real estate, court fees for registration with the Companies' Register as well as capital transfer tax for acquisition of corporate rights are not charged. Moreover, certain benefits are granted to start-ups in connection with the payment of health insurance fees.

3.3 Nominal capital / premium

A GmbH's minimum registered capital amount is € 35,000. Generally, one half of the registered capital must be raised in cash while the remainder may be contributed in the form of assets (contributions in kind). Of the original capital contributions to be paid in cash one fourth, however at least € 17,500 must actually be paid upon incorporation. Under certain conditions, the capital can be provided exclusively in the form of assets (incorporation in kind). The articles of association may provide for additional capital contributions payable by the owners on the basis of a resolution adopted by the shareholder meeting. The minimum share capital of an AG is € 70,000. For an AG, the same payment regulations apply as for a GmbH. But the owners can agree upon a further capital contribution going beyond the nominal value of the shares (premium). The premium is shown on the company's balance sheet as a capital reserve.

3.4 Incorporation costs

The amounts made available to the company (including the premium) are subject to capital transfer tax at the rate of one per cent. In addition to the capital transfer tax, a registration fee between € 400 and € 750 must be paid upon incorporation. Start-ups may under certain conditions be exempt from capital transfer tax and registration fee (see 3.2). Total incorporation costs (including taxes, attorney's and notary's fees) normally come to € 3,500 for a GmbH and to € 5,000 for an AG. Incorporation costs may be borne by the company in the amount indicated in the articles of association.

3.5 Shareholder contributions and shareholder loans

Capital contributions and loans by shareholders may be used as instruments to finance the company. In principle neither contributions nor loans need a specific form. Such contributions have no impact on the tax burden, as they do not raise the company's taxable income. They are subject to a capital transfer tax at the rate of one per cent.

A fee in the amount of 0.8 per cent of the loan is taken out on shareholder loans if a written loan agreement is concluded. In accordance with established case law in Austria, under certain conditions an owner loan is ranked below other liabilities (e.g. if the company during the period when the loan was granted was unable to raise the necessary finances in the market).

3.6 Capital transfer tax

Capital Transfer tax is levied on capital contributions made to Austrian corporations, in particular subscription to ownership rights in corporations (upon formation or capital increases), payments by the stockholder (supplementary contributions, additional payments), voluntary payments by the stockholder (contributions, release of a debt, gratuitous transfer of assets to the company). The tax is levied at the rate of one per cent. In Austria, parent company contributions are not subject to the capital transfer tax.

3.7 Bank loans

A company is in most cases financed by taking out a bank loan. As collateral on such loans the owners may provide guarantee statements that are not subject to any tax or fee. Bank credits or loans are likewise subject when being finalised in writing to the credit (loan) fee in the amount of 0.8 per cent of the line of credit for a duration of five years, for longer durations 1.5 per cent.

3.8 Real estate transfer tax

Real estate transfer tax is charged on legal transactions (purchase agreements, property acquisitions, assignments and acquisitions of rights to realize the value of property) relating to Austrian real estate. The base rate of real estate transfer tax is 3.5 per cent from the value of the consideration (property acquisitions), but is reduced to two per cent in the case of acquisition by a spouse, parents or children. In addition to the Real estate transfer tax, it will be levied a one per cent registration fee if the ownership is changed in the real estate register.

4. Austria's VAT system

4.1 General information

The Value Added Tax Act (VAT Act) was substantially modified when Austria entered the European Union. EU VAT Directives were implemented by the VAT Act of 1994 that entered into force on 1 January 1995 and still is in force.

VAT is a tax on expenditures of end-consumers. VAT levied to entrepreneurs does not constitute a cost factor. This is achieved by deduction of input VAT. However, input VAT is only allowed to be deducted if the goods or services purchased are deemed to be used for business purposes (at least ten per cent). Entrepreneurs that sell goods or render services in Austria are obliged, regardless of their location, to invoice VAT. This obligation only lapses if tax exemptions or the reverse-charge procedure are used.

Resident and non-resident entrepreneurs are as a rule entitled to claim input VAT paid by deducting it from their monthly or annual VAT debt assessment. Where the input VAT amounts exceed the VAT payable, the difference is either refunded by the fiscal authorities or credited against other tax liabilities. Entrepreneurs without a seat or fixed establishment in Austria or not providing any taxable supplies or services in Austria can have VAT refunded. The relevant application must be filed with the competent tax authority by 30 June of the following year.

4.2 Sales within the European Union

As a result of Austria's joining the European Union deliveries of goods between EU Member States are no longer subject to the import/export concept. Goods supplied within or between EU Member States are no longer subject to customs checks or import VAT.

In general, purchases by an Austrian entrepreneur from a supplier resident in another EU Member State are subject to acquisition (or transfer) tax. This VAT on intra-Community purchases must be calculated by the Austrian buyer on the basis of the purchase price and must be reported in the monthly or annual VAT return. As a rule, this amount is deductible as input VAT. Deliveries by Austrian suppliers to entrepreneurs subject to tax in another Member State are treated in Austria as zero-rated deliveries within the EU provided that the intra-Community purchase is subject to VAT in the country of destination. Moreover, the Austrian supplier has to prove in a comprehensible way to the tax authority that he himself or the recipient of the goods has transported or dispatched the goods to another EU country (by providing adequate documents like invoices, written receipts issued by the costumer or his contractor, shipping documents, etc.). Furthermore, the supplier has to meet additional bookkeeping requirements as far as tax-exempt intra-Community supplies are concerned. The particular rules can be found in a decree.

This system is only applicable if both the buyer and the seller are entrepreneurs within the meaning of the Value Added Tax Act, have a VAT identification number (UID), supply or acquire the goods in the course of their business operations and if the UID is shown on the invoice. For deliveries to private persons or undertakings not possessing a VAT identification number, the deliveries are normally subject to VAT in the country of origin. This provision also applies to mail order deliveries if the annual distance selling threshold of the EU destination country in question is not exceeded and if the supplier does not opt for taxation in the country of destination. In Austria the distance selling threshold is € 100,000 in regard to deliveries made to Austria.

4.3 Taxable sales and services

Taxable transactions are defined as follows:

1. The supply of goods and/or the rendering of services for consideration by an entrepreneur in Austria in the course of his business. The tax is not limited to sales connected with the nature and objective of the undertaking.
2. Self-supply (private use or withdrawal of corporate assets or services).
3. Imports of goods from non-EU countries to Austria (import VAT). This tax is raised on goods and raw materials imported into Austria at the same rate as applies to domestic products but is deductible in connection with the monthly or annual VAT assessment if paid by an entrepreneur. Import VAT is collected by customs authorities (import VAT old) or directly debited to the tax account (import VAT new).
4. Intra-Community acquisitions of goods.

The supply of goods is deemed to have taken place in Austria if the economic ownership is transferred in Austria. In general, the place of supply is Austria if dispatch or transport commences in Austria.

Special regulations apply to imports from non-EU countries and distance sales (mail order deliveries) to Austria.

Basically the place of supply of services is determined by the place where the entrepreneur performing the service has his seat or fixed establishment. However there are also various different special regulations so that the principle has actually become the exception:

1. Services in connection with real estate property and buildings: the place where the real estate is located.
2. Services of carriage: the place where carriage is actually effected.
3. Repairs, transport auxiliary services and services in the fields of art, sports, science, education, etc: the place where the service is actually performed.
4. Certain services performed by non-EU entrepreneurs: the place where the service is actually used.

The following services are deemed to be performed where the recipient operates his undertaking or permanent establishment, if performed for an EU entrepreneur or a recipient resident outside of the EU.

1. Transfer of patents and copyrights as well as similar proprietary rights
2. Advertising and public relations
3. Services from work as an accountant, attorney, engineer or similar work
4. Legal, technical and commercial consulting
5. Data processing
6. Provision and processing of information
7. Banking and insurance services
8. Provision of personnel
9. Forgoing the exercise of a right cited in this listing

10. Forgoing, in part or in full, the exercise of commercial activity
11. Leasing of movable objects with the exception of transportations
12. Intermediation of the services listed above
13. Telecommunications services
14. Radio and TV services
15. Other services performed electronically
    Where a third country entrepreneur performs an electronic service for a private resident on the territory of the community, the service is performed where the latter maintains his residence, seat or habitual abode. However, there are special regulations for third country entrepreneurs performing electronic services for private consumers in several EU Member States at the same time. Such entrepreneurs may opt for tax identification registration in a single EU Member State.
16. Allowing the access to power supply systems and to natural gasoline supply systems, the long-distance transfer via these supply systems as well as the rendering of other services to a buy-sell distributor directly connected therewith. On the other hand in case of a delivery to other consumers (i.e. non buy-sell distributor) the place of the actual usage is representative.

Single Market regulations in addition also include particular rules on intra-Community supplies and auxiliary services, intra-Community intermediation services and Intra-Community transportation services and also rules in regard to intra-Community work on and evaluation of movable, physical objects.

B2B-services rendered to taxable persons

Kind of service	Place of supply old	Place of supply new	Validity
Services connected to immovable property	Where the immovable property is located	Where the immovable property is located	–
Transport services			
Persons	Where the transport supply is effected	Where the transport supply is effected	–
Goods	Where the transport is effected resp. where the transport starts resp. in the Member State that issued the VAT ID	Where the recipient of the supply carries out his business (B2B general clause)	2010
Artistic, scientific etc activities including events			
Access permissions and events	Where the supplier exclusively or predominantly carries out the supply	Where the event takes place	2011
Remaining		Where the recipient of the supply carries out his business (B2B general clause)	2011
Handling, storing etc. in connection with goods	Where the supplier exclusively or predominantly carries out the supply resp. in the Member State that issued the VAT ID	Where the recipient of the supply carries out his business (B2B general clause)	2010
Work on and valuation of movable tangible property	Where the supplier exvlusively or predominantly carries out the supply resp. In the Member State that issued the VAT ID (in connection with intra-Community dispatch)	Where the recipient of the supply carries out his business (B2B general clause)	2010
Former "Art 56-services"	Where the recipient of the supply carries out his business	Where the recipient of the supply carries out his business (B2B general clause)	-
Services in connection with restaurants and catering			
On board of a ship / plane/ train in the EC	Where the supplier carries out his business (general clause)	Point of departure	2010
remaining		Where the supplier exvlusively or predominantly carries out the supply	2010
Hiring out of means of transport			
Short-term	Where the supplier carries out his business (general clause)	Where the means of transport is effectively provided	2010
Long-term		Where the recipient of the supply carries out his business (B2B general clause)	2010

*) In der deutschen Version ist hier eine Fußzeile...

B2C-services rendered to non-taxable persons

Kind of service	Place of supply old	Place of supply new	Validity
Services connected to immovable property	Where the immovable property is located	Where the immovable property is located	-
Transport services			
Persons	Where the transport is effected	Where the transport is effected	-
Goods	Where the transport is effected resp. where the transport starts (intra-Community dispatch of goods)	Where the transport is effected resp. where the transport starts (intra-Community dispatch of goods)	-
Artistic, scientific etc activities including events			
Access permissions and events	Where the supplier exclusively or predominantly carries out the supply	Where the supplier exclusively or predominantly carries out the supply	-
Remaining			
Handling, storing etc. in connection with transports	Where the supplier exclusively or predominantly carries out the supply	Where the supplier exclusively or predominantly carries out the supply	-
Work on and valuation of movable tangible property	Where the supplier exclusively or predominantly carries out the supply	Where the supplier exclusively or predominantly carries out the supply	-
Former "Art 56-services"			
Electronic services to recipient inside the EC			
• Rendered by suppliers outside the EC	Where the recipient is domiciled	Where the recipient is domiciled	-
• Rendered by suppliers inside the EC	Where the supplier carries out his business (general clause)	Where the supplier carries out his business (B2C general clause)	-
		Where the recipient is domiciled	2015
Telecommunication, broadcast and television services to recipient inside the EC rendered by suppliers inside the EC	Where the supplier carries out his business (general clause)	Where the supplier carries out his business (B2C general clause)	-
		Where the recipient is domiciled	2015
To domestic public bodies rendered by suppliers outside the EC	In Austria, when the service is used or enjoyed in Austria	In Austria, when the service is used or enjoyed in Austria	-
Remaining EC	Where the supplier carries out his business (general clause)	Where the supplier carries out his business (B2C general clause)	-
Remaining non-EC	Where the recipient is domiciled	Where the recipient is domiciled	-
Services in connection with restaurants and catering			
On board of a ship / plane/ train in the EC	Where the supplier carries out his business (general clause)	Point of departure	2010
Remaining	Where the supplier carries out his business (general clause)	Where the supplier exclusively or predominant-ly carries out the supply	2010

Kind of service	Place of supply old	Place of supply new	Validity
Hiring out of means of transport			
Short-term	Where the supplier carries out his business (general clause)	Where the means of transport is effectively provided	2010
Long-term		Where the supplier carries out his business (B2C general clause)	-
Recreational craft		Where the means of transport is effectively provided, if the supplier carries out his business from there	2013
Remaining		Where the recipient is domiciled	2013
Services of agents (intermediary services)	Where the intermediated service is carried out resp. where the supplier carries out his business (former "Art 56-services" rendered to recipients in the EC) bzw where the recipient is domiciled (services listed in Sect 3 para 10 of the VAT Act rendered to recipients outside the EC)	Where the intermediated service is carried out	2010
General clause	Where the supplier carries out his business	Where the supplier carries out his business	-

*) In der deutschen Version ist hier eine Fußzeile...

4.4 Exemption regulations

Various different exemption regulations are provided. Most entail the loss of the right to deduct input VAT.

4.5 Basis of VAT computation

VAT is charged on all remuneration paid for the goods or services (exclusive of VAT). If the remuneration is not paid in money then VAT is determined according to the general value of the goods or services (fair market value).

The basis of tax computation for imported goods is the purchase price plus any customs duties or fees, consumption taxes where they obtain as well as shipping costs to the first point of delivery within the European Union, unless this is included in the purchase price.

4.6 VAT rates

The standard tax rate is at 20 per cent.
The reduced tax rate at ten per cent is applicable, inter alia, to foodstuffs, animal husbandry, agricultural machinery and capital goods, books and antiques, accommodations, privately managed cinemas, theatres and museums, transport of persons, supply of drugs (from 2009).

4.7 VAT returns and payment of VAT

Basically, the entrepreneur must submit a monthly tax return (= advance VAT return) and pay the relevant amount by the 15th of the second month subsequent to the month in question. Any tax credit can be credited against other tax liabilities or, upon request, credited to a bank account.

In addition, an annual VAT return must be submitted aggregating the business year's VAT and import VAT. The monthly payments are deemed to be advance payments on the annual tax charge. The annual VAT return in principle must be filed in electronic form by 30 June of the following year. Extension of the deadline by one year is generally possible if the entrepreneur is represented by an Austrian tax advisor in relation to the fiscal authorities.

For supplies within the EU summary reports (EC Sales Listings) must be filed electronically (list of intra-Community deliveries of goods) on a monthly basis by the 15th of the second month subsequent to the month in question. Thus, they coincide with the monthly tax returns filed by electronic means. Furthermore, intra-Community supplies and intra-Community acquisitions – if they have exceeded € 300,000 in the previous year – have to be reported to "Statistik Austria" (so called "Intrastat-notification"). The relevant report has to be filed monthly by the tenth business day of the month subsequent to the reporting period.

4.8 VAT consolidation

Tax consolidation is possible for VAT purposes if one entrepreneur (tax consolidation parent) controls subordinate legal entities (tax consolidation subsidiaries) in financial, commercial and organisational matters. Since the companies are then considered to be a unit for purposes of VAT only the tax consolidation parent is registered. Deliveries or other services between the tax consolidation parent and the tax consolidation subsidiaries are deemed to be non-taxable internal sales. Deduction for input VAT may be claimed by the tax consolidation parent. However, the tax consolidation concept is only applicable to domestic companies or domestic parts of companies.

The substitution of the consolidation concept relevant for taxes on income by the new system of group taxation will not affect the consolidation concept relevant for VAT purposes.

4.9 Reverse charge procedure

For all other services and for installation supplies of goods by a foreign entrepreneur for an entrepreneur or a public body the reverse charge procedure is applicable. The foreign entrepreneur does not invoice any VAT and need not register in Austria for VAT purposes. The Austrian recipient must pay VAT but is basically entitled to deduct the same as input VAT.

Reverse charge for construction services
For construction services, the tax burden is being transferred to the recipient of the services if construction services are performed for an entrepreneur who is commissioned with the performance of construction services himself or usually performs construction services. Deemed to be construction services are all services serving to produce, repair, maintain, modify or remove construction edifices. Where the tax burden is transferred there is an obligation to invoice without VAT. In addition as a consequence of this, separate records of remuneration for sales with transferred tax burden must be kept for construction services by the service provider and by the service recipient.

4.10 Foreign entrepreneurs

Foreign entrepreneurs without a fixed establishment or statutory seat in Austria who do not effect taxable supplies in Austria respectively render services subject to the Austrian VAT or only services for which the tax burden is being transferred to the recipient of the services (reverse charge) usually have the possibility to apply for the refund of incurred Austrian input VAT at the Austrian tax authority by 30 June of the year subsequent to the year in question (8th Directive refund procedure).

Basically, the import of goods with a subsequent intra-Community supply in Austria is exempt from import VAT. However, foreign entrepreneurs would have to be registered for VAT purposes in order to benefit from this clause. To avoid a registration, a simplification clause is provided (issue of a special VAT number to the freight forwarder) so that the foreign entrepreneur is able to conduct an intra-Community supply and additionally to claim the exemption from the import VAT without a VAT registration in Austria. From 1 October 2006 this simplification is only applicable if the VAT number of the recipient of the goods is issued by the EU Member State in which the transport or consignment of the goods ends.

5. Taxation of individuals

5.1 Territoriality and residence

All persons residing in Austria are subject to Austrian income taxation for their worldwide income. This includes income from any agricultural or forestry activity, any trade or business activity, income from self-employment and income from salaried employment, income from capital assets as well as income from rental and leasing as well as other income. Persons not resident in Austria are only taxed on income from certain sources in Austria. A person is generally deemed to be resident if he has his domicile or habitual abode in Austria, in any case after a six months' stay. A person having a foreign center of vital interest for at least five calendar years is deemed to be resident in Austria for tax purposes only in those years when the taxpayer uses this and other domiciles more than 70 days a year.

Nationality itself is not a criterion for judging residence or tax liability. However, it may serve as an indication of residence.

5.2 Income from salaried employment

Employee income
Income from salaried employment comprises money as well as benefits in kind the individual receives from an employer or a third party. Benefits in kind are evaluated according to special regulations, which in certain cases provide for general allocations (especially for motor vehicles). Company flats are estimated at 75 per cent of the gross rent actually paid by the company;

compensation for privately paid lodgings is fully taxable. Certain minor benefits in kind are tax-free. Reimbursement of de facto moving costs of employees caused by transfers for operational reasons and intercompany transfers are exempted from taxation; lump-sum moving costs are within certain limits tax-exempt. Any compensation paid for tax payments is fully taxable.

Special payments (e.g. 13th and 14th monthly salary, i.e. holiday and Christmas bonuses) up to an annual amount equal to two average monthly salaries are taxed at a standard tax rate of six per cent; the first € 620 being tax-free. Special payments exceeding this limit are taxed at standard progressive income tax rates.

Voluntary severance payments are also taxed (for periods where no entitlement on an employee pension fund exists) at a standard tax rate of six per cent, as far as these payments do not exceed one quarter of the regular payments within the last twelve months. Voluntary severance payments exceeding this limit are taxed (up to a certain amount, depending on individual working experience) at a standard tax rate of six per cent or at the standard progressive income tax rates.

Non resident persons are subject to limited tax liability for income from Austrian sources at the regular tax rates.

An amount of € 9.000 p.a. will be added to taxable income.

Special regulations for expatriated employees

In order to reduce taxes for the growing number of foreign top executives being expatriated to Austria and to facilitate payroll accounting, an ordinance has been issued granting expatriated employees lump-sum allowances to be taken into consideration in ongoing payroll accounting.

According to that ordinance, "expatriated employees" are individuals who were not resident in Austria within the most recent ten years and who work for a fixed period of time for an Austrian employer (consolidated company or permanent establishment for payroll income tax purposes) in Austria on the basis of an expatriation agreement by his foreign employer. The intention may not be to have work in Austria persist for more than five years and the employees must maintain their residence in their home country and not rent it out. The purpose of the ordinance is to facilitate payroll accounting for expatriated employees.

The following allowances are taken into account:

1. Moving costs: lump-sum payments for moving due to expatriation are tax-free up to one 15th of the annual gross salary.
2. Costs for maintenance of a double household: appropriate rent costs for lodgings in Austria are tax deductible for the employee and his family up to a monthly amount of € 2,200.
3. Expenses for home leave: where the expatriated employee visits his foreign employer during his home leave then the trip is regarded as business travel and costs incurred may be treated as tax-free travel costs. No per diem allowances may be claimed for travel to the parent company as well as for home leave. In addition, cost reimbursements for home leave used for maintenance of the principal residence are tax-free for the employee up to a monthly amount of € 281.
4. Education costs for children (tuition): if children of expatriated employees accompany their parents to Austria and if they have to attend a private international school instead of a public school in order to continue their education, then a monthly amount of € 110 per child is tax deductible.

In addition, special expenses, income-related expenses and extraordinary financial burdens may be claimed on the annual tax return under certain conditions.

The employer must send a written confirmation to the relevant revenue office at the beginning of the assignment and thereafter at the beginning of every calendar year; this statement must list the name of the employee for whom special tax advantages are being sought and it must provide the fiscal authorities with personal data including both the employee's address in Austria and his address abroad.

Alternatively the allowances cited above may be taken into consideration in the annual assessment.

5.3 Capital income and other income

Capital income

Capital income encompasses inter alia interest income, income from dividends as well as income from investment funds.

Interest earnings

Bank interest and interest from securities held in Austrian deposit accounts and derived by a person resident in Austria are subject to the 25 per cent withholding tax deduction by the Austrian depositary bank. With this withholding tax deduction income tax in general are deemed to be satisfied (final or definitive taxation). For final taxation of bonds a „public placement" is required.

Interest income from securities in foreign deposit accounts or foreign bank interest which is not subject to the withholding

tax deduction must be included in the income tax return and is taxed at a 25 per cent special tax rate.

If the individual's table tax rate is less than 25 per cent then upon assessment application a reduction to the lower table tax rate is possible where all definitively taxable income as well as income subject to the special tax rate must be included.

Dividend earnings

Domestic earnings from dividends are definitively taxed for income tax purposes with the 25 per cent withholding tax deduction by the corporation distributing the dividend.

Foreign dividend earnings paid to a domestic deposit account are also subject to final taxation through the 25 per cent withholding tax deduction. In this case, however, banks are only liable for withholding tax insofar as they know the nature of the capital income.

Dividend income paid to foreign deposit accounts must be included on the tax return. Such income is subject to the special 25 per cent tax rate.

If one half of the individual's average tax rate is less than 25 per cent then upon application for assessment a reduction to the lower tax rate is possible where all definitively taxable income as well as income subject to the special tax rate must be included.

Regardless of a double tax treaty with the corresponding source country, foreign paid taxes on foreign dividends can be credited up to maximal 15 per cent (by the Austrian depositary bank).

Where disposal profits or income from capital assets are derived from abroad then the corresponding double taxation convention must be taken into account.

Income from investment funds

Income from domestic Austrian investment funds held by a private investor in a domestic deposit account is basically subject to final taxation (25 per cent withholding tax).

Taxable income of foreign funds

Foreign funds are divided into four categories for tax purposes:

- Reporting funds ("brighter than white" funds)
- White (non-reporting) funds
- Grey (non-reporting) funds
- Black funds

Reporting funds

From 1 July 2005 on, private investors investing in foreign investment funds have the benefit to be subject to complete and immediate final taxation if the fund follows a certain reporting procedure to Oesterreichische Kontrollbank (OeKB) and the fund certificates are held in an Austrian deposit. For such reporting funds, 25 per cent Austrian withholding tax on distributions and also on deemed distributed income ("DDI") is levied on the reported taxable portions. Furthermore, for those funds no safeguard tax will be levied and in case of sale and redemption the investor will only be taxed with the accrued interest portion within the fund (WHT deduction). Consequently, such reporting funds are treated according to the same method as applicable to domestic Austrian funds. If the certificates are not held at an Austrian deposit (i.e. no withholding tax is deducted), the investor has to include the reported income in his tax return.

The reporting system to the OeKB, which had primary been introduced for foreign securities investment funds only, can also be applied to real estate investment funds. Therefore, also foreign real estate funds have the possibility to be treated equally to domestic real estate funds now.

White (non-reporting) funds

Generally, foreign funds, which are registered for public distribution in Austria and having a tax representative in Austria, who calculates the DDI and files an electronic tax return with the Austrian Ministry of Finance on an annual basis, are classified as white funds. DDI from white funds must be included in the investor's annual income tax return (special 25 per cent tax rate).

Grey (non-reporting) funds

Foreign investment funds, which are not registered for public distribution in Austria but having a local tax representative who files a tax return with the Austrian Ministry of Finance, are classified as grey funds. For such funds the same taxation as for white funds applies.

Black funds

If the fund has no local tax representative, who files a tax return for the foreign investment fund until four months after the fund's year-end, the income is subject to a very unfavorable lump-sum taxation (see table). If the taxpayer himself provides evidence on the amounts and composition of actual income of the black fund (self-calculation according to the method issued by the Austrian Ministry of Finance), the lump-sum taxation can be avoided.

Safeguard tax

For private investors, safeguard tax (which is only applicable to non-reporting and black funds) in the amount of 1.5 per cent p.a. of the net asset value at year-end (0.125 per cent per month of the net asset value as at the date of disposal in case the fund certificates are sold or transferred to a foreign deposit) must be levied by the Austrian bank if the fund certificates are not disclosed to the tax office. The safeguard tax is treated as a prepayment of income tax.

Taxable income

Distributions and deemed distributed income (DDI) are subject to current taxation at 25 per cent flat rate.

Private investors are taxed at a 25 per cent flat rate on net investment income (interest, dividends, other income less expenses) derived from investment funds. Alternatively, the investor may choose taxation at progressive tax rate (generally, recommendable if the personal average income tax rate is lower than 25 per cent).

For private investors only 20 per cent of the realised capital gains resulting from the disposal of equities (and derivatives linked to equities) within the fund's sphere are taxable at 25 per cent tax rate. Capital gains realised from the disposal of bonds and derivatives directly linked to bonds are tax-free.

If fund certificates are held on a domestic deposit, distributions are subject to a 25 per cent withholding tax.

As no Austrian tax can be withheld if fund certificates are held on foreign deposit, the distributions are subject to the special tax rate of 25 per cent and have to be declared in the investor's income tax return. Expenses of the investor in connection with the fund certificates are not deductible.

To avoid double taxation the entire distribution is deducted from the DDI of non-reporting funds by the tax representative. Distributions paid out later than four months after the end of the financial year of the fund are tax-free, as they cannot be deducted from the fund's income when calculating the DDI. For reporting funds, 25 per cent Austrian withholding tax is withheld solely on the taxable portions of the distribution. Consequently, for reporting funds only the taxable portions are deducted from net investment income.

Deemed distributed net investment income and taxable realised capital gains are subject to 25 per cent flat tax and have to be declared in the income tax return in case of non-reporting funds. If the fund follows the reporting regime, 25 per cent Austrian withholding tax is also deducted by the Austrian bank on the DDI. Therefore, DDI of the fund is subject to immediate and complete final taxation with the effect that income from such funds needs not to be included in the income tax return of private investors.

Taxation of non-reporting funds and black funds in case of sale/redemption

If the fund's certificates are sold during the financial year of the fund, all distributions made between 1 January of the current year and the day the certificates are sold are fully taxable. Additionally, the investor is subject to 25 per cent taxation based on the higher of the following two amounts:

- The difference between the last redemption price of the calendar year and the redemption price on the day the certificates are sold;
- 0.8 per cent of the redemption price per month of the current financial year of the fund (calendar year in case of black funds).

Alternatively, the DDI figures for the whole financial year of the fund can be chosen as tax basis. Alternatively, the exact DDI for the period between the beginning of the fiscal year of the fund and the date of sale might be calculated.

Taxation of non-reporting funds and black funds in case of purchase

Generally, the same principles as in case of a sale/redemption apply.

Taxation of reporting funds in case of purchase/sale

If fund certificates of reporting funds are purchased/sold, the investor will receive a 25 per cent tax credit/deduction on the net interest income only; no lump-sum taxation (0.8 per cent per month) or taxation on basis of the deemed distributed income for the full financial year of the fund is applicable. Therefore, the fund is subject to immediate and complete final taxation with the effect that income from such funds needs not to be included in the income tax return of private investors.

Capital gains on investor's level caused by the sale of fund certificates within one year

If fund certificates are sold within one year since acquisition by a private investor, additionally to the current taxation the difference between the acquisition price and the redemption price (reduced by any taxed portions, i.e. non-distributed but already taxed DDI) is subject to the progressive income tax rate (maximal 50 per cent) as speculative income.

Summary of taxation of deemed distributed income (distributions see above)

Deemed distributed income (DDI) from	Taxation
Reporting funds • Ordinary income • Realised capital gains	 25% withholding tax Realised capital gains from bonds are tax-free. 20% of the realised capital gains from equities are subject to 25% withholding tax. The withholding tax on DDI is deducted by the Austrian bank. Therefore, no declaration within the tax return is necessary.
White non-reporting funds • Ordinary income • Realised capital gains	 25% special tax rate Realised capital gains from bonds are tax-free. 20% of the realised capital gains from equities are subject to the 25% special tax rate. The DDI has to be declared in the income tax return of the Austrian investor.
Grey funds (non-reporting) • Ordinary revenues • Realised capital gains	 25% special tax rate Realised capital gains from bonds are tax-free. 20% of the realised capital gains from equities is subject to the 25% special tax rate.
Black funds Lump-sum taxation The tax base is the higher of • 90% of the annual increase in value or • 10% of the NAV at year-end. Distributions made by the fund are also taxable but can be deducted from DDI.	25% special tax rate (on lump-sum calculated DDI or on self-calculated DDI)

Other income

In general, capital gains stemming from private activities are not taxed, except for the two following cases:

1. Short-term capital gains

Profits from the disposal of both domestic and foreign assets are deemed to be short-term capital gains and are subject to income tax at standard tax rates if the period between the purchase and the sale amounts to less than one year (real estate ten years, in certain cases 15 years; there are special rules for disposal of the main residence). Short-term capital gains up to a maximum of € 440 per year are tax-free (tax-free limit). The usage of tax losses resulting from such transactions is limited. Short-term capital gains are only taxable in Austria for those with limited tax liability if they stem from the disposal of Austrian property or property-like rights.

2. Disposal of investments

Capital gains from the disposal of investments in corporations (in particular AG or GmbH) are also subject to income tax if the party selling owned, prior to disposal, at least one per cent of the company's registered or authorised capital within the previous five years. The usage of tax losses resulting from such transactions is limited. For persons with limited tax liability, such gains are only taxed if the company had its seat or effective management in Austria. In principle, equated with disposal is also any action by the taxpayer entailing loss of the right to tax by the Republic of Austria. Based on jurisdiction of the European Court of Justice the accrued tax liability will not be assessed in case of a removal to another EU Member State or EEA Member State (under certain conditions) on application. The tax liability will be assessed when an actual sale or removal to another EU Member State or EEA Member State is carried out.

5.4 Deductions

Income-related business expenses

Expenditures for the "acquisition, securing or maintenance" of income are deductible from the taxable income from the relevant source of income. All employees are however entitled to a lump-sum tax allowance in the amount of € 132. Expenditures

going beyond this amount may be claimed if they can be proven with written documents (e.g. office space, ongoing training; for those temporarily resident, see the Expatriate Decree as explained in item 5.2 under "Income from salaried employment").

The employee portion of obligatory contributions to Austrian and/or foreign social security is tax deductible.

Special non business expenses

Deductible from income are certain special expenses but only where annual income does not exceed € 50,900. These special expenses encompass contributions to voluntary health insurance, accident insurance and retirement pensions, voluntary contributions to pension funds set up by the employer and/or government social security, expenses for obtaining and renovating a residence in Austria, expenses for the acquisition of bonus shares and newly issued shares. For such expenses a general allowance of € 60 per year is granted unless higher payments can be shown. In the latter case the deductible amount is limited to 25 per cent of the expenses up to a maximum amount of € 2,920 per year for the individual taxpayer and € 5,840 per year for sole salary-earners who are married/single parents. For taxpayers with at least three children the amount is raised to € 4,380 or to € 7,300 for sole-earners/single parents. Taxpayers earning between € 36,400 and € 50,900 per year may only claim a portion of these special expenses.

Church contribution up to an amount of € 200 and donations to certain institutions up to ten per cent of taxable income from the previous year are deductible. Tax consultant costs as well as pensions and permanent charges are deduc tible up to the full amount.

Exceptional heavy financial burdens

Where taxpayers are involuntarily affected by heavy financial burdens then these may be deducted from taxable income. Regardless of the actual kind of financial burden, they are deductible either in the amount of de facto expenses (e.g. natural disaster damages) or to the extent to which such expenses exceed an own risk amount, i.e. a certain percentage of income up to which a deduction is not allowed (e.g. medical costs, funeral expenses).

The percentage of the own risk amount is a function of the taxpayer's income and financial situation.

Annual income in €	Own risk amount in %
0 to 7,300	6
7,300 to 14,600	8
14,600 to 36,400	10
over 36,400	12

This percentage is reduced by one per cent for sole earners/single parents and for every child not yet able to support himself.

Personal allowances

Allowances are available as follows	€
Employee deduction amount	54.00
Deduction for travel expenses	291.00
Sole earner deduction: for married couples or for single earners in a permanent relationship with at least one dependent child [1) 2)]	364.00
For every dependent child[3)]	700.80
Children allowance per child[4)]	220.00
Pensioners[5)]	400.00

1) The sole earner deduction can only be asserted if the spouse's income is not higher than € 2,200 per calendar year. In the case of a family or cohabitation with one child, the amount is increased to € 6,000.

2) The following for also apply with regard to the sole earner deduction:
- For the first child € 130 which is a total deductible amount of € 494;
- For the second child € 175 which is a total deductible amount of € 669;
- For the third child € 220 which is a total deductible amount of € 889;
- For each further child the amount rises by € 220.

3) Pro rata according to the number of months in which the preconditions are met.

4) In case that allowance is claimed by to taxpayers € 132 p.a. per child can be claimed by each taxpayer

5) The pensioner deduction is continuously reduced to zero between pension amounts of € 17,000 and € 25,000. As a rule the allowances are granted in the form of a tax credit, i.e. in the form of deductions from the tax burden. By contrast, child allowances are paid out to the taxpayer together with the family subsidy.

Tax credit

Austria has double taxation conventions with all of its major trading partners. Some of these conventions provide for complete or partial avoidance of double taxation by crediting foreign taxes paid (e.g. Canada, Japan, Great Britain, USA). Under most of the conventions, however, complete or partial double taxation is governed by tax exemption with reservation made for progressive tax rates. By way of exception from this rule, dividends and interests are in general fully taxed and the tax paid abroad credited.

5.5 Social security contributions

The monthly installments of mandatory contributions (before taxes) as applicable since 1 January 2007 onwards are shown as follows.

1. Retirement, health, unemployment, accident insurance and certain minor amounts

Types of social security contributions	Employer's portion in %	Employee's portion in %	Total in %
Health	3.83	3.82	7.65
Unemployment	3.00	3.00	6.00
Retirement	12.55	10.25	22.80
Accident	1.40	–	1.40
Miscellaneous	1.05	1.00	2.05
Social security contributions (total)	21.83*	18.07	39.90

* Based on the maximum assessment baseline (gross salary) in the amount of € 4,020 per month.

2. In addition, the employer must contribute an amount of 4.5 per cent to the Family Burden Equalisation Fund, a local community tax in the amount of three per cent of the monthly gross salary or wages and in the city of Vienna a public transport levy in the amount of € 0.72 per week per employee. In addition, the Chamber of Commerce assessment is levied at the rate of about 0.40 per cent of gross salaries.
   For employment entered into after 31 December 2002 the employer is obliged to pay in 1.53 per cent of compensation (without a limit) to an employee pension fund.
3. Social security contributions are charged on bonus payments (e.g. 13th/14th monthly salary) in an amount up to € 8,040 per year at a total rate of 38.4 per cent (employer 21.33 per cent, employee 17.07 per cent).

For family members covered by the same insurance an additional contribution of 3.4 per cent of the insured's base contribution amount must be paid. There are exceptions mainly for children and spouses raising children.

Austria has concluded agreements with its most significant partner countries regulating social security. Nonetheless, in most cases exemption from Austrian social security contributions can be obtained for a certain amount of time for employees expatriated temporarily from non-EU countries. A prerequisite for tax exemption is that social security in the home country continues to apply and that this is certified for Austrian social security authorities. In respect of EU citizens, other regulations are applicable (Form E101). Submission of a valid Form E101 also exempts from payment of the employer contribution at the rate of 4.5 per cent as well as the Chamber of Commerce assessment at the rate of 0.40 per cent.

5.6 EU withholding tax

On 1 July 2005 the EU Savings Directive (Council Directive 2003/48/EC) became effective. The aim of the Directive is to enable savings income in the form of interest payments made in one EU Member State (including associated and related territories and certain non EU Member States) to beneficial owners who are individuals resident for tax purposes in an other EU Member State to be made subject to effective taxation in accordance with the law of the later EU Member State.

The effective taxation in the country of the individual resident shall be ensured by an automatic exchange of information concerning interest payments between the EU Member States. Austria, Belgium and Luxembourg (as well as the non EU Member States and certain territories) will not apply the automatic exchange of information at the same time as the other Member States. Therefore, during a transitional period until 2011 a withholding tax shall ensure an effective taxation. The rate will increase progressively from 15 per cent (2005-2007), 20 per cent (2008-2010) to 35 per cent in 2011. The EU withholding tax is deducted in case of interest payments from an Austrian paying agent to an individual, resident in an other EU Member State than Austria. No withholding tax will be deducted, if the beneficial owner provides a certificate drawn up in his name by the competent authority in his Member State to the Austrian tax authorities.

5.7 Tax procedures

Tax returns

Submission of a joint tax return for several persons is not allowed. The tax year for individuals is always the same as the calendar year.

Payment of tax

In general with salaries and wages, interests and dividends (see item 5.3 "Dividend earnings") income tax is taken out through

withholding at the source. For other types of income, advance payment against income tax is undertaken every quarter and by June of the following year an electronic tax return has to be filed.

Appeal against a tax-office decision

You can appeal against a tax-office decision within one month after service. File your appeal in writing with the tax office that issued the decision in question. There are no charges on filing an appeal. An appeal does not suspend the prescribed additional payment; it remains due on the indicated date. If you do not wish to pay the required additional payment for the time being, you must file an application for suspension of the collection. The tax office will issue a formal decision on this application. As a rule, the tax office will issue a preliminary ruling on the appeal. If you do not agree with this decision, you may apply for the submission of your appeal to the Independent Finance Senate (UFS).

Tax rates

Income tax

Annual taxable income in €	Income Tax [1)2)]		Nominal Tax Rate in %	Effective Tax Rate in %
to 11,000	0		0	0
over 11,000 to 25,000	$\frac{\text{(Income - 11,000) x 5,110}}{\text{14,000}}$		0 - 20.44	36.50
over 25,000 to 60,000	$\frac{\text{(Income - 25,000) x 15,125}}{\text{35,000}}$	+ 5,110	20.44 - 33.73	43.21
over 60,000	(Income - 60,000) x 50%	+ 20,235	> 33.73	50

[1)] From the resulting tax amount the tax deductions such as the sole earner deduction are made.

[2)] The 13th and 14th monthly salary are subject to deductions for social security as explained in item 5.5 under "Social security contributions." The first € 620 are tax-free (see item 5.2 "Income from salaried employment"); tax is withheld in the amount of a standard rate of six per cent from the remaining income.

Payroll withholding tax

Austrian employers and foreign employers with permanent establishments for taxes on salaries in Austria must withhold income tax from salaries on a monthly basis and remit it by the 15th day of the following month to the relevant authorities. Employer costs must be paid on the same day to the relevant authorities.

Persons deriving their income exclusively from salaried employment are not obliged to file income tax returns. However where such persons claim income-related expenses or special expenses then partial reimbursement of taxes can be obtained by filing a tax return.

Deductible amounts for low income (negative tax)

If you have no or only a low income, you may receive a tax credit (negative tax) in the following cases: If you are entitled to claim employee deduction, ten per cent of the employee contributions to statutory social security (however, only a maximum of € 110) will be credited. This also applies to cross-border workers. The sole-earner or single-parent deduction (the latter, however, only in case of at least one child, i.e. if there is an entitlement to a child supplement) will be paid out by the tax office if it did not produce its full tax-reducing effect on account of the low income. For one child this may amount to as much as € 494 (negative tax), for example. Negative tax is determined in the course of the employee tax assessment. Non-tax able earnings, based on bilateral (double taxation agreements) or international law (e.g. UNIDO, IAEA) agreements are considered to be taxable earnings for the purpose of computing negative tax.

Employee Tax Assessment

You can file an application for an employee tax assessment within a period of five years (e.g. an application for 2008 may be filed until the end of December 2013). You may file your application either electronically via FinanzOnline or by mailing form L1, or by handing it in at your tax office. The tax office processes the applications in the order in which they arrive and establishes your tax payment upon your application (formerly: annual wage tax re-computation). The tax office can only complete an employee tax assessment if all pay slips for the year and other disclosures (e.g. from the Labor Market Service) have been received.

Family subsidies

A tax-free monthly family subsidy for children is paid in Austria as set out below:

For children aged 0-3:

- € 105.40 per month for the first child
- € 118.20 per month for the second child
- € 140.40 per month for the third child
- € 155.40 per month for the fourth and each additional child

For children aged 3-10:

- € 112.70 per month for the first child
- € 125.50 per month for the second child
- € 147.70 per month for the third child
- € 162.70 per month for the fourth and each additional child

For children aged 10-19:

- € 130.90 per month for the first child
- € 143.70 per month for the second child
- € 165.90 per month for the third child
- € 180.90 per month for the fourth and each additional child

For children aged over 19:

- € 152.70 per month for the first child
- € 165.50 per month for the second child
- € 187.70 per month for the third child
- € 202.70 per month for the fourth and each additional child

In addition, for every child an amount of € 700.80 per year is granted in the form of a child allowance deduction. The family allowance is paid 13 times per year with a double payment in the month of September.

These family subsidies are also granted in cases in which no income tax is payable.

For persons with three or more children and low income an additional subsidy of € 36.40 is granted per month for the third child and each additional child (large family supplement). The family subsidy is paid out by the relevant authority together with the child allowance deduction.

The new child care is granted in the amount of € 14.53 per day or € 26.60 per day (depending on what model is chosen) and children are eligible for it for whom a mother-child examination certificate can be produced. Annual income limit: € 16,200. For child care granted as of year 2008 the benefit will be reduced on a pro rata basis in relation to income exceeding the income limit.

Sample income tax computation

The following sample computation is given on the basis of legislative regulations and tax rates in force as of the current legal situation.

Premises

Husband and wife both resident within the national jurisdiction, two dependent children; one spouse earns the entire family income; employment in Austria; social security in Austria mandatory; salary paid out in 14 instalments; interest income in Austria in the amount of € 11,250; foreign non-tax favoured dividend, which are taxed abroad comparable to Austrian corporate tax, of € 7,030 (a double taxation convention is applicable); creditable foreign tax is ten per cent; favoured life insurance premiums in Austria of € 7,300 per year.

Tax computation	€	€
Salary		65.400,00
minus:		
Tax-favoured portion (13th and 14th monthly salaries) (€ 65,400 / 14 x 2)		-9.343,00
Social security contributions (12 x € 726.41 for current salary)		-8.717,00
Standard allowance – income-related expenses		-132,00
Special Expenses: Life insurance premiums (maximum amount) [1)]		-371,75
1. Interest income from deposits with an Austrian bank as well as bonds (gross): € 11,250 of which 25% final tax was paid (see below)		
2. Dividends under the Double Taxation Convention DTC-state gross € 7,030 – special 25% tax rate (see below)		
Taxable income		46.836,25

Income tax at the 33.5% tax rate		14.546,00
minus		
Sole earner deduction		-669,00
Employee deduction		-54,00
Carfare deduction		-291,00
		13.523,00
plus Income tax on 13th and 14th monthly salaries (€ 65,400 / 14 x 2)	9.343,00	
minus Social security contributions on the 13th and 14th monthly salaries	-1.372,00	
minus Allowance	-620,00	
	7.351,00	
of which 6% fixed tax rate		441,06
		13.973,00
plus withholding tax on interest (25%) and special tax rate on foreign dividends (25%)		4.570,00
minus Tax credits under a DTC for withholding taken out abroad on dividends (assumption: 10% of € 7,030)		-703,00
Total tax burden		17.840

[1)] (€ 50,900 - € 47,208) x 1,460 / 14,500 = € 371.75

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