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## International tax

# Austria Highlights 2014

### Investment basics:

**Currency –** Euro (EUR)

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

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

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

### Corporate taxation:

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

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

**Taxable income –** Corporation tax is imposed on a company's profits, which consist of business/trading income, passive income and capital gains. Normal business expenses may be deducted in computing taxable income. Interest on debts obtained for the acquisition of a participation is not deductible if the participation is acquired within a group of companies.

**Taxation of dividends –** Dividends received from an Austrian resident company are tax exempt. Portfolio dividends (i.e. where there is a participation of less than 10%) received from (1) a foreign company listed in the EU parent-subsidiary directive; or (2) a foreign company comparable to an Austrian company that is resident in a non-EU country and there is a broad exchange of information clause in a tax treaty between Austria and the subsidiary's state of residence, are exempt from corporate tax (domestic/ EU/non-EU portfolio dividend exemption).

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

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

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

**Rate –** 25%

**Surtax –** No

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

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

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

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

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

The international participation exemption (for dividends or capital gains) does not apply if the foreign company generates passive income and pays tax at a rate of less than 15%. The EU/non-EU portfolio dividend exemption and the international participation exemption do not apply if the dividends are tax deductible at the level of the distributing foreign entity.

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

**Incentives –** Various incentive programs are available, such as a 10% cash premium on certain R&D expenses.

### Withholding tax:

**Dividends –** Dividends paid to another Austrian company are exempt. Dividends paid to a nonresident company are subject to a 25% withholding tax unless the rate is reduced under a tax treaty or the dividends are exempt under the EU parent-subsidiary directive. A refund of the withholding tax is possible for EU/EEA parent companies if the withholding tax cannot be credited in their residence state under a tax treaty.

**Interest –** No withholding tax is levied on loan interest paid to a nonresident company. However, the nonresident company is subject to Austrian corporate income tax if the loan is secured against Austrian real estate or other Austrian rights (the rate may be reduced or the interest may be exempt under a tax treaty). Payments made to a nonresident silent partner in an Austrian company are subject to 25% withholding tax unless the rate is reduced or the payments are exempt under a tax treaty.

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

**Technical service fees –** Fees for technical services are subject to a 20% withholding tax unless reduced or exempt under a tax treaty.

**Branch remittance tax –** No

**Other –** No

## Other taxes on corporations:

**Capital duty –** A capital tax of 1% is levied on compulsory shareholder contributions, as well as voluntary direct and hidden capital contributions to an Austrian corporation if effected by the direct shareholder. A partnership with a corporation as an unlimited partner is deemed to be a corporation.

**Payroll tax –** Municipalities levy a general payroll tax of 3% on total salaries and wages paid monthly by permanent establishments based in Austria.

**Real property tax –** Municipalities impose an annual real estate tax of up to 2% on up to five times the assessed value of property.

**Social security –** The employer is required to make pay-related social insurance contributions. The employer's contribution generally ranges from 21.7% to 21.83% of an employee's salary. The employee's corresponding contribution of 18.07% to 18.2% must be withheld by the employer and remitted to the social insurance agencies.

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

**Transfer tax –** Transfers of real estate are subject to an acquisition tax of 3.5% of the consideration (plus a 1.1% registration fee with the land register). If there is no consideration, the real estate transfer tax is usually based on three times the assessed value of the property, whereas the 1.1% registration fee is based on the fair market value of the real estate. For certain privileged transactions (e.g. reorganizations), the registration fee is based on three times the assessed value.

**Other –** Austrian banks and foreign banks with an Austrian branch are subject to a banking tax based on the balance sheet total reduced by equity and secured contributions. The banking tax amounts to 0.055% to 0.085% of the tax base. In addition, a surcharge is levied of 0.013% on the derivative transaction volume.

## Anti-avoidance rules:

**Transfer pricing –** No special transfer pricing provisions exist, but the Ministry of Finance has issued guidance based on the OECD guidelines. Transactions between affiliated companies must be at arm's length. Although there are no formal documentation rules, the tax authorities may request documentation. Taxpayers may obtain binding rulings on transfer pricing issues.

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

**Controlled foreign companies –** No

**Other –** Under the statutory GAAR, the tax authorities can make adjustments if there has been an abuse of legal form and methods to achieve a tax benefit.

**Disclosure requirements –** No

## Administration and compliance:

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

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

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

**Penalties –** Penalties apply for failure to comply.

**Rulings –** Taxpayers may request a nonbinding ruling on the tax consequences of a proposed transaction and a binding ruling on issues relating to restructurings, tax groups and transfer pricing. For a binding ruling, the taxpayer will be charged a fee of up to EUR 20,000 by the tax authorities.

## Personal taxation:

**Basis –** Austrian resident individuals are taxed on their worldwide income. Nonresidents are taxed only on Austrian-source income.

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

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

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

**Capital gains –** As from 1 April 2012, capital gains relating to investments and real estate are subject to a 25% capital gains tax. The alienation of participations of less than 1% in a corporation or participations in an investment fund acquired before 1 January 2011, bonds or derivations acquired before 1 April 2012 and real estate acquired before 1 April 2002 usually is subject to more favorable grandfathering rules.

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

**Rates –** Rates are progressive up to 50%.

## Other taxes on individuals:

**Capital duty –** No

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

**Capital acquisitions tax –** No

**Real property tax –** Municipalities impose an annual real estate tax of up to 2‰ on up to five times the assessed value of property.

**Inheritance/estate tax –** No, but there is a statutory notification requirement for gifts. Transfers of real estate are subject to an acquisition tax of 3.5% of the consideration (plus a 1.1% registration fee with the land register). If there is no consideration, the real estate transfer tax is based on three times the assessed value of the property; the 1.1% registration fee is based on the fair market value of the real estate. For certain privileged transactions (e.g. between close relatives), the registration fee is based on three times the assessed value).

**Net wealth/net worth tax –** No

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

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

## Administration and compliance:

**Tax year –** Calendar year.

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

**Penalties –** Penalties apply for failure to comply.

## Value added tax:

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

**Rates –** The standard rate is 20%. A lower rate of 10% applies to foodstuffs, agricultural products, rents, tourism and entertainment. Banking transactions are exempt and a zero rate applies to exports.

**Registration –** Austrian entrepreneurs whose annual turnover exceeds EUR 30,000 must register for VAT purposes. Nonresidents that make taxable supplies of goods or services in Austria also are required to register.

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

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

**Tax treaties:** Austria has concluded over 90 tax treaties.

**Tax authorities:** Revenue offices of the Austrian Ministry of Finance.

**International organizations:** EU, OECD, WTO.

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