AUSTRIA

Author
Dr. Karin Spindler-Simader
Wolf Theiss
Vienna

IN GENERAL

Austria does not have a specific regime applicable only to holding companies. Rather, a holding company is taxed in the same way as any other company. Nevertheless, many features of its tax system make Austria a jurisdiction worth considering for international holding companies:

- An international participation exemption exists for dividends received from foreign subsidiaries and capital gains arising from the disposition of their shares.
- A group taxation system exists that also allows cross-border loss relief.
- No formal legislation rules exist regarding thin capitalization.
- Full deductibility is provided for interest expense arising from debt incurred in connection with the acquisition of subsidiaries, subject to certain limitations.
- An extensive network of tax treaties exists, amounting to more than 90 comprehensive treaties in force and effect.
- No withholding tax is due on interest paid to nonresidents.
- No withholding tax is due on capital repayments made to nonresidents.
- The possibility to make use of the E.U. Parent-Subsidiary Directive ("P.S.D."), the E.U. Merger Directive, and the E.U. Interest and Royalties Directive ("I.R.D.") exists.
- The possibility of obtaining tax rulings on certain issues exists.

CAPITALIZATION OF AUSTRIAN COMPANIES

Equity

No taxes or stamp duties are levied on equity provided to Austrian companies.

Debt

No taxes or stamp duties are levied on debt provided to Austrian companies.

© Ruchelman P.L.L.C., 2023. All rights reserved.

Thin Capitalization

Austria does not have a statutory thin capitalization rule. Loan arrangements between an Austrian company and its shareholders or affiliates are generally recognized for tax purposes, provided that the terms of the loan meet the conditions of an arm's length test so that a third party would grant a similar loan in light of the financial situation of the company. If not, the loan capital would qualify as equity with the result that interest paid on the loan cannot be deducted as a business expense. Instead, interest payments would be treated as hidden distributions to the shareholder, triggering a withholding tax of 27.5%. In practice, debt/equity ratios of 4:1 are not uncommon.

CORPORATE INCOME TAXATION

Resident Companies

Determination of Residence

A company is resident in Austria for tax purposes if it has its legal seat and/or its place of management in Austria. The legal seat of a corporation is the place defined as such by law, by contractual agreement, or in its articles of association. The place of management of a corporation is the place where all the measures are taken that are required and essential for the management of the corporation.

Tax Rate and Base

Resident companies are taxable on their worldwide income, including capital gains, at a flat tax rate of 24% (to be reduced to 23% in 2024). Apart from corporate income tax, no other taxes or surcharges are levied on a corporation's income.

The tax base is generally the profit shown in the financial statements. Adjustments have to be made where mandatory tax provisions deviate from financial accounting rules. Profits are generally taxed on an accrual basis.

Expenses incurred in acquiring, securing, and maintaining taxable income are tax deductible. However, the following types of expenses are partly or fully nondeductible: (i) restaurant expenses, (ii) penalties and fines, (iii) income taxes, (iv) remunerations paid to supervisory board members, (v) remunerations paid to employees and managers exceeding €500,000 per person per year, and (vi) expenses in connection with earning tax-exempt income.

As of 2023, deductible expenses include an investment allowance amounting to 10% of acquisition costs (up to a maximum of €1 million) of assets subject to wear and tear with a depreciation period of at least four years. The investment allowance is increased to 15% for assets pertaining to the field of ecological transformation. Goodwill, buildings, used assets, machinery that is used to extract, transport, or store fossil fuels, as well as machinery that directly uses fossil fuels, motor vehicles and intangible assets (with certain exceptions), and assets that are subject to certain other beneficial tax measures are excluded from the investment allowance.

© Ruchelman P.L.L.C., 2023. All rights reserved.

Interest Expense Deduction

In general, interest – including interest incurred in connection with the acquisition of an Austrian or non-Austrian participation – may be fully deducted from a corporation's tax base. Three restrictions regarding deductibility apply:

- First, interest incurred in connection with the acquisition of shares that were directly or indirectly purchased from a group company or from a controlling shareholder are not deductible. Financing costs other than interest, *i.e.*, money raising costs and additional costs such as commissions incurred in connection with the acquisition of shares are generally not deductible. Examples include money raising costs, commissions, and other similar expenditures.

- Second, no deduction is possible for interest paid to a corporation if the payer and recipient are, directly or indirectly, part of the same group, or have, directly or indirectly, the same controlling shareholder, and at the level of the recipient or the beneficial owner, if different, the interest paid is (i) not subject to corporate income tax owing to a comprehensive personal or material tax exemption, (ii) subject to corporate income tax at a rate of less than 10%, (iii) subject to an effective tax rate of less than 10% owing to an applicable reduction, or (iv) subject to a tax rate of less than 10% owing to a tax refund, and here, tax refunds to the shareholder are also relevant. This provision also applies to royalties.

- Third, pursuant to the interest limitation rule, net interest expense in an assessment period is deductible only to the extent of 30% of the E.B.I.T.D.A. Net interest expense is the excess of deductible interest expense over taxable interest income in the assessment period. The E.B.I.T.D.A. equals the preliminary total amount of taxable income, *i.e.*, before applying the interest limitation rule, increased by depreciation and decreased by amortization expenses. Interest means any remuneration for the issuance of debt including all payments made to obtain the debt and any other remuneration that is economically equivalent to interest. Net interest in excess of the deductible amount in the current assessment period can be carried forward to subsequent years. The amount carried forward increases the corporation's interest expenses in the subsequent years, but not its E.B.I.T.D.A. Conversely, if 30% of E.B.I.T.D.A. exceeds the net interest expense in an assessment period ("limitation surplus"), the limitation surplus may be carried forward at the taxpayer's request, but only for the following five years.

The interest limitation rule does not apply in any of the following fact patterns:

- The corporation (i) is not fully included in consolidated financial statements, (ii) does not have an affiliated corporation, and (iii) does not have a foreign permanent establishment.

- The net interest expense of the corporation does not exceed €3 million in the assessment period.

- The corporation (i) is fully included in a group that prepares consolidated financial statements in accordance with Austrian G.A.A.P., I.F.R.S., or another comparable accounting standard and (ii) maintains an equity ratio

© Ruchelman P.L.L.C., 2023. All rights reserved.

(shareholder capital dividend by assets) as of the reporting date that is either greater than the equity ratio of the group or not more than two percentage points lower than that of the group.

- The interest expense of the corporation relates to debt that is exclusively used to finance long-term public infrastructure projects of general public interest within the E.U.

- The interest expense relates to debt incurred under a binding contract concluded prior to June 17, 2016, but only through assessment periods up to and including 2025.

Depreciation

An asset subject to wear and tear generally is depreciated on a straight-line basis over its ordinary useful life. If an asset is used for more than six months in the tax year of being placed in service or use, a full year's depreciation deduction may be claimed. Otherwise, only 50% of the yearly depreciation deduction may be claimed in that year.

Depreciation for extraordinary technical or economic loss in value is possible. For certain assets the statute mentions the depreciation rates to be used, namely buildings (generally 2.50% per annum), goodwill (6.67% per annum), and automobiles (12.50% per annum). Assets having an acquisition cost of no more than €1,000 can be fully depreciated in the year of purchase.

Taxpayers have the option to use the declining balance depreciation method, applicable to the residual book value at a constant rate of not more than 30% of the declining balance. In this way, the depreciation deduction will be front-loaded.

- It is possible to choose different depreciation methods (*i.e.*, straight-line or declining balance) for different assets.

- Transitioning from the declining balance depreciation method to the straight-line depreciation method is allowed, but only at the beginning of a fiscal year. In this case, straight-line depreciation is to be based on the remaining book value and the remaining useful life of the individual asset at the time of the transition. Transitioning from straight-line to declining balance depreciation is not possible.

- Goodwill, buildings, motor vehicles (certain exceptions apply), intangible assets (certain exceptions apply), used assets and machinery that are used to extract, transport, or store fossil fuels, as well as machinery that directly uses fossil fuels, are excluded from the option for the declining balance method of depreciation.

For buildings acquired after June 30, 2020, taxpayers are entitled to an accelerated form of straight-line depreciation. For the first year in which depreciation is claimed, the depreciation deduction is 300% of the straight-line amount and in the second year, the depreciation is 200% of the straight-line amount. The half-year depreciation rule for assets put into operation during the second half of a year does not apply.

The statutory depreciation rate generally corresponds to (i) 2.5% for buildings held in the context of an active trade or business and (ii) 1.5% for buildings held in the

© Ruchelman P.L.L.C., 2023. All rights reserved.

context of an active trade or business, but leased out for residential purposes. Thus, this leads to a maximum depreciation rate of 7.5%.

Provision of Reserves

Only the following reserve provisions are deductible on a current basis: (i) provisions for severance payments, (ii) provisions for pension payments, (iii) provisions for other contingent liabilities, and (iv) provisions for anticipated losses from pending transactions.

Net Operating Loss Carryover

Tax losses may be carried forward from past years to reduce the current year's corporate income tax base. The carryforward that may be claimed in any year is limited to 75% of the income of that year. No time limit applies after which the loss cannot be further deducted. In general, carryback of losses is not permitted.

A corporation's tax loss carryforwards are forfeited upon an ownership change if there is additionally a material change in its organizational (*e.g.*, replacement of all directors of the corporation), economic (*e.g.*, a new area of business is pursued by the corporation) and shareholder structure (*e.g.*, the majority of shareholders of the corporation are replaced).

Irrespective of taxable income, a minimum tax is levied. It amounts to €1,750 per annum for limited liability companies and to €3,500 per annum for stock companies, except that a special minimum tax of €5,452 applies to banks and insurance companies. During the first ten years after incorporation of a limited liability company, a reduced minimum tax applies. It is €500 for the first five years and €1,000 for the following five years. Minimum tax payments made can be offset against future corporate income tax assessed without any limitations.

Research and Development

As a special incentive, companies conducting qualified research and development activities may claim a credit (over and above the full deduction of the expense) equal to 14% of eligible expenses.

Tax Year

The tax year is generally the calendar year. Corporations may apply to the tax authorities for permission to use a different tax year if reasons other than tax considerations exist for the application.

Tax Filing and Tax Payment

In most cases, corporate income tax returns must be filed electronically by June 30 of the year following the close of the tax year. Taxpayers being represented by tax advisers benefit from longer deadlines. An extension of the filing date is possible in justified cases. Failure to file generally triggers a penalty.

Quarterly prepayments of corporate income tax are due on February 15, May 15, August 15, and November 15. Such prepayments are credited against the final amount of tax assessed. Any balance is payable within one month after receipt of the tax assessment notice.

Nonresident Companies

Definition

A nonresident company is a company having its legal seat and place of management outside of Austria.

Tax Base

A nonresident company is taxable on business profits to the extent it carries on a business through a permanent establishment or a permanent representative in Austria. Income and capital gains from Austrian real estate are also taxable as business profits of the nonresident company, even if the real estate is not attributable to an Austrian permanent establishment. A nonresident company is further taxable on certain other items of income from Austrian sources, in particular, dividends from Austrian companies or royalties stemming from intellectual property registered in an Austrian register or used in Austria.

"A nonresident company is a company having its legal seat and place of management outside of Austria."

Participation Exemption

Domestic Participation

Under the national participation exemption, dividends which an Austrian resident company receives through a direct or indirect participation in an Austrian subsidiary are exempt from Austrian corporate income tax, regardless of the extent of the participation and regardless of the length of time during which the participation in the subsidiary has been held by the parent. This exemption does not apply to capital gains.

International Qualified Participation

Under the international qualified participation exemption, dividends which an Austrian company receives through a direct or indirect participation in a foreign subsidiary that is an E.U. company listed in Article 2 of the P.S.D. or an entity comparable to an Austrian corporation are exempt from Austrian corporate income tax. The parent must hold a participation of at least 10% of the stated share capital of the subsidiary for a minimum duration of one year. The exemption is not applicable if the payment received is deductible abroad.

The international qualified participation exemption applies to capital gains and capital losses realized on the disposal or writing down of shares to a lower fair market value. Hence, capital gains are not taxable and capital losses are not tax deductible in connection with a sale or write-down of shares. However, final capital losses resulting from the liquidation or insolvency of a non-Austrian subsidiary remain tax deductible to the extent they exceed the amount of any tax-exempt dividends received during the last five business years.

As an alternative to tax neutrality, the Austrian parent company may opt for treating all capital gains and capital losses in connection with a sale or write-down of shares as tax effective. In such cases, capital gains are taxable, while capital losses are tax deductible, but the deductible loss is spread over a period of seven years. No deduction is allowed for capital losses that were directly caused by the prior distribution of profits.

© Ruchelman P.L.L.C., 2023. All rights reserved.

The option for tax effectiveness may be exercised separately for each participation in the corporate income tax return filed for the year in which the participation is acquired. Once the option has been exercised, it cannot be withdrawn.

International Portfolio Participation

Under the international portfolio participation exemption, dividends are exempt from tax when received by an Austrian company through a direct or indirect participation in a foreign subsidiary. The subsidiary must be an E.U. company listed in Article 2 of the P.S.D. or an entity that is comparable to an Austrian corporation. In the latter case, the entity must be resident in a state with which Austria has an agreement for the comprehensive exchange of tax information. The exemption under the international portfolio participation rules applies when the international qualified participation rules are inapplicable. The exemption is not applicable if the payment received is deductible abroad. This exemption does not apply to capital gains.

Controlled Foreign Corporation ("C.F.C.") Rules

Prerequisites

Under the Austrian C.F.C. rules, passive income of a foreign low-taxed subsidiary will be included in the tax base of the controlling corporation under certain circumstances.

Passive income encompasses the following types of income:

- Interest or any other income generated by financial assets
- Royalties or any other income generated from intellectual property
- Dividends and income from the disposal of shares, insofar as these would be taxable at the level of the controlling corporation
- Income from financial leasing
- Income from insurance, banking and other financial activities
- Income from invoicing companies that earn sales and services income from goods and services purchased from, and sold to, associated enterprises and that add no or little economic value

A foreign company is low-taxed if its effective foreign tax rate is not more than 12.5%. In order to determine the effective foreign tax rate, the foreign company's income is to be calculated in line with Austrian tax rules and the foreign tax actually paid is divided by the income computed in that manner.

Low taxation is additionally presumed if a foreign company is resident in one of the non-E.U. jurisdictions classified as noncooperative jurisdictions as of the closing date of its respective financial year. The E.U. list of noncooperative jurisdictions as of February 14, 2023 includes American Samoa, Anguilla, Bahamas, British Virgin Islands, Costa Rica, Fiji, Guam, Marshall Islands, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos, the U.S. Virgin Islands, and Vanuatu.

© Ruchelman P.L.L.C., 2023. All rights reserved.

The C.F.C. rules apply if the following facts are present:

- The passive income of the C.F.C. exceeds a third of its total income. For this purpose, the income is to be calculated in line with Austrian tax provisions, except that tax-exempt dividends and capital gains are taken into account when calculating the total income of the foreign corporation.
- The controlling corporation – alone or together with its associated enterprises – holds a direct or indirect participation of more than 50% of the voting rights or owns directly or indirectly more than 50% of the capital or is entitled to receive more than 50% of the profits of the foreign corporation.
- The foreign corporation does not carry out a substantive economic activity supported by staff, equipment, assets and premises. For this purpose, the burden of proof is on the controlling corporation.

The C.F.C. rules are not applicable to foreign financial institutions if not more than one third of the passive income stems from transactions with the Austrian controlling corporation or its associated enterprises.

For purposes of the C.F.C. rules, an associated enterprise exists if

- the controlling corporation holds directly or indirectly a participation in terms of voting rights or capital ownership of at least 25% in an entity or is entitled to receive at least 25% of the profits of that entity or
- a legal person or individual or group of persons directly or indirectly holds a participation in terms of voting rights or capital ownership of at least 25% or is entitled to receive at least 25% of the profits of the corporation.

If a legal person or individual or group of persons holds directly or indirectly a participation of at least 25% in the corporation and one or more other entities, all the entities are regarded as associated enterprises.

The C.F.C. rules also apply to Austrian corporations having their place of management outside of Austria and to foreign permanent establishments, even if an applicable double tax treaty provides for a tax exemption in Austria.

Consequences of C.F.C. Status

When the C.F.C. provisions apply to a foreign corporation, the amount of the C.F.C.'s passive income that is included in the tax base of the controlling corporation is calculated in proportion to the direct or indirect participation in the nominal capital of the C.F.C. If the profit entitlement deviates from the participation in the nominal capital, then the profit entitlement ratio is decisive. The passive income of the C.F.C. is included in the financial year of the controlling corporation in which the C.F.C.'s financial year ends. Losses of the controlled foreign company are not included.

In order to prevent double taxation, the following rules apply:

- A C.F.C.'s passive income is not included in the tax base of a controlling corporation that holds only an indirect participation in the C.F.C. where such passive income is already included in the tax base of an Austrian controlling corporation holding a direct participation in the controlled foreign company.

© Ruchelman P.L.L.C., 2023. All rights reserved.

- If the controlling corporation disposes of its participation in the C.F.C., any capital gains are tax exempt insofar as these have previously been included in the controlling corporation's tax base.
- When including the C.F.C.'s passive income in the controlling corporation's tax base, a foreign tax credit is allowed for (i) the corporate income tax imposed on the C.F.C. with regard to its passive income and (ii) the corporate income tax imposed on the C.F.C. in connection with the passive income of a lower-tier subsidiary. Foreign tax credits are allowed upon the making of an application to the Austrian tax authorities.
- If the foreign tax to be credited exceeds the controlling corporation's Austrian corporate income tax, tax credits can upon application also be claimed in the following years.

Switch-Over Rule Regarding Participations

Where applicable, the switch-over rule turns off the exemptions for dividends and capital gains. The switch-over rule applies to two of the categories of participations discussed above in **Participation Exemption**. When the switch-over rule applies, the dividends and capital gains are taxable, and a foreign tax credit is given for the underlying taxes of the foreign subsidiary on dividends.

The switch-over rules apply if the predominant focus of a low-taxed foreign corporation is earning passive income. The participation categories that are affected are: (i) participations falling under the international qualified participation exemption and (ii) participations of at least 5% falling under the international portfolio participation exemption.

The switch-over rule does not apply if passive income has been taken into account under the C.F.C. provision mentioned above. Also, it is not applicable to foreign financial institutions if not more than one third of the passive income stems from transactions with the Austrian controlling corporation or its associated enterprises.

Group Taxation

Prerequisites

Austrian tax law allows group taxation for affiliated companies. Affiliated companies are those that are connected through direct or indirect participation of more than 50% of the nominal capital and voting rights. This participation must exist throughout the entire fiscal year of the member of the tax group. The conclusion of a profit and loss transfer agreement is not necessary for the purpose of setting up a tax group. Whether the companies in a group earn active or passive income is irrelevant. Thus, pure holding companies are not precluded from participating in a tax group.

The top-tier company in a tax group may be any of the following entities:

- A resident company
- A nonresident company that is an E.U. company listed in Article 2 of the P.S.D. with a permanent establishment in Austria that is registered in the commercial register with the required participations being attributable to such permanent establishment

- A company with its place of management in the E.E.A. that is comparable to an Austrian corporation with a permanent establishment in Austria that is registered in the commercial register with the required participations being attributable to such permanent establishment
- A consortium consisting of two or more companies as specified above, whether structured on a company law basis or on a purely contractual basis, provided that one consortium partner has a participation of at least 40% and each of the other consortium partners has a participation of at least 15%

Members of a tax group may be (i) resident companies and (ii) nonresident companies that are legally comparable to an Austrian corporation. In the latter case, the nonresident company must be resident in another E.U. Member State or a state with which Austria has an agreement for the comprehensive exchange of tax information and exclusively held by resident members of the tax group or the top-tier company of the tax group.

A tax group is not formed automatically. Rather, an application must be submitted to the tax authorities by the group parent. The application must be executed by the management boards of (i) the group parent and (ii) all Austrian group members. The tax authorities then render a binding decision on whether the prerequisites necessary for establishing a tax group have been fulfilled. A tax group must have a minimum duration of three years.

"The application must disclose the respective voting and the participation rights held as well as the financial years of all the companies that wish to participate in the group."

The application for group taxation must contain a declaration stating that an agreement has been concluded between the Austrian-resident affiliated companies regarding the compensation of group members for corporate income taxes paid or not paid as a result of establishing the tax group. It is not necessary to set out the details of the agreement in the application. The application must disclose the respective voting and the participation rights held as well as the financial years of all the companies that wish to participate in the group.

Consequences

The setting up of a tax group results in 100% of the taxable income of each Austrian-resident member of the group being attributed to the top-tier company in the tax group. The income of each group member is calculated on a company-by-company basis and attributed to the group parent company. Thus, in contrast to a consolidation, income resulting from intra-group transactions is not eliminated for the purpose of calculating group income. The setting up of a tax group in no way affects the way profits of the group companies are reported under financial accounting rules.

The fiscal year for all members of the group need not align. Rather, the fiscal years of all members that end in or with the fiscal year of the group parent are reported by the group parent in the manner described above.

In the case of a tax group formed by a consortium, 100% of the taxable income of each member of the group is attributed to the consortium partners on a *pro rata* basis.

When nonresident companies are members of a tax group, only their losses are attributed on a *pro rata* basis to the top-tier company. Thus, the losses of non-Austrian subsidiaries can be utilized in Austria even though, under general principles, their profits are taxable only in the respective foreign countries. The losses of nonresident group members must be computed in accordance with Austrian tax rules.

 © Ruchelman P.L.L.C., 2023. All rights reserved.

Nonetheless, these losses cannot exceed the amount calculated pursuant to tax rules in the country of residence of the foreign member.

The aggregate losses of nonresident companies are subject to a ceiling that is similar to the rule for the carryforward of losses. The ceiling is 75% of the income of the top-tier Austrian company in a tax group and the Austrian-resident members.

Losses of nonresident companies that have been deducted by a tax group in Austria are recaptured in Austria to the extent the non-Austrian subsidiary utilizes or may utilize the losses abroad or drops out of the tax group. In the case of final capital losses resulting from a liquidation or insolvency, the recapture is reduced by nondeductible impairments (see below).

Group member tax loss carry forwards resulting from taxable years ending before the tax group was established and tax loss carry forwards assumed by group members pursuant to a restructuring can be applied only against profits generated by the respective group member, up to 100%. On the other hand, tax loss carry forwards of the top-tier company in a tax group can be applied against such company's own profits and also against the profits of group members.

No deductions are allowed for impairments in value of participations in companies that are part of a tax group.

Transfer Pricing

Pursuant to the case law of the Austrian Supreme Administrative Court, agreements between related parties (such as a parent company and its subsidiary) are recognized for tax purposes only under the following conditions:

- The agreements have been concluded in writing.
- Their content is unambiguous.
- They have been concluded in accordance with the arm's-length principle (*i.e.*, on terms that would be agreed by unrelated parties). The Austrian tax authorities follow the O.E.C.D. Transfer Pricing Guidelines in this respect.

Pursuant to the Austrian Transfer Pricing Documentation Act, multinational groups with consolidated group revenues of at least €750 million in the preceding fiscal year are required to prepare a Country-by-Country Report, which Austria will automatically exchange with other countries. Additionally, a separate business unit that is tax-resident in Austria and reports revenues of at least €50 million in the two preceding fiscal years of a multinational group must prepare transfer pricing documentation in the form of a master file and a local file.

WITHHOLDING TAX ON OUTBOUND PAYMENTS

Dividends

P.S.D.

Dividends paid by an Austrian company to nonresident shareholders are subject to withholding tax at a rate of 27.5%. The rate may be reduced to 25% in case of corporate shareholders. However, dividends paid by an Austrian company to an

© Ruchelman P.L.L.C., 2023. All rights reserved.

E.U.-resident parent company are exempt from taxation under legislation implementing the P.S.D. where the parent company directly or indirectly holds a participation in the Austrian subsidiary of at least 10% for a minimum period of one year. If payments are made before the minimum holding period has elapsed, the payment is subject to withholding taxation. The parent company, however, is entitled to a refund once the minimum holding requirement has been met.

Potentially Abusive Structure

In addition, tax must be withheld in cases of suspected abuse. In particular, abuse is assumed if the parent company is not engaged in an active trade or business, does not have its own employees, and does not have its own premises. In such cases, withheld tax is refunded on application of the parent company provided that the abuse presumption can be rebutted.

Treaties

Under most tax treaties, withholding tax is reduced to 15% for portfolio dividends and 5% for qualifying dividends. In some cases, withholding tax may be eliminated entirely. Austria has concluded more than 90 income tax treaties, 89 of which are currently in effect, including those contained in the following table:

Albania	Finland	Macedonia	Singapore
Algeria	France	Malaysia	Slovakia
Armenia	Georgia	Malta	Slovenia
Australia	Germany	Mexico	South Africa
Azerbaijan	Greece	Moldova	South Korea
Bahrain	Hong Kong	Mongolia	Spain
Barbados	Hungary	Montenegro	Sweden
Belarus	Iceland	Morocco	Switzerland
Belgium	India	Nepal	Taiwan
Belize	Indonesia	Netherlands	Tajikistan
Bosnia & Herzegovina	Iran	New Zealand	Thailand
Brazil	Ireland	Norway	Tunisia
Bulgaria	Israel	Pakistan	Turkey
Canada	Italy	Philippines	Turkmenistan
Chile	Japan	Poland	Ukraine
China	Kazakhstan	Portugal	U.A.E.
Croatia	Kosovo	Qatar	U.K.
Cuba	Kuwait	Romania	U.S.
Cyprus	Kyrgyzstan	Russia	Uzbekistan
Czech Republic	Latvia	San Marino	Venezuela
Denmark	Liechtenstein	Saudi Arabia	Vietnam
Egypt	Lithuania	Serbia	
Estonia	Luxembourg		

Repayment of Capital

In contrast to dividends from profits, the repayment of capital – whether resulting from a formal capital reduction or from the distribution of capital reserves – does not trigger withholding tax under Austrian domestic law. Such repayment of capital

© Ruchelman P.L.L.C., 2023. All rights reserved.

reduces the tax basis of the shares held by the recipient of the dividend. This may become relevant in the case of a later sale of the shares as the capital gain will be increased because of the reduction in basis. Austrian companies must keep a capital account for tax purposes to document the amount distributable as a repayment of capital.

Capital Gains

A nonresident shareholder is generally subject to taxation on the disposition of shares in an Austrian company if the shareholder has held 1% or more of the share capital at any point in time during the preceding five calendar years. If the participation does not exceed this threshold, capital gains are not taxable. For corporate shareholders, corporate income tax is levied at the regular rate of 25%. The tax is levied by way of assessment rather than by way of withholding.

However, Austria follows the O.E.C.D. Model Convention and generally has ceded its right to tax capital gains from the disposal of shares to the country of residence of the shareholder in most of its tax treaties. Only in case of "real property-rich" companies does Austria retain its right to tax.[1]

Royalties

Royalties paid by an Austrian company to nonresidents are generally subject to withholding tax at a rate of 20%. Expenses do not reduce the tax base, thereby resulting in gross basis taxation. If the recipient of the royalties is resident in an E.U. or E.E.A. Member State, expenses directly connected to the royalty income may be deducted from the withholding tax base, resulting in net basis taxation. In this case, the withholding tax rate is increased to 25%.

No withholding tax applies within the scope of the I.R.D. Austria exempts intra-group royalty payments from withholding tax if (a) the payor is a resident company or a permanent establishment of a company that is resident in another Member State of the E.U. and (b) the beneficial owner of the royalties is an associated company that is resident in another Member State of the E.U. or a permanent establishment situated in another Member State of the E.U. of an associated company that, itself, is resident in another Member State of the E.U.

For purposes of applying these provisions, a company is an associated company of a second company if any of the following conditions are met:

- The first company has a direct holding of 25% or more in the capital of the second company.
- The second company has a direct holding of 25% or more in the capital of the first company.
- A third company has a direct holding of 25% or more in the capital of the first and second company.

The I.R.D. treatment is supplemented by the royalty provisions of Austria's income tax treaties. Under most tax treaties, the withholding tax is reduced or eliminated.

---

[1] O.E.C.D., Model Tax Convention on Income and on Capital, paragraph 4 of article 13.

© Ruchelman P.L.L.C., 2023. All rights reserved.

Interest

Interest payments on loans (not on bonds) to nonresident corporations are not subject to Austrian withholding tax.

Other Income

A 20% withholding tax is levied on the following types of income earned by nonresidents of Austria:

- Remunerations in connection with an occupation as an author, lecturer, artist, architect, sportsperson, or performer in Austria
- Payments for a right of use regarding works protected by copyrights or industrial property rights
- Supervisory board remunerations
- Payments for commercial or technical consulting work

However, in many of these cases Austria waives its taxing rights under provisions of various tax treaties.

OTHER TAX ISSUES

Wealth Tax

Austria does not currently impose a general wealth tax on companies or individuals. The only wealth tax currently imposed is an annual tax on Austrian real estate levied by Austrian municipalities.

Value Added Tax

Austria levies value added tax in line with the pertinent E.U. Directives at a standard rate of 20%. Reduced rates of 10% and 13% apply to certain supplies. A number of exemptions are applicable. Examples include financial services and health services for which no V.A.T. is imposed.

Real Estate Transfer Tax

The transfer of Austrian real estate triggers real estate transfer tax. In the case of a sale of Austrian real estate the tax base is generally the purchase price, and the tax rate amounts to 3.5%. In addition, a 1.1% court registration fee is assessed, based on the fair market value of the property transferred.

Real estate transfer tax at a rate of 0.5% of the property value of the real estate is triggered if Austrian real estate is part of the assets of a corporation or a partnership, and at least 95% of the shares in the corporation or the interests in the partnership are transferred or pooled in the hand of a single buyer or in the hand of a tax group. The same applies in the case of a partnership holding Austrian real estate if at least 95% of the interests in the partnership are transferred to new partners within a period of five years.

© Ruchelman P.L.L.C., 2023. All rights reserved.

Stamp Duty

Austria levies stamp duties on a wide range of legal transactions, including assignment agreements, lease agreements, and surety agreements, if a written deed evidencing such stamp-dutiable transaction is signed and a certain Austrian nexus exists. However, these stamp duties can be avoided in many cases by way of careful structuring.

Tax Rulings

A legally binding formal tax ruling procedure exists in connection with questions concerning restructurings, tax groups, international tax law, value added taxation and the existence of abuse of law. If certain formal prerequisites are met, the competent tax office must issue a tax ruling, generally within a period of two months from filing of the application. The ruling must contain the facts and statutory provisions on which it is based, a legal evaluation of the facts, and the time frame during which it is valid. In addition, the applicant may be required to report on whether the facts of the case have been implemented and also on whether the implemented facts are different from those outlined in the request. A fee is due in conjunction with any such request. The fee ranges between €1,500 and €20,000, depending on the applicant's annual turnover,

"Abuse is defined as a legal arrangement consisting of one or multiple steps, or a series of legal arrangements, that is not genuine in light of the commercial objective."

The General Anti-Avoidance Rule ("G.A.A.R.")

Taxpayers are free to arrange their economic affairs in the manner they deem most beneficial, which includes choosing those structures and approaches that incur the least tax cost. Nevertheless, Austrian tax law contains a G.A.A.R. provision that restricts overly aggressive tax planning. Pursuant to this provision, the tax liability cannot be avoided by abusing legal forms and methods available under civil law. If such an abuse has been established, the tax authorities may compute the tax as it would have been had a genuine legal arrangement been carried out.

Abuse is defined as a legal arrangement consisting of one or multiple steps, or a series of legal arrangements, that is not genuine in light of the commercial objective. Arrangements are not genuine when they do not make sense except for the tax-saving effect, because the main purpose or one of the main purposes is to obtain a tax advantage that defeats the object or purpose of the applicable tax law. In principle, no abuse exists if valid commercial reasons exist that reflect economic reality.

Notification Obligation Regarding Reportable Cross-Border Arrangements

Under the Austrian implementation of D.A.C. 6, intermediaries must file information on reportable cross-border arrangements, that is within their knowledge, possession, or control, with the Austrian Minister of Finance generally within 30 days.

Certain arrangements are unconditionally notifiable, while other arrangements are conditionally notifiable where it can be established that the main benefit or one of the main benefits which a person may reasonably expect to derive from the arrangement, having regard to all relevant facts and circumstances, is the obtaining of a tax advantage. In general, the list of hallmarks closely follows D.A.C. 6.

Intermediaries are granted the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the

legal professional privilege under Austrian law, unless the intermediary is released from the obligation to secrecy.

Hybrid Mismatch Rules

Austrian corporations are subject to complex hybrid mismatch rules under the Austrian domestic provisions implementing A.T.A.D. 1 and A.T.A.D. 2. These provisions apply in case of the deduction of an expense without inclusion ("D/NI") or of a double deduction of an expense ("DD") and for reverse hybrid entities.

- In a D/NI case involving a payment by an Austrian resident, the deduction is denied in Austria if the payment is not taxed abroad. Where the payment is made by a foreign hybrid entity and the deduction is not denied abroad, the earnings are taken into account for tax purposes at the level of the Austrian corporation. In a fact pattern involving a foreign disregarded permanent establishment having income that is neither included in Austria nor in the permanent establishment state, the income is included in Austria.

- In a DD case, the deduction is denied in Austria at the level of the corporation making the payment. Where the deduction involves a payment by an Austrian hybrid entity or an Austrian permanent establishment and the deduction is not denied abroad, the deduction is denied in Austria. In case of a dual resident corporation, the deduction is denied in Austria, unless the corporation is deemed to be solely a resident of Austria under the terms of an income tax treaty concluded with an E.U. Member State. However, deductions may be claimed when the income of the dual resident corporation is subject to tax in the current period or will be in subsequent tax periods.

- Income of a nonresident controlling corporation in a reverse hybrid entity is taxable in Austria if it is not taxed in any other country, regardless of any tax treaty. A reverse hybrid entity is an Austrian partnership that is considered a taxable person under foreign tax law. A nonresident controlling corporation – alone or together with its nonresident associated enterprises – holds, owns, or is entitled to receive, directly or indirectly, a participation of more than 50% of the voting rights, more than 50% of the capital, or more than 50% of the profits of the reverse hybrid entity.

Foreign Tax Credit

Pursuant to a decree issued by the Austrian Ministry of Finance, certain items of foreign-source income are exempt from Austrian taxation, including: (i) income from immovable property located in a foreign state, (ii) business income attributable to a foreign permanent establishment, and (iii) income derived from building sites or construction or installation projects. The decree applies if all the following requirements are met:

- The Austrian taxpayer derives the relevant income from a country with which Austria has not concluded a tax treaty.

- The foreign jurisdiction imposes a tax on the income that is comparable to Austrian income or corporate income taxation.

- The average foreign tax rate computed in accordance with Austrian tax principles exceeds 15%.

© Ruchelman P.L.L.C., 2023. All rights reserved.

The credit method applies to all foreign-source income that is neither exempt from taxation according to the foregoing rule nor subject to a tax treaty. The foreign tax credit is capped at an amount corresponding to the part of the Austrian tax that is attributable to income from sources within the relevant foreign country. No other "basket" rules based on the character of the income exist when computing the allowable foreign tax credit.

Where a tax treaty applies the credit method to foreign-source income, but does not cover local taxes, such local taxes may then be credited against Austrian tax under Austrian domestic law.

Application of the exemption method or the credit method pursuant to the decree requires the taxpayer to maintain proper documentation listing all of the following items:

- The foreign jurisdiction
- The type of income
- The amount of income
- The average foreign tax rate
- The amount of creditable tax where the credit method applies
- The relevant accounting period