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FEDERAL MINISTRY
OF FINANCE

THE AUSTRIAN PERSONAL INCOME TAX *AND CORPORATE INCOME TAX*

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I The Austrian Income Tax Act (ITA)

1 Scope of application

1.1 Personal scope of application

Individuals are subject to income tax. The extent to which individuals are taxable depends on the nexus they have with Austria (see chapter I.1.2). In Austria partnerships are treated fiscally transparent and are neither subject to income tax nor to corporate income tax, which means that the partners are taxed on their share of the partnership income.

Under the Austrian Income Tax Act each individual is taxable on his/her own income. There is **no joint taxation** of married couples or households.

1.2 Unlimited and limited tax liability

Unlimited tax liability applies to persons having either their **residence** or **habitual abode** in Austria. If that is the case, those persons are subject to tax on their worldwide income (see chapter I.2.1).

- A **residence** is constituted if a person has a home which is possessed under circumstances indicating that it will be maintained and used not merely on a temporary basis. Such home is considered to be possessed by the person, if it is actually used or the person has the right to use it for dwelling purposes. An Austrian residence is generally constituted if the person intends to maintain the home for more than six months.

- The **habitual abode** is situated at the place where a person is present under circumstances indicating that he or she will stay at that place not just temporarily. Whether a stay is of a temporary nature or not is assessed on a case-by-case basis. However, physical presence in Austria in excess of six months results in unlimited tax liability. If the period of actual presence in Austria exceeds six months, the person's habitual abode is deemed to be established at the beginning of the six-month period.

- **EU and EEA citizens** who neither have their residence nor their habitual abode in Austria but receive the main part of their income from Austrian sources may opt to be treated as being subject to unlimited tax liability. The option may be exercised if **90 % of the income is obtained in Austria** or the total amount of income generated abroad is not higher than EUR 11,000. Despite this option taxation is still restricted to domestically sourced rather than worldwide income. However, the benefit of this option is that tax benefits which are generally enjoyed only by residents are also available to the non-resident individual upon such option, e.g. certain individual tax deductions (sole-earner deduction, single-parent deduction, support-money deduction), extraordinary expenses as well as the general income tax threshold of EUR 11.000.

- Special rules apply, if a taxpayer has his or her centre of vital interest outside Austria for more than five years. In this case, maintaining an Austrian **secondary residence** triggers unlimited tax liability in Austria only for calendar years, in which the person has used the residence (alone or together with other residences) for more than 70 days. If the residence is used for less than 70 days in the calendar year, the person is only **subject to limited tax** liability. The person has to keep records of the days where the Austrian secondary domicile had been used. However, unlimited tax liability is constituted in Austria, if the taxpayer uses the Austrian residence of his or her spouse who is subject to unlimited tax liability in Austria.

- Special relief to individuals who take up a residence in Austria may be granted by the Ministry of Finance, if the movement to Austria provides to promote science, research, arts or sports and therefore lies within the **public interest**.

Limited liability to tax applies to those persons who neither have their residence nor their habitual abode in Austria. They are subject to tax only with their income from Austrian sources (see chapter I.2.2).

2 Taxable income

2.1 Worldwide taxable income

Taxable income is the total amount of income from all categories described under the Income Tax Act. The Income Tax Act comprises seven categories of income:

1. Income from **agriculture and forestry**, e.g.
   - income earned by farmers, market-gardeners, winegrowers, stockbreeders.
2. Income from **independent personal services**, e.g.
   - income from scientific, artistic, literary, teaching or educational activities;
   - professional activities of doctors, lawyers, tax advisers, notaries, architects, journalists or interpreters;
   - income from the administration of property (e.g. income derived by facility managers, trustees, also including income derived by members of a supervisory board of directors);
   - salaries and other forms of compensation of any kind granted by a company to substantial shareholders. A person is deemed to be a substantial shareholder, if his or her share in the share capital of the company amounts to more than 25 %;
   - income of partners of a partnership, if the activity of the partnership is of an independent professional character and each of the partners perform professional services.
3. Income from **commercial activities**, which is income from any business that is not considered as agricultural or forestry activity or as income from professional services.
4. Income from **employment**, which includes
   - any remuneration, in cash or in kind, derived by an employed person;
   - pension income received by a retiree from social security, from a pension fund or from the employer himself.
5. Income from **capital investment**, unless this income derived is covered by one of the first four categories of income. It includes e.g.:
   - dividends and other distributions from participations in stock companies, in limited liability companies or commercial cooperatives;
   - income from a participation in a commercial business as a silent partner;
   - distributions from a private foundation;
   - all kinds of interest.
6. Income from **rental, leasing and royalties**, unless the income is covered by one of the first five categories of income. It includes e.g.:
   - income from renting or leasing out real estate and rights governed by the rules of civil law on real estate;
   - income from renting or leasing out conglomerations of assets, such as those of an enterprise;
   - royalties from the licence of the right to use works protected by the Austrian Federal Copyright Act, like literary and artistic works;
   - royalties from the assignment of industrial property rights, patents and know-how.
7. **Other specific income**, which is exhaustively defined and which is income derived by a person, if the income is not attributable to one of the first six categories of income. It includes:
   - recurring earnings, e.g. certain annuities;
   - income from occasional services, including income from services as an agent;
   - income from the leasing of movable property;
   - income from the alienation of personal property within a period of 1 year (e.g. shares) or within a period of 10 years, if immovable property is concerned (speculative gains);
   - income from the sale of private participations in domestic and foreign companies, provided that a minimum participation of 1 % was held in that company at any time within the 5 preceding years.

Income not belonging to one of the above-mentioned categories, is not subject to income tax, e.g. income derived from:

- lottery winnings;
- awards;
- compensation for pain, other than that paid in the form of annuities;
- alienation of private property, other than speculative gain and qualified participations.

2.2 Taxation of non-residents

Individuals subject to limited tax liability are only taxable with certain income from Austrian sources. The following types of income are subject to limited tax liability:

- Income from domestic agriculture or forestry.
- Income from independent personal services that are or were performed or utilized in Austria. The services are:
  - ‘performed’ in Austria if the taxpayer was personally active in Austria;
  - ‘utilized’ in Austria if the service is not in fact personally rendered in Austria but the benefits directly contribute to the Austrian economy.
- Income from commercial activities, if
  - a permanent establishment is maintained in Austria; or
  - a permanent agent is appointed in Austria; or
  - immovable property is located in Austria;
  - if no permanent establishment is maintained or no agent is appointed the following income:
    - income from technical or commercial advisory services performed in Austria;
    - income from the hiring-out of labour performed Austria;
    - income of a sportsman, artist or as a participant in an entertainment performance if the activity is performed in Austria.
- Income from employment, if
  - the work is or was performed or utilized in Austria or aboard an Austrian ship; or
  - such income is granted out of domestic public funds in consideration for present or past employment in particular from social security pensions.
- Income from capital investments:
  - dividends and other assimilated income;
  - profit distributions to silent partners;
  - distributions from private foundation;
  - interest derived from debt claims but only if they are directly or indirectly secured by Austrian real estate;
  - distributions of Austrian or foreign real estate funds, if the real estate is located in Austria.
- Income from leasing of property, conglomeration of assets or rights, in particular patents or know-how, if such property is:
  - located in Austria;
  - recorded in a domestic public book or register; or
  - used in a domestic permanent establishment.
- Income from speculative capital gains, if they are derived from the alienation of domestic real estate or domestic rights, treated as immovable property.
- Income from the alienation of qualified participations, if the participation was held in a company having its seat or place of management in Austria.

2.3 Tax exemptions

The following income in particular is tax exempt:

- benefits in kind or reimbursements of the statutory social security system;
- certain social payments such as: unemployment compensations, maternity allowances; parental-leave benefits, parental-leave assistance and child-care benefits;
- payments from certain funds in order to enhance art and science;
- grants made to foreign students, if they are employed in Austria for no longer than six months under the condition of reciprocity;
- income from Austrian officials on duty in a foreign country;
- income from certain qualified employees of development aid organisations for their work in developing countries according to the Development Cooperation Act;

- income from employment, if the employee is on the payroll of a domestic company and carries out construction work or assembling activities abroad for a period of more than one month.

2.4 Determination of taxable income

2.4.1 Methods for determining taxable income

Business income, which is the income from the first three categories (agriculture and forestry, professional and other independent personal services and commercial activities), is defined as „profit" and computed under special rules set out in Secs. 4 - 14 of the Income Tax Act. Income from the other four categories (non-business income) is defined as the surplus of receipts over expenses and is subject to a more simplified method of calculating the taxable income.

One of the most **important differences** of the two concepts is that **gains from the disposal of assets** held in a business are always taxable (with certain temporary relief) whereas such gains which are derived outside the business are basically non-taxable (except speculative income and income from the alienation of qualified participations). Another difference is that business income generally has to be computed on an **accrual basis**, except for liberal professions and small businesses, whereas the non-business income is computed on a cash basis exclusively.

2.4.2 Deductions

Income-related expenses

In general **expenses related to a business** are deductible, if they are caused by the conduct of the business. **Expenses related to non-business income** are deductible if they are connected with acquiring, securing and maintaining taxable income. These expenses are in general not deductible if they emanate from the private sphere of the taxpayer.

Expenses which are directly **related with non-taxable income** and those which are directly related to income subject to a **final withholding tax** are non-deductible. Furthermore, **bribes and associations fines** are not deductible.

In some cases the taxpayer has the option to calculate the expenses at an **average rate** applied to the derived turnovers.

Special expenses

Expenses not related to the generation of income but specially enumerated in the law can be deducted when calculating the income tax base:

- annuities. If they are paid as consideration for the transfer of assets, they are only deductible to the extent the payments exceed the value of the annuity obligation capitalized on the date of transfer (no limitation);
- contributions to qualified churches and religious communities (limited to EUR 200 per year);
- expenses for private tax advice (no limitation);
- special donations up to 10 % of the income (after loss set-off) of the preceding year;
- losses to be carried forward (see chapter III.1).

The following special expenses are subject to the limitations as stated below:

- private health, life and accident insurance premiums;
- contributions to pension funds and pension insurance premiums;
- expenses for the construction and renovation of residential buildings;
- expenses for the purchase of shares issued in the course of founding a company or in the course of a capital increase (new shares);
- expenses for the purchase of certain participation certificates;

The maximum amount which can be claimed for the total of such expenses is EUR 2,920 per taxpayer raised by EUR 2,920 if the taxpayer may claim the single-earner tax credit and by another EUR 1,460 if the taxpayer has to support three or more children. Only 25 % of the actual expenses are allowed as a tax deduction provided that 25 % of the maximum amount are not exceeded. Between an annual income of EUR 36,400 and EUR 60,000 the deduction is reduced down to zero proportionally to the increase in income.

Extraordinary expenses

Extraordinary expenses reduce the taxable base. They are defined as expenses that are extraordinary and inevitable and that considerably affect the taxpayer's economic performance and are neither income related nor covered by the term special expenses (e.g. medical expenses).

In general these deductions are only deductible to the extent that they exceed a certain percentage of taxable income before calculating the deduction. The percentage ranges from 6 % to 12 % of the taxable income as follows:

income	%
up to EUR 7,300	6 %
more than EUR 7,300	8 %
more than EUR 14,600	10 %
more than EUR 36,400	12 %

These percentages are reduced by 1 % if the taxpayer is entitled to a single-earner or single-parent tax credit as well as for each child that entitles the taxpayer to a child-alimony-tax-credit for more than six months in the given year.

Tax credits

Tax credits **reduce the tax amount**. Such credits are e.g.:

- child-tax-credit: EUR 58,40/month/child or a child-alimony-tax-credit: EUR 29,20 to 58,40/month/child;
- sole-earner and single-parent tax credit: between EUR 364 and EUR 669 dependent on the number of children (up to two children) + EUR 220 for the third child and each following child;
- transportation tax credit: EUR 291/year;
- employee tax credit or cross-border worker's credit: EUR 54 per year;
- pensioner tax credit: max. EUR 400/year; between an annual income of EUR 17,000 and 25,000 the credit is reduced proportionally to the income down to zero;

3 Methods of Levying

3.1 Assessment

Generally, taxes are levied according to the **assessment procedure**. Tax returns are due on 30 April of the year following the tax year. If tax returns are submitted electronically via 'FinanzOnline' the tax returns are due on 30 June of the year following the tax year. Upon request an extension of time may be granted under certain circumstances.

Also a **non-resident** subject to limited tax liability has to file an income tax return in Austria, if requested by the tax office or if the aggregate amount of income on which no Austrian withholding tax at source is levied **exceeds EUR 2,000**. Consequently, if a non-resident exclusively receives income which is subject to withholding tax he is not required to file a tax return unless he receives income from a silent partnership or income attributable to a domestic permanent establishment.

If no mandatory assessment is required (e.g. only income subject to wage tax is received) a **voluntary assessment** may be requested within a period of five years in order to enjoy a lower progressive tax rate and to claim deductions of expenses where applicable.

3.2 Wage tax

Employment income of residents and non-residents is subject to wage tax. Wage tax is **part of the income tax**. The employer is liable to withhold wage tax and transfer the tax to the competent tax authority.

Social security **pensions** and annuities paid out of approved pension funds are deemed to be employment income and are subject to wage tax.

3.3 Capital yields tax

Certain domestic **income from capital investment** of residents and non-residents is subject to a final withholding tax (capital yields tax) at a flat rate of **25 %**. Taxpayers have the option to apply for an assessment procedure in order to apply the progressive tax rate.

The withholding tax is imposed on:

- certain income from capital investment if the debtor of the income is resident in Austria:
  - dividends and other assimilated income;
  - interest derived from cash deposits at banks;
  - profit distributions to silent partners;
  - distributions from private foundations.

  In the case of dividends and interest also foreign sourced income is subject to withholding tax if paid by an Austrian paying agent.

  In general, interest paid to non-residents is not subject to tax.

- income from bonds, securities and participations in investment funds if the bank or issuer is located in Austria.

In order to treat comparable types of income from capital investment equally, regardless of whether they have an Austrian or non-Austrian source, some types of income are not included in the calculation of the taxpayer's income but are taxed at a special rate of 25 % and are therefore equally treated as domestic income from capital investments which is subject to a withholding tax of 25 %.

3.4 Special withholding tax for non-residents (20 %)

Certain domestic income of persons subject to limited tax liability is **subject to a withholding tax** at a flat rate of **20 %** which is levied on a gross basis. Under certain circumstances persons resident in the EU or EEA may choose that withholding tax is calculated on a net basis to which a flat rate of **35 %** (25 % for persons subject to the Corporation Tax Act) is applied. In any event, persons subject to limited tax liability may file tax returns so to be taxed on net income at progressive rates.

Such income concerns the following:

- income from independent personal services as author, lecturer, entertainer, architect, sportsman, artist or participant in an entertainment performance if the activities are performed or exploited in Austria;
- profits from a cross-border multi-tiered transparent partnership, if the recipients of the income are not disclosed;
- royalties and fees for the use of know-how;

- directors' fees;
- income from commercial or technical consultancy activities performed in Austria;
- income from cross-border hiring out of labour;
- distributions or deemed distributions of Austrian or non-Austrian real estate funds, if the real estate is located in Austria under the condition of public-placement (in that case the tax rate is 25 %).

4 Calculation of income tax

4.1 General scheme of assessment

Taxable income is the total amount of income from all categories described under the Income Tax Act after setting off losses arising from these categories and after deducting special allowances and extraordinary expenses.

The annual income tax is calculated according to the following scheme:

1. Income from agriculture and forestry	Business income (profits)
2. Income from independent personal services	
3. Income from commercial activities	
4. Income from employment	Non-business income (surplus of receipts over expenses)
5. Income from capital investment	
6. Income from rental, leasing and royalties	
7. Other specific income	
= Total amount of income	
- Special expenses	
- Extraordinary expenses	
- Itemized deductions	
= Taxable income	
* Tax rate	
= Tax amount	
- Tax credits	
= Annual tax due	
- Taxes withheld	
= Assessed annual tax	
- Advanced payments	
= Tax to be paid/tax to be reimbursed	

4.2 Standard tax rates

If no final withholding tax is applicable, the tax rate for the taxable income is calculated according to the following formulas:

income	income tax (EUR)
from EUR 11,001 to EUR 25,000	$\frac{(\text{income} - 11{,}000) \times 5{,}110}{14{,}000}$
from EUR 25,001 to EUR 60,000	$\frac{(\text{income} - 25{,}000) \times 15{,}125}{35{,}000} + 5{,}110$
over EUR 60,000	(income – 60,000) x 0,5 + 20,235

The application of this formula means that:

- income up to EUR 11,000 per year is taxed at an average rate of 0 %,
- income of EUR 25,000 per year is taxed at an average rate of 20,44 %,
- income of EUR 60,000 per year is taxed at an average rate of 33,73 %,
- income over EUR 60,000 per year is taxed at rate of 50 %.

4.3 Half rate taxation

Half the average tax rate applies to certain taxable income, which concerns especially the following types:

- dividends and other distributions from participations in stock companies, in limited liability companies or commercial cooperatives;
- distributions from private foundations;
- extraordinary income which is e.g. capital gains derived by an individual on the sale or liquidation of (a part of) a business, if a seven years period has elapsed and the taxpayer has died, become unable to carry on his business or to perform his duties and obligations as co-entrepreneur, or is at least 60 years old and has gone out of business;
- income from the exploitation of patent-protected inventions developed by the taxpayer.

II The Austrian Corporation Tax Act (CTA)

1 Scope of application

1.1 Personal scope of application

The law applies to:

- legal entities organized under private law (e.g. stock companies, limited liability companies, foundations, associations and co-operatives) and comparable foreign entities;
- corporations under public law and businesses carried on by corporations under public law;
- institutions and funds (e.g. specific purpose funds) without legal personality if their income is not directly taxable in the hands of another person.

1.2 Unlimited and limited tax liability

Unlimited liability to tax applies to companies having their seat or place of management in Austria, which means that their worldwide income is subject to tax (see chapter I.2.1). Companies established under Austrian commercial law must have their legal seat in Austria as the Austrian company law follows the legal seat theory.

Limited liability to tax applies to companies having neither their seat nor their place of management in Austria, which means that they are only subject to tax on their income from Austrian sources (see chapter I.2.2).

Corporations under public law and tax exempt legal entities (e.g. charitable corporations) are only taxable with their income subject to withholding tax (capital yield tax, see chapter II.3.2) or comparable foreign income (called **limited liability to tax of the second order**).

2 Taxable income

2.1 Reference to the Income Tax Act

The Corporation Tax Act refers to the definition of 'taxable income' as contained in the Income Tax Act (see chapter I.4.1). Furthermore, the sourcing rules for the taxation of non-residents of the Income Tax Act (see chapter I.2.2) apply for corporation tax purposes as well.

In principal, a legal entity may derive **income from all seven categories** of income as defined in the Income Tax Act (see chapter I.2.1). However, sec 7 (3) CTA explicitly states that the income of legal entities whose financial accounting has to be based on double entry bookkeeping under commercial law falls in one single category of income: **income from commercial activities**.

2.2 Tax exemptions

The Corporate Tax Act exempts certain **legal entities** from tax, e.g. charitable entities under certain conditions.

The following **domestic income is exempt** from corporation tax:

- intercorporate dividends and other profit distributions received under the national and international participation exemption;
- certain types of income of a private foundation;
- profits arising from mergers and reorganizations, under certain conditions.

Under the **national participation exemption** any capital yields from a participation received by a resident company from another resident company or cooperative is exempt from corporation tax. There is no minimum participation requirement and no minimum holding requirement.

Under the **international participation exemption** scheme any capital yields from a participation **of 10 % or more** are exempt from corporation tax under the following conditions:
- the parent company is legally required to keep books and records according to the Austrian Commercial Code (cooperatives, mutual insurance entities, savings banks) or the parent company is a foreign company that qualifies as a resident of Austria for corporation tax purposes (i.e. dual resident companies);
- the participation is held for at least a one-year period incessantly;
- the foreign subsidiary has a legal form listed in the Parent Subsidiary Directive (90/435/CEE) or is comparable to a domestic company.

Capital gains from such participations in foreign companies are exempt from corporation tax as well, losses, however, are not deductible. If the taxpayer opts to treat potential capital gains as taxable income, then occurring losses remain deductible. The option has to be done in the year of the acquisition of the participation and is irrevocable.
According to the Corporation Tax Act **a switch-over from the exemption to the credit method** takes place if:
- foreign-source income is subject to taxation which is not comparable to the Austrian corporation tax (if the foreign tax does not exceed 15 %); and
- the main aim of the business of the foreign company is to directly or indirectly derive interest, income from leasing of movable or intangible assets or the alienation of participations (tainted passive income).

In such cases the underlying foreign corporation tax, if any, is credited.

Under the **international participation exemption** scheme any capital yields from a participation **of less than 10 %** are exempt from corporation tax under the following conditions:
- the foreign subsidiary has to have a legal form which is listed in the Parent Subsidiary Directive (90/435/CEE)
- the foreign subsidiary hat to be a company of an EEA Member State, it has to be comparable to a domestic company and there has to be an extensive exchange of information and administrative assistance in the recovery of taxes with the foreign country in which the company is a resident.

According to the Corporation Tax Act **a switch-over from the exemption to the credit method** takes place if:
- the foreign company is actually not subject to a tax which is comparable to the Austrian corporation tax, neither directly or indirectly;
- the profits of the foreign company are subject to a tax which is comparable to the Austrian corporation tax, but the rate applicable is less than 15 %;
- the foreign company benefits from an extensive exemption from tax (except exemptions for domestic capital yields).

In such a case the underlying foreign corporation tax, if any, is credited.

Foreign companies resident in another EU Member State are entitled to the participation exemption if the qualified participation is held by a permanent establishment located in Austria.

2.3 Determination of taxable income

2.3.1 Methods for the calculation of taxable income

Profits of the company have to be defined according to the **net worth comparison method**. Profits are defined as the difference between the companies' net assets at the beginning and at the end of the tax year, adjusted by capital contributions and withdrawals.

2.3.2 Deductions

Income-related expenses

In principle, all expenses caused by the conduct of the business are deductible according to the concept of the Income Tax Act (see chapter I.2.4.2). According to **special rules** of the Corporation Tax Act interest expenses related

to the **debt financing** of the acquisition of participations for which the participation exemption is applicable are deductible. As regards remunerations paid to members of the **supervisory board or the administrative board** only half of them are deductible.

Special expenses

As regards special expenses only the following are relevant for companies:
- annuities and permanent charges to the same extent as for individuals;
- special donations are deductible up to 10 % of the income (after set-off of losses) of the preceding year;
- losses to be carried forward (see chapter III.1).

3 Methods of tax collection

3.1 Assessment

In general, taxes are levied according to the assessment procedure. The time limits for filing tax returns correspond to those for individuals (see chapter I.3.1).

3.2 Capital yields tax

The Income Tax Act defines the income from capital investment, which is subject to tax regardless of whether paid to individuals or companies (see chapter I.3.3). The difference for companies is that in most cases the tax is **not final** and therefore the income from capital investment has to be included in the tax return.

In addition to the **exemptions** from withholding tax on income from capital investment received by individuals (see chapter I.3.3), no withholding tax is due on the following income:

- **dividends**, interest and other earnings from participations in stock companies, participations in a limited liability company or commercial cooperative if
  - paid to a resident company; and
  - the minimum participation requirement of 25 % is fulfilled;
- **interest** income from cash deposits with banks and other debt claims with banks which are based on a bank transaction, and income from bonds if
  - the recipient proves that the interest constitutes business income of a domestic or foreign business; and
  - the beneficial owner of the interest informs the competent authority;
  - the bonds and the coupons are deposited with a bank;
- certain investment income paid to an investment fund, a real estate **investment fund or a private foundation**.

In accordance with the **Parent-Subsidiary Directive** dividends are exempt from withholding taxes, if
- the parent company has a legal form listed in the Directive;
- the parent company directly owns at least 10 % of the capital of the subsidiary; and
- the shareholding has been held for at least a one-year period incessantly.

Withholding taxes may be refunded by the tax authority under the following conditions:
- the parent company is resident in on EU Member state or in an EEA Member State with which on extensive exchange of information and administrative assistance in the recovery of taxes has been agreed on; and
- the withholding taxes may not be credited in the resident state of the parent company.

3.3 Withholding tax for companies subject to limited tax liability

Companies subject to limited tax liability are subject to a special withholding tax which corresponds to the one for individuals (see chapter I.3.4). In accordance with the **Interest and Royalty Directive** an exemption for companies is applicable if

- the person liable to withhold tax is subject to unlimited tax liability or a permanent establishment of an EU company;
- the beneficial owner is another EU company or a permanent establishment in the EU of an EU company;
- a direct participation of at least 25 % in the capital is held;
- the participation has been held for at least a one-year period incessantly;
- a certificate of residence issued by the competent authority and a confirmation by the taxpayer on the fulfilment of the minimum participation and holding requirement is made available to the person liable to withholding taxes.

4 Calculation of corporation tax

4.1 Tax rates

The corporation tax rate is **25 %** (flat rate). A lower tax rate applies to certain investment income of private foundations (12.5 %), which is an intermediary tax that is credited to the taxes levied on the contributions made to the beneficiaries.

4.2 Minimum tax

For stock companies an annual minimum tax of EUR 3,500 and for limited liability companies a minimum tax per year of EUR 1,750 is levied. Banks and insurance companies are charged a minimum tax of EUR 5,452. The minimum tax is conceived as a tax in advance and can be **set off against any future corporation tax.**

Withholding taxes are credited against the corporation tax. Excess amounts are refundable.

4.3 Example: Taxation of dividends at corporate and on shareholder's level

Considering the 25 % corporation tax rate and the 25 % withholding tax on profit distributions to shareholders, the total tax burden on the profits distributed is as follows:

	EUR
Taxable profit at corporate level	100
Corporation tax: 25 %	(25)
Profit after tax at corporate level (= distributable profit)	75
25 % withholding tax on profit distribution	(18,75)
Income after tax at shareholder level	**56,25**
Total tax burden	**43,75**

The 25 % withholding tax on profit distributions may be reduced under **Double Taxation Conventions**.

5 Group Taxation

The main purpose of the group taxation scheme is that legally independent companies belonging to a group of companies are regarded as a single unit for tax purposes, with the result that profits and losses are compensated within the group. The group taxation system applies to domestic and foreign companies. The key **conditions and elements** for the formation of a group are:

- The parent company is a domestic company or a foreign company with a permanent establishment, registered in the trade register in Austria, to which the participations are attributable.
- A 'more than one parent' group may be formed. Thus, several companies at the top of the group may hold financial participations of more than 50 % in total. In this case, a main shareholder with a participation of at least 40 % is required. The other group parent companies must hold a participation of at least 15 % each.
- The group members may be domestic or foreign companies. Only first-tier foreign subsidiaries may become members of a group.
- Financial integration in the form of a (direct or indirect) participation of more than 50 % of the share capital with a majority of voting rights is required. This participation has to be held during the whole accounting year.
- The group parent and all group members are obliged to have the same balance sheet date;
- An application must be filed with the competent tax authorities.
- A group formation which is binding for at least three years is required. If the group breaks up within, three years after formation, the tax effects resulting from the group formation will be retroactively neutralized.

The main **consequences** of the formation of a group are the following:

- The scheme provides for the attribution of 100 % of the profits/losses of a domestic group member to the group parent even though the actual participation is lower.
- In the case of foreign group members only losses are attributable to the parent company according to the percentage of the participation. Profits of a foreign group member are not attributed to the group parent.
- A recapture of taxes takes place, if the foreign losses are or may be set off against profits abroad in subsequent years or if the foreign group member ceases to be a group member.
- If a participation in connection with the group formation was acquired after 31 December 2004, there is an option to amortize the goodwill inherent in the acquisition cost on a straight-line basis over a period of 15 years. The amount amortized is restricted to 50 % of the acquisition costs. In order to avoid abuse, acquisitions of participations held by group companies are excluded from goodwill amortization. Goodwill amortization is limited to directly held domestic participations.
- The write off of participations is tax neutral within the group since the group parent company makes use of the losses of its group subsidiaries directly.

III Common provisions

1 Treatment of losses

Losses suffered in one category of income are deducted from the financial result of another category of income in the same year. Such a loss compensation is **not allowed**, if the losses are suffered from a business that mainly consists of the management of intangible assets (e.g. lease contracts) or from a leasing business or from a partnership publicly offering its losses for the clear purpose of tax sparing. Such losses may only be set off against future profits of the same business.

Foreign losses which may not be set off against profits abroad may be set-off against domestic profits even though a **double tax convention** which uses the exemption method exists. A recapture of taxes takes place, if in subsequent tax years the foreign losses are or may be set off abroad.

Business losses (losses from agriculture and forestry, independent personal services, commercial activities) which cannot be deducted from other income in the same year may be **carried forward** and deducted from the total amount of income up to 75 % of that total as a special expense in subsequent years. This limitation does not deprive the tax payer of using those losses in subsequent tax years. Losses incurred may be carried forward indefinitely under the condition that they are computed according to double entry bookkeeping. For losses calculated according to the cash method the carry-forward is limited by 3 years.

The loss-carry forward for companies is suppressed if the economic **identity of the company** has changed due to a change in ownership in combination with a modification of the organisational structure. The loss-carry forward remains available if the restructuring was done in order to preserve a substantial number of working places.

2 Depreciation and amortization

The cost of depreciable assets is depreciated **in equal amounts over their useful life**. Depreciation can, in general, be effected with regard to all assets used in business. Depreciation only starts as soon as the assets are put into use in the business.

The annual amount of depreciation is allowed if the assets have been used for more than 6 months in the respective accounting year; otherwise, depreciation is allowed for half of the amount.

The allowable deduction for depreciation of fixed assets used in a business is computed according to the **useful life** of the asset in the respective business. Only in specific cases the useful life of assets is explicitly defined in the law:

- **buildings** can be depreciated at a rate of 2 %, 2.5 % or 3 % depending on the nature of their use;
- production costs incurred for **buildings under preservation** are depreciated at a rate of 10 %;
- **goodwill** has to be written off over a period of 15 years;
- **cars** have to be written off over a period of 8 years.

Movable assets whose net costs do **not exceed EUR 400** can be written off to the full extent in the year of acquisition.

In addition to the current depreciation assets have to be **written down** to the going-concern value if the value of business assets falls below the book value.

3 Taxable year

Generally the tax year is the **calendar year**. Persons with business income or income from agriculture and forestry and who are required to keep books are entitled to use an accounting year different from the calendar year. The accounting year comprises twelve months. If the accounting periods are changed the accounting year may comprise fewer than twelve months but never more than twelve months. In case the accounting year differs from the calendar year the profits are taxable in the assessment year in which the accounting year ends.

4 Procedural aspects of tax assessment

The period of time for an **appeal** against a tax assessment notice is **one month**. The appeal has to be filed with the revenue office that has issued the assessment notice. The revenue office may decide on the appeal or forward the appeal to the Independent Tax Tribunal. If the Independent Tax Tribunal may decide against the taxpayer, the decision may be appealed against at the Administrative Supreme Court and/or the Constitutional Supreme Court. An appeal to those courts must be lodged within **6 weeks** after the decision of the Independent Tax Tribunal. The **appeal is free of charge**, but it does not suspend the payment of taxes.

Taxes are payable within one month after the date the assessment notice has been issued. **Quarterly prepayments** of taxes (i.e. on 15 February, 15 May, 15 August and 15 November) must be made on the adjusted basis of the preceding tax assessment.

The taxpayer has the option to apply for a **suspension of the collection** of taxes in case of an appeal. In other cases, a request for a suspension of the collection or for payment in **instalments** may be filed if the payment of the full amount constitutes considerable hardship and if the collection of the taxes due is not jeopardized. If the collection is deferred or payment in instalments is permitted, interest is due.

5 Avoidance of double taxation

5.1 By domestic means

Unilateral relief is granted by way of **exemption** with progression under the following conditions:

- the taxpayer is subject to unlimited tax liability; and
- no double tax convention is applicable on the respective income; and
- the income is subject to an average tax burden of at least 15 %; and
- one of the following types income is concerned:
  - income from immovable property situated abroad;
  - business income or income from independent personal services derived by a foreign permanent establishment;
  - income from a foreign building site or construction or installation project;
  - income from educational and teaching activities exercised abroad;
  - income from participation in an entertainment performance abroad;
  - income from employment exercised abroad.

As far as dividends, interest and royalties are concerned and for active income that does not qualify for the above-mentioned exemption, unilateral relief is granted by way of a **foreign tax credit** having regard of the tax credit limitations. The relief is also granted for local income taxes which are levied in the source state but remain outside of the scope of an applicable double tax treaty.

5.2 By tax treaties

Austria has concluded more than 80 conventions for the avoidance of double taxation (DTC). The double taxation convention defines the resident state of the taxpayer and allocates the taxing rights of the income to the two contracting states. The method articles define the method of avoiding double taxation (exemption or credit method). Furthermore, non-discrimination provisions, provisions on the exchange of information, on the collection of taxes and on arbitration are included.

The Austrian conventions follow the OECD Model Tax Convention to a large extent. Some highlights of the Austrian **double tax treaty policy** include the following:
- no withholding taxes on interest, royalties and inter-company dividends;
- application of the exemption method;
- application of the Commentary to the OECD Model Convention for interpretation purposes;
- avoidance of discriminatory treatment vis-à-vis other EU member states.

6 Advance rulings

For the time being there is **no statutory advance ruling** procedure in Austria.

However, legal questions on international tax issues may be answered by the Federal Ministry of Finance according to the **EAS** procedure (express-answer-service).

7 Advance pricing arrangements (APA)

Advance pricing arrangements can be achieved on the **international level** by using mutual agreement procedures as provided for in double taxation conventions. Mutual agreement procedures are conducted by the competent authorities of the two contracting states, which in Austria is the Federal Ministry of Finance.

IV Other taxes covered by tax treaties

1 Taxes on capital

1.1 The land tax (die Grundsteuer)

The land tax is a form of capital tax which is levied on domestic real estate. Real estate held by certain entities (e.g. political subdivisions and local authorities, churches, sports clubs, foreign states) is exempt from the land tax if it is used for tax-favoured purposes (e.g. for public use, religious or charitable purposes or for embassies in case of reciprocity).

The land tax is a tax levied by communities. In case communities fully exercise their taxing right the tax burden, in general, amounts to 0.8 % of the standardized tax value of the real estate as determined by the Federal Tax Administration.

If the land tax exceeds the amount of EUR 75 it is levied quarterly, otherwise an annual one-time payment upon assessment is required.

1.2 The tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken)

The tax on the value of vacant plots is an additional land tax which is levied on the value of vacant plots which could have been used for construction purposes. The land tax is a tax levied by the Federal Tax Administration.

Vacant plots which are exempt from the land tax are exempt from the tax on the value of vacant plots as well. There are some more exemptions provided for in the law.

The rateable value of the vacant plot is the tax base if the amount of EUR 14,600 is exceeded. The tax rate applicable is 1 %.

1.3 The tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben)

The tax is levied on agricultural and forestry enterprises and on vacant plots used for agricultural and forestry purposes.

The taxable base is derived from the calculation scheme for the determination of the land tax. For vacant plots a separate base value has to be calculated. In order to determine the annual amount of the tax a multiplier of 400 % is applied on the tax base.

2 Inheritance and gift taxes

Since 1 August 2008 the inheritance and gift taxes have been abolished. Gifts now have to be notified to the local tax authorities. The transfer of capital to private foundations, which was previously subject to a special form of gift tax, is now subject to a new private foundations entry tax at a rate of 2.5 %. Under certain conditions in relation to foreign private foundations the rate is 25 %.

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