

# Tax and Investment Facts

A Glimpse at Taxation and  
Investment in Austria  
**2019**



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# 1 Ways of Doing Business / Legal Forms of Companies

Austrian legislation offers various types of legal entity for companies or private persons to perform their business in Austria. Individuals may perform their business as sole proprietors or establish a legal entity. Foreign entrepreneurs or business entities are also able to establish a branch office (Zweigniederlassung) in Austria.

Commonly used companies/legal entities for doing business in Austria are:

- General partnership (Offene Gesellschaft, OG)
- Limited partnership (Kommanditgesellschaft, KG)
- Private limited liability company (Gesellschaft mit beschränkter Haftung, GmbH)
- Public limited liability company/Joint stock company (Aktien-gesellschaft, AG)

Legal Form	Liability of Shareholder	Minimum Capital (EUR)	Minimum number of Founders and Shareholders	Registration in Commercial Register	Tax Treatment	Tax Rates
Sole proprietor	no shares, personal liability of the sole proprietors		1	Obligatory, if annual turnover exceeds EUR 700,000 in two consecutive years	Tax liability of sole proprietor	0-55%
General Partnership	unlimited		2	Obligatory	Transparent, tax liability of partners	0-55% for individuals
Limited Partnership	unlimited (general partner) limited (limited partner)		2	Obligatory	Transparent, tax liability of partners	0-55% for individuals
Private limited liability company	limited	35,000 (of which paid: EUR 17,500) 10,000 (privileged foundation <sup>1</sup> )	1	Obligatory	Non-transparent, dividend taxation at shareholder level	25%
Public limited liability company/Joint stock company	Public limited	70,000	2	Obligatory	Non-transparent, dividend taxation at shareholder level	25%

<sup>1</sup> The share capital of foundation privileged companies' needs to be paid in by the shareholders up to EUR 35,000 during the 10 years after establishment.

Depending on the business, a trade license is required in Austria for conducting business. Such trade licenses need to be obtained in addition to establishing the business.

## 2 Corporate Taxation

Corporations (e.g. private and public limited companies) are subject to corporate income tax on their profits. Austria has no "check-the-box-regime".

### 2.1 Tax Rate

The flat rate of corporate income tax is 25% for any profit made by a corporation. If a company suffers a loss, or turns a very small profit, the company still has to pay a minimum amount of tax. The annual minimum tax for public limited companies (AG) amounts to EUR 3,500, and for private limited companies (GmbH) EUR 1,750. The minimum corporate tax can be offset against corporate tax the company pays when it is profitable in subsequent years.

If the corporation distributes its profit to shareholders, the distribution is subject to a final withholding tax of 27.5%. This is the case if the shareholder is a resident or non-resident individual. As a result, the final tax burden is 45.625%. For distributions to non-resident individuals a double tax agreement restricts the Austrian right for taxation to a specific tax rate (reduced treaty tax rate at source).

In this context it must also be mentioned that if a corporation is subject to unlimited taxation in Austria and has a share in another Austrian corporation, and the (direct or indirect) participation amounts to at least 10%, no withholding tax is levied on the distribution of profits. If the participation is below 10%, the withholding tax of 25% is first levied at the subsidiary level. However, this withholding tax can be offset against the parent company's corporate income tax or can be refunded on request.

## 2.2 Resident Companies

Corporations which have their residence or seat of effective management in Austria are subject to unlimited taxation in Austria, meaning they are taxed on their worldwide income.

### 2.2.1 Computation of Taxable Income

Resident companies are taxable on their worldwide income. Taxable income is the total income from one or more sources, decreased by any special expenses and the losses incurred from these sources. The Austrian Corporate Income Tax Act relies on the definition of "income" provided in the Austrian Income Tax Act. Therefore, as long as there are no special clauses in the Corporate Income Tax Act, the general rules of the Income Tax Act apply.

One of these special clauses is that the income of a private or public limited company is to be regarded as "business income" in any event, regardless of the nature of the income. Consequently, the valuation has to be done using the net equity comparison method. Net equity is determined based on the Austrian generally accepted accounting principles codified in the Austrian Commercial Code. A private or public limited company is therefore legally required to keep books and records under the Commercial Code. The starting point is always the Austrian generally accepted accounting principles, which are adjusted in some cases by special tax rules to determine the tax base.

Due to a special provision, interest arising from the leveraged financing of participation acquisitions is tax deductible, if the participation is business property. However, interest is not deductible if the participation is acquired by a company from the same consolidated group.

## 2.2.2 Taxation of Dividends

Special rules apply if a resident company obtains a dividend/profit distribution (or a hidden distribution) from another resident or foreign company.

### a) Domestic participation exemption

To avoid economic double taxation in affiliated groups, Austria has a participation exemption for dividends. If one corporation holds a participation in another domestic corporation, and the subsidiary distributes a dividend to its parent company, the dividend is exempt from taxation regardless of any minimum holding period and capital ownership percentage.

### b) Participation exemption for portfolio shareholdings

Dividend income earned by a resident corporation from a participation of less than 10% in the capital of a foreign corporation is exempt under the following conditions:

- the subsidiary has a legal form listed in the Annex to the EC Parent-Subsidiary Directive; or
- the subsidiary situated in a non-EU Member State has a legal form comparable to domestic corporations and the residence state of the subsidiary has concluded an agreement providing for comprehensive administrative assistance.

In contrast to qualified shareholdings, no minimum shareholding or holding period requirement has to be met. The credit method is used instead of the exemption method in the case of tax avoidance or abuse of law. Tax avoidance or abuse of law can be assumed if the following conditions are fulfilled:

- the subsidiary is not subject to a tax in the foreign country that is comparable to Austrian corporate income tax; or
- the tax rate on profits of the foreign subsidiary is not comparable to Austrian standards; this applies if the applicable foreign tax rate is more than ten percentage points lower than the Austrian corporate income tax rate; or
- the subsidiary is exempt from taxation in the foreign country.

**c) Participation exemption for qualified shareholding ("International Holding Participation")**

The international participation exemption applies to specific income (dividends and profit distribution) earned from a participation in a foreign company. Dividends qualify for the international participation exemption if:

- the parent company is legally required to keep books and records under the Commercial Code;
- the subsidiary company has a form listed in the EC Parent-Subsidiary Directive or is comparable to an Austrian public or private limited company;
- the parent holds at least 10% of the equity of the subsidiary directly or indirectly (e.g. via an intermediate transparent partnership); and
- the parent's minimum shareholding is held continuously for at least one year.

Within the scope of the international participation exemption, dividends are tax-exempt. Moreover, capital gains and any write-ups are also exempt, while capital losses and write-downs are non-deductible. The latter limitation does not apply to losses upon the liquidation or insolvency of the subsidiary resulting in an actual and definite loss of the capital invested in a non-resident entity. In such a case, capital losses are deductible, but must be reduced by the distributions made by the subsidiary within 5 years prior to the liquidation or insolvency. In addition, capital gains and losses are taxable

or deductible, if the parent company has exercised an option to have capital gains or losses and write-ups and write-downs made taxable or deductible. The option must be exercised in the year of acquisition and is binding on any group company holding or acquiring that participation. Write-downs and capital losses must be spread over a 7-year period.

**d) Switch-over rule from exemption to credit method**

The switch-over rule applies to participations of at least 5% in a foreign low-taxed passive company resulting in a switch-over from the exemption method to the credit method. The requirements for the switch-over rule are generally defined in accordance with the provisions for the new Austrian CFC rule (see Point 5.4). Dividends and capital gains from such participations are not exempt but are subject to 25% corporate income tax in Austria (foreign taxes can be credited). This provision is designed to prevent resident companies from benefiting from the dividend exemption on their foreign income that has been subject to low taxation. The switch-over rule is not applicable, in case the profits of the foreign subsidiary are subject to the CFC regime.

### 2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

Capital gains derived from the sale or other disposition of business property are taxed as business income of a company at the normal tax rate. Capital losses are treated in the same way as ordinary losses (see 2.2.5).



## 2.2.4 Depreciation / Capital Allowances

In general, the deduction allowable for the depreciation of fixed assets is determined according to the useful life of the assets. For buildings and for cars, Austrian tax law provides for statutory depreciation rates without further proof of the actual economic term of use of the assets.

Special rules exist for the depreciation of shares. A decrease in the value of a share is tax effective at the level of the parent company. However, such a write-off may not always influence the tax base (e.g. a tax neutral distribution-induced write-off of a shareholding). Even if a tax deduction is allowed, it needs to be spread over 7 years. The spread over 7 years also applies for any international holding participation for which an option has been exercised to have capital gains or losses and write-ups and write-downs made taxable or deductible (see Point 2.2.2.)

## 2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

Losses may be carried forward indefinitely. However, for GmbH and AG only 75% of the total amount of income of the taxable year is tax deductible. The remaining losses can be carried forward to subsequent years.

This holds equally true for capital losses. The loss carry forward is considered a personal right and therefore in principle is only available to the taxpayer who generated the loss. However, it is possible for a loss carry forward to be transferred to another company under the provisions of the Austrian Reorganisation Tax Act (e.g. merger of two companies) if some criteria are fulfilled.

## 2.2.6 Group Taxation

In general, corporations are taxed separately and independently from other entities. However, they can form a tax group if they are economically dependent or linked to each other. If an Austrian corporation or a permanent establishment of an EU corporation registered in Austria (group parent) holds a participation (directly or indirectly through another group member or a partnership) of more than 50% of the capital and the majority of the voting rights in a domestic or foreign (first tier) subsidiary (group member), it is possible to establish a tax group. The effect of a tax group is that all profits and losses of domestic members (subsidiaries) will be allocated for tax purposes to the group parent. Therefore, losses of one group member can be set off against profits of other group members. For non-resident group members, only the losses in proportion to the amount of the direct shareholding of the group in the foreign entity are attributed to the taxable income of the whole group. The foreign loss must in principle be adapted and calculated under national fiscal principles, but is capped with the amount under foreign rules. However, such foreign losses will have to be recaptured and taxed in Austria in subsequent years if they can be offset against profits of the respective non-resident group member, or if the foreign company leaves the group. The general 75% cap applying to the utilisation of tax loss carry-forwards (calculated on the basis of the overall positive income; see point 2.2.5.) is not applicable to profits resulting from the recapture of foreign losses. Hence, loss carry forwards available at the group parent`s level may be fully offset against such recapture profits.

To establish a tax group, an application must be submitted to the group parent`s competent tax authority (subject to certain time constraints). The tax authorities approve the tax group by official notice. Furthermore the tax group needs to exist for a period of at least three years, otherwise all group entities will be triggered and taxed retroactively on a stand-alone-basis.

Please note that it is not possible to write down participations in the share capital of group members for tax purposes, in order to avoid a double utilisation of losses.

To sum up, forming a group is particularly useful when at least one of the consolidated companies incurs a loss in the given year.

### 2.2.7 Incentives

Invention and research expenditures are generally deductible for tax purposes. Additionally, Austrian tax law grants a research premium for defined research and development expenditures of 14%.

### 2.2.8 Advance Ruling

For legal questions in relation to reorganisations, corporate groups, international tax law, value added tax (shall apply from 1 January 2020) and abuse of law, taxpayers can obtain an advance ruling for planned but as yet unrealised circumstances. An advance ruling provides legal certainty as the tax authority issuing the tax ruling is bound by it, unless the actual circumstances differ from the circumstances mentioned in the ruling. Depending on the size of the company, the ruling costs between EUR 1,500 and EUR 20,000. The tax authorities are obliged to provide their statement within two months.

## 2.3 Non Resident Companies

Non-resident companies are companies that have neither their legal seat nor their place of effective management in Austria.

### 2.3.1 Concept of Permanent Establishment / Doing Business

A non-resident company with a permanent establishment in Austria is taxed by assessing the income attributable to the permanent establishment. A building site or construction and installation project constitutes a permanent establishment after 6 months.

The concept of taxing dividends under point 2.2.2 shall be applied equally to Austrian permanent establishments of corporations resident in another EU Member State and falling within the scope of the Parent-Subsidiary Directive. This means that domestic-source dividends, foreign-source dividends from a qualified shareholding, as well as portfolio dividends from EU resident companies or companies resident outside the EU shall be exempt from tax if the shareholding can be attributed to the domestic permanent establishment.

### 2.3.2 Withholding Taxes

A final withholding tax is imposed on dividends and other corporate distributions paid to non-resident companies. The rate is 27.5%, unless a reduced rate applies under a tax treaty. Under the domestic law implementing the provisions of the EU Parent-Subsidiary Directive (2011/96/EU) in Austria, dividend distributions of resident subsidiaries to non-resident EU parent companies are exempt from any withholding tax under the following conditions:

- the parent company fulfils the prerequisites of Article 2 of the Directive;
- the parent company directly or indirectly owns at least 10% of the capital in the subsidiary; and
- the shareholding has been held for an uninterrupted period of at least one year.

Tax at source must be withheld in the case of tax avoidance, abuse of law and constructive dividends. Tax avoidance or abuse of law does not apply if the receiving company has submitted a written form to the paying company stating that it earns its income from active business, that it employs its own personnel and that it maintains its own business facilities. Tax at source must also be withheld provisionally if the dividends are distributed within a holding period of one year. A refund may be granted as soon as the holding period has expired.

Interest is generally only taxable for a non-resident company if it can be attributed to a permanent establishment in Austria. However, interest from loans secured by Austrian-situs immovable property is always taxable. Nevertheless tax treaties usually restrict Austrian taxation rights if the treaty contains an OECD-Model type of provision on interest, or the domestic provisions implementing the EC Interest and Royalties Directive are applicable (see below).

Royalties paid to a non-resident recipient are normally subject to a 20% withholding tax, unless a reduced rate applies under a tax treaty. Under the provisions that implement the EC Interest and Royalties Directive (2003/49/EG) in Austria, royalties paid by resident subsidiaries to their non-resident EU parent companies or their permanent establishments are exempt from any withholding tax under the following conditions:

- the recipient qualifies as the beneficial owner of such payments;
- the parent company has one of the forms listed in the Directive;
- the parent company is subject to regular income tax in its residence state;
- the parent company directly owns at least 25% of the capital in the subsidiary; and
- the capital holding has been held continuously for at least 1 year.

Tax at source must be withheld in the case of tax avoidance, abuse of law and royalties exceeding the arm`s length amount; in this case the payments are characterised as hidden capital distributions and constructive dividends.

### 2.3.3 Capital Gains

Capital gains of a non-resident company resulting from the alienation of a participation in an Austrian corporation are taxable in Austria at the 25% corporate income tax rate. Tax treaties usually prohibit Austria from levying tax if they contain an OECD-Model type capital gain provision.

If the capital gain was realised at the level of an Austrian permanent establishment of the non-resident seller, the gain is treated as business income of the permanent establishment and is subject to 25% corporate tax.

## 2.4 Tax Compliance

### 2.4.1 General

At the end of the fiscal year, the company has to fill out a tax return and submit it to the tax authorities electronically by 30 June of the year following the tax year. However, the tax authorities and the certified tax advisors have an agreement under which the deadline can be extended up to 31 March of the year after.

The company has to make quarterly prepayments (based on the taxable income of the previous year), which are credited against the final tax burden of the ongoing fiscal year. Resident companies are subject to a minimum corporate income tax (see also point 2.1.).

## 2.4.2 Horizontal Monitoring

After a pilot phase over the last few years, the new horizontal monitoring regime started from January 2019 as an alternative to conventional tax audit procedures. The new regime represents a shift in the prevailing command-and control paradigm towards enhanced cooperation between taxpayers and tax authorities. The new legislation generally focuses on larger corporations. The most important requirements a taxpayer has to fulfil to apply for horizontal monitoring are:

- Qualification as an entrepreneur
- Revenue exceeding EUR 40 million in the two years prior to application
- Implemented and effective tax control system
- Nexus to Austria (seat, place of effective management, domicile, permanent establishment in Austria)
- No fiscal penalty during last 5 years

An effective tax control system constitutes the most crucial and time-consuming part of horizontal monitoring. Its implementation and effectiveness must be assessed officially by a tax advisor or auditor.

### 3 Double Taxation Agreements

Austria has double taxation agreements with more than 90 countries worldwide. The double taxation agreements provide for bilateral relief. In general, the double taxation agreements comply with the OECD Model Convention.

Albania	France	Malaysia
Algeria	Germany	Malta
Armenia	Georgia	Mexico
Australia	Greece	Moldova
Azerbaijan	Hong Kong	Mongolia
Bahrein	Hungary	Montenegro
Barbados	Iceland	Morocco
Belarus	India	Nepal
Belgium	Indonesia	Netherlands
Belize	Iran	New Zealand
Bosnia and Herzegovina	Ireland	Norway
	Israel	Pakistan
Brazil	Italy	Philippines
Bulgaria	Japan	Poland
Canada	Kazakhstan	Portugal
Chile	Korea	Qatar
China	Kosovo	Romania
Croatia	Kuwait	Russia
Cuba	Kyrgyzstan	San Marino
Cyprus	Latvia	Saudi Arabia
Czech Republic	Libya	Serbia
Denmark	Liechtenstein	Singapore
Egypt	Lithuania	Slovakia <sup>2</sup>
Estonia	Luxembourg	Slovenia
Finland	Macedonia	South Africa

<sup>2</sup> The DTC with the CSSR remains applicable in relation to Slovakia.



Spain	Tunisia	United Kingdom
Sweden	Turkey	USA
Switzerland	Turkmenistan <sup>3</sup>	Uzbekistan
Taiwan	Ukraine	Venezuela
Tajikistan	United Arab Emirates	Vietnam
Thailand		

The Austrian Federal Ministry of Finance provides an express reply service (German acronym: EAS) for legal questions in relation to international tax law. In general, the Austrian Federal Ministry of Finance replies within several weeks. Austrian tax authorities are not bound by the advice given by the Austrian Federal Ministry of Finance via the express reply service.

<sup>3</sup> The DTC with the USSR remains applicable in relation to Tajikistan and Turkmenistan until a separate double taxation convention is concluded.

## 4 Transfer Pricing

In practice the OECD Transfer Pricing Guidelines 2017 form the basis for transfer pricing issues in Austria. Moreover the Austrian tax authorities have published Austrian Transfer Pricing Guidelines 2010, which are not legally binding but refer to details for carrying out an analysis of functions and risks within a group of companies. All transfer pricing issues have to be handled on an arm's length basis.

Austrian tax law has provided for specific provisions regarding transfer pricing documentation since 1 January 2016. The Transfer Pricing Documentation Law was implemented in the course of the BEPS project (setting out a plan against "Base Erosion and Profit Shifting" in tax law). The OECD introduced extensive changes to existing transfer pricing documentation processes (i.e. the Master File and Local File concept) and created an additional documentation element with the Country-by-Country (CbC) Report. So transfer pricing documentation is a standardised process for the majority of Austrian companies that are members of multinational groups. Therefore, preparing a Master File and a Local File are mandatory. The details on the content of these files are laid down by decree, and correspond largely to those proposed in the OECD reports. The threshold for filing a CbC Report has been set at EUR 750 million of consolidated group revenue. If the threshold was not exceeded in the preceding fiscal year, the multinational group of companies does not have to prepare CbC documentation in Austria either. In terms of the standardised requirements for documentation (i.e. preparation and submission of Master File and Local File), a member of an international group of companies resident in Austria that generated revenues in the two preceding fiscal years below EUR 50 million is exempt from these documentation requirements. The entire documentation can be either in German or English. Although the transfer pricing documentation reports do not have to be filed together with the tax return, the Master File and the Local File need to be submitted at the request of the tax authorities, after filing the corporate income tax return, within 30 days.

It should be mentioned that a tax opinion (advance ruling) issued by the responsible tax authority (binding statement) can be obtained on request regarding intra-group-transfer pricing matters (§ 118 BAO). The costs can range between EUR 1,500 and 20,000 depending on the turnover of the requesting taxpayer (see point 2.2.8. Advance Ruling).

## 5 Anti-avoidance Measures

### 5.1 General Anti-avoidance Rule

The general anti-avoidance rule in Austria relies on the “substance-over-form principle”. The general anti-abuse rule in connection with the concept of beneficial ownership is applied by Austrian tax courts and Austrian fiscal authorities when deciding on the lawfulness of actions taken by the taxpayer.

### 5.2 Thin Capitalisation Rules

There are no specific rules on thin capitalisation in Austria. The Austrian Administrative Court has established various principles to determine under which conditions debt financing is not to be recognised for tax purposes. Therefore the tax jurisdiction limits loan financing through hidden equity.

### 5.3 Interest Deduction

Under the Austrian Corporate Income Tax Act, interest derived from the acquisition of (foreign) shareholdings from related parties is not tax deductible. Apart from that, the deductibility of interest paid by Austrian corporations will also be denied if the payments are made to related parties located in low-tax and offshore jurisdictions. The restriction applies if the income derived from the interest is not taxed in the recipient's state due to a general or individual tax exemption or is subject to a nominal tax rate of less than 10% or is subject to an effective tax rate of less than 10% due to specific tax incentives granted for such type of income.

An interest barrier rule ("Zinsschranke") is foreseen under the Anti-BEPS EU Directive. So far Austria has argued that an early national implementation of the Directive is not necessary due to existing regulations (see above). The European Commission did not agree with the Austrian argument, and it is not clear how the Austrian legislator will react.

## 5.4 Controlled Foreign Company Provisions (CFC)

The new CFC rule is applicable for financial years beginning after 31 December 2018 and widely follows the wording of the ATAD. Under the new CFC rule, non-distributed passive income of a low-taxed controlled foreign company is reallocated to the tax base of the controlling Austrian corporation and taxed at the Austrian tax rate of 25%. Foreign taxes paid can be credited against the Austrian tax. The CFC rule is applicable if the following prerequisites are fulfilled:

- the controlling corporation 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 controlled foreign company,
- the controlled foreign company does not carry out any substantial economic activities,
- the passive income (interest income, royalty income, dividend income, finance lease income, etc.) of the controlled foreign company exceeds one third of its total income,
- the effective tax burden regarding the passive income of the controlled foreign corporation does not exceed 12.5%.

## 6 Taxation of Individuals / Social Security Contributions

Individuals resident in Austria are generally subject to income tax in Austria for their worldwide income. According to the Austrian Income Tax Act, each individual is taxable on his/her income. Joint taxation of married couples or households for instance is not possible. For certain types of income (e.g. dividends, distributions from private foundations) reduced tax rates apply.

### 6.1 Residency Rules

Under Austrian Tax law, residence applies if an individual possess a home that is not used on a merely temporary basis. A home is considered to be possessed by an individual if the individual has the right to use it or if it is actually used for residential purposes. Generally, Austrian residence applies if an individual intends to maintain a home for more than 6 months.

For EU and EEA citizens receiving the main part of their income from Austrian sources, without being resident in Austria nor having their habitual adobe in Austria, they may opt to be treated as being subject to unlimited taxation in Austria.

The habitual adobe is located where the individual is present and the individual plans to stay at this place not just on a temporary basis. In any case, the physical presence of an individual in Austria for more than 6 months is deemed to establish the individual's habitual adobe at the beginning of the 6-month period. For individuals having their centre of vital interests outside of Austria (for more than 5 years) special taxation rules apply.

The Ministry of Finance may grant special tax relief to individuals if their move to Austria lies within the public interest (e.g. to promote science, research, arts or sports).

Individuals who neither have their residence nor their habitual abode in Austria are subject to limited taxation in Austria. This means that these individuals are only subject to Austrian taxation on their income from Austrian sources.

## 6.2 Income Liable for Tax

The Austrian Income Tax Act defines 7 categories of income subject to taxation.

- Income from agriculture and forestry
- Income from independent personal services
- Income from commercial activities
- Income from employment
- Income from capital investment
- Income from rental, leasing and royalties
- Other specific income

Income which does not belong to one of these categories is not subject to income tax (e.g. lottery winnings). The first 3 categories are so-called business income and the remaining 4 categories are classified as non-business income. The applicability of the first 3 categories of income is based on the existence of a business. The distinction between business income (from profits) and non-business income (surplus income) is particularly relevant for tax calculations; likewise, there are different regulations for the deduction of losses.

There are special tax rates for capital income (25% or 27.5%) and income from real estate alienation (30%). The special tax rates are applied irrespective of whether the capital assets or real estate are part of a business' assets (with certain exceptions). However, the special tax rates do not apply for realised capital gains if the core area of business constitutes the accrual of such income.

## 6.3 Allowable Deductions

Allowable deductions may be classified in the following 4 categories. Expenses which are directly related to income subject to final withholding tax and expenses related to non-taxable income are non-deductible. Also, association and bribe fines are not deductible. In certain cases the taxable individual has the option to calculate expenses at an average rate applied to the derived turnover.

### a) Expenses

#### → Expenses related to a business

Expenses related to the conduct of business are generally deductible.

#### → Non-business income related expenses

Expenses which are related to the acquisition, security or maintenance of taxable income are tax deductible provided that these expenses are not derived from the private sphere of the taxable individual.

#### → Special expenses

Austrian tax law defines special expenses which are not related to the generation of income but are deductible when calculating the income tax base.

- annuities
- voluntary continued pension insurance and subsequent purchase of insurance periods
- contributions to qualified religious communities and churches (max. EUR 400 per year; automatic data exchange between the tax authorities and the receiving organisations)



- donations limited to 10% of the total income (after loss set-offs) of the current year (automatic data exchange between the tax authorities and the receiving organisations)
- expenses for private tax advice
- losses to be carried forward to 100%

Apart from the above, a maximum amount of EUR 2,920 can be claimed for the expenses mentioned below for contracts concluded before 1 January 2016. For contracts concluded after 1 January 2016, expenses may no longer be deducted. For taxable individuals which may claim the single-earner tax credit, this amount is increased by another EUR 2,920. Taxable individuals supporting three or more children may claim an additional EUR 1,460. The tax deduction is limited to 25% of the actual expenses and may not exceed 25% of the maximum amount. The deduction is reduced to zero in relation to the increase in income if the annual income amounts to between EUR 36,400 and EUR 60,000.

- premiums for private life, health and accident insurance
- premiums and contributions for pension funds and insurance
- construction and renovation expenses for residential buildings if the construction/renovation started before 1 January 2016

#### → **Extraordinary expenses**

Exceptional burdens are defined as inevitable extraordinary expenses which are neither income related nor classified as special expenses, and which considerably affect the economic performance of the taxable individual (e.g. medical expenses). A deduction is only possible if they exceed a certain percentage of taxable income before calculating the deduction. Depending on the taxable income, the percentage ranges from 6% to 12%.

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

A reduction of 1% of the aforementioned percentages is possible if:

- the taxable person is classified as a single-earner
- the taxable person is entitled to a single-parent tax credit
- for each child that entitles the taxable person to a child-alimony-tax-credit for more than six months in the respective year

## **b) Tax credits**

In addition to the possibility to deduct certain expenses, a taxable person may also profit from tax credits reducing the tax amount. Such credits are for example:

- the Family Bonus Plus applies to every child in Austria for which the parents receive a "Familienbeihilfe" ("family allowance"). In general the Family Bonus Plus is a tax deduction of EUR 1,500 per child and per year up to the age of 18. After the child's 18<sup>th</sup> birthday, a reduced Family Bonus Plus totalling EUR 500 is granted annually, provided that the family allowance is received for this child. For children in the EU/EEA region or Switzerland, the Family Bonus Plus is indexed (increased or decreased) and thus adjusted to the price level of the country of residence. The Family Bonus Plus does not apply if the father or mother earns so little that no income tax is due. One exception applies to low-earning single parents: for their children there is a EUR 250 reimbursement per year as a negative tax.

- child-tax-credit of EUR 58.40 per month and a child or a child-alimony-tax-credit of EUR 29.20 to 58.40 per month and child
- single-parent and sole earner tax credit between EUR 494 and EUR 669 (for up to two children) plus EUR 220 for the third child and each subsequent child
- transportation tax credit of EUR 400 per year for employees
- pensioner tax credit of no more than EUR 400 per year; between an annual income of EUR 17,000 and EUR 25,000, the credit is reduced proportionally to the income down to zero

## 6.4 Tax Rates

The tax rates on the income of individuals depend on the total income per year. The income tax rate is progressive and is calculated as follows:

- income up to EUR 11,000 per year 0%
- income between EUR 11,000 and EUR 18,000 per year 25%
- income between EUR 18,000 and EUR 31,000 per year 35%
- income between EUR 31,000 and EUR 60,000 per year 42%
- income between EUR 60,000 and EUR 90,000 per year 48%
- income between EUR 90,000 and EUR 1 million per year 50%
- income over EUR 1 million per year 55 %

## 6.5 Wage Tax

Income from the employment of non-residents and residents is subject to wage (withholding) tax. Wage tax is part of Austrian income tax. Wage tax does, however, have a series of special provisions, especially those regarding other income, perks and other benefits in kind. One of the main differences between income tax and wage tax is that the employer is liable to with-

hold and transfer the wage tax to the tax authority. Social security pensions and annuities paid out of approved pension funds are classified as income from employment and therefore subject to wage tax.

In general, the yearly gross salaries are paid out in 14 instalments. Apart from the monthly salaries, a 13<sup>th</sup> (holiday allowance) and 14<sup>th</sup> (Christmas bonus) salary is paid. These instalments are subject to a reduced tax rate of 6%.

## 6.6 Capital Yields Tax

A capital yields tax of 25% or 27.5% falls due for certain domestic income from capital investments of residents and non-residents. Taxable individuals may opt for an assessment procedure to apply the progressive tax rate.

The tax rate of 25% is imposed on interest on savings books and current accounts.

For all other income from capital investments (including capital gains) a tax rate of 27.5% is imposed.

## 6.7 Real Estate Gains Tax

Income derived from the sale of real estate is subject to real estate gains tax amounting to 30% of the purchase price irrespective of any minimum holding periods. The flat tax rate applies to private and business portfolios in the same way. For real estate purchased before 1 April 2002 and sold after 31 March 2012, special rules may apply under certain circumstances, reducing the effective tax rate to 4.2% (or 18%) of the sales price.

No income tax applies in the case of a gratuitous transfer (e.g. donation, inheritance) or if the real estate has been used as a principal residence for at least two years from the purchase of the real estate until the sale, or for at least 5 years continuously during the last 10 years. Furthermore, tax exemption applies for self-constructed buildings not used to generate income within the last 10 years.

## 6.8 Special Withholding Tax for Non-Residents (20%)

Individuals subject to limited tax liability are subject to a withholding tax at a flat rate of 20% (levied on a gross basis) with certain domestic income. Individuals which are resident in the EU or EEA have the option to choose that withholding tax be calculated on a net basis, to which a flat rate of 25% applies. By filing tax returns, individuals which are subject to a limited tax liability may be taxed on net income at progressive rates.

The following income falls under this special withholding tax regime:

- income from independent personal services (author, lecturer, entertainer, architect, sportsman, artist or participant in an entertainment performance) provided that these activities are performed or exploited in Austria
- profits from cross-border multi-tiered transparent partnerships (if the income recipient is not disclosed)
- royalties and fees for the use of know-how
- director's fees
- income from commercial or technical consultancy performed in Austria
- income from the cross-border hiring out of labour
- distributions or deemed distributions of Austrian or non-Austrian real estate funds provided that the real estate is in Austria and subject to public placement (in that case the tax rate is 27.5%)

## 6.9 Tax Compliance

Taxes are levied in principal according to the assessment procedure. Tax returns are due on 30 April of the following year. By filing tax returns electronically via "FinanzOnline" the deadline may be prolonged to 30 June of the following year. However, if the individual/company is represented by an Austrian certified tax advisor, the tax return can be submitted by 31 March of the second following year at the latest (provided the company is not formally requested by the tax office to file it earlier).

Non-resident individuals subject to a limited tax liability are obliged to file an income tax return in Austria, if

- so requested by the tax office
- the total amount of income (on which no Austrian withholding tax is levied at source) exceeds EUR 2,000
- they receive income from a silent partnership or income attributed to an Austrian permanent establishment.

Accordingly, a non-resident solely receiving income subject to withholding tax is not required to file tax returns.

## 6.10 Social Security Contributions

The Austrian social security system is a compulsory system consisting of pension, health and occupational accident insurance. Registering with social security is mandatory for employed and self-employed individuals. The employer is responsible for withholding and paying the social contributions. These contributions are divided between the employer and the employee.

The monthly contribution depends on the gross salary of an employee (with a maximum contribution basis of EUR 5,220 per month for 2019). (The contribution base is adjusted annually.) The contributions to social security amount to around 18% for the employee and around 22% for the employer. In addition to the social security contributions, the following have to be paid as well (amounting to around 10% of the gross salary):

- employee pension fund
- employer contribution to the family equalisation fund
- employer contribution surcharge
- municipal tax

The maximum contribution base for self-employed individuals in 2019 amounts to EUR 73,080 per year (the contribution base is adjusted annually). The contributions amount to 18.5% (pension), 7.65% (health), 1.53% (self-employment) and a fixed amount of currently EUR 9.79 for occupational accident insurance.

## 7 Indirect Taxes

### 7.1 Value Added Tax / Goods and Services Tax

Most goods and services supplied within Austria by VAT entrepreneurs are subject to VAT. Additionally intra-community acquisitions and imports are taxable. VAT is levied on all stages of distribution and paid by the consumer.

The standard VAT rate is 20%. A reduced VAT rate of 10% applies for certain services and goods (food, pharmaceuticals, accommodation, books and public utility services, except electricity). The second reduced VAT rate of 13% applies for plants and seeds, wood, art objects, artists and cultural services like theatre, museums and cinemas for example.

There are a few zero-rated supplies like for exports, air and sea travel, banking transactions, and small domestic businesses with yearly supplies below EUR 30,000.

Preliminary VAT returns must be filed monthly. After the end of the calendar year a VAT return must be filed. Quarterly filing of preliminary VAT returns is possible for entrepreneurs whose turnover in the preceding year did not exceed EUR 100,000.

### 7.2 Real Estate Tax

A resident or non-resident is subject to real estate tax in respect of immovable property located in Austria (agricultural forestry, private and business immovable property). The real estate tax is an exclusive community fee to the community. The tax is levied on the assessed, standard value of immovable property, whether developed or not. The basic federal rate is usually 0.2% and is multiplied by a municipal coefficient (up to 500%, depending on the municipality). Consequently the effective tax rate is normally up to 1%.



## 7.3 Real Estate Transfer Tax

### 7.3.1 Tax Object

Real estate transfer tax is levied on the transfers of immovable property located in Austria (land and buildings). Not only civil right transactions are covered, but also transactions which give rise to economic ownership of real estate. Moreover, the transfer/unification of at least 95% of the shares in a company holding Austrian real estate (real estate owning company) will trigger real estate transfer tax, while the unification of 95% of the shares within a taxation group of a group member will trigger real estate tax.

### 7.3.2 Tax Rate

The general tax rate is 3.5% of the value of the corresponding consideration (e.g. for a direct purchase, the purchase price).

For free acquisitions (e.g. inheritance or gifts) of real estate, the value of the land, which can be calculated in 3 different ways, is the taxation base. Furthermore the tax rate for free acquisitions amounts to 0.5% for the first EUR 250,000, 2% for the next EUR 150,000 and 3.5% of the value of the land for amounts above this.

For the transfer/unification of at least 95% of the shares in a holding company, the tax rate amounts to 0.5% of the value of the land and building.

### 7.3.3 Registration Fee

In this context it should be mentioned that a fee for registering ownership rights is also levied. The fee for the registration in the real estate register amounts to 1.1% of the current market value. However, there are some preferential transactions (i.e. for transfers within families).

### 7.4 Stamp Duty

A stamp duty at rates between 0.8% and 2% is levied on written contracts for certain transactions (e.g. commercial lease agreements, assignments of accounts receivable).

### 7.5 Others

Austria has a number of indirect taxes, such as:

- Alcohol tax,
- Tax for sparkling wines,
- Beer tax,
- Tobacco tax,
- Petroleum tax.

Furthermore, there are some energy taxes in Austria (i.e. electricity tax, carbon tax, natural gas tax).

There is no Inheritance and Gift Tax. However, gifts (donations) are subject to obligatory notification to the tax authorities.

## 9 Wealth Tax

There is no net wealth tax.

## Disclaimer

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