

# Taxes in Austria

## Overview of taxation in Austria

In Austria, companies are subject to corporate income tax on their entire income and their profits at a standard tax rate of 25 per cent. In contrast individuals are subject to personal income tax to a progressive tax rate of 0 up to 50 per cent.

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

Interest earnings, bank interest and interest from securities held in Austrian deposit accounts and derived by an individual resident in Austria are subject to the 25 per cent withholding tax. With this withholding tax deduction income tax is frequently deemed to be satisfied (final or definitive taxation).

Levies such as trade tax and net worth tax, which are common in other countries, do not exist in Austria.

Moreover, tax and tax base can be reduced by taking the advantage of the several tax deductions and allowances. Under certain circumstances, for example

- research and development allowances or
- education allowances can be claimed.

Furthermore, tax payers have the possibility to claim the allowance for reinvested profits or to take advantage from a net operating loss carry forward or the transfer of hidden reserves.<sup>1</sup>



“A number of factors have contributed to the success of the engine and gearbox production at our plant in Austria: the high educational standards of our flexible and creative staff, good industrial relations, and the high quality of life, which, in turn, creates a motivated and productive workforce. This is why Opel Austria is revving ahead and posting profits that are taxed at a flat rate of only 25 per cent.”<sup>2</sup>

<sup>1</sup> Hidden reserves can be transferred only by individuals as of 1 January 2005.

<sup>2</sup> ABA (ed.), ‘Austria – Where your profits climb to the top’ - Business Location Austria (2007).

## Taxation of corporations

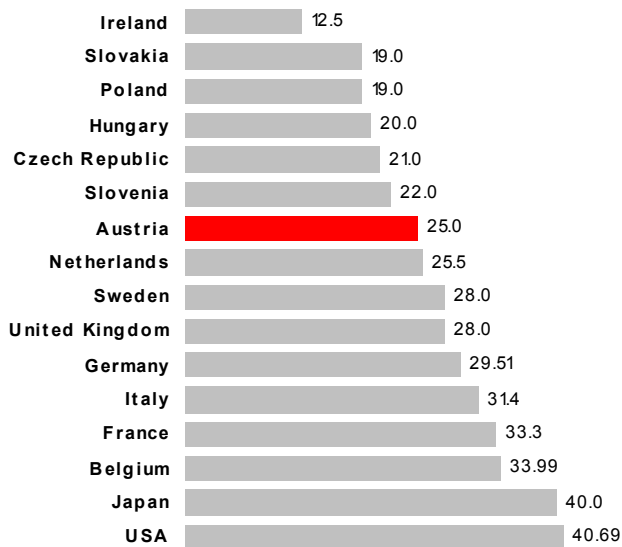
### Corporate income tax

In Austria companies, in particular corporations (GmbH, AG) are subject to corporate income tax on their entire income. Profits will be taxed at a standard tax rate of 25 per cent.

The reduction of the corporate tax rate from 34 to 25 per cent as of January 1, 2005 elevated Austria into a position among Europe's most business-friendly nations.

Among the former EU-15, only Ireland offers more favorable tax provisions. But Austria also makes a strong showing in comparison to the new EU member states, that are attracting investors through major tax rate reductions.

### Corporate Income Tax Rates\*) 2008 Maximum taxation on profits, in per cent



Source: KPM G 2008

\*) The given percentage includes all income taxes dependant on profits.

### In top shape in international rankings

Regarding the effective tax burden of companies, Austria is one of the top ranked countries in Europe. Compared to other EU nations, Austria offers one of the lowest tax rates for companies.

In general the corporate tax rate is 25 per cent for all corporations, no matter whether the profit is withheld or distributed. However, there exists an obligation to pay minimum corporate income tax for every full calendar quarter for which unlimited tax liability obtains, and essentially in the amount of five per cent of one quarter of the minimum statutory amount of nominal or registered capital (i.e. EUR 1,750 per year for a GmbHs and EUR 3,500 per year for an AG).

All newly incorporated corporations must pay a minimum corporate income tax at only EUR 273 per quarter (i.e. EUR 1,092 per year) as a so called "young entrepreneur incentive". Minimum corporate income tax amounts can be set off against actual corporate income tax liabilities for an unlimited period of time.

Also foreign corporations having their place of management in Austria have to pay minimum corporate income tax.

### **Corporate residence**

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

### **Holding companies (International participation exemption)**

Under tax aspects Austria is an attractive location for Holding companies, because Austria grants the international participation exemption for investments in foreign companies held by Austrian holding companies under certain conditions. Dividends received from shares in foreign corporations and capital gains from disposals of investments are treated neutral with respect to corporate income tax, if:

- the direct or indirect investment amounts to at least ten per cent of the foreign company's capital;
- the Austrian parent company or a foreign corporation is both subject to unlimited taxation and in addition comparable to a company taxable under Paragraph 7 Section 3 of the Corporate Income Tax Act (dual resident company), and capital shares have been owned uninterruptedly for a period of at least one year;
- the foreign (subsidiary) company is comparable to a domestic corporation;
- there is no suspicion of abuse. A suspicion of abuse is assumed if the foreign subsidiary company is taxed at a low rate (below 15 per cent), does not meet an active-trade-or-business test and does not meet the subject-to-tax condition and largely earns passive income. Usually interest, royalties (in connection with patents and licensing), capital gains from the disposal of non-exempted participations, etc. have to be considered as passive income. Dividends and other profit distributions have not to be considered as passive income unless they are distributed by companies generating mainly passive income. A managing holding company is not to be considered as a company which generates passive income as specified above. In case of suspected abuse, the participation exemption for dividends is replaced by a tax credit.

## Modern concept of group taxation

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

The group consists of a top-tier company (so called “group parent”) and at least one financially affiliated domestic or foreign based subsidiary (so called “group member”). Beside tax resident corporations and cooperatives, also certain joint-venture structures as well as certain tax resident or non-tax resident EU (or EEA) companies with registered branches in Austria (where the respective investment can be attributed to) may act as group parent. Moreover, beside tax resident corporations and cooperatives, also “comparable” foreign corporations can act as group member.

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

A tax group can also include foreign group members. Losses of foreign subsidiaries within a tax group (only the losses generated by the “first tier” of foreign subsidiaries of Austrian group members or parents) can be offset against Austrian profits – the amount of tax losses to be deducted depends on the stake in the particular participation. The foreign tax losses have to be calculated according to Austrian tax law. Profits realized by foreign subsidiaries will not become subject to taxation in Austria. Foreign tax losses previously offset against profits at the level of the Austrian group parent – in order to avoid “double-utilization” of tax losses – have to be subjected to recapture taxation in Austria at the time they are effectively offset or could be offset by the foreign group member in the source state.

In the case of a domestic tax group, the attribution of profits and losses is effected at 100 per cent, even in the case the actual amount of holding is less than 100 per cent.

Upon acquisition of a participation in an Austrian company that should be a group member a goodwill has to be deducted as well as a badwill has to be added tax effectively over a period of 15 years if certain conditions are met (the company has to meet the active business test when it is acquired). If the participation is eliminated due to a reorganization measure the tax effects resulting from a former goodwill/badwill amortization must be reserved.

### **Exemption for domestic investments**

Dividends received by an Austrian corporation on (but not gains from disposal of) domestic investments are, regardless of the extent of investment and duration of ownership, exempted from corporate income tax. Any withholding taxes (investment extent of less than 25 per cent) are credited against corporate income tax.

### **Dividends**

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

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

## Taxation of individuals

### General information

Individuals maintaining residence or habitual abode in Austria are subject to personal income tax. Unlimited tax liability is extended to all domestic and foreign sources of income (worldwide income). Otherwise individuals are subject to limited tax liability for Austrian source income. An individual has his habitual abode in Austria if he is not just staying in the country temporarily. Where the stay in Austria does exceed six months (183 days), then in any case unlimited tax liability in Austria is applicable.

Income tax is based on such income as the taxpayer has earned within a calendar year from the seven types of income listed in the Income Tax Act:

- Income from agriculture and forestry
- Income from independent (professional) services
- Income from trade or business
- Income from employment
- Income from investment of capital
- Income from rentals, leases and royalties
- "Other specific income" (as defined by the Austrian income tax act)

Sources of income not included in these seven types of income are thus not taxable.

### Capital income

This type of income includes a.o. interest earnings, dividends and income from investment funds:

Type of income	Taxation
Interest earnings	Bank interest and interest from securities held in Austrian deposit accounts and derived by a person resident in Austria are subject to the 25 per cent withholding tax deduction by the Austrian depository bank. With this withholding tax deduction income tax as well as inheritance tax are deemed to be satisfied (final or definitive taxation).
Dividends	Domestic earnings from dividends are definitively taxed for income tax purposes with the 25 per cent withholding tax deduction by the corporation distributing the dividend. Such definitive taxation is deemed to apply to inheritance tax as well. However, in this case, only if the investor has a holding of less than one per cent of the joint stock company's authorized capital.
Income from investment funds	Income from domestic Austrian investments funds held by a private investor in a domestic account is basically subject to final taxation (25 per cent withholding tax).

## **Employee income**

Income from salaried employment comprises money as well as benefits in kind the individuals receive from an employer or a third party. Benefits in kind are evaluated according to special regulations, which in certain cases provide for general allocations (especially for motor vehicles). Certain minor benefits in kind are tax free. Reimbursement of de facto moving costs of employees caused by transfers for operational reasons and inter - company are exempted from taxation; lump-sum moving costs are within certain time limits tax exempt. Any compensation paid for tax payments is fully taxable. Special payments (e.g. 13<sup>th</sup> und 14<sup>th</sup> monthly salary, i.e. holiday and Christmas bonuses) up to an annual amount equal to two average monthly salaries are taxed at a standard rate of six per cent; the first EUR 620 being tax-free.

## **Income-related business expenses**

Expenditures for the "acquisition, securing or maintenance" of income are deductible from the taxable income from the relevant source of income. All employees are however entitled to a lump sum tax allowance in the amount of EUR 132. Expenditures going beyond this amount may be claimed if they can be proven with written documents (e.g. office space, ongoing training). The employee portion of obligatory contributions to Austrian and/or foreign social security is tax deductible.

## **Special non business expenses**

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

### Exceptional heavy financial burdens

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

### Income tax rate

Since the Austrian Tax Reform Act 2005 the Income Tax Rate for individuals is calculated as shown in the table below:

Income in €	Income tax in € (before deductions)	Mean tax rate	Marginal tax rate
up to 10,000	0	0%	0%
10,000 to 25,000	$(\text{income} - 10,000) \times 5,750$ 15,000	0 - 23%	38.333%
25,000	5,750	23%	
25,000 to 51,000	$5,750 + (\text{income} - 25,000) \times 11,335$ 26,000	23 - 33.5%	43.596%
51,000	17,085	33.5%	
in excess of 51,000	$17,085 + (\text{income} - 51,000) \times 0,5$	> 33.5%	50%

For income increasing Euro 51,000.00 the tax rate is 50 %.

### Income tax in comparison (2007)

As the following chart shows, Austria ranks in Europe's centre.

Country	Highest tax rate	Highest tax rate for annual income over
Belgium	50,00 per cent	32,270 euros
Germany	44,31 per cent <sup>(1)</sup>	52,152 euros
France	48,09 per cent	48,750 euros
United Kingdom	40,00 per cent	46,104 euros <sup>(2)</sup>
Ireland	42,00 per cent	32,000 euros
Italy	43,00 per cent	75,000 euros
Netherlands	52,00 per cent	53,064 euros
<b>Austria</b>	<b>(43,00) 50,00 per cent <sup>(3)</sup></b>	<b>51,000 euros</b>
Poland	40,00 per cent	23,990 euros <sup>(4)</sup>
Slovenia	41,00 per cent	13,600 euros
Czech Republic	32,00 per cent <sup>(5)</sup>	12,816 euros <sup>(6)</sup>
Slovak Republic	19,00 per cent	Flat Rate
Hungary	36,00 per cent	6,627 euros <sup>(7)</sup>
USA	41,00 per cent <sup>(8)</sup>	220,485 euros
Japan	51,00 per cent <sup>(9)</sup>	117,850 euros <sup>(10)</sup>

Source: PwC Worldwide tax summaries

<sup>(1)</sup> 42 per cent plus solidarity surcharge (5.5 per cent of 42 per cent), if annual income exceeds EUR 235,000 a tax rate of 45 per cent (47,48 per cent plus solidarity surcharge) applies.

<sup>(2)</sup> GBP 34,600

<sup>(3)</sup> In Austria the annual salary (wage) of employees is paid in 14 partial amounts, whereas a tax of six per cent is levied on the 13th and 14th partial amounts (so-called vacation and Christmas bonus). Other bonuses within the sixth part of the current annual salary (wage) are also charged with an income tax rate of six per cent, too. Therefore, the average top rate in Austria is 43 per cent.

<sup>(4)</sup> PLN 85,528

<sup>(5)</sup> In fiscal year 2008 15 per cent, from fiscal year onwards 12.5 per cent (Flat Rate)

<sup>(6)</sup> CZK 331,200

<sup>(7)</sup> HUF 1,700,000

<sup>(8)</sup> USD 326,450; Percentage for New York (35 per cent plus six per cent state individual income tax)

<sup>(9)</sup> 40 per cent plus municipal tax (from fiscal year 2007 onwards: 10 per cent Flat Rate)

<sup>(10)</sup> YEN 18,000,000

## Double taxation treaties

To provide double taxation Austria has entered into Double Taxation Treaties with most European countries and several non-European states.

In cases of unlimited tax liability in two or more countries that have concluded such an agreement, double taxation is avoided since the state to which the tax payer has closer personal or economic ties is considered the country of permanent residence. If this criterion is not met, the customary place of abode or nationality is used as criteria. The other state has the status of the country of income source.

### Austrian double taxation treaty

The following table lists the countries with which Austria has signed a double taxation treaty and gives details of the amount of withholding taxes.

<b>Resident recipient:</b>	<b>Dividends <sup>(1) (2)</sup> in per cent</b>	<b>Interest <sup>(3)</sup> in per cent</b>	<b>Royalties, licenses in per cent <sup>(4)</sup></b>
Corporations	0/25 <sup>(5)</sup>	0/25	0
Individuals	25 <sup>(6)</sup>	0/25	0
<b>Non-resident individuals:</b>			
<b>Non-treaty:</b>			
Corporations and business enterprises	25	0	20
Individuals	25	0	20
<b>Treaty:</b>			
Algeria	15 / 5+	0	10
Argentina <sup>(7)</sup>	15	0	15
Armenia	15 / 5+	0	5
Azerbaijan	5 / 10 / 15 <sup>(8)</sup>	0	5 / 10 <sup>(9)</sup>
Australia	15	0	10
Barbados <sup>(10)</sup>	15 / 5+	0	0
Belarus (White Russia)	15 / 5*	0	5
Belgium	15	0	0 / 10x
Belize	15 / 5*	0	0
Brazil	15	0	10 / 15 / 25 <sup>(11)</sup>
Bulgaria	0	0	
Canada	15 / 5+	0	10
China	10 / 7*	0	10 / 6 <sup>(12)</sup>

Croatia	15 / 0+	0	0
Cyprus	10	0	0
Czech Republic <sup>(13)</sup> and Slovakia	10 / 0+	0	5
Cuba <sup>(34)</sup>	15 / 5*	0	5 / 0 <sup>(35)</sup>
Denmark	10	0	0 / 10**
Egypt	10	0	0 / 20 films
Estonia	15 / 5*	0	10 / 5 <sup>(14)</sup>
Finland	10 / 0+	0	5
France	15 / 0+	0	0
Georgia	10 / 5+ / 0** <sup>(15)</sup>	0	0
Germany	15 / 5+	0	0
Greece	25 <sup>(16)</sup>	0	0 / 10x
Hungary	10	0	0
India	10	0	10
Indonesia	15 / 10*	0	10
Iran	10 / 5*	0	5
Ireland	10	0	0 / 10x
Israel	25	0	10
Italy	15	0	0 / 10x
Japan	20 / 10**	0	10
Kazakhstan <sup>(17)</sup>	15 / 5+	0	10
Kyrgyzstan	15 / 5*	0	10
Korea	15 / 5*	0	10 / 2 <sup>(18)</sup>
Kuwait	0	0	10
Latvia <sup>(36)</sup>	10 / 5*	0	10 / 5 <sup>(19)</sup>
Liechtenstein	15	0	10 / 5 <sup>(20)</sup>
Lithuania	15 / 5*	0	10 / 5 <sup>(21)</sup>
Luxemburg	15 / 5*	0	0 / 10x
Malaysia	10 / 5*	0	10 / 15 films
Malta	15	0	0 / 10 <sup>(22)</sup>
Mexico	10 / 5+	0	10
Moldova	15 / 5*	0	5
Mongolia	10 / 5+	0	5 / 10 <sup>(23)</sup>
Morocco <sup>(24)</sup>	10 / 5*	0	10
Netherlands	15 / 5*	0	0 / 10**
Nepal	15 / 10+ / 5*	0	15
Norway	15 / 5*	0	0
Pakistan <sup>(25)</sup>	15 / 10	0	10
Philippines	25 / 10+	0	15

Poland	15 / 5+	0	5
Portugal	15	0	5 / 10 <sup>(26)</sup>
Romania <sup>(27)</sup>	5 / 0*	0	3
Russia	15 / 5* <sup>(28)</sup>	0	
Russian Federation <sup>(29)</sup>	0	0	0
San Marino	15 / 0+	0	0
Saudi Arabia <sup>(30)</sup>	5	0	10
Singapore	10 / 0+	0	5
Slovakia and Czech Republic	10	0	5
Slovenia	15 / 5*	0	0 / 10 <sup>(31)</sup>
South Africa	15 / 5*	0	0
Spain	15/10**	0	5
Sweden	10 / 5*	0	0 / 10x
Switzerland	15 / 0++ <sup>(32)</sup>	0	5
Thailand	25 / 10*	0	15
Tunisia	20 / 10*	0	10 / 15 films
Turkey	25	0	10
Ukraine	10 / 5+	0	5
UK	15 / 5*	0	0 / 10x
United Arab Emirates	0	0	0
USA	15 / 5+	0	0 / 10 films
Uzbekistan	15 / 5+	0	5
Venezuela <sup>(33)</sup>	15 / 5+++	0	0

**Notes:**

- 1) Dividends – Dividend distributions attributable to a prior release of paid-in surplus or other shareholder contributions (classified as capital reserves) are deemed to be a repayment of capital, i.e. no withholding tax is incurred. At the shareholder's level, dividends received and those classified as contribution refund will reduce the tax basis assessment for investments. To the extent to which the tax basis would become negative, such dividends are treated as taxable income (unless taxation is eliminated by a tax treaty). Further, according to the Parent/Subsidiary Directive, an exemption from withholding tax is granted for the distribution of profits by an Austrian corporation to an EU parent company if the parent holds a participation of at least 10 % subject to the condition of reciprocity during an uninterrupted period of at least one year.
- 2) Under certain treaties the amount of the withholding tax is dependent on the extent of the proportion of issued share capital held by the recipient. Where this is the case, all rates are given. Those marked with + refer to an investment of 10 %, ++ to 20%, those marked with +++ refer to an investment of 15%, those marked with \* refer to an investment of 25 % and those marked with \*\* refer to an investment of 50 %.
- 3) Interest – Interest on cash deposits in Euro or foreign currency in bank accounts and fixed interest bearing securities in foreign currency (issued after 31 December 1988) and on fixed interest bearing securities denominated in Austrian Schillings or Euro (issued after 31 December 1983) are subject to a 25 % withholding tax. If the recipient is an individual, this withholding tax is final (no further income taxation and inheritance taxation). Companies receiving interest payments may obtain an exemption from withholding tax if they provide the bank or other custodial agent with a written confirmation from the recipient that such interest payments constitute a part of the recipient's operating revenues (exemption statement). Interest payments to nonresidents without a permanent establishment in Austria are generally not subject to withholding taxation. At interest payments between affiliated companies the regulations stipulated by the EU interest directive have to be taken into consideration.

- 4) Royalties, etc. – In case of payments to countries marked with “x,” the rate is nil unless more than 50 % of the issued share capital of the company paying the royalties is held by the recipient, in which case the rate given applies. At royalty payments between affiliated companies the regulations stipulated by the EU interest directive have to be taken into consideration.
- 5) If the recipient holds a participation of less than 25 % in the distributing company, the dividends are subject to a 25 % withholding tax. Since dividends distributed by an Austrian corporation to another Austrian corporation are generally not subject to taxation (see “Determination of income”), the withholding tax is credited against corporation income tax upon assessment of the recipient corporation for the respective tax year.
- 6) Withholding tax on dividends from Austrian companies is final, i.e. no further income tax is collected from the recipient (provided an individual).
- 7) Dividends may only be taxed in the source state and are tax exempt in the recipient’s state.
- 8) 5 % for shares of at least 25 % and worth at a minimum of USD 250,000; 10 % for shares of at least 25 % and worth at least USD 100,000; 15 % in all other cases.
- 9) Five % for industrial licenses and know-how not more than three years old; ten % in all other cases.
- 10) The treaty entered into force on 1 April 2007 and will be applicable by the beginning of the fiscal year 2008.
- 11) 10 % for copyright license fees in connection with literature, science and art; 25 % for trademarks license fees; 15 % in all other cases.
- 12) Industrial, commercial or scientific equipment – 6 %; 10 % in all other cases.
- 13) The treaty entered into force on 22 March 2007 and will be applicable by the beginning of the fiscal year 2008.
- 14) 5% for use of commercial or scientific equipment of mobile goods and 10% for other licenses.
- 15) 0 % for shares of at least 50 % and worth at a minimum of EUR 2,000,000; 5 % for shares of at least 10 % and worth at least EUR 100,000; 10 % for shares in all other cases.
- 16) The treaty does not restrict the taxation right of the source country. Thus consequently a 25 % withholding tax is applied under domestic law.
- 17) The new treaty enter into force at the beginning of the fiscal year 2007.
- 18) Two % for license income from industrial, commercial or scientific use and ten % for other licenses.
- 19) For the use of commercial or scientific equipment 5 % – 10% in all other cases.
- 20) 5 % in case of direct (or indirect over a patent-realization-company) payments of royalties by companies of the other member state (with an industrial establishment in the other member state) and 10 % for other licenses.
- 21) Industrial, commercial or scientific equipment – 5 %; 10 % in all other cases.
- 22) 0 % or copyright license fees in connection with literature, art and scientific use and 10 % for other licenses.
- 23) 10 % for the right of use of copyrights to artistic, scientific or literary as well as cinematographic works and 5 % for other licenses.
- 24) The new treaty was signed on 13 September 2006 and entered into force at the beginning of the fiscal year 2007.
- 25) The treaty entered into force on 1 June 2007 and will be applicable by the beginning of the fiscal year 2008.
- 26) For Portugal, withholding tax rate is 5 %, but 10 % if more than 50 % of the issued share capital is owned by the recipient.
- 27) The treaty is applicable from the beginning of the fiscal year 2007 onwards. Former periods are governed by the treaty from 1979.
- 28) 5 % if capital share amounts to at least 10 % and worth at least USD 100,000; 15 % in all other cases.
- 29) The treaty applies to Tajikistan and Turkmenistan. With Russia a new treaty has been ratified.
- 30) The treaty entered into force on 1 June 2007 and will be applicable by the beginning of the fiscal year 2008.
- 31) For Slovenia, the rate of withholding tax is 0 %, but 10 % if more than 25 % of the issued share capital is owned by the recipient.
- 32) For dividend distributions retroactive as of 1 January 2000.

- 33) The treaty entered into force on 17 March 2007 and will be applicable by the beginning of the fiscal year of 2008.
- 34) The treaty entered into force on 12 September 2006 and will be applicable by the beginning of the fiscal year of 2007.
- 35) 0 % for copyright license fees in connection with literature and art if these license fees are subject to tax in the state of the recipient and 5 % for other licenses.
- 36) The treaty entered into force on 16 May 2007 and will be applicable by the beginning of the fiscal year of 2008.

### **Relief-at-source ordinance**

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

The ordinance became effective on 1 July 2005 and is applicable for all Austrian double tax conventions.

## Other taxes in Austria

### **Value added tax (VAT)**

VAT ("Umsatzsteuer" or "Mehrwertsteuer") was introduced in Austria by the Value-Added Tax Act of 1972, which took effect on 1 January 1973. This was substantially modified when Austria entered the European Union. EU VAT directives were implemented by the Value-Added Tax Act of 1994 that entered into force on 1 January 1995.

VAT is a tax on expenditures of end-consumers. The general tax rate is 20 per cent. VAT credited to undertakings does not constitute a cost. This is achieved by deduction of prepaid VAT. However the prepaid VAT is only allowed to be deducted if the goods or services purchased are deemed to be used for business purposes (at least ten per cent). Undertakings that sell goods or render services in Austria are obliged, regardless of their location, to invoice VAT. This obligation only lapses if tax exemptions or the reverse-charge procedure are used.

Resident and non-resident undertakings are as a rule entitled to claim input VAT paid by deducting them from their monthly or annual VAT debt assessment. Where the prepaid VAT amounts exceed the VAT payable, the difference is either refunded by the fiscal authorities or credited against other tax liabilities.

VAT is levied at a rate of 20 per cent in Austria. The rate is reduced to ten per cent for items including food, agricultural products, various raw materials, books, and rental of land for residential and accommodation purposes.

The following transactions are subject to Austrian VAT:

- supply of goods and services in Austria through an entrepreneur within the scope of his enterprise in return for payment
- personal consumption (appropriation of business property for non-business purposes of the owner) in Austria
- import of goods from third countries (non-EU member states) to Austria (import sales tax) and
- intra-community acquisitions in Austria (purchases effected from other EU countries)

### **Real estate transfer tax**

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

**Capital transfer tax**

Capital transfer tax at a rate of one per cent is imposed on initial contribution of capital as well as other contractual or voluntary contributions in cash or kind (and certain hybrid forms of financing) to corporations. In 2006 the Austrian federal ministry confirmed the administrative practice with respect to capital contributions made by grant parent companies to Austrian companies which are not subjected to capital duty.

**Stamp duties**

Stamp duties (of which there are two kinds) are incurred for certain documentation and legal transactions for which a contract or notarial deed has been signed (e.g. lease contracts, loan agreements, bills of exchange, assignments, etc.).

## Taxation of private foundation

A private foundation is a legal entity of private law to which the founder has dedicated assets to achieve the purpose of the foundation. The foundation is shown in the Austrian companies register and its purpose need not be charitable but can, for instance, be the support of members of a family or of descendants (so called "family foundations").

Payments by such foundations to beneficiaries and ultimate beneficiaries (individuals) are subject to a withholding tax of 25 per cent (as with dividends). Until their distributions, certain types of income (e.g. certain capital earnings and investment earnings) are subject to so called "interim taxation" in the amount of 12.5 per cent. This reduced 12.5 per cent tax is subsequently credited to withholding tax incurred by payments made to beneficiaries. All in all there is no increase in taxes (which means that an average tax rate of 25 per cent is applied) but the partial taxation of the capital income cited above is brought forward in time. Capital gains realized by the private foundation due to the sale of a participation can be allocated to the acquisition cost of the participation held by the foundation.

Payments by the foundation to corporations do not fall under the remit of the participation exemption but are taxable in the usual manner. Payments (inter vivos and upon death) by the founder to his private foundation have since 1 January 2001 been subject, regardless of the amount of the resources paid, to the fixed donation tax rate of five per cent. In the case of allocation of real estate property this rate is raised by 3.5 per cent of the value of the real estate.

From 1 August 2008 onwards, Austrian donation tax will be eliminated. However, the Austrian government communicated already its intention to tax donations provided to the

## Tax benefits

In Austrian tax law there are many tax benefits available for reducing the income tax basis:

### **Research allowance**

Research and development expenses are fully deductible at the time when incurred. Additionally there are three alternatives to claim a research and development allowance in Austrian tax law:

- Research and development expenses are fully deductible at the time when incurred. There is an option to deduct 25 per cent of these expenses (without administration- and distribution costs as well as expenses of fixed assets) in the form of a so called "research allowance" in addition to de facto research expenses. However, privileged research and development activities have to be performed within the EU/EEA. The economic value of the research program (in process or already completed) has to be proved. An extended allowance of 35 per cent is possible up to the extent to which the research expenses of the companies are beyond the average of the last three years or when a company makes research investments for the first time.
- Since 2004 there is an additional option of taking advantage of a so called research allowance II ("Frascati-allowance") in the amount of 25 per cent of expenses for and investments in research and experimental development activities "systematically carried out by the company itself (within the EU/EEA) using scientific methods" – the economic value of the research program has not to be proved. The scope of the "Frascati-allowance" is more general, but the rate of the allowance is limited to 25 per cent. This allowance may not be claimed for those expenditures that already have been included in the basis for research allowance I.
- Furthermore, since 1 January 2005 it is possible to take advantage of a research allowance in the amount of 25 per cent of the expenses for research and experimental development activities assigned to particular institutions. However, this allowance is limited to EUR 100,000 of the fiscal year. The client is to be entitled for the allowance. It is essential that the institution assigned to research has its seat of management in a country of the European Union or European Economic Area. The client has to communicate the contractor which amount of expenditures he definitely claims for the allowance until the end of his financial year. This allowance may not be claimed for those expenditures that already have been included in the basis for research allowance I and II.

Research bonus: As an alternative to the research allowance (research allowance I or II) a research premium in the amount of eight per cent may be claimed. The claim of the premium is in most cases more advantageous for an enterprise since the decrease of the corporate tax rate from 34 per cent to 25 per cent in 2005. However, the research allowance I and the research premium can also be combined.

### **Education allowance**

The education allowance for direct expenditure for in-firm education and training measures is 20 per cent. Education and training must be of use for the business or the operational activity and should be conducted by external institutions or external lecturers.

Furthermore, the benefit is valid for in-firm education and training measures, if the measures are rendered by in-firm education and training institutions. In-firm education and training institutions are such who are comparable to a plant but who do not offer their training measures to third parties. For this the education allowance is 20 per cent, too. The in-firm education allowance can be claimed insofar the expenditure per education and training measure does not exceed EUR 2,000 daily.

As an alternative to the education allowance an education premium can be claimed. The premium is credited the tax account. It has to be considered that the choice between the education allowance and education premium is exclusively due in case of the above mentioned external education and training institutions or external lecturers. In case of in-firm education and training measures solely an education premium can be claimed.

### **Apprenticeship training premium**

Every financial year an apprenticeship training premium amounting to EUR 1,000 can be claimed for every trainee who is in an apprenticeship in force. It is essential for the claim of the premium that the apprenticeship is converted into a definitive apprenticeship after the probation period and that the expenditures for the apprenticeship training are deductible as operating expenses.

### **Allowance for reinvested profits**

Ten per cent of profits accounted on a cash basis (up to EUR 100,000 maximum per calendar year) remain tax-exempt, if the following assets are acquired or produced within one year:

- Limited-life and tangible fixed assets with a useful life of at least four years which are used in a permanent establishment in Austrian or the EU/EWR and
- securities which can be brought up to cover the accruals for pensions, if they are kept as fixed assets for four years.

The allowance is due to co-entrepreneurs according to their profit-sharing rate. No allowance can be claimed for buildings, certain types of automobiles and estate cars, low-cost assets as well as for assets which are acquired by a company that is under controlling influence of the taxpayer. Also, if already the allowance for research and experimental development activities assigned to particular institutions or the "Frascati-allowance" was claimed.

### **Transfer of hidden reserves**

Hidden reserves can be transferred only by individuals as of 1 January 2005. This restriction is related to the reduction of the income tax rate from 34 per cent to 25 per cent.

- The ownership of the sold asset must be at least seven years at the moment of elimination (this period is increased to 15 years if hidden reserves of real estates or buildings were disclosed).
- The use of the fixed asset to which the hidden reserves are to be transferred must be in an Austrian permanent establishment.

The transfer of hidden reserves to the acquisition costs of plants, of interests in partnerships and financial assets and the transfer of hidden reserves which result from the sale of a plant or interests in partnerships is not possible.

### **Tax privilege for retained profits**

Sole trader and (aliquot) stakeholder of partnerships who calculate their profits on an accrual basis have the possibility to tax their retained profits up to an amount of EUR 100.000 at the half average tax rate. However, it is a precondition to call upon the tax privilege that the equity of the business has increased in the respective fiscal year. The increase in equity is calculated from the profits of the current fiscal year plus contributions being used for business purposes minus withdrawals. If however in a fiscal year the withdrawals are higher than the profits and contributions being used for business purposes – that means that equity of the business decreases – and if privileged taxation was applied for during the last seven fiscal years this tax privilege has to be reversed (by subsequent taxation of privileged amounts). Subsequent taxation has to be done by applying the same average tax rate as in the year of the privileged taxation.

### **Tax relief for expatriates**

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

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

Following allowances are taken into account:

- Moving costs
- Costs for maintenance of a double household
- Expenses for home leave
- Education costs for children (tuition)

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

### **Tax loss carry forward**

Tax losses accumulated by companies calculating their profits on an accrual basis may be carried forward for an unlimited period of time and set off against earnings from later years. The Tax Reform Act of 2001 created an additional restriction on the deductibility of operating losses. As of 1 January 2001 deductible losses may only be set off in the amount of 75 per cent of the total amount of the annual taxable income. The remaining losses however are not lost but are deductible in future business years (again, within the 75 per cent limit).

Individuals calculating their profits on a cash basis so far were only allowed to carry forward operating losses of the first three financial years of their business for an unlimited period of time (so called "Anlaufverluste" or start-up losses). As of the income tax assessment for fiscal year 2007 all kind of losses (not only start-up losses which incurred during the first three financial years) can be carried forward. However, tax losses then can only be carried forward for three years (only start up losses accumulated before the income tax assessment of fiscal year 2007 can be carried forward for an unlimited period of time).