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# *Worldwide Tax Summaries*

## Corporate Taxes 2011/12

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# Austria

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## **Significant developments**

On 20 December 2010, the 'Budgetbegleitgesetz 2011' passed the Austrian parliament. The Budgetbegleitgesetz 2011 includes numerous amendments having significant impact on the Austrian Income Tax Act, the Austrian Corporate Income Tax Act, and the Austrian Stamp Duty Act, such as the following:

- The research and development (R&D) premium was increased from 8% to 10% (*see the Tax credits and incentives section*).
- The stamp duty on loan and credit agreements has been disposed of (*see the Other taxes section*).
- The minimum holding requirement for the exemption from 25% Austrian withholding tax (WHT) on dividend payments between domestic companies was reduced to 10% (*see Note 5 of the Withholding taxes section*).
- Interest expenses relating to the acquisition of shares from related parties are generally not deductible any more (*see the Deductions section*).

In December 2010, the 'Betrugsbekämpfungsgesetz 2010', an act regarding the fight against fraud, was enacted. This act affects inter alia tax limitation periods. *See the Tax administration section for more information.*

Austrian transfer pricing (TP) guidelines were issued by Austrian tax authorities on 3 November 2010. The guidelines represent the Austrian authority's understanding of the Organisation for Economic Co-operation and Development (OECD) TP guidelines and are of relevance for the interpretation of Austrian income tax law by the tax administration. *See the Group taxation section for more information.*

In June 2010, a reform of the Austrian Corporate Income Tax Act ('Abgabenänderungsgesetz 2010') was enacted, which resulted in the introduction of an advanced ruling opportunity. With the implementation of this new regulation, legally binding information in the fields of TP, group taxation, and mergers & acquisitions (M&A) can be requested from the Austrian tax authorities for the payment of an administrative fee. The advanced ruling opportunity is applicable as of the beginning of the 2011 fiscal year onwards. *See the Group taxation section for more information.*

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## **Taxes on corporate income**

### **Basis of corporate income tax (Körperschaftsteuer)**

Corporations (i.e. GmbH, AG) are subject to unlimited taxation in Austria of their entire (domestic and foreign) income if they have their legal seat or place of effective management in Austria. A non-Austrian corporate tax resident (with neither a legal seat

nor place of effective management in Austria) is subject to limited taxation on certain sources of income in Austria.

### **Rates of corporate income tax (Körperschaftsteuer)**

Due to the qualification of corporations as independent tax subjects, a distinction must always be made between tax ramifications at the level of the company and those at shareholder level. At the level of the company, profits are taxed at the standard corporate income tax (CIT) rate of 25%, regardless of whether profits are retained or distributed. At the shareholder level, the profit distributions are usually subject to WHT of 25%.

There is also a minimum CIT, payable by companies in a tax-loss position. The minimum CIT amounts to 437.50 euros (EUR) for limited liability companies (GmbH) and EUR 875 for stock corporations (AG) for each full quarter of a year. To promote the formation of new companies, the minimum CIT is reduced to EUR 273 for the first four quarters. The minimum CIT can be carried forward without time limitation and be credited against future CIT burdens of the company.

There is no additional local income tax levied at the company level.

### **Corporate residence**

A corporation is resident in Austria for tax purposes if either it is registered in Austria (legal seat) or its place of effective management is located in Austria. The 'place of effective management' is located where the day-to-day management of the company is actually carried out and not where singular board decisions are formally made.

However, the definition of place of effective management under Austrian tax law does not significantly deviate from its definition under the OECD guidelines.

### **Permanent establishment (PE)**

An Austrian PE is defined under Austrian tax law as a fixed establishment where a business is carried out, in particular:

- the place where the management is carried out
- plants, warehouses, purchase and sales establishments, and other establishments where an entrepreneur or one's permanent representative carries out one's business, or
- construction sites, which last for more than six months.

However, the definition of PE is different in some tax treaties. The Austrian tax authorities generally follow the commentary to the OECD model convention regarding the PE concept.

### **Other taxes**

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

Generally, the Austrian VAT law is based on the 6th European Union (EU) VAT Directive. Under the Austrian VAT law, companies and individuals carrying out an active business on a permanent basis are qualified as entrepreneurs for VAT purposes. As entrepreneurs, they have to charge the supply of goods or services provided to their customers with Austrian VAT at a rate of 20%. A certain limited range of goods and

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services (such as food, books, passenger transportation, cultural events) is taxed at the reduced rate of 10%. Certain other transactions are exempted from Austrian VAT (e.g. export transactions).

## **Input VAT**

Entrepreneurs are entitled to deduct Austrian input VAT insofar as the input VAT does not result from goods/services purchased which are directly linked to certain VAT exempt sales (e.g. interest income, insurance premium). However, certain transactions are exempt from Austrian VAT (e.g. export transactions) without limiting the ability of the entrepreneur to deduct the related input VAT. To be entitled to deduct input VAT, the entrepreneur must obtain an invoice from one's supplier which fulfils certain formal requirements.

## **VAT filing and payment**

Entrepreneurs have to file monthly or quarterly VAT returns by the 15th day of the second month following the month concerned or by the 15th day of the second month following the quarter concerned. The balance of the VAT due and the input VAT deducted has to be paid to the tax office (if VAT burden) or is refunded by the tax office (if in a net input VAT position) to the electronic tax account of the entrepreneur. A separate report has to be filed by the entrepreneur at the tax office showing the cross-border intra EU-transactions made.

## **Excise taxes**

Excise taxes are imposed on certain products including petroleum (approximately EUR 40 to EUR 600 per 1,000 litres), tobacco products (13% to 47% of price), and alcoholic beverages.

## **Customs duties**

Certain cross-border inbound movements of goods from non-EU countries trigger Austrian customs duty. The duty is levied according to the Austrian customs duty scheme, which is based on the EU-customs duty scheme. It defines the customs duty tariffs, dependent on the nature of the good.

## **Stamp duty**

Stamp duty is imposed in connection with certain legally predefined transactions for which a written contract has been established (e.g. lease contracts, bills of exchange, assignments of receivables). The Austrian administration's understanding of a 'written contract' is very broad and covers not only paper contracts but also contracts concluded by electronic means (e.g. electronically signed emails).

The stamp duty is triggered upon the establishment of a legal relationship if at least one Austrian party is contractually involved or, even if a contract is concluded between non-Austrian parties only, if the subject of the contract relates to Austria (e.g. lease contract on Austrian real estate). However, various possibilities are available for most legal transactions subject to stamp duty to structure them in a way without triggering stamp duties (e.g. setting up of contracts abroad, offer-acceptance procedure, usage of audio-tapes).

As of 2011, loan and credit agreements are no longer subject to stamp duty. This modification of the Stamp Duty Act refers to new agreements signed after 1 January 2011 as well as to agreements which are set up in written form in 2011 for loans/credits concluded before 2011.

The stamp duty rates for the most common legal transactions are as follows:

<b>Legal transactions</b>	<b>Duty (%)</b>
Lease agreements	1.00
Certificates of bonds	1.00
Loan agreements (for written agreements set up until the end of 2010)	0.80
Credit agreements non-recurring or revolving during a period of five years (for written agreements set up until the end of 2010)	0.80
Credit agreements with a maturity exceeding five years (for written agreements set up until the end of 2010)	1.50
Bill of exchange	0.13
Assignment of receivables	0.80

### **Capital transfer tax (*Gesellschaftsteuer*)**

Capital transfer tax is imposed at a rate of 1% on the initial contribution of capital, other contractual or voluntary contributions in cash or in kind, and certain hybrid financing instruments to Austrian corporations. However, in many cases a taxable event for capital transfer tax purposes can be eliminated by careful structuring (e.g. contributions made by the indirect shareholder of an Austrian company (so called 'grandparent contributions') do not trigger capital transfer tax).

### **Real estate tax**

Local authorities annually levy real estate tax on all Austrian real estate property whether developed or not. The tax is levied on the assessed standard ratable value ('Einheitswert') of immovable property. The assessed value is usually substantially lower than the market value. The effective tax rate depends on the intended use of the real estate and is calculated using a special multiplier.

Tax rates:

- Agricultural area and forestry
  - 1.6% for the first EUR 3,650 of the assessed standard ratable value.
  - 2% for the amount of the assessed standard ratable value exceeding EUR 3,650.
- Buildings and property are taxed at 2% of the assessed standard ratable value. This multiplier is reduced for:
  - Single family houses
    - to 0.5% for the first EUR 3,650 of the assessed standard ratable value, and
    - to 1% for the next EUR 7,300.
  - Leasehold and shared property
    - to 1% for the first EUR 3,650 of the assessed standard ratable value, and
    - to 1.5% for the next EUR 3,650.
  - All other property
    - to 1% for the first EUR 3,650 of the assessed standard ratable value.

After the assessed standard ratable value is multiplied by the relevant multiplier, the real estate tax is calculated by using a special municipal rate fixed by each municipality (maximum 500%). Finally, the tax amount is reduced by a general reduction of 25% as stated by law and increased by a 35% inflation adjustment.

### **Real estate transfer tax**

Tax is levied at 3.5% on any transaction which causes a change in the ownership of Austrian real estate or in the person empowered to dispose of such property. Real estate transfer tax is generally calculated on the basis of the acquisition price. However, in the case of corporate restructuring under the Reorganisation Tax Act and in case of real

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estate transfers free of consideration, the two-fold (in the case of the former) and the threefold (in the case of the latter) assessed standard ratable value for tax purposes is taken as the tax base.

Real estate transactions with a tax base of EUR 1,100 or below are exempt.

Note that an additional 1% registration fee (same tax base as Real Estate Transfer Tax) becomes due upon incorporation to the land register.

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## **Branch income**

Austrian branches of foreign corporations are taxed in the same way as Austrian corporations, except that inter-company dividends received by Austrian branches of non-EU corporations are not tax exempt (*see the Income determination section*) and Austrian tax losses can be carried forward only if they exceed non-Austrian profits. Books and records generally can be kept abroad but must be brought to Austria in case of a tax audit (upon official request).

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## **Income determination**

Taxable income is determined based on statutory accounts under Austrian generally accepted accounting principles (GAAP) adjusted for certain deductions and additions prescribed by the tax law.

### **Inventory valuation**

In general, inventories are valued at the lower of cost or market. If specific identification during stock movements is not possible, other methods, such as last in first out (LIFO) and first in first out (FIFO) are permitted when shown to be appropriate. Conformity between financial book keeping and tax reporting is required.

### **Capital gains/exit taxation/inbound transfer**

Generally, capital gains (short and long-term) are part of the normal annual result of a corporation and therefore are taxed at the ordinary CIT rate (25%).

A special tax treatment applies to capital gains with respect to the exit of taxable assets. In the case of a transfer of assets which formed part of a business from Austria to a foreign country (e.g. allocation of assets to foreign branch), latent capital gains generally are taxed at the time of the transfer. However, if these assets are transferred to an EU member state, capital gains taxation can be postponed upon request until the assets are sold or transferred outside the European Union.

In case of an inbound transfer, generally, the fair market value of the assets is considered for Austrian income tax purposes (step up). Therefore, any hidden reserves accumulated abroad are not taxed in Austria.

### **Dividend income**

Dividends received from an Austrian company at the corporate shareholder level are generally excluded from the tax base (no minimum stake, no minimum holding period). This tax exemption refers to domestic dividends only, not to capital gains or losses.

Additionally, dividends received from companies located within the European Union or from countries within the European Economy Area (EEA) with which an agreement on

comprehensive administrative assistance was established (currently only Norway) are also tax exempt if the foreign company is subject to a tax similar to the Austrian CIT and if the foreign CIT rate is not below 15%.

In cases where the dividends from foreign investments are taxable, foreign CIT can be credited against the Austrian CIT.

### ***International participation exemption for dividends and capital gains***

Dividends received from a foreign company are also tax exempt at the corporate shareholder level if the Austrian company holds at least 10% of the issued share capital for a minimum holding period of one year (international participation exemption). Furthermore, both capital gains and capital losses derived from shares qualifying for the international participation exemption are tax neutral. This means a deduction of capital losses is no longer available. However, the parent company can exercise an (irrevocable) option for each single participation acquired to treat both capital gains and capital losses as taxable (spread of losses and depreciations over a period of seven years). The option refers to capital gains (losses) only and does not affect the tax treatment of ongoing dividend distributions.

In the case of presumed tax abuse, the participation exemption for dividends and capital gains is replaced by a tax credit (switch-over-clause). The credit system is applied if the foreign subsidiary does not meet an active-trade-or-business test (i.e. passive income from royalties, interest, etc. is greater than 50% of total income of subsidiary) and is not subject to an effective foreign minimum CIT rate of more than 15%. The domestic and foreign participation exemptions are available to Austrian resident corporations and to Austrian branches of EU corporations only, but not to Austrian branches of non-EU corporations.

### ***Portfolio dividends***

Portfolio dividends (i.e. dividends from an investment below 10%) received from corporations located in member states of the European Union, as well as dividends from corporations which are located in those EEA countries with which Austria has concluded an agreement on mutual assistance and collection of taxes (currently only Norway), are generally exempt from CIT. However, the switch-over to the credit method outlined under 'Dividend income' above has to be considered.

Currently, the exemption of portfolio dividends applies to dividends from EU/EEA countries only, but not to those from third countries. As a result of a decision of the ECJ of February 2011 (C-436/08 and C-437/08, Haribo/Salinen), the restriction of the exemption to portfolio dividends received from countries within the EU/EEA is contrary to EU law. Therefore, an extension of the exemption to third country portfolio dividends is planned to be implemented as a consequence of the 'AbgÄG 2011'. Furthermore, the requirement of an agreement on the collection of taxes with the source country will have to be eliminated.

### ***Stock dividends***

A conversion from revenue reserves (retained earnings) to capital by a company does not lead to taxable income for the shareholder (but triggers 1% capital transfer tax). However, capital reductions are treated as taxable income if within ten years prior to the capital reduction the above-mentioned increase in capital was repaid to the shareholder. Otherwise, they are tax exempt.

### ***Interest income***

Interest income is taxed at the general CIT rate of 25%.

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## **Rents and Royalties**

Rental income is treated as normal business income.

## **Foreign income**

Austrian resident corporations are taxed on their worldwide income. If a double taxation treaty (DTT) is in force, double taxation is mitigated either through an exemption or by granting a tax credit equal to the foreign WHT at the maximum (capped with the Austrian CIT incurred on the foreign source income). If foreign WHT cannot be credited at the level of the Austrian corporation (e.g. due to a loss position), Austrian tax law does not allow to carry forward the foreign WHT to future assessment periods. However, if the source of the income is a non-treaty country, exemption or a tax credit shall be available based on unilateral relief (representing a discretionary decision of the Austrian Ministry of Finance only but no legal entitlement for the applicant). Austrian tax law does not provide for a deferral of taxes on foreign income. Special rules for taxing undistributed income of foreign subsidiaries are applicable only to foreign investment funds.

Please note that Austrian Tax Law does not define special controlled foreign company (CFC) rules. However, under certain circumstances, the Austrian tax administration, under a substance over form approach, taxes passive income of foreign subsidiaries of Austrian companies located in low tax jurisdictions (*see switch-over-clause under International participation exemption for dividends and capital gains above*).

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## **Deductions**

### **Accrued expenses**

Certain accruals (such as provisions for liabilities and impending losses) running for more than 12 months as of the closing date of the accounts are accepted for tax purposes at 80% of their value only. Exempted from this reduction are provisions for personnel benefits (severance payments, pensions, vacations, and anniversary awards) for which specific reduction and computation methods have been provided and provisions which were already calculated by discounting a future obligation.

In general, lump-sum accruals and accruals for deferred repairs and maintenance are not allowed for tax purposes.

### **Depreciation and amortisation**

Only the straight-line method is accepted for tax purposes, whereby the cost is evenly spread over the useful life of an asset. For certain assets, depreciation rates relevant for tax purposes are prescribed by the tax law and shown in the following chart:

<b>Assets</b>	<b>Rate (%)</b>
Buildings (industrial use)	3.0
Buildings (banking, insurance)	2.5
Other buildings	2.0
Automobiles	12.5

Goodwill arising in the course of an asset deal for tax purposes must be amortised over 15 years. Goodwill arising in the course of a share deal can be amortised only if the acquired company is included in a tax group (*see the Group taxation section*). Goodwill arising as a result of a corporate merger cannot be amortised.

Trademarks are usually amortised over 15 years. Other intangibles have to be amortised over their useful lives.

Tax depreciation is not required to conform to financial depreciation under Austrian GAAP. If depreciated property is sold, the difference between tax value and sale proceeds is taxed as a profit or loss in the year of sale.

### **Interest payments**

Interest payments (also inter-company) are generally tax deductible if they meet the general arm's-length requirements. *See Thin capitalisation in the Group taxation section for more information.*

### **Financing costs**

According to current tax law, interest expenses resulting from the debt-financed acquisition of shares are usually tax deductible. This is so even if the Austrian participation exemption regime applies (*see the Income determination section*).

As of 2011, interest expenses relating to the debt-financed acquisition of shares from related parties or (directly or indirectly) controlling shareholders are generally non-deductible. This disallowance of interest also applies in circumstances where the shareholder acquiring the shares has been funded by a debt-financed equity contribution (insofar as the equity contribution was made in direct connection with the share acquisition). Interest expenses resulting from intra-group share acquisitions conducted prior to 1 January 2011 are also covered by the new regulation. The deductibility of interest expenses incurred in connection with the acquisition of shares from a third party is not impacted.

Other financing costs (e.g. fees, legal advice) directly related to tax exempt dividend income are not deductible. However, foreign exchange expenses or profits accumulated in connection with the financing of tax exempted international participations are treated as a deductible or taxable (respectively) item.

### **Charitable contributions**

Charitable contributions are tax deductible up to a limit of 10% of the prior year profit.

### **Meals and entertainment**

The deductibility of costs for business lunches generally is limited to 50% of actual expenses incurred (provided the business lunch had the purpose of acquiring new business).

The deductibility of entertainment expenses is restricted to advertising expenses.

### **Payment to directors**

Payments to a member of the supervisory board ('Aufsichtsrat') are tax deductible up to a limit of 50%. Payments to members of the executive (managing) board are tax deductible without special limitation.

### **Organisational and start-up expenses**

Generally, organisational and start-up expenses are tax deductible.

### **Fines and penalties**

Fines and penalties are generally not tax deductible.

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## **Taxes**

Austrian and foreign taxes on income and other personal taxes, as well as VAT insofar as it relates to non-deductible expenditures, are non-deductible. Other taxes, such as payroll or capital transfer taxes, are deductible.

## **Net operating losses**

Tax losses can be carried forward without any time limit. However, tax loss carryforwards generally can be offset against taxable income only up to a maximum of 75% of the taxable income for any given year. Some exceptions apply (e.g. in connection with tax groups or in the case of liquidations), allowing a company to charge tax loss carryforwards available against 100% of annual taxable income.

The Austrian tax law does not provide for a carryback of tax losses.

## **Loss-trafficking (Mantelkauf)**

Tax loss carryforwards may be lost in the case of a share deal being classified as loss-trafficking (so called 'Mantelkauf') or in the course of a legal restructuring leading to similar results.

Under Austrian tax law, a share deal against compensation is classified as a Mantelkauf, if, from a substance over form perspective, the 'economic identity' of a company is changed due to the transaction. The change of economic identity of a company is realized if all of the following structural changes are made to the acquired Austrian company having the tax loss carryforwards available:

- Change of shareholder structure.
- Change of the organisational structure.
- Change of the business structure.

All three conditions cumulatively have to be met. There is no exact time period defined within which they have to be met; however, meeting them within one year after the share transfer usually is regarded as a strong indication for a Mantelkauf.

## **Payments to foreign affiliates**

Generally, there are no restrictions on the deductibility of royalties, interest, and service fees paid to foreign affiliates, provided they are at arm's length (which should be appropriately documented by agreements, contracts, calculation sheets, etc.). Payments to affiliated companies not meeting arm's-length standards are treated as a hidden distribution of earnings (i.e. they are not tax deductible, and WHT is usually triggered at source). *See Transfer pricing in the Group taxation section for more information.*

Note that the domestic implementation of the EU Interest Royalty Directive which abolishes WHT on cross-border payments of interest and license fees (regardless of whether taken out by deduction or by assessment) between affiliated companies in the member states should be considered.

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## **Group taxation**

In 2005, a new group taxation system replaced the 'Organschaft' concept under which Austrian resident companies as well as foreign companies (with restrictions) may be taxed as a unit. Under the 2005 system, two or more companies can form a tax group, provided the parent company directly or indirectly owns more than 50% of the shares in the subsidiaries. The tax group also can include foreign group members. If a group

member withdraws from the group within a minimum commitment-period of three years, all tax effects derived from its group membership must be reversed.

Within a tax group, all of the taxable results (profit and loss) of the domestic group members are attributed to their respective group parent. From foreign tax group members, tax losses in the proportion of the shareholding quota are attributed to the tax group parent. Foreign tax losses utilised by the Austrian tax group parent are subject to recapture taxation at the time they are utilised by the tax group member in the source state, or in the moment the group member withdraws from the Austrian tax group. Under the recapture taxation scheme, the Austrian tax group has to increase its Austrian tax base by the amount of foreign tax losses used in prior periods (limited to the amount of tax losses actually utilised by the foreign tax group member).

For the purpose of the application of the recapture taxation scheme, a withdrawal from the tax group is also assumed if the foreign group member significantly reduces the size of its business (compared to the size of the business at the time the losses arose). Reduction of size is measured on the basis of business parameters such as turnover, assets, balance sheet totals, and employees, while the importance of the respective criteria depends on the nature of the particular business.

Goodwill arising in the course of a share deal (acquisition of an active business company from a third party contractor) must be amortised over 15 years, provided that the acquired company is included in a tax group.

Write-downs of participations in tax group members are not tax deductible.

### ***Transfer pricing***

Under Austrian Tax Law there are no explicit TP regulations available defining in detail the local requirements with regards to arm's length, the documentation standards required, penalties, etc. In general, Austria applies the OECD TP guidelines referring to the OECD model tax convention. Furthermore, Austrian TP guidelines were recently issued by Austrian tax authorities. The guidelines represent the Austrian authority's understanding of inter-company business relationships with regards to their arm's-length classification and are based on the OECD TP guidelines.

According to these guidelines, all business transactions between affiliated companies must be carried out under consideration of the arm's-length principle. Where a legal transaction is deemed not to correspond to arm's-length principles, the transaction price is adjusted for CIT purposes. Such an adjustment constitutes either a constructive dividend or a capital contribution. Currently, there is the option of applying for a non-binding ruling of the tax authorities. Additionally, a reform of the Austrian CIT Act was recently enacted, which contains the introduction of an advanced ruling opportunity. With the implementation of this new regulation, binding information in the fields of TP, group taxation, and M&A can be requested from the Austrian tax authorities against payment of an administrative fee (the fee rate depends on the size of the applicant's business). The advanced ruling opportunity is applicable as of the 2011 fiscal year.

### ***Thin capitalisation***

There are no explicit tax regulations available under Austrian tax law stipulating the minimum equity required by a company ('thin capitalisation rules'). Basically, group financing has to comply with general arm's-length requirements. Therefore, an Austrian group entity being financed by an affiliated entity must be able to document that it would have been able to obtain funds from third party creditors under the same conditions as from an affiliated financing entity. Therefore, the appropriate ratio

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between an Austrian company's equity and debt will mainly depend on the individual situation of the company (profit expectations, market conditions, etc.) and its industry. Nonetheless, the fiscal authorities in administrative practice (i.e. no 'safe-harbour' rule) tend to accept a debt-equity ratio of approximately 3:1 to 4:1. However, the debt-equity ratio accepted by tax authorities also strongly depends on the average ratio relevant for the respective industry sector. If in inter-company loan for tax purposes is not accepted as debt, it is reclassified into hidden equity and related interest payments into (non-deductible) dividend distributions.

Furthermore, under Austrian commercial law (for companies subject to statutory audits), a minimum equity ratio of 8% is claimed. If the equity ratio of the company falls below 8% and its earning power (virtual period for debt redemption) at the same time does not meet certain requirements, a formal and public reorganisation process will have to be initiated.

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## **Tax credits and incentives**

### **Research and development (R&D) incentives**

R&D costs are fully deductible at the time they accrue. As of 2011, an R&D premium of 10% (i.e. R&D expenses x 10% = tax refund) may be claimed for R&D activities performed in Austria.

Prior to 2011, an R&D premium of 8% was available for all R&D activities, not just those performed in Austria. An alternative R&D allowance of 25% to 35% of qualifying R&D expenses was also available.

The R&D premium (and allowance prior to 2011) is also available in case of contract R&D; however, R&D incentives cannot be claimed by both principal and agent.

### **Employment incentives**

A tax bonus payment of 6% or, alternatively, an allowance of 20% can be claimed for expenditures in connection with the training of employees. These incentives can be claimed for external training expenditures and for in-house training expenditures, provided that there is a dedicated in-house training department (for in-house training expenditures, only the allowance can be applied for).

A new premium scheme for apprenticeships started in June 2008. This premium is based on the amount of actual wage as set out in the applicable collective contract and provides tax free subsidies, depending on the duration of the apprentice's employment.

### **Investment incentives**

For investment in certain regions, government grants and subsidies are available and are generally individually negotiated.

### **Foreign tax credit (matching credit)**

Generally, foreign WHT can be credited against Austrian CIT (*see Foreign income in the Income determination section*). In special cases (e.g. China, Korea, Brazil), the DTT provides for a matching credit, which allows the credit of a pre-defined amount which exceeds the actually paid foreign WHT.

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## **Withholding taxes**

### **Dividend WHT**

Under Austrian domestic law, there is generally a 25% WHT on dividends (profit distributions) paid to a foreign parent company. The WHT has to be deducted and forwarded by the Austrian subsidiary to the tax office.

To end up with the reduced WHT rate as defined under the DTT applicable, Austrian tax law provides for the following alternative methods of WHT relief: refund method or exemption at source method.

### **Refund method**

The Austrian subsidiary generally has to withhold 25% WHT on profit distributions to the foreign parent company, and the parent company has to apply for a refund (of the difference between 25% WHT and the lower DTT rate). In the course of the refund process, the Austrian tax administration analyses whether the foreign shareholder can be qualified as beneficial owner of the dividends paid. If the refund is approved by the Austrian tax authority, dividend distributions within the following three years can be done without deduction of WHT (for distributions of a comparable size and provided the foreign holding structure did not change in the meantime).

### **Exemption at source method**

Relief at the source is available only if the direct parent company issues a written declaration confirming that it is an 'active' company carrying out an active business that goes beyond the level of pure asset management and has its own employees and office space at its disposal (substance requirements).

### **WHT on dividends paid to EU companies**

With regard to dividends paid to EU resident corporate shareholders, Austria has implemented the EU Parent/Subsidiary Directive according to which domestic WHT is reduced to zero. The requirements for the reduction are that the EU resident parent company, which also has to meet the substance requirements mentioned above (*see Exemption at source method*), must directly own at least 10% of the share capital of the Austrian subsidiary for a period of at least one year. In case of foreign EU shareholders being qualified as pure holding companies, the Austrian tax administration does not allow an exemption at source but claims the application of the refund method

Provided the requirements according to the EU Parent/Subsidiary Directive are not met, Austrian WHT has to be deducted. If an EU parent company cannot credit the Austrian WHT deducted against the CIT of its resident state (e.g. because the foreign dividend income is exempted from the CIT or due to a loss position of the shareholder), it is entitled to apply for a refund of the Austrian WHT. This application has to include a confirmation/documentation that the Austrian WHT could (fully or partly) not be credited at the level of the parent company.

### **Interest WHT**

Interest payments to non-resident companies are not subject to WHT (provided no Austrian real estate property is used as security).

### **Royalties WHT**

On royalties paid to a non-resident company, Austrian WHT at a rate of 20% has to be deducted. This tax rate can be reduced under an applicable DTT or under the application of the EU Interest Royalty Directive which was implemented in Austrian Tax Law.

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## Tax treaties

The following table lists the countries with which Austria has signed a DTT and provides details of the amount of Austrian WHT.

Recipient	Dividends (%) (1, 2)	Interest (%) (3)	Royalties, licenses (%) (4)
Resident corporations	0/25 (5)	0/25	0
Resident individuals	25 (6)	0/25	0
<b>Non-residents:</b>			
<b>Non-treaty:</b>			
Corporations and business enterprises	25	0	20
Individuals	25	0	20
<b>Treaty:</b>			
Albania (7)	15/5*	0	5
Algeria	15/5+	0	10
Argentina (8) (DTC was recalled by Argentina in 2008)			
Armenia	15/5+	0	5
Australia	15	0	10
Azerbaijan	5/10/15 (9)	0	5/10 (10)
Bahrain (11)	0	0	0
Barbados (12)	15/5+	0	0
Belarus (White Russia)	15/5*	0	5
Belgium	15	0	0/10**
Belize	15/5*	0	0
Bosnia and Herzegovina (13)	10/5*	0	5
Brazil	15	0	10/15/25 (14)
Bulgaria (15)	0	0	5
Canada	15/5+	0	10
China	10/7*	0	10/6 (16)
Croatia	15/0+	0	0
Cuba	15/5*	0	5/0 (19)
Cyprus	10	0	0
Czech Republic (17)	10/0+	0	5 (18)
Denmark (20)	15/0+	0	0
Egypt	10	0	0/20 (21)
Estonia	15/5*	0	10/5 (22)
Finland	10/0+	0	5
France	15/0+	0	0
Georgia	10/5+/0** (23)	0	0
Germany	15/5+	0	0
Greece (24)	15/5*	0	7
Hong Kong (25)	10/0+	0	3
Hungary	10	0	0
India	10	0	10
Indonesia	15/10*	0	10
Iran	10/5*	0	5
Ireland	10	0	0/10**

Recipient	Dividends (%) (1, 2)	Interest (%) (3)	Royalties, licenses (%) (4)
Israel	25	0	10
Italy	15	0	0/10**
Japan	20/10**	0	10
Kazakhstan	15/5+	0	10
Korea	15/5*	0	10/2 (26)
Kuwait	0	0	10
Kyrgyzstan	15/5*	0	10
Latvia (27)	10/15*	0	10/5 (28)
Libya (29)			
Liechtenstein	15	0	10/5 (30)
Lithuania	15/5*	0	10/5 (31)
Luxemburg	15/5*	0	0/10**
Macedonia (34)	15/0+	0	0
Malaysia	10/5*	0	10/15 (32)
Malta	15	0	0/10 (33)
Mexico	10/5+	0	10
Moldova	15/5*	0	5
Mongolia	10/5+	0	5/10 (35)
Morocco (36)	10/5*	0	10
Nepal	15/10+/5*	0	15
Netherlands	15/5*	0	0/10**
New Zealand (37)	15	0	10
Norway	15/5*	0	0
Pakistan (38)	15/10+++	0	10
Philippines	25/10+	0	15
Poland	15/5+	0	5
Portugal	15	0	5/10 (39)
Romania	5/0*	0	3
Russia	15/5* (40)	0	
Russian Federation (41)	0	0	0
San Marino	15/0+	0	0
Saudi Arabia (42)	5	0	10
Serbia (43)	15/5*	0	5/10 (44)
Singapore	10/0+	0	5
Slovakia (45)	10	0	5
Slovenia	15/5*	0	5
South Africa	15/5*	0	0
Spain	15/10**	0	5
Sweden	10/5*	0	0/10**
Switzerland	15/0+++ (46)	0	0
Syria (47)	10/5*	0	12
Thailand	25/10*	0	15
Tunesia	20/10*	0	10/15 (48)
Turkey (49)	15/5*	0	10
Ukraine	10/5+	0	5
United Arab Emirates	0	0	0
United Kingdom	15/5*	0	0/10**

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Recipient	Dividends (%) (1, 2)	Interest (%) (3)	Royalties, licenses (%) (4)
United States	15/5+	0	0/10 (50)
Uzbekistan	15/5+	0	5
Venezuela (51)	15/5++	0	5
Vietnam (52)	15/10*5***	0	10/7.5 (53)

## Notes

- 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 WHT 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).
- Under certain treaties, the amount of the WHT 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 15%, those marked with +++ refer to an investment of 20%, those marked with \* refer to an investment of 25%, those marked with \*\* refer to an investment of 50%, and those marked with \*\*\* refer to an investment of 70%.
- 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 EUR (issued after 31 December 1983) are subject to a 25% WHT. If the recipient is an individual, this WHT is final (no further income taxation and inheritance taxation). Companies receiving interest payments may obtain an exemption from WHT 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 non-residents without a PE in Austria are generally not subject to WHT. At interest payments between affiliated companies, the regulations stipulated by the EU interest directive have to be taken into consideration.
- In case of payments to countries marked with \*\*, the rate is 0% 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.
- If the recipient holds a participation of less than 10% (25% prior to 2011) in the distributing company, the dividends are subject to a 25% WHT. Since dividends distributed by an Austrian corporation to another Austrian corporation are generally not subject to taxation, the WHT is credited against CIT upon assessment of the recipient corporation for the respective tax year.
- WHT on dividends from Austrian companies is final, i.e. no further income tax is collected from the recipient (provided it is an individual).
- The treaty was signed on 14 December 2007 and entered into force on 1 September 2008. It is applicable as of the beginning of fiscal year 2009.
- The treaty was recalled by Argentina in 2009. Austrian tax citizens are protected by section (§) 48 BAO (Bundesabgabenordnung (Austrian Fiscal Federal Code)) against double taxation. Austria will try to enter into new negotiations with Argentina.
- 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.
- 5% for industrial licenses and know-how not more than three years old; 10% in all other cases.
- The treaty entered into force on 17 February 2011 and is applicable as of the beginning of fiscal year 2011.
- The treaty entered into force on 1 April 2007 and is applicable as of the beginning of fiscal year 2008.
- The treaty was signed on 16 December 2010. It has not yet been decided when it will enter into force.
- 10% for copyright license fees in connection with literature, science, and art; 25% for trademarks license fees; 15% in all other cases.
- The new treaty has entered into force on 3 February 2011 and is applicable as of the beginning of fiscal year 2011.
- 6% for industrial, commercial, or scientific equipment; 10% in all other cases.
- The treaty entered into force on 22 March 2007 and is applicable as of the beginning of fiscal year 2008.
- 5% for license income from copyrights, brands, plans, secret formulas or procedures, computer software, industrial, commercial or scientific use of equipment, and information.
- 0% for copyright royalties in connection with the production of literary, dramatic, musical, or artistic work; 5% in all other cases.
- The new treaty was signed on 25 May 2007 and entered into force on 27 March 2008. It is applicable as of the beginning of fiscal year 2009.
- 20% for films.
- 5% for leasing of mobile goods, and 10% for other licenses.
- 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.
- The treaty entered into force on 1 April 2009 and is applicable as of the beginning of fiscal year 2010.

25. The treaty entered into force on 1 January 2011 and will be applicable as of the beginning of fiscal year 2012 (Austria: 1 January 2012, Hong Kong: 1 April 2012).
26. 2% for license income from industrial, commercial, or scientific use, and 10% for other licenses.
27. The treaty entered into force on 16 May 2007 and is applicable as of the beginning of fiscal year of 2008.
28. 5% for the use of commercial or scientific equipment; 10% in all other cases.
29. The treaty was signed on 16 September 2010. It has not yet been decided when it will enter into force.
30. 5% in case of direct (or indirect over a patent-realisation-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.
31. 5% in case of license income from industrial, commercial, or scientific use, and 10% for other licenses.
32. 15% for films.
33. 0% for copyright license fees in connection with literature, art, and scientific use, and 10% for other licenses.
34. The treaty was signed on 7 September 2007 and entered into force on 20 January 2008. It is applicable as of the beginning of fiscal year 2008.
35. 10% for the right of use of copyrights to artistic, scientific, or literary as well as cinematographic works, and 5% for other licenses.
36. The new treaty was signed on 13 September 2006 and entered into force on 13 November 2006. It was applicable as of the beginning of fiscal year 2007.
37. The treaty was signed on 21 September 2006 and entered into force on 1 December 2007. It is applicable as of the beginning of fiscal year 2008.
38. The treaty entered into force on 1 June 2007 and is applicable as of the beginning of fiscal year 2008.
39. For Portugal, the rate of WHT is 5%, but 10% if more than 50% of the issued share capital is owned by the recipient.
40. 5% if capital share amounts to at least 10% and worth at least USD 100,000; 15% in all other cases.
41. The treaty applies to Tajikistan and Turkmenistan. With Russia, a new treaty has been ratified.
42. The treaty entered into force on 1 June 2007 and is applicable as of the beginning of fiscal year 2008.
43. The treaty entered into force on 17 December 2010 and is applicable as of the beginning of fiscal year 2011.
44. 5% for copyright license fees; 10% for other licenses.
45. Until a new treaty will be established, the treaty with Czechoslovakia remains applicable.
46. For dividend distributions retroactive as of 1 January 2000.
47. The treaty was signed on 3 March 2009. It has not yet been decided when it will enter into force.
48. 15% for films.
49. The new treaty was signed on 28 March 2008 and entered into force on 1 October 2009. It is applicable as of the beginning of fiscal year 2010.
50. 10% for films.
51. The treaty entered into force on 17 March 2007 and is applicable as of the beginning of fiscal year of 2008.
52. The new treaty was signed on 2 June 2008 and entered into force on 1 January 2010. It is applicable as of the beginning of fiscal year 2011.
53. 7.5% for fees for technical services; 10% for royalties.

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## **Tax administration**

### **Tax returns**

The standard tax assessment period in Austria is the calendar year. However, a company's financial year may deviate. When the tax and financial years deviate, the tax assessments for a year are based on the profits derived in the financial year(s) ending in the respective calendar year (e.g. if tax year 1 June 2009 – 31 May 2010: assessment FY 2010).

### **Tax return due dates**

Generally, the CIT return has to be submitted electronically by June 30 of the calendar year following the year in which the fiscal year of the company ends. However, if the company submits the tax return via a certified tax advisor, the tax return can be submitted by 31 March of the second following year at the latest, if the company will not be formally requested by the tax office to file it earlier.

### **Statute of limitation**

The right to assess CIT is subject to a general limitation period of five years after the end of the calendar year in which the fiscal year ends. Additionally, the limitation period

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can be extended for another two years in cases where certain interruptive events (e.g. tax audit, tax assessment) take place within the general limitation period.

As a result of the 'Betrugsbekämpfungsgesetz 2010', the maximum limitation period in case of tax evasion was prolonged from seven to ten years. The new limitation period is applicable for cases for which the ten-year limitation period has not expired as of 1 January 2011.

In certain cases, the maximum limitation period can be extended to 15 years.

## **Payment of tax**

CIT is prepaid in quarterly instalments during the calendar year, with a final settlement subsequent to the annual assessment. Prepayments of CIT generally are based on the most recently assessed tax year's tax burden (unless the taxpayer can show that its tax charge for the current year will be lower).

The difference between CIT as per the final assessment and the prepayments made is interest bearing from 1 October of the year subsequent to the year when the tax claim arose up to the date when the assessment is released (late payment interest). Interest at a rate of currently 2.38% is applied to underpayments (as well as overpayments) of tax.

## **Electronic filing of annual CIT returns**

The annual CIT return (as well as the annual VAT return) has to be filed by electronic means. In the case of a company that cannot reasonably be expected to file tax returns electronically due to the lack of technical prerequisites, filing of the tax return is allowed to be done via pre-printed forms.

## **Audit cycle**

In general, companies are audited every three to four years. The audit period usually covers three to four fiscal years, so generally each fiscal year is audited.

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## **Other issues**

### **Choice of business entity**

The most important types of companies in Austria are the limited liability corporation (GmbH), and the joint stock corporation (AG). Foreign investors generally choose the GmbH since it provides a higher degree of corporate law control and allows for lower equity provision.

As a legal entity, the GmbH exists upon registration with the Companies' Register. The application for registration must contain the notarised signatures of all managing directors. The articles of association must be drawn up in the form of a notarial deed (written document executed by a public notary) and must, as minimum requirements, include the name of the company as well as its seat, the business purpose, the amount of registered capital, and the capital contribution of each of the various owners.

A GmbH's minimum registered capital amount is EUR 35,000. Generally, one half of the registered capital must be raised in cash while the remainder may be contributed in the form of assets (contributions in kind). Of the original capital contribution, 25%, or at least EUR 17,500, must actually be paid in upon incorporation. Under certain conditions, the capital can be provided exclusively in the form of assets (incorporation in kind, in this case the contribution is subject to an audit verifying the market value of the assets contributed). The articles of association may provide for additional

capital contributions payable by the owners on the basis of a resolution adopted by the shareholder meeting.

The minimum share capital of an AG is EUR 70,000. For an AG, the same payment regulations apply as for a GmbH, but the owners can agree upon a further capital contribution going beyond the nominal value of the shares (premium). The premium is shown on the company's balance sheet as a capital reserve.

Since 2004, the company type *Societas Europaea* (SE) can be chosen in Austria. The SE is a stock corporation based on community law. The advantages of this legal form are the simplification of organisational structures (in particular for international groups) and the possibility of cross-border transfers of corporation seats without loss of the legal identity. The SE allows the choice of a business location under an economic point of view as well as the choice of the most favourable legislation. The minimum share capital required for the incorporation of a SE is EUR 120,000 while the statutory seat of the corporation must be located in the same country where the place of management is located in.

### ***Restructuring measures (M&A from a business perspective)***

Transfers of assets and undertakings can be realised with retroactive effect and be tax neutral within the framework of the Austrian Reorganisation Tax Act.

The legislation administers the following areas (Article I-VI):

- Mergers (within EU also cross border) of corporations.
- Special conversion (from corporations to partnerships).
- Contribution of businesses and exchange of shares.
- Merger of partnerships.
- Demerger of partnerships.
- Demerger of corporations.

If the reorganisation qualifies for the application of the Austrian Reorganisation Tax Act, the reorganisation steps are realised tax neutrally and with a retroactive effect as of the reorganisation due date. Existing tax loss carryforwards can be transferred under certain conditions as well. Furthermore, several other tax privileges are granted under the Reorganisation Tax Act for stamp duties, capital transfer tax, etc.

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ISBN 978-0-9554840-6-3



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