Austria

Individual Taxation

Introduction

Individuals are subject to national income tax. There are no local income taxes. After 1 August 2008, inheritance and gift tax is no longer levied. Social security contributions are also levied. For VAT and miscellaneous indirect taxes, see Corporate Taxation, 8. and 9., respectively.

For individual income tax purposes, the description below applies to all areas of Austria.

The currency is the euro (EUR).

1. Income Tax

1.1. Taxable persons

Individuals are resident in Austria if they have either their domicile or habitual place of abode in Austria. An individual is domiciled in Austria if he permanently occupies a residence there. A stay in Austria exceeding 6 months is deemed to establish an habitual place of abode in Austria.

Married persons are taxed separately. A child is also taxed separately. A partnership is treated as a transparent entity for tax purposes.

1.2. Taxable income

1.2.1. General

Resident taxpayers are taxable on their worldwide income, whether received in money or money’s worth. The Individual Income Tax Law contains an exhaustive list of categories of taxable income; income not falling under any of these categories is not taxable. For individuals, the categories are:

(1) agriculture and forestry;
(2) professional and other independent services;
(3) trade and business;
(4) employment income;
(5) investment income;
(6) rents, lease payments and royalties; and
(7) other specified income (including certain annuities and capital gains on private property).

Taxable income is the total amount of all categories of income, decreased by special expenses, which include loss carry-forwards, extraordinary burdens, tax-exempt amounts and losses incurred in these categories.

For the business income categories (1) to (3), taxable profits are defined by the law as the difference between the value of the enterprise’s assets at the end of a financial year and the value of those assets at the end of the preceding financial year, plus withdrawals, less contributions to the capital of a business during the course of the year. Moreover, business income must also be computed on the basis of a profit and loss account. Small enterprises, however, are exempt from the obligation to keep books. They may compute profits as the surplus of business income over business expenses.

Taxable income from the other categories (4) to (7) is calculated according to the net-income method as the surplus of receipts over expenses incurred in acquiring and maintaining income.

Taxable income is the aggregate net result of all categories of income minus losses, special expenses, exceptional expenditure and certain other allowances and gains.

1.2.2. Exempt income

Exempt income includes:

- certain social distributions;
- payments received from foundations or public funds for the direct promotion of the arts, science or research; and
- scholarships and grants for school pupils.

1.3. Employment income

1.3.1. Salary

Income from employment includes all remuneration, in cash or in kind, derived by an employed person and paid by the employer himself or a third party. As a rule, the tax is levied by way of withholding (see 1.9.2.).

Numerous types of expenses are deductible for income tax purposes (see 1.7.1.). If an employee is seconded by his employer, he may deduct his moving costs. Any reimbursement by the employer of such costs is taxable.

1.3.2. Benefits in kind

In principle, benefits in kind are taxable as income from employment. Benefits in kind are taxed at average values, which are usually lower than market value, fixed by the provincial tax directorates or by the Ministry of Finance. These include living allowances, housing allowances, free holiday trips, company cars, etc. Exempt benefits in kind include free sports facilities, working clothes, training and pension premiums paid by the employer.

Income arising from the fact that a company grants shares to its employees at favourable conditions is not taxable up to an amount of EUR 1,460. As regards
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employee stock options granted before 1 April 2009, income from such options is exempt if the value of the shares does not exceed EUR 36,400 at the time the options are granted. However, this income is not fully exempt, but only 10% per year (maximum of 50%) if the exercise of the stock options is postponed.

1.3.3. Pension income

Pension payments received by a former employee from social security, from a pension fund, or from the employer himself are included in employment income. Only 25% of the payments are taxable if the former employee contributed to the pension fund himself. Employer contributions to a pension fund are tax-free for the employee. Contributions to domestic and foreign pension funds made by employees are fully deductible from employment income, if payments are required by law.

1.3.4. Directors’ remuneration

Remuneration paid to a managing director is taxed as income from employment if he is an employee of the company; otherwise it is income from professional services. If a managing director owns more than 25% of the share capital of the company, the remuneration is always income from professional services. Fees of the members of the supervisory boards are always income from professional services. If remuneration is paid to a shareholder as directors’ fees, the payment should meet an arm’s length standard. Otherwise, the income may be adjusted by the tax authorities and that part of the payment exceeding the arm’s length value may be treated as a hidden profit distribution.

1.4. Business and professional income

Business and professional income is taxed under two different categories of income (see 1.2.1.). Expenses incurred in acquiring, securing and maintaining taxable income are in general deductible. For details on deductions, see Corporate Taxation, 1.3.3. to 1.3.6.

Taxpayers calculating their income on a cash basis may opt for a lump-sum deduction of expenses, instead of deducting actual expenses. Such deduction is calculated as a percentage of gross income, and generally ranges from 12% (for business and professional activities in general) to 6% (for teaching and scientific activities), with a maximum of 12% or 6% of EUR 220,000.

Until 31 December 2009, the business and professional income up to EUR 100,000 was subject to one half of the average income tax calculated on annual income. Profits withdrawn in subsequent tax years are recaptured and taxed at the normal progressive rates (see 1.9.1.). The recapturing also applies for periods after 31 December 2009. In 2009, there was a possibility to recapture tax-exempt amounts of previous years that had not been recaptured until 2008 on a lump-sum basis at a tax rate of 10%.

Individuals have the possibility to claim a tax-exempt amount for “invested profit” not exceeding 13% (10% before 2010) of the annual profit. The total tax-exempt amount may never exceed EUR 100,000 nor the acquisition or production costs of the assets. This tax-exempt amount is granted for the acquisition or production of depreciable tangible assets, certain securities and buildings (including also lessee investments). However, from 1 January 2010, up to an amount of profit of EUR 30,000, there is no requirement to invest part of the profit (base tax-exempt amount); i.e. 13% of the base tax-exempt amount of EUR 30,000 is tax exempt in any case. Beyond EUR 30,000, the tax-exempt amount depends on the amount of investments (limited to 13% of the profit and in total to EUR 100,000).

1.5. Investment income

Investment income is all income that is not attributable to one of the first four income categories (see 1.2.1.). Expenses incurred are deductible, unless they are connected with income that is subject to a final withholding tax. Foreign-source investment income is discussed in 6.1.1.

Dividends received from a resident company are taxable as business income or as income from capital. A final withholding tax at a rate of 25% applies in both cases (see 1.9.2.). Dividends derived by individuals owning newly issued shares in resident companies (other than state-owned companies) that are engaged in production activities are not subject to withholding tax or individual income tax to the extent the dividends are attributable to such shares. Upon acquisition of such shares, a deduction for special expenses may be claimed (see 1.7.1.).

Interest is taxable also as business income or as income from capital. A final withholding tax at a rate of 25% applies in both cases (see 1.9.2.).

Royalties and income from immovable property are taxable as business income or income from rents, lease payments and royalties at the normal income tax rates.

1.6. Capital gains

In general, capital gains are not included in taxable income except capital gains realized in the course of a business, speculative gains, and gains from the alienation of shares forming a substantial shareholding.

Capital gains from the sale of a business or part of it are computed as the amount by which the proceeds exceed the book value of the business. Under certain conditions, roll-over relief is available.

Speculative gains are derived from:

(1) the sale of immovable property within 10 years after acquisition;

(2) the sale of other property, especially securities (with some exceptions), within 1 year after acquisition; and

(3) the exercise of futures and forward contracts and written options, and the trade in or settlement of swaps, within 1 year.
Gains from the sale of business assets within the above-mentioned 10-year and 1-year periods also constitute speculative gains, unless they result in business income.

Gains arising from the disposal of shares in a company in which the shareholder owns, or owned at any time during the preceding 5 years, directly or indirectly, a substantial shareholding, consisting of at least 1% of the company’s share capital are taxable as extraordinary income. Such income is taxed at one half of the effective rate on the taxpayer’s total income (see 1.9.1.). If the shares were acquired by seller without consideration, it is sufficient that the former owner held at least 1% of the company’s share capital at any time during the preceding 5 years.

Capital gains from the alienation of a holding in a resident company held as a business asset by a sole entrepreneur or partnership are also taxed at one half of the effective rate on the taxpayer’s total income (see 1.9.1.).

### 1.7. Personal deductions, allowances and credits

#### 1.7.1. Deductions

Expenses incurred in acquiring and maintaining income may be deducted from the relevant category of income. Subsequently, losses that occurred in any category, special expenses, exceptional expenditure, certain exemptions and allowances may be deducted for purposes of determination of the taxable total income. Donations to certain charitable organizations have been deductible since 2009. The deductibility of such donations is limited to 10% of the income of the preceding year.

Certain groups of taxpayers deriving employment income may opt for a lump-sum deduction of expenses, instead of the normal expense deduction. The lump-sum deduction is calculated as a percentage of gross income less payments receiving preferential treatment, such as holiday and Christmas pay. The percentages for some of the groups are:

- artists, musicians: 5% with a maximum of EUR 2,700;
- journalists, TV reporters: 7.5% with a maximum of EUR 4,050; and
- sales agents: 5% with a maximum of EUR 2,250.

The following standard lump-sum deductions for assumed expenses are allowed:

- EUR 132 for expenses connected with income determined according to the net-income method (see 1.2.1.). If actual expenses are higher, they may be deducted;
- in addition to the traffic tax credit (see 1.7.3.), a deduction for travel expenses if the journey to work exceeds 20 km. This deduction varies between EUR 630 and 1,857, according to the distance travelled. If public transport is not available or reasonable, a deduction is granted (instead of the above deduction) for journeys over 2 km; this deduction ranges from EUR 342 to 3,372, according to the distance. In no case may actual expenses be deducted; and
- a child-related deduction of EUR 220 annually.

Interest payments, life insurance premiums and acquisition costs of newly issued shares in resident companies are deductible as special expenses up to EUR 730 (EUR 1,460 if the taxpayer is entitled to the head of household tax credit or the single parent tax credit; additional EUR 365 if the taxpayer has at least three children). The deduction is reduced proportionally to zero between an annual income of EUR 36,400 and 50,900.

Medical expenses and educational expenses are only deductible if they form an extraordinary burden for the taxpayer. The amount of the deduction depends on the income of the taxpayer. Expenses for occupational training of a child outside the town of residence, however, are always deductible at a fixed amount of EUR 110 per month.

Child care costs are deductible up to an amount of EUR 2,300 per child per year if the child is under the age of 10. The payments for child care are only deductible if they are transferred to private or public institutions or to persons providing comparable pedagogical services.

For pension premiums, see 1.3.3.

#### 1.7.2. Allowances

For the computation of a tax credit based on the personal allowance and allowances for children, see 1.7.3.

#### 1.7.3. Credits

A married taxpayer is entitled to a head of household credit of EUR 364 if the spouse’s income does not exceed EUR 2,200. The limit for the spouse’s permitted income is increased to EUR 6,000 for households with at least one child. The credit is also granted to single parents if the parents’ income does not exceed EUR 6,000. The household credit amounts to EUR 494 (one child), EUR 669 (two children) and EUR 220 for each additional child.

A taxpayer who receives tax-exempt family grants under the law on family equalization is, in addition, entitled to an annual tax credit of EUR 700.80 for each child.

Persons deriving employment income are entitled to an employment tax credit amounting to EUR 54 and to a traffic tax credit of EUR 291, which covers commuting expenses in general (see also 1.7.1.).

Retired persons may credit EUR 400. They are not entitled to the lump-sum deduction of EUR 132 for expenses connected with employment. The credit is phased out for pension income between EUR 17,000 and 25,000.

Taxpayers incurring a negative tax may qualify for a cash tax refund if they qualify for the head of household or the single parent credit. Furthermore, taxpayers who incur a negative tax and qualify for the employment tax credit, receive a credit for future tax years at 10% of the social security contributions paid, subject to a maximum of EUR 110.

### 1.8. Losses

As a rule, losses must first be set off against income from the same category (see 1.2.1.) and secondly against all other categories of income. However, capital losses
not attributable to business income may only be set off against capital gains.

Losses may be carried forward indefinitely. In principle, only taxpayers who determine their profits according to the net-worth comparison method (see 1.2.1.) qualify for a loss carry-forward. However, also taxpayers who determine their business income according to the net-income method may carry forward losses arising from the 3 preceding years, irrespective of whether the losses are start-up losses.

Losses incurred by an individual from a business consisting mainly of the management of intangible assets or of leasing activities, may not be set off against income from any other source. Such losses may be set off against future profits of the same business.

Losses that have been incurred in the current or a previous tax year can only be set off against 75% of the income from the current tax year. Excess losses may be carried forward to the following tax year.

1.9. Rates

1.9.1. Income and capital gains

Income tax is computed on the aggregate net income of all categories of income (see 1.2.1.). The rates for 2010 are as follows:

<table>
<thead>
<tr>
<th>Taxable income (EUR)</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>first 11,000</td>
<td>0</td>
</tr>
<tr>
<td>next 14,000</td>
<td>36.5</td>
</tr>
<tr>
<td>next 35,000</td>
<td>43.2143</td>
</tr>
<tr>
<td>over 60,000</td>
<td>50</td>
</tr>
</tbody>
</table>

The following types of income are subject only to one half of the effective rate on the taxpayer’s total income as calculated according to the above table:

- extraordinary income, including gains from the sale of a business (if owned for at least 7 years), certain indemnifications for lost income and the repayment of share capital;
- capital gains from the sale of a holding in a resident company held as a business asset by a sole entrepreneur or partnership;
- capital gains from the sale of a substantial shareholding in a company (see 1.6.); and
- income from qualifying use of forests.

1.9.2. Withholding tax

Dividends and other profit distributions to resident individuals are subject to a final withholding tax at a rate of 25%. This also applies if such income is derived in the course of a trade or business. If, however, the final 25% tax is less favourable than one half of the effective rate on the taxpayer’s total income (see 1.9.1.), the latter will apply if requested by the taxpayer within 5 years. See also the discussion on progressive rates on interest income below.

The following types of interest received by resident individuals are subject to a final withholding tax at a rate of 25%:

- interest on deposits and other debt claims with certain banks;
- interest on certain securities, including convertible and profit-sharing bonds;
- income from participations in investment funds and similar participations; and
- interest on securities issued by international institutions after 30 September 1992.

Interest on securities is subject to the final withholding tax only if the securities are offered publicly; for private issues, progressive income tax rates with a credit for any withholding tax apply.

Regarding interest income subject to the above final withholding tax, the appropriate progressive income tax rate will apply instead if so requested by the taxpayer within 5 years. If this option is exercised, the progressive rate will apply to all dividend (for dividends, one half of the effective rate applies, see above) and interest income; thus, the option may not be exercised for dividend or interest income only. The tax authorities are obliged to apply the progressive rate in both cases if that rate is below 25%. Where dividend and interest income is taxed at a progressive rate (for dividends, one half), the withholding tax is credited against the income tax so calculated.

Employers are generally obliged to withhold tax from salaries paid to their employees. The wage tax is basically a prepayment of the employee’s final income tax and is credited against the assessed income tax liability if an obligation to file an income tax return exists. This is, amongst others, the case if the taxpayer has derived other income than employment income in excess of EUR 730 or if he has been employed simultaneously by two or more employers. An assessment may also be requested by the taxpayer. The wage tax does not apply to salaries paid by an employer who has no business establishment in Austria.

1.10. Administration

1.10.1. Taxable period

In general, the tax year is the calendar year. However, individuals who earn business income and are registered with the commercial register may use a tax year different from the calendar year, if approved by the tax authorities.

1.10.2. Tax returns and assessment

In general, tax returns are due by 30 April of the year following the tax year (30 June if the tax return has been submitted electronically). If a tax return is filed late, a penalty of a maximum of 10% of the tax due may be imposed at the discretion of the tax authorities. In addition, interest is due on any tax owed.

1.10.3. Payment of tax

Taxes are collected during the tax year either by preassessment or withholding at source where possible (see 1.9.2.). Prepayments must be made by 15 February, 15 May, 15 August and 15 November for income tax pur-
poses. These payments are generally based on the prior year’s tax.

Withheld or prepaid taxes are credited against the final tax liability, unless they are final (see 1.9.2.). If the taxpayer’s final tax liability exceeds the aggregate of the amounts already withheld or paid, tax is refunded. The final tax is payable within 1 month after the date of receipt of the notice of assessment.

1.10.4. Rulings

Advance ruling requests may be addressed to the local tax office, to the regional fiscal directorate or to the Ministry of Finance. Rulings obtained from the Ministry of Finance or the regional fiscal directorate are never binding. Rulings of the local tax office are binding on the tax administration on the principle of good faith as long as there are no contradicting legal provisions. However, rulings are generally not binding on the taxpayer and on the courts. The taxpayer cannot appeal against a ruling. Apart from stamp duty, there are no additional charges levied.

2. Other Taxes on Income

There are no other taxes on income. The municipalities, however, receive a share of the national individual income tax.

A church tax is levied according to special rules on one half of the income and the net wealth of the taxpayer. The tax rates are subject to negotiation with the church authorities. Church tax paid, up to EUR 100 in a calendar year, may be deducted from individual income tax as a special expense.

3. Social Security Contributions

All resident employees are compulsory insured under the social security system. They must pay contributions as a percentage of their earnings up to EUR 49,320 per year or EUR 4,110 per month (a separate ceiling of EUR 8,220 applies for special remuneration, such as the 13th or 14th month’s salary). For 2010 the rates are:

<table>
<thead>
<tr>
<th>Contribution for</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>White-collar</td>
</tr>
<tr>
<td>pension insurance</td>
<td>10.25</td>
</tr>
<tr>
<td>health insurance</td>
<td>3.82</td>
</tr>
<tr>
<td>unemployment insurance</td>
<td>3.00</td>
</tr>
<tr>
<td>housing fund</td>
<td>0.50</td>
</tr>
<tr>
<td>total</td>
<td>17.57</td>
</tr>
</tbody>
</table>

Certain employees must make a contribution to the chambers of employees (0.5%) and a bad weather compensation contribution (0.7%).

An additional 3.4% health insurance contribution is payable for spouses, partners and other family members (except children and grandchildren) who are insured together with the taxpayer. The base for the contribution is the employment income of the taxpayer, subject to the above-mentioned ceiling for the general social security contributions. Alternatively, the family member may opt for a separate health insurance, in which case a contribution payable for such insurance varies from EUR 51.69 to 350.12 per month, depending on the occupation and income.

Social security contributions are deductible for income tax purposes.

4. Taxes on Capital

4.1. Net wealth tax

There is no net wealth tax.

4.2. Real estate tax

Immovable property situated in Austria is subject to real estate tax. The tax is levied on the assessed standard value of immovable property, whether developed or not. In general, the assessed value is substantially lower than the market value.

The real estate tax is levied at a basic federal rate, multiplied by a municipal coefficient. The basic federal rate is usually 0.2% and the municipal coefficients range up to 500%. For individuals, real estate tax paid is only deductible if the property is used for business purposes.

5. Inheritance and Gift Taxes

From 1 August 2008, inheritance and gift taxes are no longer levied in Austria. However, a reporting obligation has been introduced regarding gifts inter vivos.

For donations to foundations and trusts, a foundation entrance tax of 2.5% is levied. This tax is increased to 25% if the donation is made to a foundation or trust that is not comparable to the Austrian private foundations (see Corporate Taxation, 1.7.1.) or if the relevant documents regarding the organization of the foundation or trust are not forwarded in time to the competent tax authority or if the foundation or trust is resident in a state which does not have a treaty for administrative assistance or execution with Austria. The foundation entrance tax is triggered if either the founder or the foundation (or trust) is an Austrian resident.

6. International Aspects

6.1. Resident individuals

For the concept of residence, see 1.1.

6.1.1. Foreign income and capital gains

A resident individual is subject to tax on his worldwide income and capital gains. Foreign income is subject to the same income tax as domestic income; foreign capital gains are taxable under the same rules as domestic capital gains.