Introduction

Corporate taxpayers are subject to national corporate income tax. There are no other taxes on the income of companies. A payroll tax and social security contributions are levied on the aggregate salaries paid to employees. A VAT system applies to the supply of goods and services.

In general, the description below applies to all areas of Austria. For VAT purposes, however, the small villages of Jungholz and Mittelberg near the German border are excluded.

The currency is the euro (EUR).

1. Corporate Income Tax

1.1. Type of tax system

The Austrian corporate income tax is based on the classical system. Corporate profits are subject to corporate income tax. Dividends paid to individual shareholders and portfolio corporate shareholders are subject to a withholding tax. For an individual shareholder, the withheld tax is final; for a portfolio corporate shareholder, it is credited against final income tax liability (on other income) or refunded on request. There is no withholding tax on dividends paid to substantial corporate shareholders. Dividends are exempt from corporate income tax in the hands of a corporate shareholder, regardless of the size of the holding (participation exemption, see section 2.2.).

1.2. Taxable persons

Legal entities subject to corporate income tax include:

- stock companies (AG);
- limited liability companies (GmbH);
- private foundations;
- commercial enterprises operated by public entities;
- associations, institutions, foundations without independent legal existence and accumulations of property for a specific purpose.

Both limited and general partnerships are treated as transparent entities for tax purposes.

This survey is restricted to resident stock companies and limited liability companies, as well as to foreign-incorporated entities of a similar description, whether resident or non-resident. These entities will be referred to as companies.

The private foundation is not allowed to pursue trade or commercial activities as its main activity but it may operate as a holding company. The private foundation is, in principle, subject to corporate income tax on its worldwide income. However, special treatment is provided for certain items of passive income and capital gains derived by the foundation. For details, see section 1.7.1.

1.2.1. Residence

A company is resident if it has its legal seat (place which is designated as such in its statutes) or its place of effective management in Austria. Companies incorporated under Austrian commercial law must have their legal seat in Austria. For the place of effective management test, the location of the strategic management (i.e. where the leading decisions are made), and not that of the day-to-day management, is decisive.

1.3. Taxable income

1.3.1. General

Resident companies are taxable on their worldwide income. The provision that lists items of taxable income is broadly worded and includes practically all income, whether principal or accessory in nature, and whether received in money or money’s worth. Taxable income is the total income from one or more sources listed in the Individual Income Tax Law, decreased by some special expenses and the losses incurred from these sources. Income and capital gains are pooled and taxed at the same rate. The computation of the income follows the rules of the Individual Income Tax Law, unless the Corporate Income Tax Law provides otherwise.

1.3.2. Exempt income

The most important items of exempt income are domestic and foreign dividends under the participation exemption (see section 2.2.). Also exempt are contributions by shareholders to the capital of a company upon formation or increase, whether or not in return for shares or other membership rights or in proportion to shareholding.

1.3.3. Deductions

1.3.3.1. Deductible expenses

In general, expenses incurred in acquiring, securing and maintaining taxable income are deductible. Employees’ remuneration is deductible. In addition to direct payments of remuneration, employers may deduct the costs of employee benefits including retirement plans, health, accident and life insurance, meals, cars and other fringe...
benefits. In some cases the deduction is limited either by statutory law or rulings, e.g. for certain contributions to pension funds.

Interest on loans and other debts to third parties economically connected with any type of income is generally deductible (for restrictions, see section 1.3.3.2.). Interest payments to shareholders or parties related to shareholders are subject to arm’s length standards. Therefore, interest charged at excessively high rates on loans granted by shareholders or affiliates may be deemed a “hidden profit distribution”. Such interest is then not deductible.

Royalties are as a general rule deductible. Similarly with the rules on interest, excessive royalty payments to shareholders or affiliates are treated as disguised profit distributions. However, royalties paid at arm’s length are always deductible.

1.3.3.2. Non-deductible expenses
Dividends and all other profit distributions may not be deducted.

Interest is not deductible if it is incurred to generate tax-free income. Where a resident company concludes a loan contract to finance the acquisition of a participation in the share capital of another resident or non-resident company attributed to the business assets of the company, the interest paid on the loan is deductible even if the dividends received from such participation are tax-exempt in the hands of the recipient company. From 1 January 2011, interest on loans taken out to finance the acquisition of intercompany participation is not deductible.

There are restrictions on the deductibility of directors’ fees. One half of the remuneration paid to members of the supervisory board or any other persons in relation to supervisory services is not tax deductible. One quarter of the remuneration paid to non-managing directors is not tax deductible. The same applies to one half/one quarter of the reimbursement of travelling expenses, insofar as they exceed the maximum tax-free lump-sum reimbursement amounts of the Individual Income Tax Law. Also see section 7.3.

1.3.4. Valuation of inventory
Each category of inventory may be valued at acquisition costs (including incidental costs such as import duties, insurance, freight, etc.) or at production cost. Fungible goods may also be valued by using the weighted average cost method. If, however, the going concern value at the end of the financial year is lower than the cost price or production cost, inventory has, due to the rules in commercial law, to be valued at this lower going concern value.

Where inventory is valued according to the cost price, the FIFO method is generally accepted. The LIFO method is allowed only if it is in accordance with the taxpayer’s actual practice.

Write-downs for anticipated future losses may be deducted if they are necessary to arrive at a net realizable value. Other anticipated losses can only be recognized if they concern pending transactions involving the inventory to be valued.

1.3.5. Depreciation and amortization
Depreciation, which is mandatory whether there is a profit or a loss in the financial year concerned, may generally be taken on all assets used in business. However, assets whose value basically does not decrease, do not qualify for depreciation. Depreciation starts when an asset is put to use in the business. Depreciation may only be claimed by the owner of the asset.

The depreciable base is the acquisition cost or production cost. If the taxpayer has acquired the business asset without any consideration, the depreciable base is the amount, which should have been paid by the taxpayer at the moment of acquisition. The asset must be valued at its lower going concern value at the end of the financial year if the reduction in value is expected to be permanent (extraordinary depreciation). Financial assets (i.e. participations) may be written down to a lower going concern value even if the reduction in value is not expected to be permanent.

Only the straight-line method is permitted for tax purposes. For the first financial year of use, depreciation for 12 months is allowed, if the asset has been in use for more than 6 months; otherwise it is allowed for 6 months.

The allowable deduction for depreciation of fixed assets used in a trade or business is computed according to the useful life of the asset in the respective trade or business. Although standards have been developed – partly by law, partly by administrative practice – it is still possible for the taxpayer to argue that the useful life of an asset is shorter or longer in his specific trade or business than it would be in a comparable trade or business.

Although no general guidelines have been issued with regard to the rate of depreciation, buildings may be depreciated at a rate of 2%, 2.5% or 3%, unless the taxpayer proves otherwise. Cars may only be written off over an 8-year period. Goodwill may only be written off over a 15-year period. A movable asset whose net cost does not exceed EUR 400 may be fully written off in the year of acquisition.

The depreciation of a plant is explicitly allowed. Without any proof of the useful life, depreciation of a plant is allowed by applying a percentage of up to 3% (33 1/3 years) if the building serves directly the purpose of the trade or business. A shorter economic life of not less than 20 years will be permitted if justified by technical or economic circumstances.

The value of assets that were written down to a lower going concern value in a previous year may be adjusted if the reasons for the extraordinary depreciation no longer exist. In the case of financial assets such adjustments are obligatory. Adjustments not made must be indicated in the notes accompanying the balance sheet.

1.3.6. Reserves and provisions
Provisions and valuation adjustments reduce and increase taxable profits upon their creation and dissolution,
respectively. The most important cases where provisions are allowed to be set up are:
- severance payments;
- current pension payments and future interests in pensions;
- other uncertain liabilities; and
- anticipated losses from pending projects.

Liability provisions do not have to be legal or certain in amount, and generally a wide scope is given to taxpayers’ estimates if based on objective facts and special business experience in the particular industry, transaction, etc. On the other hand, it is not allowed to set up such liability provisions on a globally estimated basis. Typical liability provisions are set up for actual liabilities on surety obligations, warranties, damage claims, tax advisors’ costs, etc. Self-insurance and deferred repair provisions are disallowed.

Provisions may not exceed the going concern value of the expected liability and must be reflected in the commercial balance sheet. They have to be dissolved as soon as the reason for their creation has disappeared, except in the case of valuation adjustments for bad debts, which may be maintained until the debt is paid.

In general, only 80% of the value of provisions, other than those for severance payments and pensions, may be taken into account for tax purposes. However, provisions with a term of up to 12 months may be fully taken into account.

1.4. Capital gains
Capital gains derived from the sale or other disposition of business property are taxed as business income of a company at normal rates. No rollover relief is granted.

From 1 October 2011, capital gains, not connected with a trade or business, derived from the disposal of shares and units held in funds purchased after 31 December 2010 or bonds, debentures and derivatives purchased after 30 September 2011, that are business assets are subject to a special tax rate of 25%.

1.5. Losses

1.5.1. Ordinary losses
Losses may be carried forward indefinitely. A carry-back of losses is not permitted. Only the taxpayer who incurs a loss may claim it as a deduction. There are, however, some exceptions in the case of mergers, divisions, etc. Losses incurred in the current or a previous tax year can only be set off against 75% of the income of the current year. Excess losses may be carried forward to the following tax year.

Losses arising from a participation in a company or partnership may not be set off against profits from other activities if the main purpose of the participation is to obtain tax advantages. Such losses may be set off against future profits from the participation. The intention to obtain tax advantages is presumed if the acquisition of the participation is offered to the public and if the after-tax return that would be obtained is more than twice the before-tax return that would have been obtained under the general participation exemption (ignoring the anti-avoidance provision).

Foreign losses not taken into account abroad must be included in the Austrian tax base. Any foreign loss must be recaptured if it can later be utilized in the foreign country.

Losses resulting from the devaluation, disposal or redemption of shares and units in funds purchased after 31 December 2010 and debentures, bonds and derivatives purchased after 30 September 2011 that are subject to the special tax rate of 25%, must firstly be set off against capital gains resulting from such financial instruments. 50% of the remaining losses may then be set off against other business income or be carried forward. This rule does not apply to corporations subject to unlimited tax liability.

1.5.2. Capital losses
Capital losses are treated in the same way as ordinary losses.

1.6. Rates

1.6.1. Income and capital gains
The flat rate of the corporate income tax is 25%. This rate also applies to capital gains.

An annual minimum tax of EUR 3,500 for AGs and EUR 1,750 for GmbHs is levied. Adjustments are provided for banks and insurance companies as well as for new companies. The minimum tax is due in advance and can be set off against the final corporate income tax.

1.6.2. Withholding taxes
Dividends and other profit distributions to resident companies are subject to withholding tax at a rate of 25%. No withholding tax is due if the dividends are paid to a company that holds at least 25% of the shares in the distributing company. From 1 April 2012, the minimum participation will be reduced to 10%. If tax is withheld, it is credited against the final income tax liability (on other income) of the company, or refunded on request.

Dividends paid to private foundations (see section 1.7.1.) on or after 18 June 2009 are exempt from withholding tax under the general conditions. Before that date, such dividends were generally exempt from the withholding tax without regard to the degree of holding.

A withholding tax of 25% applies to most types of interest that are paid out in Austria, except interest on loans between two companies. Tax withheld constitutes only a prepayment of the corporate income tax due and may be credited against the final tax liability. Types of interest that are subject to the withholding tax include:
- interest on deposits and other debt claims with certain banks;
- interest on certain securities, including convertible and profit-sharing bonds (from 1 April 2012, only if they are offered to the public);
- income from participations in investment funds and similar participations; and
– interest on securities issued by international institutions after 30 September 1992.

There is no withholding tax on royalties paid to resident companies.

For rates of withholding tax on payments to non-residents, see section 6.3.

1.7. Incentives

1.7.1. Private foundations

Although private foundations are subject to unlimited corporate income tax liability, until 2000 numerous items of passive income derived by them were exempt. From 1 January 2001 exemptions are only granted for domestic dividends (see sections 1.6.2. and 2.2.), and, until 17 June 2009, for foreign dividends if no relief from foreign withholding tax could be obtained under a tax treaty. With respect to dividends received by private foundations on or after 18 June 2009, the participation exemption applies analogically under the general conditions (see section 6.11.2.).

Interest income from domestic and foreign deposits or other claims against banks, bonds, convertible bonds, profit-sharing bonds and shares in investment funds or real estate funds are subject to an interim corporate income tax at a reduced rate of 12.5%. From 1 January 2011 the rate is increased to 25%. Capital gains from the alienation of shares realized before 1 April 2012 are also taxable at the interim corporate rate of 25% if the private foundation has had a substantial shareholding (i.e. at least 1% in the company’s equity) at any moment within the last 5 years. Additionally, from 1 April 2012, capital gains from the sale of (i) financial instruments generating capital income, and (ii) derivative financial instruments will be subject to interim corporate income tax of 25%.

The interim corporate income tax of 25% only applies to interest income resulting from publicly placed bonds, debentures and index-linked notes. Based on a grandfathering rule, this is only relevant for shares and fund units acquired after 31 December 2010 and for bonds, debentures, index-linked notes and other derivatives purchased after 31 March 2012. For shares and fund units acquired before 1 January 2011, the old rules apply. For shares and fund units acquired after 31 December 2010, the speculative period is extended up to 15 months; if such shares or fund units are sold within the speculative period, the normal corporate tax rate of 25% applies. A grandfathering rule also applies to other kinds of financial instruments generating capital income (i.e. bonds, debentures, index-linked notes and derivative financial instruments) bought before 1 April 2012.

Bonds, debentures, index-linked notes and derivative financial instruments purchased between 1 October 2011 and 31 March 2012 are subject to speculative gains taxation irrespective of the holding period. In this case the normal corporate tax rate of 25% applies. If such instruments are sold after 31 March 2012, the interim corporate tax rate applies.

The hidden reserves that are revealed upon alienation of a substantial shareholding of at least 1% may be set off against the acquisition cost of a substantial participation (of more than 10% of the shares) acquired in the same year or up to 12 months after the alienation. For acquisition of shares after 31 December 2007, the set-off of hidden reserves revealed upon alienation of shares does not apply if the foundation, its founder or a beneficiary holds, alone or together, directly or indirectly, at least 20% of the seller of the shares in the newly acquired participation.

If the private foundation makes a distribution in the same tax year and the withholding tax (see section 1.6.2.) is levied on the distribution, the interim tax on interest and capital gains is not levied. If the profits are carried forward, the tax is credited against the foundation’s tax liability in the tax year of the distribution.

From 1 July 2010, Austrian private foundations have to submit, upon request, the current statutes and by-laws of the foundation to the competent tax authorities. From 1 April 2011, such foundations have to inform the tax authorities about the beneficiaries.

1.7.2. Invention allowance

For tax years starting from 1 January 2011, the invention allowance is abolished. Starting from that date, an invention premium of 10% of the expenses for research and development may be claimed.

For tax years starting before 1 January 2011, an invention allowance is granted for expenses incurred for the expenses of research and experimental development. In addition, an invention allowance is granted for the development or improvement of inventions valuable for the Austrian economy, except for administration costs and distribution costs, as well as for expenses on fixed assets. The value for the Austrian economy of an invention must be shown by a certificate by the Federal Minister for Economic Affairs. This certificate is not required if the invention is already protected under patent law. As a general rule, the maximum invention allowance is 25% of the research and development expenses.

An increased invention allowance of up to 35% applies to that portion of the expenses which exceeds the arithmetic average of all such expenses for which an invention allowance or premium (see below) has been claimed within the last 3 tax years. In addition, an allowance of 25% is granted in respect of certain research and experimental activities carried out within a company. Alternatively, an invention premium of 8% of the expenses for research and development may be claimed. A company ordering a research project sourced out to a research institution is granted an allowance of 25% of the expenses; this allowance is, however, limited to EUR 100,000 per year.

Until 2007, the invention allowances could only be claimed with respect to expenses paid to Austrian recipients. From 2007, the allowance may also be claimed with respect to expenses paid to companies resident, or permanent establishments located, in other EEA countries.

1.7.3. Education allowance

An education allowance is granted in respect of expenses incurred for the education and training of employees. The allowance is equal to 20% of the qualifying expenses.
The allowance is granted only if the expenses are directly related to the education, which means that travelling expenses, for example, do not qualify for this relief. Only expenses paid to institutions offering education and training are generally taken into account; expenses for education and training within a company may also be considered, provided that they do not exceed a daily ceiling of EUR 2,000. The allowance has to be claimed in the tax return. Alternatively, a premium of 6% of the expenses for employees’ advanced education and training can be claimed.

### 1.7.4. Newly issued shares

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 by individuals, a deduction for special expenses may be claimed (see Individual Taxation section 1.7.1.). This exemption only applies to newly issued shares acquired before 1 January 2011.

### 1.8. Administration

#### 1.8.1. Taxable period

In general, the tax year is the calendar year. A tax year different from the calendar year may be used, if approved by the tax authorities. The tax authorities must give their consent if the taxpayer can show valid economic reasons for the change, other than the saving of taxes.

#### 1.8.2. Tax returns and assessment

For calendar year taxpayers, the due date for filing corporate income tax returns is 30 April of the following year. It is extended to 30 June for tax returns filed in electronically. An automatic extension is granted for 1 year if the return is prepared by tax professionals. This period can be extended further under exceptional circumstances upon request.

#### 1.8.3. Payment of tax

Taxpayers must make prepayments of tax in four equal instalments by 15 February, 15 May, 15 August and 15 November of each tax year in accordance with an assessment notice issued by the tax authorities, which, in general, is based on the prior year’s tax, plus an adjustment (4% for the calendar year following the year of the last assessment, 5% for every subsequent year). The prepaid amount may be further adjusted if the liability for the current year is estimated to vary substantially from the total prepayments to be made in the year. The prepayments fixed for the assessment period and any amounts collected through withholding are credited against final corporate income tax liability. Excess prepayments are refunded, unless they do not exceed the minimum tax (see section 1.6.1.). In this case, they are carried forward and offset against the corporate income tax liability of future years.

Assessed corporate income tax is normally payable within 1 month after the date of issue of the assessment notice. Postponement may be granted if an appeal has been lodged.

#### 1.8.4. 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.

From 1 January 2011, advance rulings for reorganizations, group taxation and transfer prices are introduced. Such rulings are binding on the tax authorities. The taxpayer may appeal against the ruling. Fees are levied on the issuance of the rulings in the amount ranging from EUR 1,500 to EUR 20,000, depending on the sales revenue of the taxpayer.

### 2. Groups of Companies

#### 2.1. Group treatment

From 2005, the traditional Austrian group relief system has been replaced by a new system of optional group taxation. Group parent companies and their subsidiaries may elect for consolidated income taxation if the parent exercises financial control over the subsidiary. Financial control is presumed if the group parent owns more than 50% of the capital and voting power in the subsidiary from the beginning of the financial year.

Consolidated income taxation means that a subsidiary, although a separate legal entity according to company law, is treated as a branch of its parent company for tax purposes. This ensures that losses of one group company are immediately set off against profits of the other companies. Irrespective of the participation held, 100% of the profits and losses of the group members will be attributed to the group parent. In contrast to that, losses of non-resident group members can be offset to the extent of the direct participation share by the group parent. The loss will have to be recovered if it can be offset against the profit of the non-resident group member in the foreign country in a later period or if the non-resident entity leaves the group. In the case of insolvency or liquidation resulting in actual and definite loss of the capital invested in a non-resident group member, the loss to be recovered is reduced by tax-neutral write-offs of the participation incurred during group membership.

Because of the use of losses and goodwill amortization, write-offs in respect of participations in group members are not tax deductible for income tax purposes. If a share in a (new) Austrian group member is acquired after 31 December 2004, an additional deduction will be available for the amortization of goodwill of the target company (not applicable for intra-group acquisitions and acquisitions of non-resident companies). The amortization is
evenly allocated over a period of 15 years and is limited to 50% of the purchase price of the shares. The deduction is available without corresponding taxation of the goodwill in the target company but it reduces the acquisition cost of the participation. Conversely, a negative goodwill triggers corporate income tax spread over 15 years.

2.2. **Intercorporate dividends**

Special rules apply to dividend distributions, including hidden distributions, received by resident companies from other resident companies. Such distributions are exempt from corporate income tax in the hands of the recipient company, regardless of the size of the holding (participation exemption). Costs related to such shareholdings are not deductible.

The participation exemption does not extend to capital gains and liquidation proceeds.

The exemption applies also to private foundations receiving dividends from resident companies.

For foreign-source dividends, see section 6.1.1.; for dividends paid to non-resident companies, see sections 6.2.1. and 6.3.1.

3. **Other Taxes on Income**

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

4. **Taxes on Payroll**

4.1. **Payroll tax**

There is no general payroll tax. However, a municipal tax is levied as a substitute for the abolished business tax on payroll.

The municipal tax is levied at the rate of 3% of the aggregate salaries paid to the employees. A person is considered to be an employee if he derives his income either from dependent work or certain forms of independent work.

Enterprises maintaining a single permanent establishment may claim an allowance of EUR 1,095, provided that their assessment base does not exceed EUR 1,460 per month.

The municipal tax is deductible for corporate income tax purposes.

It is at issue whether or not the municipal tax automatically falls within the scope of existing tax treaties. In general, this is assumed with respect to tax treaties containing an automatic adaptation clause within the meaning of Art. 2(4) of the OECD Model Convention, since the tax is a substitute for the abolished business tax on payroll.

Every employer must also make contributions to the Family Burden Equalization Fund, irrespective of whether he has a permanent establishment in Austria.

The employer’s contribution is levied at a rate of 4.5% (plus a surcharge varying between 0.38% and 0.44% depending on the region) on the aggregate amount of the salaries.

4.2. **Social security contributions**

Employers must pay social security contributions for all employees whose place of work is in Austria. Contributions are levied on an employee’s remuneration up to EUR 50,760 per year or EUR 4,230 per month (a separate ceiling of EUR 8,460 applies for special remuneration, such as the 13th or 14th month’s salary). For 2012 the rates are:

<table>
<thead>
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<th>Contribution for</th>
<th>White-collar</th>
<th>Blue-collar</th>
</tr>
</thead>
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<tr>
<td>pension insurance</td>
<td>12.55</td>
<td>12.55</td>
</tr>
<tr>
<td>health insurance</td>
<td>3.83</td>
<td>3.70</td>
</tr>
<tr>
<td>unemployment insurance</td>
<td>3.00</td>
<td>3.00</td>
</tr>
<tr>
<td>accident insurance</td>
<td>1.40</td>
<td>1.40</td>
</tr>
<tr>
<td>insolvency insurance</td>
<td>0.55</td>
<td>0.55</td>
</tr>
<tr>
<td>housing fund</td>
<td>0.50</td>
<td>0.50</td>
</tr>
<tr>
<td><strong>total</strong></td>
<td><strong>21.83</strong></td>
<td><strong>21.70</strong></td>
</tr>
</tbody>
</table>

For employment agreements entered into from 1 January 2003, the employer must pay a monthly contribution of 1.53% to the employees’ future fund. Employers must make an additional night shift/heavy work contribution (2%) and a bad weather compensation contribution (0.7%) in respect of certain blue-collar workers.

Social security contributions paid by employers are deductible for corporate income tax purposes.

5. **Taxes on Capital**

5.1. **Net worth tax**

There is no net worth tax.

5.2. **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%. Real estate tax paid is deductible for corporate income tax purposes.

6. **International Aspects**

6.1. **Resident companies**

For the concept of residence, see section 1.2.1.
6.1.1. Foreign income and capital gains

6.1.1.1. General

A resident company is subject to tax on its worldwide income and capital gains. The rules in sections 1.3. and 1.4. generally apply also to foreign income and capital gains. Foreign losses must be taken into account in the same way as domestic losses (see section 1.5.1.), but they are subject to recapture if they can later be utilized in the foreign country.

6.1.1.2. Exempt dividends and gains on shares

Qualifying dividends from, and capital gains on the sale of a substantial shareholding in a company resident in an EU Member State are exempt under the Austrian law implementing the provisions of the EU Parent-Subsidiary Directive (90/435). Dividends and gains derived from subsidiaries resident outside the European Union are exempt under the same conditions; in this case, the subsidiary must be comparable to a resident company.

Dividends qualify for the international participation exemption if:
- the parent company is legally required to keep books and records under the Commercial Code or the parent company is a foreign company that qualifies as a resident of Austria for corporate income tax purposes;
- the subsidiary company has a form listed in the Directive and is subject to a corporate income tax listed in the Directive with no possibility of opting for taxation or being exempt;
- the parent holds directly or indirectly at least 10% of the equity of the subsidiary; and
- the parent’s minimum 10% shareholding is held continuously for at least 1 year.

Capital gains and any write-ups are exempt, while capital losses and write-downs are non-deductible. The latter limitation does not apply to losses upon liquidation or insolvency of the subsidiary resulting in actual and definite loss of the capital invested in a non-resident entity. In such a case, capital losses are deductible, but must be reduced by the distributions made by the subsidiary within 5 years prior to the liquidation or insolvency. In addition, capital gains and losses are taxable or deductible, as the case may be, if the parent company has, in the year of acquisition of the participation, exercised an option to have capital gains or losses and write-ups and write-downs taxable or deductible, as the case may be.

The exemption is likewise granted to Austrian permanent establishments of companies resident in an EU Member State if they have a form listed in the Directive and the holding attributable to the permanent establishment fulfills the requirements as listed above. Interest expenses relating to debt-financed acquisitions of shares are tax deductible if the shares lead to tax-exempt dividend income and are attributable to business assets.

A shift from the exemption method to the credit method takes place in case of tax avoidance or abuse of law. This provision, which applies to all foreign dividend payments, is designed to prevent resident companies from benefiting from the affiliation privilege as regards their foreign-source income that has been subject to low taxation (tax burden abroad less than 15%). If a shift from the exemption method to the credit method has taken place, the foreign corporate income tax paid on the foreign-source income received will, on request, be credited up to the amount of the domestic tax due on that income.

Tax avoidance or abuse of law can, in particular, be assumed if the following conditions are fulfilled:
- the focus of the non-resident subsidiary’s business operations consists directly or indirectly in deriving interest income, income from the leasing of assets or the sale of shareholdings (passive income); and
- the tax rates or the taxable base in the country in which the non-resident subsidiary is resident are not comparable with Austrian taxation; foreign taxation is not comparable if it is less than 15% of the taxable base determined by Austrian tax law; a foreign average tax burden of less than 15% is not detrimental if it is caused by using special depreciation methods or carry-backs or carry-forwards of losses.

Under the Tax Amendment Law 2009, the participation exemption is extended to portfolio dividends (holdings of less than 10%) derived from companies resident in the EEA countries. No holding period is required for applying the tax exemption for such dividends. In the case of dividends from EEA countries, the exemption only applies if the parent company is a resident of Austria for corporate income tax purposes; the subsidiary company has a form listed in the Directive and is subject to a corporate income tax listed in the Directive with no possibility of opting for taxation or being exempt; the parent holds directly or indirectly at least 10% of the equity of the subsidiary; and the parent’s minimum 10% shareholding is held continuously for at least 1 year.

From 2011, the participation exemption also applies to portfolio dividends from companies resident in non-EU Member States if the dividend-paying foreign company is comparable to an Austrian corporation and resident in a state with which Austria has concluded a comprehensive agreement on mutual assistance in the collection and collection of taxes with the company’s state of residence. This would be the case with Norway, while Austria has no such agreements with Iceland and Liechtenstein. The amendments are applicable in respect of all tax assessments that were still open on 18 June 2009. However, a shift from the exemption to the credit method may take place for portfolio dividends from EEA countries whose tax level is not comparable with the Austrian corporate income tax (at least 10% lower than the Austrian tax).

From 2011, the participation exemption also applies to portfolio dividends from companies resident in non-EU Member States if the dividend-paying foreign company is comparable to an Austrian corporation and resident in a state with which Austria has concluded a comprehensive agreement on mutual assistance in the collection and collection of taxes with the company’s state of residence. This would be the case with Norway, while Austria has no such agreements with Iceland and Liechtenstein. The amendments are applicable in respect of all tax assessments that were still open on 18 June 2009. However, a shift from the exemption to the credit method may take place for portfolio dividends from EEA countries whose tax level is not comparable with the Austrian corporate income tax (at least 10% lower than the Austrian tax).

For portfolio dividends that are generally tax exempt, a shift from the exemption to the credit method may take place if the foreign corporate tax is not comparable with the Austrian corporate tax (i.e. if the foreign level of corporate tax is at least 10% lower than the Austrian tax) or if the foreign corporation enjoys extensive objective or subjective tax exemptions (other than the participation exemption).

For taxable periods starting after 31 December 2010, the participation exemption is granted only if the foreign-source dividends are not tax deductible for the foreign distributing company.

From tax year 2011, in cases where there is a shift from exemption to credit method and the foreign tax credit is higher than Austrian corporate tax due (excluding minimum corporate tax), an unlimited carry-forward is granted for the excess tax credit.
6.1.2. Foreign capital

There is no net worth tax. Immovable property located abroad is not subject to real estate tax in Austria.

6.1.3. Double taxation relief

For active income, such as income from a business carried on through a permanent establishment situated abroad, unilateral relief is granted by way of an exemption with progression. The exemption is granted if the income has been subject to a tax of at least 15%.

For passive income, such as dividends, interest and royalties (and for active income that does not qualify for the above-mentioned exemption), unilateral relief is granted by way of an ordinary foreign tax credit. The foreign income tax is credited on a per-country limitation basis. The relief is also granted in respect of local income taxes that are levied in the source state but not covered by a treaty.

In order for the unilateral relief to apply, the recipient must provide reliable documentation for each item of foreign income, including its amount, the date of payment, the source state, and the nominal and effective foreign income tax suffered.

6.2. Non-resident companies

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

6.2.1. Taxes on income and capital gains

A non-resident company is taxable on business income if it carries on a business through a permanent establishment in Austria or participates in such a business. As a general rule, a non-resident company is subject to tax on all income earned through the activities of its permanent establishment or derived from assets held by the permanent establishment as business property. A building site or construction and installation project constitutes a permanent establishment after 6 months. Non-resident entities may carry forward losses of an Austrian permanent establishment only insofar as they exceed the global income of the non-resident company.

From 1 January 2006, income, including capital gains, from Austrian-situs immovable property is taxable for a non-resident company as its business income, regardless of whether or not it is attributable to a permanent establishment. Hidden reserves relating to immovable property that have been accrued before 1 January 2006 remain tax exempt, provided that they were tax exempt under the old rule. According to the old rule, capital gains from the sale of immovable property not attributable to a permanent establishment were only taxable if realized within 10 years after the acquisition (speculative gains).

Capital gains on the sale of shares in Austrian resident companies are taxable if the direct or indirect shareholding has been at least 1% at any time during the preceding 5 years. Capital losses incurred on the sale of shares may only be set off against capital gains on the sale of shares.

From 1 April 2012, capital gains from the sale of shares in an Austrian resident company in which the shareholder owns, or owned at any time during the preceding 5 years, a substantial shareholding, consisting of at least 1% of the company’s share capital will be subject to a final withholding tax of 25%.

Other capital gains are generally taxable only if they arise from assets pertaining to a permanent establishment in Austria.

Interest is generally only taxable for a non-resident company if it can be attributed to a permanent establishment in Austria. However, interest from loans secured by Austrian-situs immovable property is always taxable.

Gross dividends and royalties are subject to final withholding taxes (see section 6.3.) if no permanent establishment exists. Dividends and royalties attributable to a permanent establishment are fully taxable for corporate income tax purposes; any withholding tax is credited against the final tax liability. The participation exemption (see section 2.2.) is granted to Austrian permanent establishments of companies resident in an EU Member State if they have a form listed in the EU Parent-Subsidiary Directive (90/435).

Non-residents may only deduct expenses related to their taxable income. The rate of corporate income tax is the same for resident and non-resident companies.

The transfer out of Austria of assets of a permanent establishment in Austria is a deemed disposal at fair market value, which can give rise to taxation of unrealized capital gains.

6.2.2. Taxes on capital

There is no net worth tax. A non-resident company is subject to real estate tax (see section 5.2.) in respect of immovable property located in Austria.

6.2.3. Administration

A non-resident company with a permanent establishment in Austria is taxed by assessment in respect of the income attributable to the permanent establishment. See section 1.8. for details of assessment. See section 6.3. for final withholding taxes on dividends and royalties derived directly by a non-resident company.

6.3. Withholding taxes

6.3.1. Dividends

A final withholding tax is imposed on dividends and other corporate distributions paid to non-resident companies. The rate is 25%, unless a reduced rate applies under a tax treaty (see section 6.3.5.).

Under the domestic law implementing the provisions of the EU Parent-Subsidiary Directive (90/435) in Austria, dividend distributions by resident subsidiaries to non-resident EU parent companies are exempt from any withholding tax under the following conditions:

- the parent company has a form listed in the Directive;
– the parent company owns directly at least 10% of the capital in the subsidiary; and
– the shareholding has been held continuously for at least 1 year.

However, tax at source must be withheld provisionally if the dividends are distributed within the holding period of 1 year. A refund may be granted as soon as the holding period has expired.

Tax at source must also be withheld in the case of tax avoidance, abuse of law and constructive dividends. Tax avoidance or abuse of law is not present if the receiving company has submitted a written form to the paying company stating that it derives its income from active business, that it employs its own personnel and that it maintains its own business facilities. In general, a constructive dividend distribution is assumed if the paying company grants to its shareholders a benefit it would not have granted to an independent third party when applying the diligence of a prudent businessman.

By virtue of the EU-Switzerland Savings Agreement, the EU Member States must exempt dividend payments to companies resident in Switzerland under essentially the same conditions as those laid down in the EU Parent-Subsidiary Directive (before the amendments effective from 1 January 2005; thus, a minimum holding of 25% for at least 2 years may be required). However, the exemption under the tax treaty between Austria and Switzerland is subject to more lenient conditions.

6.3.2. Interest

Interest paid to non-resident companies is generally not subject to withholding tax. However, interest derived by non-resident companies from loans secured by Austrian-situs immovable property is subject to income tax by assessment at the normal rate of corporate income tax (or to a 25% withholding tax if paid to a bank), unless a reduced rate applies under a tax treaty (see section 6.3.5.) or the domestic provisions implementing the EU Interest and Royalties Directive (see section 6.3.3.).

6.3.3. Royalties

Royalties paid to non-resident companies are subject to corporate income tax by withholding at source. This is a final tax. The rate is 20%, unless a reduced rate applies under a tax treaty (see section 6.3.5.).

Under the provisions that implement the EU Interest and Royalties Directive (2003/49) in Austria, royalties paid by resident subsidiaries to their non-resident EU parent companies or their permanent establishments are exempt from any withholding tax under the following conditions:
– the parent company has a form listed in the Directive;
– the parent company owns directly at least 25% of the capital in the subsidiary; and
– the capital holding has been held continuously for at least 1 year.

However, tax at source must be withheld provisionally if the royalties are paid within the holding period of 1 year. A refund may be granted as soon as the holding period has expired.

Tax at source must also be withheld in the case of tax avoidance, abuse of law and royalties exceeding the arm’s length amount and for this reason, characterized as constructive dividends. Tax avoidance or abuse of law is not present if the receiving company has submitted a written form to the paying company stating that it derives its income from an active business, that it employs its own personnel and that it maintains its own business facilities. In general, a constructive dividend distribution is assumed if the paying company grants to its shareholders a benefit that it would not have granted to an independent third party when applying the diligence of a prudent businessman.

By virtue of the EU-Switzerland Savings Agreement, the EU Member States must exempt interest and royalty payments to companies resident in Switzerland under essentially the same conditions as those laid down in the EU Interest and Royalties Directive (2003/49). It should be noted, however, that royalty and interest payments are exempt in all cases under the tax treaty between Austria and Switzerland.

6.3.4. Other

No withholding tax is levied on management fees. Fees for technical and commercial consulting services rendered by a non-resident are subject to a 20% withholding tax. In most of its tax treaties, however, Austria waives its rights to tax such fees.

There is no branch profits or remittance tax in Austria.

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Austrian companies to non-residents under the tax treaties currently in force. Where, in a particular case, a rate is higher than the domestic rate, the latter is applicable.

Reduced treaty rates are normally not applied at source. Austrian tax authorities, however, generally allow the application of the reduced rate at source if the non-resident company presents a certificate of residence to the paying company.

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1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. Unless indicated otherwise, the rate in this column applies if the recipient company holds at least 25% of the capital or the voting power of the paying company, as the case may be. Special conditions may apply.
3. A holding of at least 10% is required.
4. The lower rate applies to interest paid by public bodies.
5. The lower rate applies to interest on bank loans.
6. These rates apply if the capital holding is at least 25%. In addition, a participation exceeding USD 100,000 is required for the 10% rate and a participation exceeding USD 250,000 is required for the 5% rate.
7. The lower rate applies to royalties for patents, designs or models, plans, secret formulas or processes and know-how not older than 3 years (in each case).
8. The higher rate applies if the recipient holds more than 50% of the capital or the voting power (as the case may be) of the company paying the royalties.
9. The domestic rate applies to interest paid by public bodies (under the treaty such interest is taxable only in the source state and there is no reduction).
10. The 10% rate applies to copyright royalties, excluding films; the 25% rate applies to trademarks.
11. The zero rate applies if the beneficial owner is a company (other than a partnership); no degree of ownership is required.
12. The lower rate applies to copyright royalties, excluding films, computer software, patents and know-how.
13. The lower rate applies to copyright royalties, including films.
14. The domestic rate applies to film royalties.
15. The lower rate applies to equipment leasing.
17. The zero rate applies if the Georgian company holds at least 50% of the capital of the Austrian company and the value of the holding exceeds EUR 2 million. The 5% rate applies if the Georgian company holds at least 10% of the capital of the Austrian company and the value of the holding exceeds EUR 100,000.
18. The rate applies if the Japanese company has held more than 50% of the capital of the Austrian company for a period of 12 months immediately before the end of the accounting period for which the distribution of profits takes place.
19. The 5% rate applies if the Liechtenstein company owns manufacturing facilities in Liechtenstein and the royalties are paid directly or through a Liechtenstein patent holding company.
20. The higher rate applies to copyrights of films and literary and artistic work.
21. The lower rate applies to copyright royalties, excluding films.
Transfer Pricing and Multinational Enterprises should be length principle. In addition, the 1995 OECD Report on between a resident company and a non-resident company pricing cases.

7.2. Transfer pricing

Under Austrian tax law, transfer pricing is only to a certain extent governed by special provisions designed to be applicable to transactions with non-resident related parties. However, the area of transfer pricing is supplemented by rules derived from general principles such as hidden profit distributions and hidden contributions. In some cases, the Austrian tax authorities also refer to the general anti-avoidance rule (see section 7.1.) in transfer pricing cases.

Under these rules, transfer prices for transactions between a resident company and a non-resident company or headquarters must be in accordance with the arm’s length principle. In addition, the 1995 OECD Report on Transfer Pricing and Multinational Enterprises should be followed when applying the various tax treaties concluded by Austria.

7.3. Thin capitalization

There are no specific thin capitalization rules in Austria. However, the Administrative Court has established certain broad and rather liberal guidelines, which are used to determine whether the equity for commercial purposes is adequate for the purpose of taxation. If the equity is inadequate, a portion of the indebtedness to shareholders may be regarded as the equivalent of shareholders’ equity. In addition, interest paid on loans that are regarded as “disguised capital” will be treated as hidden profit distribution. Such interest may not be deducted from the taxable income.

7.4. Controlled foreign company

There are no provisions regarding controlled foreign companies. The non-distributed income of a foreign company may, nevertheless, be attributed to and taxed at the level of the Austrian shareholder in proportion to its participation, but regardless of its percentage, if the foreign company is characterized as a foreign investment fund or real estate fund. The investment fund and real estate fund concepts include any foreign entity or pool of assets that (by law, statutes or on the basis of actual practice) structures its investments under the risk spreading rule. The investor is taxed under the general rules or on the basis of at least 10% of the share’s redemption value if the earnings of the foreign company characterized as a foreign investment fund or real estate fund are not disclosed to the Ministry of Finance.

8. Value Added Tax

8.1. General

Value added tax is levied at all levels of the supply of goods and services. Austria’s VAT law resembles that of the other EU Member States with certain exceptions granted to Austria by virtue of the Accession Treaty.

8.2. Taxable persons

The following persons are liable to VAT:

- entrepreneurs carrying out taxable supplies of goods and services in Austria;
- entrepreneurs as regards their intra-Community acquisitions and certain services related thereto;
- small entrepreneurs and other entrepreneurs who are exempt, persons engaged in farming or forestry who are subject to a special regime and non-taxable public law entities if the total value of their intra-Community acquisitions exceeds EUR 11,000 per year; and
- persons importing goods from non-EU Member States.
8.3. **Taxable transactions**

Taxable transactions include:
- supplies of goods and services in Austria by entrepreneurs within the scope of their business;
- certain self-supplies and supplies of services for the entrepreneur;
- intra-Community acquisitions; and
- importation of goods from non-EU Member States.

8.4. **Taxable amount**

The taxable amount is the total consideration agreed upon (excluding VAT) and charged to the person receiving the goods or services. In the case of importation from countries other than the EU Member States, the taxable amount is the value for customs duties; if the item is not subject to customs duties, the taxable amount is the consideration paid.

In computing the final tax liability in a taxable period, the VAT due on the supplies is reduced by a credit for VAT previously paid on supplies to the entrepreneur and on imports for his use.

8.5. **Exemptions**

There are two types of exemption for VAT, i.e. exemption without credit for previously paid VAT (e.g. for transactions subject to real estate transfer tax; see section 9.2.1.) and exemption with credit for VAT paid (e.g. for export).

8.6. **Rates**

The standard VAT rate is 20%. A reduced rate of 10% applies to basic foodstuffs, books and newspapers, passenger transport and renting of residential immovable property.

In the duty exclusion zones of Jungholz and Mittelberg, VAT is imposed at a rate of 16%. The reduced rate of 10% is applicable as described above.

8.7. **Non-residents**

Non-residents are taxable in the same manner as residents if they carry out any of the taxable transactions described in section 8.3.

Non-resident taxable persons without a place of business in Austria are entitled to a refund of the tax paid in Austria on goods and services insofar the supplies have been used for the person’s taxable activities.

9. **Miscellaneous Indirect Taxes**

9.1. **Capital duty**

A 1% capital duty is levied on contributions of capital to an Austrian company if the company issues shares in consideration for the contribution, or if the contribution is likely to increase the value of the contributor’s interest in the company. Only direct contributions are subject to the duty.

9.2. **Transfer tax**

9.2.1. **Immovable property**

The transfer of the title to immovable property located in Austria is subject to real estate transfer tax. The term “immovable property” includes land and buildings as well as building laws and buildings on third party land. It does not include machinery and equipment forming part of an industrial plant nor industrial or commercial franchises (e.g. mining rights).

Taxable transactions include the sale, exchange and contribution to capital upon formation of a company. The tax is also levied if all shares of a company owning immovable property are united or taken over by one shareholder. From 1 August 2008, also mortis causa transfers and inter vivos donations of immovable property located in Austria are subject to real estate transfer tax.

The taxable base is normally the value of the consideration given for the transfer, including liabilities that have been transferred. If the consideration cannot be determined or if all shares in a company owning immovable property are united or taken over by one shareholder, three times the assessed or unit value of the immovable property is used.

The tax rate is 3.5%. The rate is 2% if the property is transferred between husband and wife or parents and children. Additional registration fees and other fees and charges, in total about 2%, should be taken into consideration in calculating the cost incurred at the acquisition of immovable property.

9.2.2. **Shares, bonds and other securities**

There is no transfer tax on shares, bonds and other securities.

9.3. **Stamp duty**

Stamp duties are levied on numerous legal transactions concluded in written form. The rates vary between 0.8% and 2%; some duties are levied as a fixed amount.

The nature of such documentary stamps goes beyond the fiscal impact of other internationally known documentary stamp duties and may, in certain circumstances, cause a substantial tax burden. It is not the legal transaction, as such, which triggers the tax, but the written instrument executed to document such transaction. The most important exceptions are the granting of a shareholder’s loan and the granting of a loan by a foreign lender to a domestic borrower. In these cases, the entry of the loans into the books of the debtor constitutes the substitution of a written instrument. From 1 January 2011, however, the stamp duty on loans (also shareholder’s loans) is abolished.

Even legal documents executed abroad may be subject to the Austrian documentary stamp duty. This would occur if one party to an agreement is an Austrian resident and the transaction has Austrian links, or if the written docu-
ment evidencing the transaction is physically brought into Austria, provided that the legal transaction has legal effect in Austria, or a legal obligation is assumed under the legal document or will be performed in Austria, or the transaction refers to an object situated in Austria.

The following written agreements, inter alia, attract stamp duty:
- lease and rental agreements;
- guarantee agreements;
- easements;
- compromise and settlement agreements; and
- assignment agreements for receivables and bills of exchange.

From 1 January 2011, stamp duty on loan agreements, overdraft and mortgage deeds is abolished.