PwC Austria
Tax

PwC Austrian Tax News*

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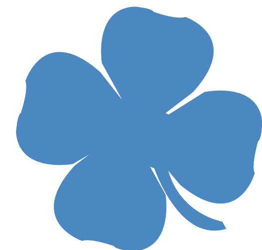
Happy
New
Year!



We wish you a happy and prosperous 2009!

Direct Taxes

Latest amendments to tax legislation

As the year 2008 draws to a close, we highlight some recent developments.

Allowance for invested profits (Freibetrag für investierte Gewinne)

With effect from the assessment year FY 07 businesses who use a cash basis of accounting can claim a tax allowance for expenditure on certain categories of fixed asset. The deduction is limited to ten percent of the profit of the respective year up to a maximum allowance of EUR 100,000 per person and year.

The categories of fixed assets include furniture and office equipment (tangible assets) such as computers, laptops, tables etc or certain securities (intangible assets). In the event the asset is removed from the business within four years, the allowance previously given for this asset is recaptured when the asset is withdrawn from business. An exception from recapture exists for bonds which are sold and replaced by another fixed asset. A recent amendment published in the income tax guidelines clarified that bonds can not be replaced by other bonds. Therefore bonds can only be replaced by tangible assets.

Entrepreneurs calculating their profits based on a lump sum deduction of business expenditures (Gewinnermittlung durch Pauschalierung) are not entitled to apply for this tax allowance.

It must be kept in mind that special documentation requirements must be followed in order to be entitled to claim this tax relief. The allowance has to be precisely recorded in the property ledger, which has to be provided to the tax authorities upon request.

Profit realization on conversion of foreign currency loans

The Austrian Supreme Administrative Court (VwGH) has recently decided that conversion gains resulting from a switch in currency of foreign currency denominated loans are not to be taxed until the profit can be regarded as being final.

This decision was based on an appeal made by a medical doctor converting a YEN denominated loan into a Swiss Francs denominated loan, which resulted in a potential taxable gain. The competent tax office assessed the income tax. As many loan agreements contain so called "multi currency clauses" the tax administration's approach would have caused tax burdens for a significant number of entrepreneurs. According to the high court a conversion profit does not become taxable before the loan is either amortized or converted to Euro respectively to a Euro dependent currency. The high court argues that the conversion of a foreign currency loan into a non Euro dependent currency does not create a new liability or rather a new negative asset. This approach is not only valid for cash basis accountants but also for entrepreneurs using the accrual basis method. As a consequence, a switch between Euro independent currencies does not realize taxable gains.

Gift Announcement Act 2008 (Schenkungsmeldegesetz 2008)

With effect from 1 August 2008 donations have to be reported to the Austrian tax authorities. This reporting requirement was created when the previous gift and inheritance tax was abolished. Those donations which exceed a defined fair market value have to be electronically reported to the competent tax office:

- In case of transfers between relatives, those with a fair market value in excess of EUR 50,000 must be reported within one year;
- In case of transfers between third parties, those in excess of EUR 15,000 must be reported within five years.

In addition, donation of the following assets has to be reported: Cash, shares in companies, securities, bonds, savings books, intangible assets (such as usufructary rights or other rights, trademarks, etc) as well as tangible assets (such as jewels, cars, artistries, etc). In the case of consecutive (small) donations within the period of one, or respectively, five years the reporting obligation is triggered if the limits of EUR 15,000, or respectively, EUR 50,000 is exceeded. If the limit is exceeded all donations granted within the period have to be reported retrospectively.

The filing with the tax office has to be effected within three months after the fair market value limit is exceeded. Where the filing does not occur in time, a penalty of up to ten percent of the value of the donations can be imposed.

The gift of domestic real estate, or a transfer without consideration, is subject to a reporting obligation as defined under to the "Real Estate Transfer Tax Act" (Grunderwerbsteuergesetz). This is not based on the new "Gift Announcement Act 2008".

Where domestic real estate is transferred after 31 July 2008 without consideration, the donee has to continue with amortization of the premises in the same manner as the donor (amortization based on the book value at the time of the donation). Under the previous rules, the regular amor-

tization at the donee was calculated either based on a special standard tax value (Einheitswert) or on a fictitious acquisition costs of the premises. The previous rules proved to be more favorable for the beneficiary as multiple amortizations of the premises could have been possible in the long run. However, the possibility to benefit from multiple amortizations no longer exists under the new regime.

In addition, where domestic real estate is transferred after 31 July 2008 without consideration, the beneficiary is allowed to continue with amortization of capitalized repair expenditures which for tax purposes have to be spread over an amortization period of ten years, and also with amortization of capitalized building expenditures which have to be spread over fifteen years. According to the previous legal situation non amortized depreciation resulting from repair and building expenditures could not be continued: Non amortized depreciation could only be continued, if the low special standard tax value was chosen as the basis for amortization and the transfer of real estate was realized because of inheritance and not due to donation.

Privately consumed air miles

Employees benefiting from accumulated air miles (in their leisure time) acquired in the course of business trips have to tax this benefit under the payroll taxation regime. The benefit for tax purposes is treated as part of the normal salary and is subject to payroll tax. In order to avoid this taxation, the employer must put in place an agreement with employees that air miles can not be consumed by them for others than business purposes.

Since it would be difficult to calculate the taxable benefit, the payroll tax guidelines base the valuation of the benefits on a lump sum of 1.5 percent of the expenses (flight, transportation or accommodation costs) borne by the employer which gives rise to the benefit. Air miles used for business flights by the employee tax wise are not treated as part of the salary.

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Update on the Austrian DTC network

The following article provides you with a brief summary and highlights recent developments in the Austrian Double Tax Treaty network.

Barbados

The new Double Taxation Convention (DTC) with Barbados is principally based upon the OECD Model Convention. Dividend payments may be taxed in the state of residency of the receiving shareholder as well as in the source state where the distributing company is located. The maximum Withholding Tax (WHT) rate for portfolio dividends which can be levied in the source state is 15 percent. It is reduced to five percent for dividends paid to corporate shareholders out of participations of at least ten percent. Interest and royalty payments may only be taxed in the state of residency of the receiving person. Certain sites (a building site, construction or installation project, and installation or drilling rigs or ships used for the exploration or exploitation of natural resources) only constitute a permanent establishment in the source state if their duration is in excess of six months. Further, Barbados as the source state may levy a so-called “branch profit tax” of five percent on income transfers from a permanent establishment to Austria as the state of residency. This tax may be imposed additionally on the gross amount of such income transfer. To eliminate double taxation, Austria and Barbados exclusively implement the credit-method. The DTC between Austria and Barbados entered into force on 1 April 2007 and is applicable for fiscal years beginning on or after 1 January 2008.

Latvia

The new DTC with Latvia contains a special provision in case a company is a tax resident of both contracting states according to national law. In deviance to the OECD Model Convention, the so-called “tie-breaker rule” is not applied for dual resident companies. In such cases, the residency of the company according to the DTC is to be settled by mutual agreement between the two states. Dividend payments out of portfolio participations may be taxed in the source state at a maximum WHT rate of ten percent. The WHT rate is limited to five percent where dividends are paid to a corporate shareholder out of qualifying participations (participation of at least 25 percent). In

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general, interest payments may be taxed at a rate of ten percent in the source state. The maximum WHT rate for royalties ranges from five to ten percent and depends on the nature of the royalty income. A permanent establishment will be constituted in the source state in case building sites or similar activities including supervisory activities exceed the period of nine months. Offshore activities in connection with the exploration or exploitation of natural resources which last more than 30 days within a twelve months period will also lead to a permanent establishment. Latvia generally uses the credit-method to eliminate double taxation. Austria exempts active income using the exemption with progression-method. For dividend, interest and royalty payments the credit -method basically applies. Austria exempts dividends paid to resident corporate shareholders out of participations of at least ten percent under the conditions set forth in the domestic international holding privilege.

The treaty entered into force in May 2007. It can be applied for fiscal years beginning on and for taxes withheld at source on income derived on or after 1 January 2008.

Macedonia

In January 2008, the DTC between Austria and Macedonia became effective. The principle right to tax dividends, interest payments and royalties belongs to the state of residency of the receiving person. However, the source state may also tax dividends out of portfolio participations (participations less than ten percent) at a rate of 15 percent. Dividend payments to corporate shareholders out of participations of at least ten percent, interest as well as royalty payments may not be taxed in the source state at all. A building site or construction or installation project only leads to a taxable presence in the source state if it lasts more than twelve months. To avoid double taxation, Austria basically implements the exemption under progression-method except for dividends where the credit-method applies. Notwithstanding the foregoing, Austria exempts dividends paid to resident corporate shareholders out of participations not less than ten percent under the conditions of the respective domestic anti-avoidance rules. Macedonia implements the credit-method.

The DTC entered into force on 20 January 2008. However, its provisions can be applied for any fiscal years beginning on or after 1 January 2008.

Pakistan

The existing DTC with Pakistan expired at the end of 2007 and the updated DTC came into force in the meantime. Under the new treaty, the source states' right to levy tax on portfolio dividends is limited to 15 percent. The maximum WHT rate is reduced to ten percent for dividends paid to corporate shareholders out of participations of not less than 20 percent. In general, the WHT levied in the source state on most interest payments may not exceed 15 percent. Royalties may be taxed in the source state at a rate of at most ten percent. Moreover, fees for technical services are also subject to WHT in the source state of the income at a maximum rate of ten percent. Building sites and similar construction activities constitute a permanent establishment if they last more than six months. Further, premises used for the purpose of selling goods or merchandise also lead to a taxable presence in the source state. Insurance companies are deemed to constitute a permanent establishment in the source state if they collect premiums in the source state or insure risks situated therein. In general, gains from the alienation of other assets are taxed in the state of residency of the seller. However, such capital gains from the alienation of shares deriving most of their value (in)directly from immovable property and gains from the alienation of a participation of more than 20 percent may also be taxed in the source state. In Pakistan, double taxation is eliminated by means of the credit-method. Under specific circumstances, the updated DTC provides for a matching credit for dividend, interest and royalty income as well as for fees for technical services.
Austria exempts active income using the exemption with progression-method and exempts dividends paid to resident corporate shareholders out of participations of at least 20 percent with reference to the relevant national anti-avoidance rules.

The updated treaty entered into force on 1 June 2007. Further, the DTC is applicable for fiscal years starting on and for taxes withheld at source on amounts paid on or after 1 July 2008.

Saudi Arabia

The new DTC between Austria and Saudi Arabia provides for a general limitation of the maximum WHT rate on dividends to five percent. In certain cases of public bodies, such dividend payments may only be taxed in the state of residency of the receiving shareholder. There is no difference in the WHT rate between portfolio dividends and dividends paid out of qualifying participations. In general, income from debt-claims (interest income) underlies a maximum WHT rate of five percent in the source state. Royalties may be taxed at ten percent in the source state of the income. A permanent establishment will be constituted if a building site, a construction, assembly or installation project (including any supervisory activities in this context) exceeds the period of six months. Furthermore, the furnishing of services (including consultancy services) also leads to a permanent establishment in the source state, in

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cases where such services will be rendered for more than six months within a twelve months period. Insurance companies are deemed to constitute a permanent establishment if they collect premiums in the source state or insure risks situated therein. Gains from the alienation of shares deriving most of their value directly or indirectly from immovable property may also be taxed in the state where the immovable property is situated in. Notwithstanding the OECD Model Convention, the source state has the right to tax gains from the alienation of a participation of at least 25 percent in a company which is a resident of the source state. Both states basically apply the exemption with progression-method. The credit-method applies for dividends, interest payments, royalties, certain capital gains and specified other income.

The new DTC entered into force on 1 June 2007 and is applicable for taxable periods starting on and for taxes withheld at source on amounts paid on or after 1 January 2008.

Venezuela

Under the new DTC, the maximum WHT rate on portfolio dividends amounts to 15 percent. For dividend payments to corporate shareholders out of qualifying participations (participation of at least 15 percent) the rate is reduced to five percent. Basically, interest payments may be taxed in the source state at a rate of ten percent. With regard to banks or public bodies, this rate might be reduced or is set to nil under certain circumstances. The source states' right to tax royalty payments is limited to five percent. A permanent establishment will be constituted in the source state in case construction sites or similar activities exceed the period of nine months. Further, a taxable presence will be created in the source state if a dependent agent maintains a stock of goods or merchandise in the source state. Insurance companies which collect premiums in the source state or insure risks situated therein are also deemed to have a permanent establishment. The source state has the right to tax capital gains from the alienation of shares deriving most of their value (in)directly from immovable property situated in the source state and such gains from the alienation of a participation of more than ten percent in a company which is a resident of the source state. To eliminate double taxation, Austria principally uses the exemption with progression-method. For certain income such as dividends, interest income or royalties the credit-method is applied. Austria exempts dividend payments to resident corporate shareholders out of participations of at least 15 percent under the conditions of the relevant domestic anti-avoidance rules. Venezuela implements the credit-method to avoid double taxation.

The DTC between Austria and Venezuela became effective on 17 March 2007. It is applicable for fiscal years beginning on and for taxes withheld at source on income derived on or after 1 January 2008.

With regard to the new DTCs between Austria and the Czech Republic, New Zealand and Turkey, respectively, please refer to the previous editions of the Austrian Tax News.

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Coverage of pension provisions by securities

Austrian taxpayers have to own securities for pension provisions carried in balance sheets with dates from 1 July 2008. Having been previously abolished by the Austrian Supreme Administrative Court, this requirement is now re-introduced by law.

At the balance sheet date, marketable securities amounting to 50 percent of the net value of the pension accruals as stated, for tax purposes, in the balance sheet of the prior business year must be available. This protection and security must be maintained throughout the entire year following the respective balance sheet date. However, if pension liabilities decrease during the business year, the coverage requirement declines as well. Reinsurance claims can be credited against the coverage requirement amounting to the actuarial unearned premium reserve or the higher cash value.

Securities used to provide this cover may originate either from domestic or EU/EEA issuers. Share certificates in real estate property funds also qualify for the coverage requirement. It should be kept in mind that securities are supposed to serve as collateral for pension claims and therefore must not be given in mortgage.

Shortfalls below the required 50 percent will result in tax income of 30 percent of the shortfall.

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VAT Update

The Federal Ministry of Finance has – like every year – published important Minutes on Value Added Tax (“VAT”).

Records in connection with work on movable tangible property

The place of supply of work on movable tangible property is normally the place where the services are actually performed. However, work on movable tangible property for customers who have a VAT Identification Number of a Member State other than that of the territory where the services are physically carried out, shall be treated as supplied within that other state if the goods do not remain in the territory where the work has been effected. In such cases detailed records must be kept.

In the specific case at hand the taxable person was established outside of Austria but had a fixed establishment in Austria. The Austrian employees use cars, which are registered by the head office outside of Austria.

If repair or maintenance of the cars is carried out in Austria, the taxable person carrying out those services is entitled to assume that the cars will be brought back to the other EC Member State because of the foreign car plates. The requirements for shifting the place of supply from Austria to another EC Member State (VAT Identification Number) are fulfilled. The fact that the cars should have been registered in Austria as the place of use has no impact on the treatment of the place of supply by the domestic supplier of services.

Input VAT deduction for invoices with a cancelled or invalid VAT Identification Number

If the VAT Identification Number of the issuer of the invoice is cancelled, because he does not qualify as taxable person, the recipient of the invoice cannot recover the VAT stated on the invoice. The issuer of the invoice owes the VAT shown on the invoice. This is true even where the Austrian VAT guidelines state that the VAT Identification Number of the supplier does not need to be reviewed to check whether it is valid.

Place of supply of service of “management services”

The VAT law does not contain special rules for “management services”. VAT

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law focuses on the economic content and not on the term used for the supply. Similarly, the place of supply is also determined based on the economic content. This means that if the management services are marketing services (Art 56 of the Recast/Sixth VAT Directive) the marketing services are treated as Art 56 services which are deemed to be effected where the recipient is established.

Administration of investment funds established outside the EC

Asset management services supplied to investment funds established in another Member State are exempt from VAT. The Austrian tax authorities state that the asset management of investment funds established outside the EC are also exempt from VAT. The place of supply is where the recipient is established (Art 56 of the Recast/Sixth VAT Directive), and therefore, the supply of services is outside the scope of Austrian VAT.

Input VAT related to the supply of asset management to investment funds established outside the EC cannot be recovered as the supply would be deemed to be exempt if the place of supply would have been treated as in Austria.

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Austrian GAAP

Capitalization of dividends in the same year

Often, a practical question arises if the accumulated profits of a subsidiary may be recognized by the parent as a dividend in the same year (“in-phase capitalization”).

Under Austrian GAAP the parent company is obliged to include profits of the subsidiary in its balance sheet in the same year if certain requirements are met. Otherwise the in-phase capitalization of dividends is not allowed.

The relevant requirements for in-phase capitalization are the following:

- The parent company has the power to control the subsidiary.
- The balance sheet date of the subsidiary must be before or coincide with the balance sheet date of the parent company.
- The subsidiary’s annual accounts for the financial year in question have to be adopted before the annual accounts of the parent company. Alternatively the audit of the subsidiary has to be finished to a degree which makes it possible to determine the profit available for distribution.
- The parent company has to make a resolution before its balance sheet date stating that it will use its power over the subsidiary to obtain the dividends. This resolution has to contain the amount designated for distribution in numbers.
- It is important that there are no obstacles to the execution of the distribution resolution such as the necessity of the approval of administrative authorities.

These criteria are based on rulings of the ECJ as well as the Austrian Supreme Court for Civil Law.

However, the administrative supreme court of Austria, which is competent for tax issues, differs from the ECJ and the Austrian Supreme Court for Civil Law and denies the in-phase capitalization if the balance sheet dates of the parent company and the subsidiary coincide. This might lead to the necessity of a deferred capitalization of dividends in the tax balance sheet. There are no consequences where a participation exemption is available because the received dividends need to be deducted from the pre-tax income anyway.

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Austrian Tax Facts & Figures

Taxation of corporations

Corporate income tax rate (Basis – adjusted statutory accounts)	25%	Non-deductible expenses (examples)	
Dividend withholding tax	25%	Long-term accruals	20%
Witholding tax on licences/royalties	20%	Business meals	50%
Interest	0%	Excessive car expenses for luxury cars	
Significant allowances		Tax loss carry forwards	
Research & Development (R&D) (Alternatively premiums in cash: 8%)	up to 35%	Losses may be carried forward for an indefinite period of time	
Learning & Education (L&E) (Alternatively premiums in cash: 6%)	up to 20%	Usage of tax losses: 75% of taxable income	

Double taxation agreements

with 68 countries – mainly exemption method

International participation exemption for holding companies	
Conditions: Investments >10%, 1 year holding	
Dividends	0%
Capital gains	0%
Thin capitalization rules	None
CFC rules	None

Group taxation

valid from January 2005

Consolidation of tax losses with taxable profits
Conditions: Qualifying participations > 50%
Group agreement and agreement on allocation of cost
Losses of foreign participations may be offset against profits of group leader

Annual taxable		Income Tax		Effective Tax Rate	Marginal Tax Rate
to	€ 10,000	€ 0		0%	0%
over to	€ 10,000 € 25,000	$\frac{(EK - 10,000) \times 5,750}{15,000}$		0 - 23%	38.333%
over to	€ 25,000 € 51,000	$\frac{(EK - 25,000) \times 11,335}{26,000}$	+ 5,750	23 - 33.5%	43.596%
over	€ 51,000	(EK - 51,000) x 50%	+ 17,085	> 33.5%	50%

Social security on monthly earnings up to EUR 3,930			
Employer's share	up to 21.9%	Payroll related taxes	approx. 8.0%
Employee's share	up to 18.1%		
Income cap for social security contributions, social security totalisation agreements with various states			

Value added tax

in line with the 6th EU directive

Standard rate	20%
Reduced rate (Food, rent, public transportation etc.)	10%
VAT refund for foreign enterprises – available up to June 30 of the following year.	

Other taxes

Real estate transfer tax	3.5%
Capital tax	1.0%
Stamp duties – Loan agreements	0.8%
Rent agreements	1.0%

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