

**International Bar Association Annual Conference 2020**

**Recent Developments in International Taxation**

**Austria**

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## Domestic law

In the past year, in the area of international tax law, the most important changes in Austrian domestic statutory law were the following:

- The Digital Tax Act 2020 (Digitalsteuergesetz 2020) provides for a digital tax of five per cent of the consideration received by an online advertiser in the case of online advertising rendered in Austria. It has been applicable to online advertising services rendered from 1 January 2020. Online advertising is defined as any advertising service provided on a digital interface (eg, banner advertising or search engine advertisement). The tax is triggered if the advertisement is targeted (also) at Austrian users and is received by a user with an Austrian Internet Protocol (IP) address. The tax only applies if an online advertiser (or the group of companies to which the online advertiser belongs) in a financial year has: (1) worldwide revenues of at least €750m; and (2) revenues from the rendering of online advertising in Austria of at least € 25m.
- As of 1 January 2020, the Austrian domestic provisions transposing the hybrid mismatch rules introduced by Anti-Tax Avoidance Directive (ATAD) I and ATAD II have been applicable. These provisions aim at 'neutralising' tax discrepancies in case of: (1) deduction of an expense without inclusion (D/NI); and (2) double deduction of an expense (DD), if further prerequisites are fulfilled.
  - D/NI cases are covered by the hybrid mismatch rules if expenses are tax deductible in one state without qualifying as taxable income in another state due to differences regarding the characterisation of a financial instrument (hybrid instrument); the attribution of income from a financial instrument transferred (hybrid transfer); the characterisation of the payor or the payee as a taxable entity (hybrid entity); the attribution of expenses and income to a permanent establishment (hybrid permanent establishment); or the existence of a permanent establishment (disregarded permanent establishment). In addition, the hybrid mismatch has to arise between associated enterprises; between the head office and a permanent establishment of an entity; between two or more permanent establishments of the same entity; or from a structured arrangement.
  - DD cases are covered by the hybrid mismatch rules if special tax provisions lead to a double deduction of expenses of a hybrid entity, permanent establishment or dual resident entity.
- The European Union Notification Obligation Act, which transposes into domestic law the Directive on Administrative Cooperation (DAC) 6 Directive (Council Directive (EU) 2018/822), has been applicable since 1 July 2020. The Austrian Ministry of Finance announced that Austria will not exercise the option provided by Council Directive (EU) 2020/876 to extend reporting deadlines. However, no fines will be levied for late reporting if reporting is effected until 31 October 2020. Pursuant to the EU Notification Obligation Act, intermediaries such as lawyers, accountants or banks must under certain circumstances file information on reportable cross-border arrangements with the Austrian Minister of Finance. The reportable cross-border arrangements under the EU Notification Obligation Act are in line with the hallmarks outlined in the DAC 6 Directive. Austria has opted to grant intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under Austrian law, unless the intermediary is released from the obligation to secrecy.

- By way of the EU Tax Dispute Resolutions Mechanisms Act, Austria transposed into domestic law Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU.
- Austrian income tax on employment income is generally levied by way of withholding by the employer. Until recently, the employer could generally abstain from withholding wage tax in case no Austrian permanent establishment exists. However, from 1 January 2020, employers not having an Austrian permanent establishment have been obliged to withhold Austrian wage tax from wages paid to Austrian tax resident employees.
- In the area of VAT, Austria transposed into domestic law Council Directive (EU) 2018/1910, which provides for changes in the VAT rules regarding, inter alia, call-off stock arrangements and chain transactions. Further, Austria has already transposed the VAT rules on distance sales under Council Directive (EU) 2017/2455 that shall be applicable from 1 January 2021.

### **Tax treaties**

Over the last year, the following developments occurred regarding tax treaties:

- Austria and Argentina signed an income tax treaty, which has not yet entered into force.
- A protocol to the income tax treaty concluded between Austria and Russia entered into force and has been effective from 1 January 2020.
- A protocol to the income tax treaty concluded between Austria and India in 2017 entered into force and will be effective from 1 January 2021.
- Austria and Ukraine signed a protocol to their income tax treaty, which has not yet entered into force.
- The competent authorities of Austria and Hong Kong concluded a competent authority arrangement on the exchange of country-by-country reports, pursuant to which country-by-country reports shall be exchanged automatically.
- Austria and the Netherlands concluded a memorandum of understanding (MoU) on the implementation of mutual agreement procedures.
- In light of the Covid-19 pandemic, the Austrian Ministry of Finance concluded agreements on the taxation of frontier workers with the competent authorities of Germany and Italy.
- The Austrian Ministry of Finance issued guidance on the interpretation of double tax treaties in relation to Covid-19, which closely follows the clarifications issued by the Organisation for Economic Co-operation and Development (OECD).