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# Recent Developments in International Taxation

## Austria

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**Domestic law in relation to international tax law**

In the past year, there was little movement in Austrian domestic statutory law in the area of international tax law. The most notable developments, all introduced by way of the Tax Amendments Act of 2022, are the following:

*Withholding taxes*

Upon request, Austria refunds Austrian dividend withholding tax to corporations resident in the European Union or the European Economic Area (EEA) if such withholding tax can partly or fully not be credited in the state of residence of the recipient on the basis of an income tax treaty. The refund provision now extends to foreign corporations holding less than ten per cent in the capital of the Austrian corporation paying the dividend, if the foreign corporation is resident in a state with which Austria has agreed to comprehensive administrative assistance.[1] The change in statutory law implements case law by the Supreme Administrative Court, which is the highest court in tax matters, and ensures compliance with the EU principle of free movement of capital.

Additionally, no explicit procedural provision has existed until now concerning the refund of Austrian withholding tax in cases where Austria's right to withhold tax is restricted under an income tax treaty. Such a provision was introduced and applies to taxpayers that are not obliged to effect income tax filings. A taxpayer generally has to file a claim for a refund of Austrian withholding tax until the end of the fifth calendar year following the year of withholding; this deadline is also relevant where applicable income tax treaties provide for shorter deadlines. The provision will apply to refund applications filed after 31 December 2022.

Further, the Ministry of Finance issued a new public letter ruling dealing with relief from dividend withholding tax at source based on an income tax treaty. One of the requirements for relief at source is that the shareholder confirms that it carries out an activity over and above the mere holding of assets. The ruling confirms that such activity may consist in (group) management and financing activities of the parent towards its subsidiaries. It is not necessary that such activity dominates other activities.

*Automatic exchange of tax information*

Austria transposed into domestic law Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 7). The provisions regarding mandatory automatic exchange of tax information in the area of platform operators and the corresponding obligations of platform operators are contained in a new act, namely the Digital Platform Notification Act; it is also relevant for information exchange regarding platform operators pursuant to the global standard for the automatic exchange of information.

Other topics governed by DAC 7 (such as the definition of 'foreseeable relevance' and the inclusion of a new legal framework for tax authorities of two or more EU Member States to conduct joint audits) were introduced in the EU Administrative Assistance Act. These provisions will apply as of 1 January 2023.

*International tax risk assessment*

Austria participates in the International Compliance Assurance Programme of the Organisation for Economic Co-operation and Development (OECD), as well as the European Trust and Cooperation Approach of the EU. These are risk assessment and assurance programmes that facilitate tax risk assessment by two or more tax administrations in cooperation with the concerned companies. The legislator introduced procedural provisions on the multilateral risk assessment into the Federal Fiscal Procedures Act.

**Domestic law: areas other than international tax law**

Notable changes in Austrian statutory tax law in areas other than international tax law, as introduced by the Eco-Social Tax Reform Act of 2022, are the following:

*Income taxes*

Austrian income tax is levied at progressive rates. The 35 per cent rate for portions of income from €18,000 to €31,000 was lowered to 32.5 per cent for the calendar year 2022, and to 30 per cent as of the calendar year 2023. The 42 per cent rate applicable to portions of income from €31,000 to €60,000 was reduced to 41 per cent for the calendar year 2023, and to 40 per cent as of the calendar year 2024.

Austrian corporate income tax, which is currently levied at a rate of 25 per cent, was reduced to 24 per cent for the calendar year 2023, and to 23 per cent thereafter.

*Cryptocurrencies*

Previously, cryptocurrencies were not explicitly mentioned in the Income Tax Act. With effect from 1 March 2022, investment income was expanded to include income from cryptocurrencies. Taxable income from cryptocurrencies includes current income from cryptocurrencies and income from realised increases in the value of cryptocurrencies.

Current income from cryptocurrencies encompasses remuneration for the provision of cryptocurrencies, as well as the acquisition of cryptocurrencies by way of a technical process in which transaction processing services (such as mining) are provided. Current income from cryptocurrencies does not encompass income in connection with staking, airdrops, bounties or hard forks.

Income from realised increases in value of cryptocurrencies includes income from:

- the sale of cryptocurrencies for legal tender;
- the exchange of cryptocurrencies for assets other than cryptocurrencies; and
- the exchange of cryptocurrencies for services.

Thus, the direct exchange of a cryptocurrency for another cryptocurrency does not lead to taxable income, while the exchange of a cryptocurrency for legal tender (even if such legal tender is subsequently used to purchase another cryptocurrency), for other assets or for services, leads to taxable income. In this context, the following is relevant: in the case of an exchange of a cryptocurrency for another cryptocurrency, the acquisition costs of the 'new' cryptocurrency are the same as the acquisition costs of the 'old' cryptocurrency. Thus, if eventually taxable income in connection with cryptocurrencies is realised, the original acquisition costs of the first cryptocurrency in a sequence of non-taxable exchanges is relevant for calculating the taxable gain.

Individuals are generally subject to a special income tax rate of 27.5 per cent on income from cryptocurrencies. Income from cryptocurrencies will generally be subject to withholding tax, with Austrian service providers generally being obliged to deduct withholding tax from income from cryptocurrencies accruing as of 1 January 2024.

**Tax treaties**

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

- Austria signed protocols to its income tax treaties concluded with South Korea and the United Arab Emirates, neither of which have yet entered into force.
- A protocol to the income tax treaty concluded between Austria and Ukraine in 2020 entered into force, applying partly from 1 January 2022 and partly from 1 January 2023.
- Austria concluded consultation agreements with Portugal and Spain on the issuance of tax residence certificates. The Austrian tax administration generally only recognises tax residence certificates if issued by the foreign tax administration on the Austrian form. However, in the case of Portugal and Spain (as well as Chile, Mexico, Thailand, Turkey and the United States), Austria also accepts tax residency certificates issued by the foreign tax authorities on their own forms.
- Austria retroactively suspended its information exchange with Russia under the Convention on Mutual Administrative Assistance in Tax Matters as of 23 March 2022.
- In 2019, in light of the Covid-19 pandemic, the Austrian Ministry of Finance had concluded consultation agreements on the taxation of frontier workers with the competent authorities of Germany and Italy. These agreements have been terminated and are only applicable for the period up to 30 June 2022.

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[1] Currently Austria has comprehensive administrative assistance in tax matters in place with the following countries: Albania, Algeria, Andorra, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Australia, Azerbaijan, the Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Bermuda, Bosnia-Herzegovina, Botswana, Brazil, the British Virgin Islands, Brunei, Bulgaria, Cameroon, Canada, Cape Verde, the Cayman Islands, Chile, China, Colombia, the Cook Islands, Costa Rica, Croatia, Curaçao, the Czech Republic, Cyprus, Denmark, Dominica, the Dominican Republic, Ecuador, Egypt El Salvador, Estonia, Eswatini, the Faroe Islands, Finland, France, Georgia, Germany, Ghana, Gibraltar, Grenada, Greece, Greenland, Guatemala, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, the Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macao, Malaysia, Malta, the Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat, Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Northern Macedonia, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia (even though Austria has suspended automatic exchange of financial account information with Russia), Samoa, San Marino, Saudi Arabia, Senegal, Serbia, the Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, South Africa, South Korea, Spain, St. Kitts and Nevis, St. Lucia, St. Vincent

and the Grenadines, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, the Turks and Caicos Islands, Uganda, Ukraine, Uruguay, Vanuatu, Venezuela, the United Arab Emirates, the US and Vietnam.