

Austria as a Base for International Holding Companies

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Austria has created an environment which is attractive to both Austrian and international businesses. Austria is frequently used by international corporate tax planners for holding companies, regional headquarters, and both finance and operating companies.

1) International Participation Exemption

The most attractive features for businesses are a flat corporate tax rate of 25%, with an effective rate of about 22%, together with a tax exemption for dividends received from foreign subsidiaries and capital gains derived from the disposal of foreign subsidiaries. The tax exemption of foreign dividends and capital gains (international participation exemption) received by Austrian companies from foreign subsidiaries is available if the following conditions are met:

(a) The foreign subsidiary is a company in accordance with the local law of the place of incorporation. There is no requirement for the foreign subsidiary to be engaged in any specified activity nor are there any restrictions as to the country of incorporation. Accordingly, subsidiaries in low tax or no tax jurisdictions are accepted in the same way as subsidiaries in high tax countries.

(b) The Austrian company must hold at least 10% of the equity of the foreign company.

(c) Such equity must be held at least one year prior to the balance sheet date on the basis of which dividends or capital gains are distributed.

(d) The structure is not caught by the Austrian anti-abuse regulation (see below). For example, structures for the sole purpose of converting interest into dividends would not be able to claim the tax exemption.

If these conditions are met, not only are the dividends exempt from any taxation, but also any capital gains realized at the time of disposal of the foreign equity.

This tax exemption is used extensively by international corporate tax planners using an Austrian holding company for the acquisition of foreign businesses with high capital appreciation and rapid growth. Once the foreign subsidiary is sold and the capital appreciation realized, the proceeds (depending on the applicable double taxation treaty) may remain untaxed by the country of the former subsidiary when transferred to Austria and remain tax exempt in the hands of the Austrian holding company. The accumulated tax-free gains may then be reinvested abroad in another country which again promotes high capital appreciation.

2) Group Taxation

Another attractive corporate tax planning feature in Austria is group taxation which allows profits to be set off against losses of other companies belonging to the group, irrespective of whether the companies are located in Austria or abroad.

3) Anti-abuse rules

The international participation exemption according to which an Austrian company is able to receive tax-exempt dividends and capital gains from a foreign subsidiary (see above) will only be available where the foreign corporation is not caught by both the anti-abuse tests below:

(a) the overall direct and indirect tax burden suffered by the foreign subsidiary does not exceed 15% of its profits; and

(b) 25% or more of the overall resources of the foreign corporation are used for earning passive income such as interest, capital gains, license fees or leasing rates; receiving dividends does not count towards passive

Where both anti-abuse tests are met, the tax office can deny the participation exemption for the dividends and, as a result, the dividends will be taxed fully in Austria. However, any taxes suffered abroad will be credited. If only one anti-abuse test is met, the international participation exemption is available in full.

4) Double Taxation Treaties

Austria has tax treaties with more than 60 countries. The current treaties are available at the following internet address: www.schwank.com

Most of these follow the OECD Model Treaty. Austria's tax treaties often provide favorable features reflecting the special relationship that Austria, as a small and neutral country, enjoys with its counterparts.

The countries covered are a wide cross section of western, eastern and less developed countries. This mixture gives ample opportunity for international corporate tax planning.

In fact, numerous multinational corporations use Austrian companies as vehicles for investments in eastern Europe, the successor states of the former Soviet Union and certain less developed countries. For instance, the treaty with Argentina provides for a tax exemption for dividends and interest in the receiving country. Also matching credit provisions are available in a number of treaties with Asian and Latin American countries.

Austria has not enacted any CFC legislation. As a result, rules in tax treaties always take precedence over internal Austria tax legislation.

5) Relief Article of Treaty

According to the rules of the Federal Tax Code and the established practice of the tax administration, relief is also available where no treaty protection can be invoked but taxes have actually been paid abroad and the taxpayer is exposed to double-taxation. To some extent, depending upon circumstances, tax relief may be dependent on the discretion of the tax authorities.

6) Advance Ruling

The Federal Ministry of Finance has established an express answer service (EAS) which provides within two to three weeks non-binding advance rulings on possible tax liability in respect to international and/or trans-border issues. These rulings may be obtained on a no-name basis.

Binding tax rulings are available in advance from the relevant local tax office responsible for the businesses in its district. Obtaining these binding rulings involves usually transfer pricing, cost-plus arrangements, commissionaire structures, cash pools and other structures which

may give rise to differing views on tax exposure and liability.

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