



The Legal 500 Country Comparative Guides

Austria: Tax

This country-specific Q&A provides an overview of tax laws and regulations applicable in Austria.

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1. How often is tax law amended and what are the processes for such amendments?

Austrian tax laws are amended constantly. Rather minor amendments may be part of a bill directed at a totally different matter. Further, a Federal Tax Amendment Act making more substantial amendments to Austrian tax laws is enacted almost every year. In addition major amendments generally take the form of a reform bill. It has to be noted that besides the Federal legislative also the provinces of Austria have a power to enact tax laws, which play, however, a rather subordinated role (except for special business lines like e.g., tourism levy, advertising tax, etc.).

The legislative process provides that a Federal bill be passed by the Federal Parliament (*Nationalrat*) either upon proposal of the Federal Government, upon the initiative of a minimum of 5 members of Parliament, upon proposal of a parliamentary committee for topics related to its activity or upon proposal of the Federal Council (*Bundesrat*). During the legislative process several institutions and interest groups like the Chamber of Commerce, the Austrian Chamber of Tax Advisers and Public Accountants, the Bar Association, the Chamber of Labour, the Federation of Austrian Industry and many others may provide input.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Tax returns for VAT and income tax / corporate income tax are generally due by 30 April (or 30 June in case of electronic filing) after the calendar year to be assessed. If the taxpayer is represented by a tax adviser, tax returns are due by the end of March of the second year following the assessed calendar year at the latest, unless the tax office requests earlier filing. Additionally there are monthly or quarterly pre-payments for VAT and income tax or corporate income tax.

Taxpayers falling under the scope of the Austrian Transfer Pricing Documentation Act must file a master and local file within one month upon request of the tax authority. The Country-by-Country-Report (CbC) if required has to be filed with the tax office within one year after the end of the pertaining accounting year.

All taxpayers must keep basic records relevant for taxation for at least 7 years. With respect to the statute of limitations, it is advisable to keep records as long as the relevant assessments can be amended (10 years after the assessed periods). For VAT this period may extend to up to 20 years (e.g., in case of real estate investments).

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The key regulatory authorities for federal taxes are the tax offices led by the Ministry of

Finance.

The Ministry of Finance also prepares draft tax bills for Federal tax laws, issues guidelines for the interpretation of tax provisions, negotiates the Austrian double taxation agreements and has wide-ranging competences in international tax law matters. Informal rulings on tax questions on a rather generic level (so-called "Express-Answering-Service") may also be obtained from the Austrian Ministry of Finance.

The tax offices are the main reference point for the day-to-day tax matters of taxpayers. Some of the tax offices are specialized for certain tasks like the collection of stamp duties and transfer taxes or refund of withholding taxes to non-residents under a double taxation convention.

Taxpayers may also apply for binding advance tax rulings regarding transfer prices, restructurings, group taxation, international tax law and tax abuse. Since 1 January 2020 taxpayers can also obtain advance tax rulings on VAT issues. In other areas informal rulings based on good faith may be obtained.

The time needed to resolve an issue with the local tax office or the Ministry depends on the scope, the complexity of the issue and the availability.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

Taxpayers can appeal tax assessments deviating from the tax return filed or following an audit within one month whereby the tax authorities can extend this period upon taxpayer's request. Upon the filing of the appeal, the tax office has first the possibility to amend or withdraw its tax assessment or decision according to the appeal in an administrative appeal decision. The taxpayer can appeal this administrative appeal decision within one month, whereby the tax authority can extend this period as well. After the taxpayer has appealed against the administrative appeal decision, the case will be referred to the Federal Fiscal Court (judicial appeal). Against the decision of the Federal Fiscal Court the taxpayer can appeal to the Supreme Administrative Court (second level judicial appeal) or the Constitutional Court (the latter in case the assessment or decision violates a constitutional right or guarantee or an unconstitutional law was applied when rendering the contested decision).

The duration of judicial appeal proceedings heavily depends on the complexity of the relevant matters and the current workload of the court. Therefore, proceedings may be closed within several months, but may also take many years.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens

with amounts of tax in dispute with the regulatory authority?

Prepayments of income tax are due by the middle of each annual quarter. Prepayments of VAT are due by the 15th of the second month following the prepayment-period, which can be either the annual quarter or the calendar month (the latter for annual turnovers exceeding € 100.000). As regards annual tax returns, see above point 2.

Assessment decrees can be appealed against, in which case the tax remains due and enforceable. A suspension of enforcement is usually granted upon request in case that the appeal has a chance of success and the taxpayer does not jeopardize the enforcement of taxes. However, suspension of enforcement gives rise to a monthly interest charge (of 2% above the base rate, currently amounting to a total of 1.38%) of the suspended tax payment which will only be due if the taxpayer finally has to pay the disputed tax amount.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

The data relating to tax matters are subject to a statutory non-disclosure requirement which basically stipulates that the tax authorities are not allowed to disclose any data they gained knowledge of during the tax proceedings to any third party including other public authorities. However, there are exceptions to the non-disclosure rule, like the disclosure of facts in connection with criminal tax proceedings or other cases stipulated by the law or in case that imperative public interest requires it.

Austria is a signatory of the Common Reporting Standard providing for the automatic exchange of information between member countries on financial accounts of non-residents. Austrian corporations have to disclose their beneficial ownership information to a central register kept by the Austrian Ministry of Finance.

7. What are the tests for residence of the main business structures (including transparent entities)?

A corporation is treated resident under Austrian domestic tax law, if it has its registered seat or effective place of management in Austria. The effective place of management is the place where the day-to-day management decisions (the actual and legal acts that are part of the ordinary course of business) of the company are taken and prepared. The vast majority of double taxation conventions concluded by Austria determines residence using the effective place of management as a tie-breaker; Austria has not followed Art 4 of the MLI with its new rules for dual resident companies.

Transparent entities (partnerships) are not regarded as taxpayers in Austria. Therefore their

income is allocated proportionately to the direct or indirect partners being individuals or corporations.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

Ordinary tax audits usually encompass VAT, CIT and withholding taxes. In case of ordinary tax audits, cross-border transactions within international groups always play an important role for tax authorities. Usually, increased attention is devoted to reorganizations, transfer pricing issues and other transactional details, such as debt-push down structures.

Apart from this, there are separate audits on wage-related charges (i.e., wage tax and several social security contributions). These audits are carried out by the competent tax authorities or by auditors of the social security institutions.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

The controlled foreign company (CFC) regime was adopted in Austria transposing Art 7 of the Anti-Tax Avoidance Directive (ATAD) and is effective since January 2019. It leads to attribution of low taxed passive income (from interest, license income, dividends, income derived from sale of shares, income from finance leasing, income from activities of banks and insurance companies) of controlled corporations and permanent establishments to the controlling domestic corporation and shall deter profit shifting to low or no tax countries. The threshold for the so-called "low taxation" is met at a tax rate of 12.5% or less. Exceptions exist for foreign entities with significant economic activity in terms of personnel, equipment, assets and premises. As the CFC regime contains many uncertainties also an implementing regulation was enacted by the Ministry of Finance.

Austria used to have a switch over regime in the past, which only concerned the distribution of dividends. Under this regime dividends were excluded from the international participation exemption on dividends stemming from low taxed passive income but rather were subject to a foreign tax credit. This regime was independent from general non-acceptance of foreign subsidiaries due to general anti-abuse provisions and the substance-over-form principle.

There are currently no thin cap rules in Austria. However, as regards the proposed interest limitation rule by the ATAD Austria applied among some other Member States for the postponed implementation as of 1 January 2024. The EU Commission considered the existing Austrian interest limitation rule as not equally effective. Consequently, the introduced interest limitation rule in the ATAD should have been transposed into national law by 31 December 2018. In July 2019 the EU Commission formally launched an infringement procedure against Austria in this respect. Due to the further delay in transposing the interest barrier, the EU Commission issued a reasoned opinion in November 2019. As of July 2020, Austria still has not implemented an interest barrier regime. Before the Covid-19 crisis, the

implementation of an ATAD conform interest limitation rule in the course of the year 2020 was regarded highly likely. In the light of Covid-19, it is however unclear if this still applies.

Under case law of the Austrian Supreme Administrative Court debt financing has to be made at arm's length both in form and substance. In the past, the Supreme Administrative Court's case law also required sufficient equity capitalisation.

As regards transfer pricing Austria has implemented Action 13 of the BEPS Action Plan for multinational enterprises (MNEs) in its Transfer Pricing Documentation Act. Accordingly, MNEs have to file the master file and/or their local file with the tax administration in case they exceed certain thresholds of their annual turnover (in general EUR 50 million). Large MNEs with a consolidated group revenue of at least EUR 750 million have to take part in the CbC-reporting for accounting periods beginning on or after 1 January 2016. Regardless of whether an Austrian affiliated entity falls under the increased documentation requirements for MNEs it is however necessary to keep adequate transfer pricing documentation explaining the cross-border inter-company relations.

Taxpayers may apply for a binding advance tax ruling with the competent local tax office regarding transfer pricing matters, based on the facts and circumstances to be presented by the taxpayer prior to their implementation. To a certain degree it is also possible to reach cross-border advance pricing arrangements on a bilateral or multilateral basis, which are of a rather general level. Although the taxpayer has no formal right to request such mutual agreements, the Austrian Ministry of Finance can negotiate with the other contracting State in order to clarify issues of interpretation of transfer prices on the basis of conventions for the avoidance of double taxation containing a provision that reflects Article 25 para 3 of the OECD MTC.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

Austrian law comprises a GAAR. Transactions are deemed abusive and are therefore disregarded if they consist of several legal steps, which have an unusual and inappropriate character and can only be explained by tax reasons. In addition, the Austrian law follows the substance over form approach. Both rules are used by the authorities on a regular basis to challenge tax structures, intragroup transactions and reorganisations.

In order to transpose Art 6 of the ATAD the general anti-avoidance rule (GAAR) was amended. The introduced explicit definition of the term "abuse" shall ensure, that the GAAR fully complies with the ATAD. From a practical point of view, it remains to be seen how the new definition will indeed be interpreted by the Austrian courts and – since the Austrian GAAR applies to cases outside of the scope of ATAD – how the future case law of the CJEU will influence the interpretation of the Austrian GAAR.

11. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?

With respect to Action 1 (digital economy) the EU Commission proposed on 21 March 2018 new rules to ensure that digital business activities are taxed in a fair and growth-friendly way in the EU. In January 2019 the Austrian Federal Government announced a plan to no longer wait for co-ordinated actions by the member states but to introduce unilateral measures. Consequently, Austrian parliament has passed a Digital Tax Act in September 2019. Under this new act (applicable since 1 January 2020) online advertising services which are rendered against consideration in Austria are subject to a 3% digital tax. Only companies exceeding two thresholds for turnover from online advertising per year (worldwide at least EUR 750m and within Austria EUR 25m) are subject to Austrian digital tax.

As regards the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) and Action 15, Austria has signed the MLI on 7 June 2017 and was one of the first countries to submit the ratification instrument to the depositary (the OECD Secretary General). A number of Austrian DTCs were adapted in the framework of the MLI (see below) to correspond to BEPS. As far as the prevention of treaty abuse is concerned (Action 6), the Austrian tax law has national anti-abuse rules.

With regard to action 4, the Austrian Ministry of Finance took the position that the existing regime restricting interest and royalty deduction (non-deductibility if payments are made to a related party and are subject to low taxation) being “equally effective” to the interest limitation rule set out in the ATAD. In July 2019 the EU Commission however stated that regarding said regulation an equal effectiveness is not given and opened formal infringement proceedings against Austria. As of July 2020, the interest limitation rule has still not been implemented (see above).

Action 7 (prevention of artificial avoidance of permanent establishment status) led to an update of the OECD MTC and its commentary and as such is, in general, followed by the Austrian tax authorities as an interpretation tool. As regards new rules of DTCs suggested by Action 7, a number of Austrian DTCs were adapted in the framework of the MLI. This concerns the commissionaire arrangements and similar structures, but Austria has not opted for the specific activity exemptions.

There are no special implementations of Actions 8 to 10 (change of transfer pricing rules with respect to value creation) in Austrian tax law. However, these actions are largely reflected in the update of the OECD Transfer Pricing Guidelines, which are used by the Austrian tax authorities as an interpretation tool. Austria generally follows the interpretation of the OECD, as it is laid down in the OECD Transfer Pricing Guidelines. Using the example of the method for the identification of intangible assets (also defined in BEPS Actions 8-10), it shows that Austria generally follows the interpretation of the OECD, as it is also laid down in Chapter VI of the OECD Transfer Pricing Guidelines 2017.

Austrian tax authorities follow the principle that the economic owner of the IP is regarded as the person to whom the income derived from the IP has to be allocated for tax purposes. By the same token, the DEMPE principles, as described in BEPS Action 8, are followed by the Austrian tax authorities (i.e., that the person or persons who control the development, enhancement, maintenance, protection and exploitation of the intangibles are relevant for the determination of the economic owner of the intangible, which should be documented appropriately).

There is no implementation of Action 11 (monitoring of profit shifting) yet. Action 12 (disclosure of aggressive tax planning models) however has been implemented by the Austrian legislator in September 2019 in the course of the transposition of the amendment to Directive 2011/16/EU on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6). Within the framework of this regulation (EU-Meldepflichtgesetz) certain cross-border structures and transactions must be communicated to the tax authorities on an ad hoc basis within 30 days after the triggering event. Only events that fulfil certain hallmarks are reportable. Potentially reportable transactions might for example be cross-border transfers of intangible assets within a group of companies, debt equity swaps or transfer pricing arrangements using unilateral safe harbour rules. The beginning of the initial reporting period was originally scheduled for 1 July 2020. Due to the Covid-19 crisis, the EU Council has allowed that Member States defer the new regime until 1 October 2020. As of today (29 July 2020) Austria has not made use of this option. However, the Austrian Ministry of Finance stated that, due to the fact that the possibility of the electronic submission of reports will most likely not be available before October 2020, sanctions for a violation of the reporting obligation shall be suspended until 31 October 2020.

Austria has fully implemented the OECD recommendations on Action 13 (re-examination of transfer pricing documentation) in its Transfer Pricing Documentation Act (TPDA) and in the implementing ordinance, specifying the master file and the local file, which is largely in accordance with the description given in Annexes I and II to Chapter V of the OECD Transfer Pricing Guidelines. For the mandatory automatic information exchange regarding the Country-by-Country reporting, the Austrian legislator has implemented Council Directive (EU) 2016/881 of May 25 2016 amending Directive 2011/16/EU, which is in line with the OECD recommendation on Article 13 of the final BEPS Report. Austria has implemented the Multinational Authority Agreement that extends the scope of participating countries of the automatic information exchange for the Country-by-Country reporting.

As regards Action 14 (arbitration rules in double taxation treaties), Austria has opted for the arbitration provision of the MLI.

12. In your view, how has BEPS impacted on the government's tax policies?

Although not every BEPS related issue has been addressed by the Austrian government so far, BEPS led to substantive changes in Austrian tax policies and therefore to numerous

amendments in the Austrian tax law (for details see answer to question 11).

For example already the governmental program of December 2017 provided for the intention of addressing the issue of digital PEs. Further examples of BEPS related policies are the adaption of the Austrian domestic GAAR provision, or the amendment of some of the Austrian double tax conventions regarding the principal purpose test stipulated in the MLI.

Whereas an example of non-confirmatory BEPS indicated policies would be the reservation to the MLI made by Austria as regards the provisions relating to the creation of a PE by commissionaire structures, as suggested by BEPS Action 7, as the Austrian government is of the opinion that its interpretation of the existing treaties already allowed such interpretation in some cases. Whether this will be accepted by the courts remains to be seen.

13. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?

Austria committed itself to the international standards of the OECD Model.

a) Resident corporations in Austria are subject to corporate income tax of 25% with their total income regardless of the source (e.g. business income, savings income and royalties, income from land) unless it is exempt from taxation. The most important items of exempt income are dividends and, under certain conditions, capital gains generated from the sale or other disposition of foreign shareholdings. According to the (pre-Covid-19) agenda of the Austrian federal government, the corporate tax rate shall be reduced gradually in the near future.

The business profits of individuals are subject to personal income tax at a progressive rate starting at 25% (for net income above EUR 11,000) and going up to a maximum rate of 50% (for net income above EUR 90,000) and of 55% (for net income above EUR 1,000,000). To boost the Austrian economy in the Covid-19 crisis the Austrian government has proposed to reduce the tax rate for the first taxable income bracket from 25% to 20% with effect as of 1 January 2020.

b) Employment income and pensions are also subject to personal income tax at the progressive rate (see above at point a)). The employer has to withhold the income taxes levied on employment income.

c) VAT is generally levied on the sale of goods and supply of services. The standard rate is 20%. Certain goods and services, however, are subject to a reduced tax rate of 10% (e.g. food, books) or 13% (e.g. plants, hotel accommodation).

d) Ordinary capital income (dividends, interest payments) of individuals is subject to a flat-rate tax of 27.5%, with the exception of certain savings income, where a flat-rate tax of 25% applies. Savings income and royalties of corporations are subject to corporate income tax of 25%.

e) Rental income of individuals is also subject to personal income tax at the progressive rate (see above at point a)). Income derived by individuals from the disposal of real estate is subject to flat-tax rate of 30%. Income of corporations from land is subject to corporate income tax of 25%.

f) Private capital gains relating to shares in a corporation or other financial instruments are generally subject to a flat-tax rate of 27.5%. Capital gains of corporations are generally subject at the standard tax rate of 25%. However, gains from the sale of an international participation (i.e. the non-resident subsidiary is comparable to an Austrian company or is listed in the EU parent-subsidiary directive, the parent company holds at least 10% of the capital of the subsidiary for at least one year) are tax exempt.

g) Stamp duties are due on numerous legal transactions concluded in written form. The rates vary between 0.8% and 2%. Residential lease agreements are exempt from stamp duty since November 2017. However, business lease agreements (e.g. for shops) are still subject to stamp duty. Capital duty on equity contributions to companies was abolished from 31.12.2015.

14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

In general, the determination of the taxable income is based on the Austrian GAAP account. However, adjustments are necessary to comply with specific fiscal tax provisions (e.g. different depreciation periods, tax reliefs etc.). In the new government program, it is intended to (further) consolidate the tax balance with the commercial balance.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

For Austrian tax purposes it has to be distinguished between opaque and transparent entities.

Stock companies (*Aktiengesellschaft*, abbreviated as "AG"), limited liability companies (*Gesellschaft mit beschränkter Haftung*, abbreviated as "GmbH") and private foundations (*Privatstiftung*) are opaque for Austrian (corporate) income tax purposes. Income realised by such entities is subject to Austrian corporate income tax at the level of such entities. These entities are also subject to VAT but private foundations may not run an active business,

therefore, they hardly qualify as taxable person (entrepreneur) for VAT purposes.

Partnerships – most importantly the general partnership (*Offene Gesellschaft*, abbreviated as “OG”) and the limited partnership (*Kommanditgesellschaft*, abbreviated as “KG”) – are legal entities, but transparent for (corporate) income tax purposes. Income is taxed *pro rata* at the level of the partners. Partnerships can however be subject to VAT.

16. Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?

Individuals having a domicile or their habitual abode in Austria or corporations having their corporate seat or their place of management in Austria are considered residents for Austrian income and corporate income tax law purposes, respectively and are subject to unlimited resident taxation in Austria on a world-wide basis.

Non-residents are taxed on the basis of a territorial system (involving taxation of PEs and other income sourced from Austria like income from immovable property located in Austria, Austrian dividends and Austrian interest payments to individuals under certain circumstances).

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

There are no special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

There is no patent box, but a premium of 14% applies to R&D expenses for R&D inhouse activities performed in Austria.

Conversely, intra-group interest and royalties are non-deductible if the foreign receiving company is situated in a low tax jurisdiction (i.e. less than 10%).

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

Austrian law provides a group taxation system both for corporate income and VAT purposes.

For corporate income tax purposes any domestic corporation having a common shareholder

holding at least 50% in the share capital and voting rights of such corporation may elect to be a group member. The group will be headed by the common shareholder, which also has to fulfil certain requirements.

The income of each group member is calculated separately (including filing annual corporate income tax returns to the Austrian tax authorities) and is finally allocated to and consolidated at the head of the tax group. The heading corporation is the only entity of the group against which CIT will be levied (i.e., it receives the CIT assessment for the whole group).

It is also possible to include non-Austrian corporations into the group (certain restrictions apply). With respect to non-Austrian group members only tax losses will be included in the group consolidation on a pro-rata basis, if the subsidiary is a resident of a country with which Austria has concluded comprehensive mutual assistance agreements in tax matters. Any such loss will be subject to a recapture upon utilisation of the losses in the foreign jurisdiction in subsequent years or upon withdrawal from the tax group.

The group has a minimum duration of three calendar years; a recapture on a stand-alone basis takes place for all group members which are not meeting the minimum adherence of three full accounting years.

For VAT groups different criteria apply.

20. Are there any withholding taxes?

Apart from wage withholding tax at the progressive income tax rate, dividends paid to non-resident companies are, in general, subject to a withholding tax. Dividend withholding tax amounts to 27.5% (25% if paid to a corporate shareholder), unless a reduced rate applies under a tax treaty. Dividends falling under the scope of the EU Parent-Subsidiary Directive (company form listed in the Directive; at least 10% shareholding, retention period of one year) are exempt from any withholding tax, if the EU parent company has an active business and sufficient substance; otherwise a refund procedure can be operated with the Austrian tax authority.

Royalties paid to non-resident companies are subject to a withholding tax of 20%, unless a reduced rate applies under a tax treaty or are exempt from any withholding taxes pursuant to the EU Interest and Royalties Directive. Loan interest payments to non-resident companies are currently not subject to WHT as long as the loan is not secured with domestic real estate. Interest on bank deposit or certain publicly issued corporate bonds may trigger Austrian withholding tax (25%/27.5%), if an Austrian paying agent or custodian is involved.

WHT of 20% has also to be levied on fees for technical or commercial advisory services, unless the rate is reduced or the payments are exempt under an applicable tax treaty.

Since 1 January 2019 a special withholding tax applies on income derived from the letting of rights on land to infrastructural enterprises in connection with transmission of energy or use of cables below or above the surface in the public interest (e.g. electricity, gas, oil or heating), which amounts to 10% in case of individuals and 8.25% in case of corporations.

21. Are there any recognised environmental taxes payable by businesses?

There are several taxes in Austria, whose tax base is in dependency of the impact on the environment, e.g. various forms of energy taxes (tax on electricity, gas, carbon, mineral oil, etc.), car-related taxes for cars with combustion engines (consumption tax, increased insurance tax, tax on motor vehicles).

22. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

Dividend income realised by tax resident corporations from domestic body corporates is tax exempt.

Dividend income realised by tax resident corporations from non-tax resident body corporates is exempt from Austrian corporate income tax under the international participation privilege if

- the non-Austrian body corporate is comparable to a domestic corporation or is an EU company listed in the EU Parent-Subsidiary Directive,
- the minimum holding period of 1 year has elapsed,
- the shares in the foreign company constitute at least 10% of the nominal capital and
- the foreign company does not mainly derive low taxed passive income.

In addition, dividend income from portfolio participations (participation below 10%) in foreign companies is exempt from corporate income tax if the foreign company is comparable to a domestic company and is resident in a country with which Austria has agreed on a comprehensive exchange of information or is an EU company listed in the EU Parent-Subsidiary Directive.

For dividends from low-taxed passive body corporates Austria applies a switch over regime (credit instead of exemption method) unless the CFC regime applied.

Individuals realising dividend income are subject to a flat-rate tax of 27.5% (certain exemptions apply).

23. If you were advising an international group seeking to re-locate activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered by

your jurisdiction?

An advantage in relocating business activities to Austria may lie in the modern group taxation regime and the extensive double tax treaty network with in total more than 80 countries. Also, Austria has a competitive R&D tax incentive regime. Further, Austrian has a participation exemption for dividends and qualified shareholdings in foreign corporations. Austria neither levies inheritance/estate nor gift tax. This may particularly be of importance if the international group is family owned.

Further important factors are the generally strong political stability and the geographic location of Austria in the centre of Europe.

The (pre-Covid-19) government agenda foresaw a gradual reduction in corporate income tax from currently 25% to 21%. In the light of the Covid-19 induced economic crisis it is unclear whether this measure is still going to be realised. However, in June 2020 the Austrian government proposed a comprehensive legislative package targeted at combating said economic crisis, which among others provided for a onetime loss carry-back for the tax year 2020 for a maximum of 2 years (under certain conditions).