

THE TAX DISPUTES
AND LITIGATION
REVIEW

NINTH EDITION

Editor
David Pickstone

THE LAWREVIEWS

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PREFACE

It is increasingly common for tax practitioners to be involved in disputes that span multiple jurisdictions. We operate in a global economy. Supply chains cross continents, and the increasing role of technology accelerates the pace at which economic activity becomes divorced from the structures intended to tax it. The pace of economic and technological change potentially increases the gap between the reality of commerce and taxation.

Although supranational agencies such as the European Commission and OECD work hard to keep pace with change, there is an inevitable lag between intention and action. Of late we have seen individual countries start to take unilateral actions, with digital taxation being a prime example. In coming years, a combination of economic developments and unilateral actions by individual countries is likely to further emphasise the importance of double tax treaties and the OECD multilateral instrument.

As the chapters of this book were being written, there were already important changes taking place in the political landscape in the United States and Europe, and in the global economy, that may affect international cooperation on tax and trade.

While tax practitioners must understand their own jurisdiction in detail, it is more important than ever to understand the global environment in which clients operate. It comes as no surprise that the authors of many chapters have identified international tax issues and offshore structures as areas of key focus for their own domestic tax authorities.

Regardless of whether tax authorities increase in cooperation or increase in competition, one thing is certain: they will not stand still. Tax, and particularly the international approach to tax, is a constantly evolving issue.

The purpose of this book is to provide insight into the issues that give rise to tax disputes in different jurisdictions, the procedures for resolving those disputes, and the powers and approach of local tax authorities. It is hoped that it will provide valuable insight into the process, timescale and cost of resolving complex difficulties when they arise across more than one jurisdiction.

We are lucky to have contributions from many leading and impressive tax practitioners across a wide range of jurisdictions. Each provides an up-to-date insight into dealing with contentious tax issues in their jurisdiction. I have enjoyed and learned from reading their contributions and I hope you will do, too.

I would like to thank my colleagues Victor Cramer, Lee Ellis and Cristiana Bulbuc for their valuable assistance in compiling this edition.

David Pickstone

Stewarts

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February 2021

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AUSTRIA

Gerald Schachner, Kornelia Wittmann, Nicolas D Wolski and Lucas Hora¹

I INTRODUCTION

Austria has a long-standing and well-established system and practice of disputes and litigation in tax matters.

Where a taxpayer deems a tax claim asserted against him or her by the Austrian tax authorities to be unlawful, he or she is entitled to appeal against the respective administrative act in question. Austria has a multi-level appeal system with respect to tax matters.

The first level is an ‘administrative appeal’. Thereafter, there are two levels of ‘judicial appeal’, namely to the Federal Tax Court and ultimately to the Supreme Administrative Court (see Section II for more details).

The taxpayer can also file a complaint with the Constitutional Court if the contested decision of an Austrian court infringes his or her constitutional rights (see Section II).

Austria does not allow for alternative dispute resolution with respect to taxes. However, with the objective of avoiding future tax disputes, a taxpayer may contact the competent Austrian tax authority and ask for informal answers to tax questions or informal tax rulings in advance. Since 1 January 2019, Austria has allowed for binding rulings in the area of reorganisations, tax groups, international tax law and questions of abuse of law; in addition, value added tax (VAT) rulings have been allowed since 1 January 2020 (see Section VII for more details).

II COMMENCING DISPUTES

i Tax dispute resulting from original tax decree or a tax audit

In principle, Austria has an assessment-based tax procedure. This means that a taxpayer is required to file a tax return. Following such return, an Austrian tax authority will issue a tax decree that determines and assesses the due tax. If the taxpayer disagrees with a tax notice, he or she can file an appeal within one month after delivery.

Any tax return that is filed with the Austrian tax authorities is subject to a plausibility check before a tax decree is issued. Normally, the taxpayer’s information is reviewed in more detail only if certain aspects of the filed tax return are unclear to the Austrian tax authorities. More often such review is made after the tax assessment. Under Austrian statutory law, any tax notice may be corrected by the Austrian tax authorities without further reasoning given within one year.

¹ Gerald Schachner and Kornelia Wittmann are partners, Nicolas D Wolski is an attorney at law and Lucas Hora is an associate at bpm Huegel.

Further, a tax decree can be amended as a consequence of a tax audit within the statutes of limitation, which, generally, is six years after the year for which the tax return was filed (five years plus one year in case of investigative actions by the tax authorities). In the case of deliberate tax evasion, the statute of limitation is 10 years. However, if the Austrian tax authorities undertake investigative actions within the respective last year, the statute of limitation is extended for one additional year. In any case, the right to assess taxes is time-barred after 10 years.

ii Subject matter of the appeal

If a decree by an Austrian tax authority infringes the taxpayer's rights, an administrative appeal can be filed by the taxpayer within one month after the delivery of the decree. This deadline may, upon the application of the taxpayer, be (also repeatedly) extended by the Austrian tax authorities for 'good reason' and was generally suspended during the first covid-19-induced governmental shutdown in March and April 2020. The appeal has to be filed with the Austrian tax authority that issued the decree.

iii Administrative appeal procedure

After the administrative appeal has been filed the Austrian tax authority will review the case and render an administrative appeal decision. However, there will be no administrative appeal decision if the taxpayer has requested that the authority refrains from doing so in the administrative appeal or if the taxpayer only claims that a regulation is not in line with the statutory law, a statutory law is unconstitutional or that international conventions are unlawful. Also, there will be no administrative appeal decision if the decree that shall be appealed against has been issued by the Federal Ministry of Finance. The objective of this procedure is a level of administrative self-control.

The Austrian tax authority's decision on the administrative appeal becomes final and binding if the taxpayer does not request the submission of the matter to the Federal Tax Court within one month after the delivery of the administrative appeal decision.

If the Austrian tax authority does not render its administrative appeal decision within six months after the filing of the administrative appeal, the taxpayer may lodge a complaint with the Federal Tax Court for the reason of the inactivity of the Austrian tax authority. In this case, the Federal Tax Court will grant the Austrian tax authority an additional period of three months (which can be extended once for good reason), after which the Federal Tax Court becomes competent for the decision of the appeal. The Austrian tax authorities often require up to one year to render a decision.

iv Judicial appeal procedure

If the taxpayer is not satisfied with the administrative appeal decision by the Austrian tax authority, he or she must request submission of the appeal to the Federal Tax Court within one month after the delivery of the decision. As with the administrative appeal, this deadline was suspended during the first covid-19-induced governmental shutdown in March and April 2020. If the submission is requested in time, the appeal procedure is deemed undecided and the Federal Tax Court becomes competent for the appeal. The Federal Tax Court is competent from the beginning if the taxpayer has requested a direct decision by the Federal Tax Court in the appeal and the Austrian tax authority has forwarded the appeal to the court.

Taxpayers may represent themselves in Federal Tax Court procedures. Alternatively, they may be represented by a professional representative such as an attorney at law, a (registered)

tax adviser or an auditor. Federal Tax Court procedures follow the principle of official investigation. The Federal Tax Court will investigate the facts and circumstances *ex officio*. It may reject the appeal as unfounded or allow the appeal, which leads to the annulment or revision of the contested decision or decree. The Federal Tax Court can change the contested decision in all directions, including to the detriment of the taxpayer. If the taxpayer does not request a public hearing, it is up to the court's discretion to decide in a closed session or to hold a public hearing before its decision.

v Legal appeal to the Supreme Administrative Court

A legal appeal against a decision of the Austrian Federal Tax Court may be filed with the Supreme Administrative Court, which is the second and last judicial instance in tax matters in Austria. The legal appeal can either be filed by the taxpayer or by the Austrian tax authority. The legal appeal must be submitted within a period of six weeks, which cannot be extended. The legal appeal is decided upon by the Supreme Administrative Court. There is no minimum threshold amount necessary to file a legal appeal. The legal appeal has to be addressed to the Federal Tax Court, which decides whether the procedural requirements are met.

To be admissible, the matters brought before the Supreme Administrative Court must address fundamental questions so that the court may ensure the uniformity of the application of the (tax) law. The Supreme Administrative Court decides on the admissibility of the legal appeal based on these criteria. A legal appeal to the Supreme Administrative Court may even be possible if the Federal Tax Court considers it inadmissible. In this case, additional arguments must be put forward in the legal appeal.

The Supreme Administrative Court does not decide on the facts and circumstances of the case, but only rules on questions of law and on errors of law or procedure, which might have influenced the wrong ascertainment of facts. The Supreme Administrative Court will not perform any factual investigations, nor will it review the facts and circumstances provided by the Federal Tax Court. No new facts will be considered by the Supreme Administrative Court. Only if procedural rules have been neglected, which, if considered appropriately, would have led to a different fact finding, may the Supreme Administrative Court annul the contested decision and refer the case back to the Federal Tax Court.

At the Supreme Administrative Court, representation by an attorney, a (registered) tax adviser or an auditor is mandatory. The court decides either by an annulment of the contested decision (referring the case back to the Federal Tax Court) or by a rejection of the legal appeal. In rare cases, where there is no need for further investigation of the facts and circumstances, it has also the authority to rule in the case by changing the contested decision. Additionally, the Supreme Administrative Court is obliged to refer a case to the Constitutional Court if it considers a legal provision to be incompatible with the Austrian Constitution or to the European Court of Justice if a question arises that needs to be interpreted under EU law or in the case of doubts with regard to the compatibility of a domestic tax provision with EU law.

vi Alternative procedure before the Constitutional Court

If a taxpayer is of the opinion that a decision of the Federal Tax Court infringes their constitutional rights or is based on an unconstitutional or otherwise unlawful provision, they may also directly address the Constitutional Court within a period of six weeks after the Federal Tax Court's decision. The appellant may request that the Constitutional Court refer the case to the Supreme Administrative Court, if the Constitutional Court holds that

no constitutional rights of the taxpayer have been violated (this procedure is called 'successive legal appeal'). The Constitutional Court and Supreme Administrative Court may also be addressed simultaneously ('parallel judicial appeal').

vii Suspension of execution of tax claims

An appeal against a decree by an Austrian tax authority does not have the effect of suspending the execution of that decree. The disputed amount, hence, must be paid, even if an appeal is filed. Together with the filing of the appeal, the taxpayer may apply for suspension of execution in whole or in part. A suspension of execution must be granted by the Austrian tax authorities: (1) unless the appeal, from a reasonable perspective, appears to be almost certainly unsuccessful; (2) if and to the extent that the appealed decree does not deviate from the tax return or other requests made by the taxpayer; or (3) if the taxpayer's conduct does not indicate a risk with regard to the collection of the tax claim. If the appeal is finally unsuccessful, interest is chargeable for the period during which the payment of the Austrian tax was suspended. The interest rate is the base interest rate plus 2 percentage points (currently resulting in an interest rate of 1.38 per cent). If, on the other hand, instead of applying for a suspension of execution, the taxpayer pays the Austrian tax when due and payable and, consequently, the taxpayer's appeal is successful, the taxpayer may in turn also claim interest (at the same rate) in respect of the amount paid.

Alternatively, the taxpayer may ask for a deferral of payment even before an appeal is filed. This might be of particular interest to the taxpayer if the taxpayer (for whatever reasons) cannot file the appeal in time and, therefore, has applied for and been granted an extension of the deadline for the filing of the appeal. Because a suspension of execution can only be applied for once an appeal has been filed, a deferral of payment may provide the necessary protection against an execution of the tax claim by the Austrian tax authorities. If a deferral of payment is granted, interest arises on the deferred payment at the rate of the base interest rate plus 4 percentage points (currently resulting in an interest rate of 3.38 per cent) if the amount exceeds €750.

III THE COURTS AND TRIBUNALS

In Austria there are two kinds of tax courts, competent for different taxes. An administrative court in each of the nine federal Austrian states is competent in the case of municipal or provincial taxes assessed by the local or provincial administrative authorities (e.g., tourism levy), while the Federal Tax Court is competent for federal taxes, assessed by the (federal) tax authorities, which include the most important Austrian taxes, such as income tax, corporate income tax (CIT) and VAT, real estate transfer tax, stamp duty and consumption taxes.

The Federal Tax Court has its seat in Vienna and six further locations in other larger cities in Austria. Generally, the Federal Tax Court's decisions are made by both professional judges and lay judges, all of whom are completely independent from the Austrian tax authorities and not subject to any instructions. Normally, the Federal Tax Court decides by a single professional judge unless the taxpayer has requested (or the competent judge in specific cases holds) that the decision shall be made by a 'senate', which is a body comprising two professional judges and two lay judges.

As mentioned in Section II, an appeal against the Federal Tax Court's decision can be brought before the Supreme Administrative Court in the case of legal issues of fundamental importance or, if the taxpayer claims violation of his or her constitutional rights, before the Constitutional Court.

Decisions of the Supreme Administrative Court are made by a panel of five professional judges. In matters of fiscal criminal law and in certain procedural matters, a panel of three professional judges decides.

The Constitutional Court regularly decides as a senate of six, whereby the president of the court does not cast a vote. The Constitutional Court may, however, also decide as a larger senate or in a plenary sitting.

IV PENALTIES AND REMEDIES

i Criminal penalties or sanctions

Penalties or sanctions for tax offences, if any, are not imposed in tax disputes. Rather, if the Austrian tax authorities believe that a taxpayer has committed a tax offence, they will initiate, or cause to be initiated, (separate) fiscal criminal proceedings against the taxpayer.

The tax authorities are competent for smaller offences (negligent offences or intentional offences with evaded taxes of not more than €100,000).

The Austrian criminal courts are competent for intentional offences with evaded taxes of more than €100,000 (in some cases an overall perspective may result in several offences being considered collectively with respect to this threshold).

Intentional tax evasion is sanctioned with a fine of up to twice (or in the case of commercial tax evasion, up to three times) the evaded tax amount or up to two (three) years of imprisonment. In the case of qualified forms of tax evasion (e.g., use of falsified documents or fictitious structures), up to 10 years of imprisonment is possible.

Under Austrian law, not just individuals but also legal persons can be subject to fiscal criminal proceedings.

Decrees of the Austrian tax authorities in fiscal criminal matters can be appealed to the Federal Tax Court and ultimately (in principle) to the Supreme Administrative Court. Court decisions in a fiscal criminal case can be appealed to the Court of Second Instance and further (in certain cases) to the Supreme Court for Civil and Criminal Matters.

ii Administrative charges

Administrative charges, by contrast, may be imposed as part of a tax dispute in tax matters. The most important administrative charges in tax matters are the following:

- a If a tax return is not filed on time, the tax office can impose a late filing charge. The amount of the late filing charge is at the discretion of the Austrian tax authority, but must not exceed 10 per cent of the assessed tax.
- b If a tax amount is not paid when due, the tax authority can impose a late payment charge, which is usually the case when VAT or withholding taxes are levied *ex post* in a tax audit. The late payment charge is always 2 per cent of the amount of tax due, increased by an additional 1 per cent three months after the initial imposition of the late payment penalty and another 1 per cent (to a total interest of 4 per cent), after a further three-month period has elapsed. No further increases are possible.
- c If a difference arises between Austrian income tax or CIT prepayments and the assessed tax, such difference bears interest beginning from 1 October of the year following the

years in which the tax arises until such time that the difference amount is actually paid. This situation may arise also as a result of *ex post* tax audits. The interest rate is the base interest rate plus 2 percentage points (currently resulting in an interest rate of 1.38 per cent).

Administrative charges will rarely be assessed during a tax remedy, unless new late payments are detected. Both late filing charges and late payment charges are administrative acts against which an appeal is possible. If, however, the underlying tax is appealed against, no separate appeal is necessary against the late payment charge. Additionally, the tax authorities may impose enforcement charges to enforce certain actions of taxpayers (e.g., to file a tax return), which may amount to up to €5,000.

V TAX CLAIMS

i Recovering overpaid tax

A taxpayer is obliged to pay taxes either by way of self-assessment (e.g., VAT, wage withholding tax) or by way of a formal tax assessment in a decree issued by the Austrian tax authorities (e.g., CIT, real estate transfer tax). If a taxpayer pays a tax that is not due or in the case of overpayments, the taxpayer can claim repayment. An overpayment may result from (quarterly CIT or monthly VAT) prepayments. The tax is repaid to the taxpayer upon request after the annual assessment, unless the amount can be credited against other due and payable tax liabilities of the same taxpayer. It is also possible to file a request for a reduction of prepayments already during the year, if it becomes clear that the prepayments will result in an overpayment. In the case of withholding taxes, any amount withheld mistakenly can be reclaimed from the competent tax authority by the recipient of the payments (the actual taxpayer).

ii Challenging administrative decisions

Basically, administrative decisions may only be challenged if they are unlawful. The unlawfulness may result from the administrative act being incompatible with the Austrian constitution or with specific tax law provisions. The basic constitutional principle in the area of direct taxation is the principle of equal treatment. A similar situation has to be taxed similarly unless there are reasonable grounds to do otherwise. Therefore, a taxpayer that has been treated unlawfully has to appeal against the respective decree. Discrimination in terms of unequal treatment of similar situations may render the decree unconstitutional.

iii Tax waiver

A taxpayer may apply for a tax waiver if the imposition of the tax would be unfair given the overall circumstances. The Austrian tax authorities are rather reluctant to grant a tax waiver. The inadequacy can either be of a personal or factual nature. Personal inadequacy requires that the imposition of the tax results in personal risks for the taxpayer or his or her family. Such personal risks do not have to be life threatening. Rather, it is sufficient if the taxpayer would need to dispose of property to pay the tax and such disposal would be considered squandering. Factual inadequacy requires that the application of the law leads to results that are – beyond reasons of personal inadequacy – obviously not intended by the law and that would result in an abnormal burden for the taxpayer. If compared to similar cases, the situation of the taxpayer must be atypically burdensome. As an example, a tax waiver is in

principle possible in the case of protection of the taxpayer's good faith. The taxpayer may have been in good faith if he or she has relied on recent case law or statements by the competent tax authority (e.g., informal rulings, described in Section I) or public releases by the Ministry of Finance (e.g., legally non-binding guidelines).

iv Claimants

In Austria, as in Germany, tax court litigation aims at challenging taxes assessed in the (contested) tax decree. As a consequence, only the taxpayer to whom the contested tax decree has been addressed by the Austrian tax authority may appeal this decree.

VI COSTS

An appeal against a tax decree is free of charge. Representation costs are, however, unrecoverable, even if an appeal is successful.

Successful proceedings against a tax court's judgment, however, warrant a claim for a partial refund in the form of a lump-sum payment amounting to approximately €1,100 plus a refund of the court fees paid (which currently amounts to €240 in the case of both the Supreme Administrative Court and the Constitutional Court).

VII ALTERNATIVE DISPUTE RESOLUTION

With the objective of reducing future tax litigation, Austria allows for taxpayers to contact the competent Austrian tax authority and ask either informally for a non-binding statement or formally for a tax ruling. If the conditions (demonstration of the taxpayer's specific interest) are met, the tax authorities are obligated to issue a binding ruling. The submission of an informal statement, however, is at the discretion of the tax authorities.

Under Austrian law, binding rulings can only be requested regarding a limited scope of matters. With effect from 1 January 2019, the catalogue of these matters has been extended and comprises reorganisations, tax groups, international tax law and questions of abuse of law; since 1 January 2020, VAT tax rulings have also been allowed.

The application for a binding ruling triggers administrative fees. The fee amounts to €500 if the binding ruling request is denied or withdrawn in time. Otherwise, the fee depends on the taxpayer's annual turnover. The base fee is €1,500. If the taxpayer's annual turnover exceeds €400,000, the base fee is gradually increased up to a maximum of €20,000 (where turnover exceeds €40 million). The Austrian tax authorities do not charge any administrative fee for the issuance of informal rulings.

If a ruling is obtained, it reduces the risk that the Austrian tax authorities will take a divergent view (e.g., in tax audits). For a ruling to be binding, the actual facts and circumstances may not deviate from the facts and circumstances on which the ruling was based. In this case, the Austrian tax authority is bound by a ruling granted based on the law.

The protection of the taxpayer against tax audits deviating from rulings applies to both binding rulings and also informal rulings (in the case of the latter, because of the protection of good faith).

On the basis of double taxation conventions (DTCs), which contain a provision that reflects Article 25(3) of the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD MTC), cross-border advance pricing arrangements can be negotiated by the Ministry of Finance on a bilateral or multilateral basis. Within the

European Union, the outcome of such arrangements is also subject to a mandatory automatic information exchange system. However, the advance pricing arrangements should clarify specific issues of interpretation of DTCs (including fact patterns) on a rather generic level.

In 2019, a new system of 'horizontal monitoring' entered into force, which is available on a voluntary basis and is open for certain reliable and very large enterprises with an annual turnover of more than €40 million as well as banking institutions and insurance companies. Participants will be reviewed by inspectors of the Austrian tax authorities on an ongoing basis instead of *ex post* tax audits. This system aims to reduce uncertainty resulting in less tax litigation.

Finally, in implementation of Directive EU 2017/1852, since September 2019 there has been the possibility for lodging dispute settlement complaints regarding the interpretation and application of DTCs. Taxpayers facing intra-EU tax disputes may, within three years of the first notification of the tax dispute, submit a request to initiate a dispute settlement procedure. During this procedure, the Member States involved can find a common solution within two years. If an agreement is reached between the Member States, it constitutes an enforceable decision for the taxable person concerned. If, on the other hand, the Member States involved do not reach an agreement on the complaint within two years (with a possible extension of up to one year) arbitration proceedings must be carried out. The final decision by the Advisory Committee then binds the Member States involved, if no agreement can be reached within a further 6 months.

VIII ANTI-AVOIDANCE

As of 2019, Austria has amended its general anti-avoidance rule by implementing the principle purpose test, as stipulated in Article 6 of the Anti-BEPS Directive (EU 2016/1164). Hence, a transaction is regarded as abusive if one of its principal purposes is the saving of taxes. In addition, the Austrian tax law follows the substance over form approach.

IX DOUBLE TAXATION TREATIES

Austria maintains a dense network of DTCs with all major jurisdictions across the world.

Most Austrian DTCs are limited to income tax, CIT and property taxes. Additionally, there are some DTCs dealing with inheritance taxes (which are still in force, although Austria no longer levies inheritance tax).

Under the Austrian DTCs Austrian taxation rights may be limited or excluded. Hence, the Austrian DTC network may provide protection for a non-Austrian taxpayer investing into Austria. However, Austrian tax laws often require substance and beneficial ownership to be able to rely on tax reliefs.

X AREAS OF FOCUS AND BEPS/MLI

For quite some time, Austrian tax audits have focused on international activities. One of the reasons for this is the OECD report regarding base erosion and profit shifting (BEPS) published in 2013. As suggested by BEPS Action 3, Austria has implemented controlled foreign corporation legislation, which entered into force on 1 January 2019 in line with the Anti-BEPS Directive (EU 2016/1164). BEPS Action 12 regarding the disclosure of aggressive tax planning models has been implemented in transposition of the amendment

to Directive EU 2011/16 (DAC6) in September 2019. According to the newly created regulation, various cross-border arrangements that are considered aggressive have to be reported to the tax authorities within 30 days after a given triggering event. The beginning of the initial reporting period was originally scheduled for 1 July 2020. As a result of covid-19, the EU Council allowed Member States to defer the new regime until 1 October 2020. Austria, however, has not made use of this option. Nevertheless, the Austrian Ministry of Finance stated that owing to technical delays the electronic submission of reports would not be available until 31 October 2020 and therefore sanctions for a violation of the reporting obligation would be suspended until 31 October 2020.

With respect to BEPS Action 13, a master and local file transfer-pricing documentation system as well as country-by-country reporting for large affiliated enterprises has been established, applicable for accounting years starting on or after 1 January 2016.

As recommended by BEPS Action 15, Austria signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017.

Finally, Austrian tax law comprises a regime limiting interest expense deduction paid by Austrian companies to low-taxed non-Austrian affiliates. The Ministry of Finance took the position that the Austrian interest deduction limitation regime is equally effective to the interest limitation rule set out in Article 4 of the EU Anti-BEPS Directive. In this case, Austria would have had time to introduce the interest limitation rule set out in Article 4 of the EU Anti-BEPS Directive until 1 January 2024. However, in July 2019 the European Commission held that the Austrian regime is not equally effective and opened formal infringement proceedings against Austria. Thereafter, in November 2019 a reasoned opinion regarding this matter was provided by the European Commission. Consequently Austria was requested to implement the concerning regulation, otherwise the matter may be brought before the European Court of Justice. Subsequently, the Austrian legislator proposed an implementing regulation in late November 2020. The draft provides for a new rule to be incorporated into the Austrian Corporate Income Tax Act limiting net interest expense deduction to 30 per cent of a special EBITDA (based on tax figures) and was expected to enter into force at the beginning of 2021 with retroactive effect from 1 January 2021. However, the draft contains many of the possible types of relief provided for in Article 4 of the EU Anti-BEPS Directive, such as the exemption for amounts up to €3 million, the ‘equity escape’, the stand-alone exemption or the extended carry-forward option.

In late 2020, and most likely also during upcoming periods, tax auditors further focused on the review of state aid granted during the covid-19-induced economic crisis. For this purpose, a new regulation (the Covid-19 State Aid Audit Act) was introduced extending the scope of tax audits.

XI OUTLOOK AND CONCLUSIONS

Globalisation has resulted in more and more international fact patterns. The Austrian legislature and the Austrian tax authorities have reacted to this internationalisation and have increased their efforts to respond to these developments.

It is to be expected that tax audits will even more focus on international transactions and transfer pricing in the future.

In addition, international measures such as the interest limitation rule or the recent national covid-19 legislation have increased the complexity of tax cases and will, in turn, contribute to an increasing number of tax procedures and tax litigation in the future.

Another trend nowadays is that Austrian tax audit findings not only may result in tax proceedings and ultimately tax litigation, but fiscal criminal procedures are also increasingly being introduced. Therefore, taxpayers must consider more carefully than ever how to avoid and prepare for future tax disputes and tax litigation.

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