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1. INTRODUCTION

a. Forms of Legal Entity

Business activities in Austria can be carried out by companies either in the form of a partnership (general partnership "OG", or limited partnership "KG") or a corporation (Limited liability company – "GmbH" or Joint stock company – "AG"). Also investments through Austrian private foundations ("Privatstiftung"), which qualifies as a legal entity, are common in Austria. In addition, it is possible to do business in the form of a branch of a foreign legal entity.

The main legal differences between Austrian partnerships and corporations are that the liability of shareholders of corporations is generally restricted to the subscribed share capital, while no limitation of liability is given for general partners of a partnership (for limited partners, liability is also limited to an amount agreed in the partnership agreement). Furthermore, corporations may be established by a single shareholder while partnerships must consist of at least two different partners. From a tax perspective, partnerships are considered as tax transparent entities and income is attributed directly to the partners. Austrian corporations on the other hand are recognised as tax subjects and income is assessed at the company level.

b. Taxes, Tax Rates

Domestic and foreign legal entities are subject to a flat federal Austrian Corporate Income Tax of 25%, regardless of whether the profit is distributed to shareholders or retained. Dividend distributions are subject to WHT of 25% (legal entity recipients) or 27.5% (individual person recipients), however a reduction of WHT up to nil is possible if certain conditions are met (e.g. EU domiciled legal entity shareholder with substance and beneficial ownership, at least 10% shareholding and holding period of at least 1 year). Neither trade tax nor additional income based local taxes are levied in Austria.

Income taxes on income of individual persons is levied based on progressive tax rates (i.e between 0% for income up to €11k and 55% for income exceeding €1m).

c. Common divergences between income shown on tax returns and local financial statements

The basis for the computation of the income tax base is the income as declared in the annual separate financial statements of the entity according to Austrian GAAP. In a second step tax adoptions of the GAAP-income need to be undertaken. Most commonly the following items are adopted:

- Amortisation of Goodwill (fixed tax depreciation period of 15 years);
- Depreciation of assets (e.g. special tax rules for e.g. buildings exist and only a linear and (for certain assets acquired/constructed after 30.6.2020) a degressive depreciation is accepted);
- Provisions (e.g. special tax rules exist for provisions for certain personnel expenses; also not all provisions which are accepted for GAAP-purposes are accepted for tax purposes);
- Tax exemptions on dividends and capital gains if certain conditions are fulfilled (e.g. national dividends and international dividends - from EU corporations or non-EU corporations domiciled in countries with whom Austria concluded a comprehensive administrative assistance agreement - conversely no tax exemption exists in cases the distributing entity qualifies as low taxed (12.5% or less effective tax rate) passive entity; for capital gains see below point III.h);
- Write-downs of subsidiaries (spreading over 7 years or no deductibility in case of international participation or within a tax group).

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2. RECENT DEVELOPMENTS

a. Austrian Tax Amendment Act 2018 (“Jahressteuergesetz 2018“)

The most significant amendments to the Austrian Tax Code (Austrian Tax Amendment Act 2018 – ***“Jahressteuergesetz 2018”) with effect for 2019 and thereafter*** were passed in late 2018, and entered into force (mostly) 1 January 2019 and provided e.g. for the following amendments:

- Implementation of a CFC-rule (based on EU-ATAD) with effect for financial years starting after 31 December 2018.
- Based on this new CFC-legislation, low taxed passive income of direct or indirect controlled foreign corporations will be attributed directly to the Austrian controlling entity and subject to Austrian corporate income taxation.
- This rule only applies in cases where the foreign entity (i) generates passive income, such as interest, royalties, dividends and income from the disposal of shares (only if they would not be considered as tax exempt if received directly by an Austrian entity), income from financial leasing, income from insurance/banking, income from invoicing companies), (ii) is effectively low taxed, i.e 12.5% or less (the effective tax rate of the foreign entity must be computed based on Austrian tax rules), (iii) the passive income constitutes more than a third of the total income of the foreign entity, and the foreign entity is controlled directly or indirectly by the Austrian entity. The CFC rule would not apply in case the Austrian entity can demonstrate that the foreign entity performs a substantive economic activity supported by staff, equipment, assets and premises.
- Expansion of Binding Advance Ruling to the following topics: “International Tax”, “Abuse” (with effect as of 1 January 2019) and VAT (with effect as of 1 January 2020). This instrument allows taxpayers, prior to the implementation of a transaction, to obtain a binding ruling regarding the tax consequences of an envisaged transaction by the Austrian Tax Authority. Such binging rulings can be obtained only for “reorganisations”, “tax groups” and the three mentioned categories. Generally, they should be issued within two months and are subject to a fee of up to €20,000 (depending on the size of the entity/group).
- With effect from 1 January 2019, the time frame for the payment of instalments with regard to the Austrian exit tax (generally available for exits to other EU-member states) was reduced from seven to five years.

b. Austrian Digital Tax Act 2020 (“Digitalsteuergesetz 2020“)

As no common rules regarding the taxation of digital services could be agreed within the OECD/EU, Austria implemented, as an interim solution, a digital services tax on online advertising services (Austrian Digital Tax Act 2020, “Digitalsteuergesetz 2020”). Since 1 January 2020 online advertising services provided by online advertisers in Austria for a remuneration are subject to a 5% tax. This tax applies to online advertisers with a worldwide turnover of at least €750,000,000 and a turnover in Austria of at least €25,000,000 from the provision of online advertising services.

c. EU Reporting Act – DAC 6 (“EU-Meldepflichtgesetz”)

Based on the amendment (2018/822/EU) of the EU Directive on Administrative Cooperation (2011/16/EU), which Austria transposed into national law as the “EU-Meldepflichtgesetz”, certain cross-border arrangements which pose a risk of tax avoidance, circumvent reporting under the Common Reporting Standard (“CRS”) or preventing the identification of the beneficial owner must be disclosed by intermediaries (e.g. tax advisors) or tax payers to the Austrian Tax Authority. Reports covering arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 needed to be filed by 31 August 2020. For arrangements where the first step was implemented after 1 July 2020 or which were designed, marketed, made available for implementation or administered after 1 July 2020, reporting must be filed generally within 30 days. Austria has decided not to extend the deadline for filing the first reports as would have been possible according to the amended EU directive 2020/876/EU which provides for a deadline extension due to Covid-19. However, due to technical delays in the implementation of the reporting mechanism, the filing of reports was not possible before 1 October 2020 and therefore it has been announced that the deadline for filing the first reports was postponed until 31 October 2020.

d. Interest limitation rule according to EU-ATAD

Austria did not implement an interest limitation rule as stipulated in Art 4 of the EU-ATAD as the government believed that it had an equally effective interest limitation rule already in place (this rule forbids the deduction of interest/royalty payments to low taxed group recipients). Therefore, the transitional provision of Art 11 EU-ATAD should be applicable and the implementation of the rule may be delayed until 1 January 2024 at the latest. The EU commission, who is responsible for validating the fulfilment of the requirements of the transitional provision, however did not agree with Austria’s position and therefore the interest limitation rule should have been implemented as of 31 December 2018. In July and November 2019, Austria was formally asked by the EU Commission according to Art 258 TFEU to transpose the interest limitation rule into national law. With effect from 1 January 2021 an interest limitation rule according to EU-ATAD was finally introduced. Based on this rule excess interest expenses (defined as deductible interest expenses less taxable interest income within the same taxable year) are tax deductible only up to 30% of the taxpayers tax EBITDA of that year. In any case, exess interest expenses up to EUR 3 Million per tax year my be deducted. Exess interest expenses may be deducted in full if the taxpayer is fully consolidated and the taxpayers equity ratio is not more than two percent points lower than the equity ratio of the group according to the consolidated financial statements. Any not tax deductible exess interest expenses of a year may be carried forward to future years. Also, any portion of the 30% tax EBITDA which was not utilized may be carried forward up to five years. For Austrian tax groups special rules exist (eg, the interest allowance of EUR 3 Million is only available once in the whole group).

e. Economic Stimulus Act 2020 (“Konjunkturstärkungsgesetz 2020”)

In response to the Covid-19 pandemic and its impact on the Austrian economy, many tax, financial and other measures have been taken by the Austrian parliament. In July 2020 the parliament passed the Economic Stimulus Act 2020 (“Konjunkturstärkungsgesetz 2020”) which provides a few amendments to the Austrian (Corporate) Income Tax Act:

- Introduction of a degressive depreciation method for certain assets acquired/constructed after 30 June 2020 with up to 30% depreciation (based on acquisition/construction costs) in the first year.
- Introduction of accelerated depreciation for buildings acquired or constructed after 30 June 2020 whereby up to triple the normal depreciation rate may be applied in the first year and up to double the normal rate in the second year (thereafter the normal rate applies). Also for buildings acquired in the second half of a year, the full annual depreciation is deductible instead of only half of the amount.

- Introduction of a Tax Loss Carryback ("TLCB") rule for losses of the tax year 2020 (or optionally 2021 in case the tax year deviates from the calendar year). Based on the new TLCB losses of the tax year 2020 (or 2021) of up to €5,000,000 may be used to offset profits of 2019 and 2018. The Austrian Ministry of Finance may stipulate in an ordinance that (expected) losses of 2020 may already be used to offset profits of 2019 or 2018 before a tax assessment for the year 2020 was issued; furthermore, details for utilising the 2020 loss in the year 2018 shall be included in the ordinance. In case of an Austrian Tax Group only the head of the tax group may utilise the TLCB. The 2020 loss to be carried back in the tax group is limited to €5,000,000 per group member whose income is attributable to the tax group.

As an additional measure to support the Austrian economy during the Covid-19 pandemic, a temporary tax free premium of up to 14% of new qualifying investments was introduced in the Investment Premium Act ("Investitionspärmiengesetz"). This measure is intended to provide incentives for companies to invest in fixed assets. For investments in depreciable fixed assets located in Austria, an investment premium can be applied for between 1 September 2020 and 28 February 2021. Climate-damaging investments (e.g. the construction or extension of installations for the extraction, transport or storage of fossil fuels and the construction of installations that directly use fossil fuels), undeveloped land, financial assets (including the acquisition of companies) and capitalised own work are not eligible. The investment premium generally amounts to 7% of qualifying costs and 14% of qualifying cost of investments in the area of digitisation, ecologisation and health/life science.

f. f. COVID-19 related state support measures

Numerous measures have been and will continue to be introduced to support businesses affected by the COVID-19 pandemic. Such measures include, for example, grants for fixed costs, a grant to cover losses, compensation for lost sales, investment premiums, etc. Due to constantly changing regulations, these measures will not be discussed in detail here.

3. SHARE ACQUISITION

a. General Comments

In a share deal situation, the shares of a company are acquired and the ownership is transferred. Basically all inherent rights and obligations in the corporation remain unchanged as only the shares of the legal entity are acquired (however material contracts should be reviewed for change-of-control clauses). Consequently, no step-up of asset book values is possible and no goodwill can be capitalised and subsequently amortised. Interest expenses resulting from the acquisition of shares are generally deductible, provided that the interest expenses are within the boundaries of the newly introduced interest limitation rule (see comments above). However, interest cannot be deducted if the seller of the shares is an affiliated company or the acquisition of the shares was financed by an affiliated company and the respective company is subject to low taxation. In general no stamp duties are triggered as consequence of a share deal.

b. Tax Attributes

Tax loss carry forwards are maintained at the level of the target, if the provision regarding the purchase of corporate shells (Mantelkauf) is not applicable. Hence the tax loss carry forwards are forfeited if the following three criteria are met cumulatively:

- Substantial change in the economic structure
- Substantial change in the organisational structure
- Substantial change in the ownership of the company against consideration

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Generally, a substantial change is considdered to occur in case of a change of approximately 75% (e.g. acquisition of more than 75% of shares, change of more than 75% of management, reduction of previous economic unit and establishment of new economic unit which outweighs the previous unit by 75%). However as not all criteria must be affected equally, a change of less than 75% could be enough for the application of the Mantelkauf-provision and therefore a case-by-case evaluation is required.

c. Tax Grouping

There is a tax grouping regime in Austria. For the establishment of a tax group an Austrian corporation or a permanent establishment of an EU corporation registered in Austria holding a (direct or indirect) participation of more than 50% of the capital and the majority of the voting rights in a domestic or foreign corporation is required.

Providing that the requirements are fulfilled, the group leader may opt for group taxation simply by filing an application form with the tax authorities (subject to certain time constraints) and signing a tax equalisation agreement with the Austrian tax group members. The tax authorities approve the tax group by official notice. The tax group has to remain in existence for at least three years. If the tax group is terminated earlier, all benefits from the group taxation will be lost and each member of the group will be taxed as a separate entity with retroactive effect.

A tax group has the benefit that all profits and losses of domestic group members are allocated for tax purposes to the group leader. The group may also include first-tier comparable foreign corporations which are resident in the EU or in a country that has concluded a comprehensive administrative assistance agreement with Austria. Only losses of foreign group members may be deducted from the taxable income of the group in proportion to the amount of the direct shareholding of the group in the foreign entity. However, please note the following limitations with respect to foreign losses:

- The deductibility of foreign losses derived through non-resident group members is limited to the amount as calculated under foreign rules. The foreign losses are recaptured and taxed in Austria in subsequent years if and to the extent they can be offset against profits of the foreign entity under its domestic tax regime or if the foreign entity drops out of the group (e.g. due to sale of the participation or if the foreign company is deemed to be liquidated). Profits of foreign group members are not to be included in the tax group.
- The deduction of losses from foreign group members with the tax group's profit is capped at 75% of the profit of all domestic group members (including the group leader). The remaining loss surplus may be carried forward by the group leader without any time limit until the foreign losses are recaptured.

d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the Reorganisation Tax Act ("RTA") – which is based on the EC Merger Directive (90/434/EEC; see Annex III) – provides for a special tax regime applicable to the following types of reorganisations:

- mergers;
- conversions;
- contributions of assets;
- formation of partnerships;
- divisions of partnerships; and
- demerger of corporations.

The RTA basically provides for the following tax treatment, subject to certain conditions:

- no liquidation taxation due to the reorganisation (neither on the level of the company/partnership nor on the level of the shareholder/partner);
- tax-neutral transfer of assets;
- transfer of loss carry-forward to the receiving entity;
- beneficial rules as to the tax base for real estate transfer tax purposes;
- exemption from capital tax; and
- exemption from value added tax.

The RTA allows reorganisations with retroactive effect (basically within a nine-month period), as well as multiple reorganisations, at the same effective date. Special attention should be paid to loss trafficking rules, exit taxation, RETT and possible VAT correction.

Binding rulings are available in reorganisation issues (costs amounting to between €1,500 and €20,000 depending on the turnover of the requesting taxpayer).

e. Purchase Agreement

It is common in Austria that shares in the target company are acquired by an Austrian (or foreign) SPV. In case of an Austrian SPV a tax group may be established and a pooling of interest expenses (SPV-level) and operating income (target-level) can be achieved.

In Austrian law no special rules regarding warranty for share deals exist (i.e the general rules apply). However, in a share deal the tax qualification of the target remains unchanged and therefore the target continues to be liable for all taxes. Therefore, it is of importance that not only the representations and warranties but also the remedies in case of violations of the representations and warranties are regulated in detail in the share purchase agreement. The catalogue of typical warranties is in line with international standards.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The sale of shares is tax-exempt under Austrian VAT. Consequently, input VAT for expenses related to the sale of the shares (e.g. consulting costs) cannot be deducted.

Real estate transfer tax ("RETT") is triggered if 95% or more of the shares in a company which owns real estate in Austria are acquired by a single shareholder or by companies which are members of a tax group pursuant to Sec 9 CIT. In such cases the RETT amounts to 0.5% of the tax real estate value; generally the RETT rate amounts to 3.5% of the consideration. Strategies to manage RETT exist and should be considered during structuring of the transaction. No registration duty for real estate at the land registry court (generally 1.1% of the real estate value) is triggered in the course of a share deal (even if RETT is triggered). Capital duty was abolished in Austria with effect from 1 January 2016.

g. "Purchase accounting" applicable to share acquisitionss

In case of a share purchase, the acquisition costs are capitalised on the participation. This includes direct and indirect acquisition costs (e.g. transactions fees). Write-downs are possible in case the value of the shareholding sustainably decreases below the book value; in such case the expenses need to be spread over a seven-year period for tax purposes (no tax effective write-down is possible for international participations in case no opt-into taxation was elected in the year of acquisition and in case of tax grouping). In case the fair value rises again, the value of the participation needs to be appreciated up to the historical acquisition costs (i.e a revaluation above historical acquisition costs is not possible without performing a reorganisation).

h. Stock Purchase Advantages

Advantages of share acquisitions are that the available tax loss carry forward of the target remains available, except in special cases (see above). Also real estate transfer tax costs may be managed if the transaction is structured properly (see also above). Furthermore, international participations (shareholdings in comparable foreign corporations with at least 10% shareholding and holding period of at least 1 year) can be sold tax free (not applicable for low taxed passive shareholdings);

The Austrian tax law does not provide for a possibility to finalise the tax exposure of a target company prior to acquisition (i.e no tax clearance certificate). Therefore, an extensive tax due diligence is highly recommended. Regarding, inter alia, reorganisations (or acquisitions structured as a reorganisation) a possibility exists to obtain a binding ruling regarding the Austrian tax implications. See above for more details on binding rulings.

i. Stock Purchase Disadvantages

The main disadvantage of stock purchases is that no step-up of the underlying asset book values is possible and previous tax liabilities/risks remain within the company after purchase.

4. ASSET ACQUISITION

a. General Comments

In case of an asset deal all or specific assets of a company are acquired and the ownership of the assets is transferred through singular succession. The main characteristics of an asset deal are summarised as follows:

- Extensive statutory liabilities apply to the purchaser e.g. Art 1409 Austrian general civil act ("ABGB"), Art 38 and 39 Austrian Commercial Code ("UGB"), Art 6 Labour contract law ("AVRAG"), § 14 Federal Fiscal Code ("BAO"), § 67 (4) Austrian General Social Security Act ("ASVG") and further contractual liabilities.
- The book value of the acquired assets is stepped-up subsequently resulting in a higher depreciation. However, it is to be noted that a higher depreciation may result in a "cash-trap" as the net profit is reduced, which subsequently lowers the possible dividend payments.
- Goodwill can be capitalised and depreciated over 15 years.
- Interest for financing the acquisition of assets can be deducted (subject to restrictions, see above.)

b. Purchase Price Allocation

In case of an asset deal the total purchase price needs to be allocated to all the intangible and tangible assets based on expert opinion. Goodwill needs to be capitalised (and subsequently depreciated) if the purchase price exceeds the sum of the fair value of all identifiable assets acquired.

c. Tax Attributes

Tax attributes, such as tax loss carry forwards are not transferred in an asset deal and remain at the level of the seller.

d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the Reorganisation Tax Act ("RTA") – which is based on the EC Merger Directive (90/434/EEC; see Annex III) – provides for a special tax regime applicable to the following types of reorganisations:

- mergers;
- conversions;
- contributions of assets;
- formation of partnerships;
- divisions of partnerships; and
- demerger of corporations.

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The RTA basically provides for the following tax treatment, subject to certain conditions:

- no liquidation taxation due to the reorganisation (neither on the level of the company/partnership nor on the level of the shareholder/partner);
- tax-neutral transfer of assets;
- transfer of loss carry-forward to the receiving entity;
- beneficial rules as to the tax base for real estate transfer tax purposes;
- exemption from capital tax; and
- exemption from value added tax.

The RTA allows reorganisations with retroactive effect (basically within a nine-month period), as well as multiple reorganisations, at the same effective date. Special attention should be paid to loss trafficking rules, exit taxation, RETT and possible VAT correction.

Binding rulings are available in reorganisation issues (costs amounting to between €1,500 and €20,000 depending on the turnover of the requesting taxpayer).

e. Purchase Agreement

In Austria special rules regarding warranty for asset deals exist in case a business unit is transferred; i.e the purchaser is liable for certain business related liabilities of the seller. Therefore, it is of importance that not only the representations and warranties but also the remedies in case of violations of the representations and warranties are regulated in detail in the asset purchase agreement. The catalogue of typical warranties is in line with international standards.

f. Depreciation and Amortisation

Depreciable tangible and intangible assets must be depreciated over their useful life. The Austrian tax rules for depreciation differentiate from the Austrian GAAP rules, for example under Austrian tax law only the linear and for certain assets the degressive depreciation method is accepted. Write-downs or a write-offs are possible in case of sustainable impairments. In case the fair value recovers at a later point in time, an appreciation in value needs to be considered.

Goodwill and other intangible assets may only be capitalised if they result from a purchase. Self-created goodwill and self-created intangible assets may not be capitalised and any expenses associated with the creation thereof are generally immediately tax deductible.

For derivate goodwill the Austrian tax law prescribes a fixed amortisation period of 15 years.

g. Transfer Taxes, VAT

The sale of assets is generally subject to Austrian VAT. Possible VAT exemptions depend on the type of the acquired assets. In particular the sale of real estate is tax exempt; however, opting into VAT liability is possible. Furthermore, input VAT on the purchase of the assets as well as transaction costs may be deducted, if the purchaser generates VAT taxable supplies.

The acquisition of real estate in an asset deal triggers real estate transfer tax of 3.5% of the consideration and registration duty of 1.1% of the consideration. Stamp duties may be triggered for the assignment of receivables to the new owner (0.8% of consideration) as well as the extension or amendment of certain agreements (e.g. lease agreements; 1.0% of multiple of rent) may trigger stamp duties.

h. Asset Purchase Advantages

The main advantage of an asset deal compared to a share deal is the possibility to step-up the asset values and thereby increase the baseline value for subsequent depreciation. Furthermore, income tax liabilities are generally not transferred to the purchaser, however certain exceptions exist (see below).

i. Asset Purchase Disadvantages

Basically, historical tax liabilities are not transferred to the purchaser in case of an asset deal. However, Austrian law provides for different provisions stipulating that purchasers of a business or business unit may be liable for historical taxes if certain conditions are met, e.g. Sec 1409 Austrian general civil act (ABGB, Sec 38 and 39 Austrian Commercial Code ("UGB"), Art 6 Labour contract law ("AVRAG"), Sec 14 Federal Fiscal Code ("FFC"). In practice the provisions of Sec 1409 ABGB and Sec 14 FFC which are the most relevant tax liability provisions for asset deals, restrict the liability for historical taxes insofar as only tax liabilities which, at the time of purchase, were known to the purchaser or which should have been known to the purchaser are included. Examples of liabilities which could be transferred are payroll tax liabilities, VAT liabilities, withholding tax liabilities and social security contribution liabilities.

Austria levies property tax on real estate based on a special assessed value which is generally not updated in case of a sale.

5. ACQUISITION VEHICLES

a. General Comments

Austrian commercial and tax law do not provide a specific legal form or a concept for an acquisition vehicle or holding company. The optimal acquisition vehicle is chosen by the economic and legal requirements (e.g. liability) of the investor.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is the Austrian GmbH as it is a company with limited liability (see above). For real estate investments partnerships are also a viable option. Furthermore, to perform a debt push-down or to establish a tax group usually the GmbH is the preferred legal form.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

Partnerships and joint ventures are possible in Austria, but no specific legal form is provided. The legal form of the joint venture depends on the interests of the investor, however, typically, limited liability companies (especially GmbH) are the main joint venture vehicle.

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle mainly depends on the investment strategy pursued by the investor as well as the industry.

6. ACQUISITION FINANCING

a. General Comments

In Austria there is no provision in the Austrian tax law regarding the use of either equity or debt. However, the jurisprudence established the principle of "financing freedom" which allows the choice between equity or debt financing.

In general, the provisions of the 5th Anti-Money Laundering directive apply to Austrian bank institutes. After performing the necessary KYC checks and other bank internal requirements the transfer of funds to Austria can be completed. There is no estimation regarding the time frame as this depends on the respective bank institute.

b. Equity

Austria consists of only one jurisdiction regarding tax legislation and in general Austria does not provide any major benefits for holding equity, i.e there is no interest on equity funding. Furthermore, no specific substance is required for setting up a holding company.

c. Debt

i Limitations on use of debt

Specific rules on thin capitalisation do not exist in Austria. The Austrian Administrative Court has established various principles to determine under which conditions debt financing is not to be recognised for tax purposes. For instance, if the equity is inadequate (e.g. no securities, low or no interest, no stipulated or actual repayment of the loan, no written form, etc), a loan may be (partly) regarded as hidden equity. However, there are no defined debt-equity ratios to comply with. Hidden equity may also be assumed if the loan agreement is not in line with the arm's length principle. Interest paid on loans that are regarded as hidden equity will be treated as a deemed dividend and may not be deducted from the taxable income. Furthermore, deemed dividends are subject to WHT just as normal dividends.

ii Limitations on interest deductions

Interest payments for debt are not tax deductible entirely if the debt was used to acquire a participation that was previously owned by a group member or by a shareholder with controlling influence. This rule also applies for capital increases or equity contributions in case the increase or contribution is connected with the acquisition of the participation.

Furthermore, interest is not tax deductible in case of low-taxed related party recipients (beneficial owner of the interest). This is applicable if (i) the recipient is a corporation or a comparable foreign corporation; (ii) the recipient is a direct or indirect member of the same group or controlled directly or indirectly by the same shareholder; and (iii) the interest payments are not subject to tax at the level of the receiving entity owing to a personal or objective tax exemption, or if the nominal or effective tax rate is less than 10%.

Interest for debt which is used to finance capital repayment or deemed dividends are not tax deductible. However, in case an open distribution of profits is debt financed the interest is tax deductible.

Effective with 1 January 2021 also the EU interest limitation rule was transposed into Austrian tax law and needs to be considered. See other sections redarding more details on the rules on interest deduction.

iii Tax - and/or legal - relevant distinctions between related party debt and unrelated party debt

Based on Austrian case law a re-characterisation of a related party loan to equity is possible under very special conditions (see above). Interest payments for such a re-characterised loan, as well as non-arm's length interest payments are not tax deductible and are deemed dividends and therefore subject to WHT.

iv Standard means for accomplishing "debt-pushdowns" in the context of acquisitions

The Austrian corporate law provides for various restrictions (e.g. forbidden repayment of contributions as the main restriction) regarding debt push-down securing the interest of debtors. Therefore, it is crucial not to violate these obligatory corporate law principles by pushing down debt to a subsidiary.

In order to push-down debt (economically), an Austrian tax group can be established, which allows the interest expenses from the debt financing of the group leader (holding company) to be offset against the positive income of the group member companies. Furthermore, a limited debt push-down can be achieved by debt financed open dividend distributions made by the target.

d. Hybrid Instruments

In general companies in Austria are financed by way of a capital grant (without the issuance of new shares), capital increase (with issuance of new shares) or a shareholder loan. As an alternative, participation rights can be issued. In principle a participation right is a contractual relationship, grants the right to receive dividends and liquidation revenue. However, they do not provide other shareholder rights. From a tax perspective the definition of the contract is relevant for the qualification as debt or equity as payments of the issuer are only tax deductible if the participation right is considered a debt instrument for tax purposes. The instrument is considered a debt instrument in case the following criteria are met cumulatively:

- not subordinate to other debts and therefore no liability function;
- no profit/loss participation and/or a participation in the liquidation profit;
- no time limitation.

Starting with 1 January 2020 the national transposition of the EU ATAD II Directive (2017/952/EU) entered into force covering cross-border hybrid arrangements. According to these new rules, tax discrepancies, such as double deduction or deduction without inclusion, caused by hybrid arrangements must be neutralised in case further criteria are fulfilled.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are a tool to motivate the sellers or the directors of a target company as well as a purchase price adjustment mechanism. Earn-out payments generally must be capitalised on the shares and therefore are not immediately deductible. The earn-out payments to the beneficiary, i.e the seller of the shares, are treated as subsequent capital gain for the beneficiary and for the purchaser as subsequent costs of acquisition as they are part of the purchase price and therefore increase the book value of the acquired shares.

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7. DIVESTITURES

a. Tax Free

Capital gains and losses resulting of the alienation of shares in a foreign corporation are tax exempt and write-offs as well as write-ups are tax neutral, if at least 10% of the equity in the international participation is held directly or indirectly for an uninterrupted period of at least one year by an Austrian corporation (or a comparable foreign corporation subject to unlimited taxation) and the legal form of the foreign participation is comparable to Austrian corporations or is listed in the Annex 2 of the Austrian Income Tax Act. It is to be noted, that it is possible to opt-out from this tax neutrality for each international participation separately in the respective tax return in the year of acquisition, thus making gains and losses as well as write-offs and write-ups resulting of this participation taxable.

b. Taxable

i Share Deal

Capital gains generated by Austrian resident individuals on the sale of shares in a corporation are generally taxed at a flat rate income tax of 27.5%.

Capital gains generated by an Austrian resident corporation on the sale of shares in a corporation are generally subject to 25% CIT. However, in case the criteria noted above, to qualify for a "Tax Free" divestment are met (i.e comparable foreign corporation, at least 10% capital participation for an uninterrupted period of at least one year, no opt-out), the capital gains on the sale of shares are tax exempt.

ii Asset Deal

Capital gains generated by Austrian resident individuals from the alienation of assets are generally taxed at the progressive income tax rate (up to 55%). A more beneficial taxation (i.e (i) tax allowance of €7,300 or (ii) distribution of the profit over three years or (iii) preferential tax rate of 50% of the applicable tax rate) may be applicable under certain circumstances.

Capital gains generated by an Austrian resident corporation from the sale of assets are generally subject to 25% CIT.

Due to the tax transparency of Austrian partnerships, the sale of shares in an Austrian partnership is classified as an asset deal (sale of the assets of the partnership).

c. Cross Border

Capital gains of a non-resident corporation resulting from the alienation of shares in an Austrian corporation (GmbH or AG) are taxable in Austria at a rate of 25% CIT. This applies if the shareholding amounts to at least 1% in the capital of the corporation, at any time during the five preceding years.

However, double tax treaties may deny Austria the right to tax capital gains, if the OECD Model-provision for capital gains was negotiated. In case the capital gain was realised at the level of an Austrian permanent establishment of the non-resident seller, the capital gains are part of the income of the permanent establishment and subject to tax under the general rules.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Companies and other legal entities that are resident in Austria are subject to unlimited tax liability while non-resident companies and other legal entities are subject to limited tax liability. Unlimited tax liability means the taxation of worldwide income in Austria, while limited tax liability means the taxation of specific Austrian-source income.

Companies and other legal entities are resident if they have their legal seat or place of management in Austria. The legal seat is defined as the place which is designated as such in the articles of association or other basic documents. All entities established under Austrian commercial law must have their legal seat in Austria. The place of management is defined as the centre from which the activities of the company are effectively directed. The place of management is at the office of the principal officers or managers of the company. Companies and other legal entities are non-resident if neither their legal seat nor their place of management is located in Austria.

b. CFC Regime

By way of the Annual Tax Act 2018, Austria introduced CFC rules (***Hinzurechnungsbesteuerung***) with effect from 1 January 2019. The CFC-rules for low-taxed passive income are included in section 10a of the CIT-Act, implementing articles 7 and 8 of the EU Anti Tax Avoidance Directive (2016/1164). The CFC rules lead to an inclusion of income in the Austrian tax base of an Austrian corporate shareholder that holds directly or indirectly a controlling participation in a foreign entity if that entity generates low-taxed passive income. Income is considered low taxed if the effective foreign tax burden is not more than 12.5% whereas passive income includes e.g. interest, royalties, dividends or income from other financial activities.

c. Foreign branches and partnerships

An unincorporated branch of a non-resident company, whether in the form of a registered branch or a non-registered permanent establishment, is taxed under the rules relating to non-resident entities and is considered an integral part of its non-resident head office. Registered branches or non-registered permanent establishments situated in Austria of a non-resident company are not treated as taxable entities. On the other hand, the non-resident head office is subject to Austrian taxation on all income properly attributable to its domestic operations. Thus, income from Austrian sources (and possibly even from non-Austrian sources, e.g. dividends) that is attributable to the branch may be subject to tax.

Partnerships are treated as transparent entities from an Austrian tax perspective. This also applies to foreign partnerships. Thus, profits of a partnership are taxed in the hands of the partners rather than at the partnership level.

d. Cash Repatriation

Dividends received by an Austrian domestic company are generally exempt from corporate income tax. However, in case the payment is deductible for tax purposes at the level of the foreign distributing company, the tax exemption for the Austrian company is denied. A switch-over from exemption method to credit method takes place for dividends received from low taxed (ie effective CIT of 12.5% or less) passive foreign entites, if the shareholding is at least 5%. See other sections for more details.

Outbound profit distributions resulting from the tax internal profit account (ordinary dividend payments) are generally subject to Austrian WHT at a rate of 27.5% (potential relief through treaty law or EU Parent-Subsidiary-Directive).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Generally, the Austrian tax law does not provide for special provisions for real estate companies. However, the following aspects should be considered:

- ***Real Estate Transfer Tax ("RETT")***: RETT at a rate of 3.5% is levied on transfers of immovable property (land and buildings) located in Austria. Furthermore, RETT is triggered if at least 95% of all shares of a corporation owning Austrian immovable property are held by or are taken over by one shareholder (so-called *"unification of shares"*) or by members of an Austrian tax group. In addition shares held by trustees are always attributed to the trustor or settlor of the trust. RETT is also triggered if 95% of shares of a partnership have been transferred to new partners within the last five years. In the case of a unification of shares, the tax base is always the tax value of the real estate and the tax rate amounts to 0.5%.
- ***Real estate investment funds***: Austrian tax law provides a special tax regime for real estate investment funds, which prevails over domestic tax and tax treaty rules. In short, if the regime is applicable, the fund vehicle will be treated as tax-transparent with the investors in the fund becoming subject to Austrian limited tax liability on so-called "deemed distributions". In particular, the taxation of deemed distributions provides for the taxation of annual pro-rata unrealised capital gains and interest on shareholder loans, which would be deemed rental income from Austrian situs real estate. The fund tax rules are based on a substance-over form approach, which means that companies interposed between the fund and the real estate object may be, in general, disregarded for fund tax purposes. In the case of an Austrian corporation held by the fund, unrealised capital gains are attributed to the fund and are taxable at the level of the unitholders. In the case of a partnership or a foreign corporation, the latter is just treated as transparent.

b. CbC and Other Reporting Regimes

The Austrian tax law provides for reporting regimes in context of transfer pricing (CbC, master file, local file – see point 10. below).

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10. TRANSFER PRICING

Affiliated companies are required to observe the arm's length principle. The same is true for transactions between head offices and permanent establishments. Thus, transfer prices of goods and services, interest rates, royalty payments, rentals, etc. must be fixed at an adequate level as if the transaction had been rendered between unrelated parties.

On 2 August 2016, Austria enacted the Transfer Pricing Documentation Law (***Verrechnungspreisdokumentationsgesetz***, VPDG) following the OECD's base erosion and profit shifting ("BEPS") Action Plan. The VPDG sets standards and regulations regarding transfer pricing documentation and only applies to Austrian entities that are part of a multinational group of companies (MNE group). In detail, the VPDG provides for the following documentation obligations:

- MNE groups whose consolidated group revenue was at least €750,000,000 in the preceding fiscal year must prepare and electronically file a country-by-country report.
- Austrian members of an MNE group with revenue exceeding €50,000,000 in both of the two fiscal years preceding the current fiscal year must prepare a master file and a local file.

General documentation of inter-company transactions must be maintained even if the threshold for master/local file (EUR 50 million revenue) is not exceeded.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The Austrian tax law generally applies a substance over form approach. Consequently, any transaction is attributed to the beneficial owner rather than to the legal owner. Thus, generally a look through approach is applied to transactions involving strawmen or back-to-back structures. To be considered a beneficial owner the entity generally needs to have the resources and the capacity to control the investment and the related risks (i.e rented office space, staff).

b. Use of Hybrid Instruments

Regarding the use of hybrid instruments, the Austrian tax law provides for the following provisions:

- Dividend income or other payments obtained by Austrian resident corporations from participations or other forms of investments in a foreign corporation or subsidiary are disqualified from Austrian CIT exemption insofar as these payments are tax-deductible at the level of the foreign corporation. This could be especially the case where investments in a foreign company are characterised from an Austrian perspective as equity and from the foreign tax law perspective as debt.
- Interest paid to a resident or non-resident corporate entity which is directly or indirectly part of the same group or directly or indirectly controlled by the same shareholder is not deductible if the income of the recipient is either not taxed or subject to a tax rate of less than 10%. For purposes of determining the effective tax rate of 10%, any refunds or credits granted to the receiving entity or its shareholders must be taken into account, even if such credits or refunds are granted in the 9 subsequent years.

- Starting from 1 January 2020 the national transposition of the EU ATAD II Directive (2017/952/EU) entered into force covering cross-border hybrid arrangements. According to these new rules, tax discrepancies, such as double deduction or deduction without inclusion, caused by hybrid arrangements must be neutralised in case further criteria are fulfilled.

c. Principal/Limited Risk Distribution or Similar Structures

Austria generally follows the OECD approach with regard to arm's length standards of inter-company distribution structures. Thus, transfer prices for distribution services can generally be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method). However, in practice, the transactional net margin method ("TNMM") is often chosen as the relevant profit indicators can be backed up by comparables from generally recognised databases.

d. Intellectual Property

Austria does not have any special tax status or patent box regime in place. Instead, Austria promotes research and development activities by allowing an immediate tax deduction for R&D expenses and additionally granting a special R&D tax relief. The tax credit for R&D takes the form of a cash tax credit and amounts to 14 per cent of R&D expenses. The cash tax credit is granted for in-house and contract R&D, however, only expenses of up to €1 million per year may be considered as the base for the cash tax credit in case of contract R&D (no limitation for in-house R&D expenses).

e. Special Tax Regimes

Besides the tax grouping regime, Austrial does not provide for any special beneficial regimes.

12. OECD BEPS CONSIDERATIONS

Austria has conducted the following measures with regard to the implementation of BEPS actions:

- **Action 2 – hybrid mismatch:** Dividend income or other payments obtained by Austrian resident corporations from participations or other forms of investments in a foreign corporation or subsidiary are disqualified from Austrian CIT exemption insofar as these payments are tax-deductible at the level of the foreign corporation. This could be especially the case where investments in a foreign company are characterised from an Austrian perspective as equity and from the foreign tax law perspective as debt. Furthermore, tax discrepancies resulting from certain cross-border hybrid arrangements must be neutralised starting from 1 January 2020 (see above).
- **Action 3 – Controlled Foreign Company Rules ("CFC"):** By way of the Annual Tax Act 2018, Austria introduced CFC rules (***Hinzurechnungsbesteuerung***) with effect from 1 January 2019. The CFC rules for low-taxed passive income are included in section 10a of the KStG, implementing articles 7 and 8 the EU Anti Tax Avoidance Directive (2016/1164). The CFC rules lead to an inclusion of income in the Austrian tax base of an Austrian corporate shareholder that holds directly or indirectly a controlling participation in a foreign entity if that entity generates low-tax passive income. Income is considered low taxed if the effective foreign tax burden is not more than 12.5% whereas passive income includes e.g. interest, royalties, dividends or income from other financial activities.

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- **Action 4 – Interest Deductions: With effect from 1 March 2014 Austria implemented a targeted interest (and royalty) limitation rule (not limited to the acquisition of participations) which is applicable if the following conditions are fulfilled:**
  - the recipient is a corporation or a comparable foreign corporation;
  - the recipient is a direct or indirect member of the same group or controlled directly or indirectly by the same shareholder; and
  - the interest (or royalty) payments are not subject to tax at the level of the receiving entity owing to a personal or objective tax exemption, or if the nominal or effective tax rate (tax refunds are taken into account) is less than 10 per cent.

  This rule must be applied to the beneficial owner of the interest, therefore any interposed entities are disregarded and the tax regime of the beneficial owner needs to be checked. In case of transparent entities under Austrian tax law (e.g. partnerships, investment funds, etc) the rule applies to the corporate entity (partner, investor) behind the transparent entity. With delay, Austria transposed the EU-ATAD interest limitation rule with effective date 1 January 2021. See above for more details.
- **Action 5 – Harmful tax practices; Action 6 - Treaty abuse:** Under the Austrian corporate tax law a substance over form approach is applied. Thus, entities are ignored for Austrian tax purposes (look through approach) where they do not meet certain substance requirements (i.e office space rented or owned in own name, employment of people, management carried out at the seat of the company).
- **Action 7 – Permanent Establishments:** In accordance with the MLI and the artificial avoidance of permanent establishment status, Austria applies Option A according to Art 13 (1) MLI. Austria signed the MLI on 7 June 2017 and ratified it on 22 September 2017. Preparatory or auxiliary activities are regarded as non-PE-establishing activities, irrespective of the provisions of a covered tax treaty and the definition of the term permanent establishment in those treaties. This implies that the listing of PE-excluding activities in the respective tax treaties have to be reviewed in the light of the actual characteristic as a preparatory or auxiliary character of the activity of the company's business model. Despite the listing of the PE-excluding activities, a "core business activity" will constitute a PE.
- **Action 8 – 10 and 13 Transfer Pricing:** On 1 August 2016 the Austrian Transfer Pricing Documentation Law ("TPDL") was officially published in Austria. Based on the TPDL, transfer pricing documentation must be prepared for fiscal years starting on or after 1 January 2016. Transfer pricing documentation requirements for prior fiscal years as well as for local constituent entities not covered by the TPDL are based on the Austrian Federal Fiscal Code ("FCC"), taking into account the OECD Transfer Pricing Guidelines. See above for more details.
- Binding rulings are available in transfer pricing issues (costs amounting between €1,500 and €20,000 depending on the turnover of the requesting taxpayer).
- **Action 14 – Dispute Resolution:** The EU Arbitration Convention – to which Austria is a member - establishes a procedure to resolve disputes where double taxation occurs between enterprises of different Member States. The Convention provides for the elimination of double taxation by an agreement between the contracting states including, if necessary, by reference to the opinion of an independent advisory body.

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- **Action 15 – Multilateral instrument:** Austria has signed the Multilateral Instrument (MLI – "Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting) on 7 June 2017 in a signature ceremony with 66 other states and jurisdictions. Austria ratified the MLI as the first country on 22 September 2017. The first double tax treaties of Austria (with France, Israel, Lithuania, Poland, Serbia, Slovakia and Slovenia) that have been comprehensively changed by the MLI already entered into force on 1 January 2019. From an Austrian constitution perspective, the MLI constitutes an intergovernmental contract, comparable to double tax treaties, which has to be transformed into domestic law. The MLI provisions regarding the alterations of the double tax treaties entered into force as of 1 July 2018.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

In general, the provisions of the Austrian GAAP as well as the provisions of the IFRS have to be accounted for. IFRS principles are applicable, if the securities of a parent company is listed on a regulated market in an EU member state. In this case the company has to provide a consolidated financial statement according to the provisions of the IFRS. Other companies may prepare their consolidated financial statements either according to the accounting requirements under Austrian GAAP or IFRS. The Austrian GAAP stipulates size-dependent exemptions regarding the preparation of a consolidated financial statement either by way of Austrian GAAP or IFRS. Two of the following size-dependent criteria have to be fulfilled at the balance sheet date in order to utilise the exemption of Section 246 Austrian GAAP:

i gross method (aggregated figures):

- Balance sheet total: less than €24,000,000
- Revenues: less than €48,000,000
- Average employees: less than 250 in the respective year

ii net method (consolidated figures):

- Balance sheet total: less than €20,000,000
- Revenues: less than €40,000,000
- Average employees: less than 250 in the respective year

b. Divestitures

The statement above under "Combinations" applies for Divestitures as well.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

From a corporate law perspective, the capital reserve needs to be released (booked) to the balance sheet profit in order to be distributable to the shareholder. The corporate law does not distinguish whether the distributed profit results from the annual net profit or from released capital reserves.

The tax law distinguishes whether the distributed profit results from the (i) tax internal profit account or (ii) the tax equity account. Profit distributions resulting from the tax internal profit account (ordinary dividend payments) are generally subject to Austrian WHT at a rate of 27.5% (potential relief through treaty law or EU Parent-Subsidiary-Directive). On the other hand, distributions from the tax equity account (repayment of share premium) are not subject to Austrian WHT. The latter however lead to a reduction of the tax book value of the shares in in the Austrian company held by the shareholder. Generally (under certain conditions), the tax law (Sec 4 para 12 ITA) provides the right to choose whether to treat the profit distribution as a dividend payment (generally subject to Austrian WHT) or as a capital repayment (not subject to Austrian WHT). In order to be able to treat the profit distribution as a capital repayment from a tax perspective, the company needs to have a positive tax equity account (which is created by the equity injection). Furthermore, in case the tax internal profit account is negative (due to incurred losses) the profit distribution needs to be treated as a capital repayment. Only in case the company had both a positive tax equity account and a positive tax internal profit account, the law would provide the right to choose between a dividend payment or capital repayment.

b. Substance Requirements for Recipients

The Austrian tax law generally applies a substance over form approach. Consequently, any transaction is attributed to the beneficial owner rather than to the legal owner. Thus, generally a look through approach is applied to transactions involving strawmen or back-to-back structures. To be considered a beneficial owner the entity generally needs to have the resources and the capacity to control the investment and the related risks (i.e rented office space, staff).

c. Application of Regional Rules

Austria has transposed European Directives in tax related matters into Austrian domestic law, i.e EU Parent Subsidiary Directive, EU Interest and Royalty Directive and EU Merger Directive.

d. Tax Rulings and Clearances

Austria has a rulings practice which is commonly used. Rulings must generally be granted. A ruling request may be addressed to the competent tax office (***Finanzamt***) or the Ministry of Finance (***Bundesministerium für Finanzen***). Rulings obtained from the Ministry of Finance are never binding. Rulings of the competent tax office are binding on the tax administration on the principle of good faith as long as there are no contradictory legal provisions. Rulings, however, are generally not binding on the taxpayer and on the courts.

Legally binding advance rulings are available relating to company reorganisation, group taxation and transfer pricing. The Annual Tax Act 2018 extends the scope of the advance ruling procedure also to questions concerning international tax law (as of 1 January 2019), value added tax (as of 1 January 2020) and tax abuse (as of 1 January 2019). The advance ruling has to be issued within 2 months of application (effective from 1 January 2019) and is binding for the tax authorities. The taxpayer may appeal against such an advance ruling. The administration fee for the ruling depends on the sales revenues of the applicant and ranges from €1,500 – €20,000).

15. MAJOR NON-TAX CONSIDERATIONS

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16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest* %	Royalties %	Footnote
Argentina	25 / 27.5	0	20	[1] [2]
Australia	15	0	10	
Belgium	15	0	0 / 10	[3]
Brazil	15	0	10 / 15 / 25	[4]
Canada	5 / 15	0	0 / 10	[5] [6]
Chile	15	0	5 / 10	[7]
China	7 / 10	0	6 / 10	[8] [9]
Colombia	25 / 27.5	0	20	[1] [2]
Croatia	0 / 15	0	0	[10]
Cyprus	10	0	0	
Czech Republic	0 / 10	0	0 / 5	[11] [12]
Denmark	0 / 15	0	0	[13]
Finland	0 / 10	0	5	[14]
France	0 / 15	0	0	[15]
Germany	5 / 15	0	0	[16]
Greece	5 / 15	0	7	[17]
Hungary	10	0	0	
India	10	0	10	
Indonesia	10 / 15	0	10	[18]
Ireland	10	0	0 / 10	[19]
Italy	15	0	0 / 10	[19]
Japan	0 / 10	0	0	[20]
Luxembourg	5 / 15	0	0 / 10	[17] [19]
Malaysia	5 / 10	0	10 / 15	[21] [22]
Malta	15	0	0 / 10	[23]
Mauritius	25 / 27.5	0	20	[1] [2]
Mexico	5 / 10	0	10	[24]
Netherlands	5 / 15	0	0 / 10	[25] [26]

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Jurisdiction	Dividends %	Interest* %	Royalties %	Footnote
Norway	0 / 15	0	0	[27]
Philippines	10 / 25	0	15	[28]
Poland	5 / 15	0	5	[16]
Portugal	15	0	5 / 10	[29]
Puerto Rico	25 / 27.5	0	20	[1] [2]
Romania	0 / 5	0	3	[30]
Russia	5 / 15	0	0	[31]
Serbia	5 / 15	0	5 / 10	[17] [32]
Singapore	0 / 10	0	5	[33]
Slovakia	10	0	5	
Slovenia	5 / 15	0	5	[17]
South Africa	5 / 15	0	0	[17]
South Korea	5 / 15	0	2 / 10	[17] [35]
Spain	10 / 15	0	5	[35]
Sweden	5 / 10	0	0 / 10	[21] [19]
Switzerland	0 / 15	0	0	[36]
Turkey	5 15	0	10	[17]
UK	0 / 10 / 15	0	0	[37]
USA	5 / 15	0	0 / 10	[38] [39]
Venezuela	5 / 15	0	5	[40]

* Austria currently does not levy withholding taxes on interest payments to non-resident companies.

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Footnotes	
1	“No double tax treaty with with the respective country is in place; therefore, the respective taxes have to be withheld according to domestic tax law.
2	Dividends - 25% rate applies for payments to corporations and 27.5% rate for payments to other recipients.
3	Royalties - In case the recipient of the royalties holds more than 50% of the issued share capital in the company, the withholding tax for royalties amounts to 10%, otherwise 0%.
4	Royalties - The withholding tax amounts to 10% for license fees regarding literature, art and science; 25% in case of trademark license fees and 15% for all other cases
5	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly or indirectly at least 10% of the voting shares in the company.
6	Royalties - The 0% rate applies to royalties on certain cultural works (e.g. literary, dramatic, musical or artistic work), as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience; otherwise the rate is 10%.
7	Royalties - The 5% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.
8	Dividends - Maximum rate of 10%. Reduced rate of 7% applies to dividends paid to a corporation that owns directly at least 25% of the voting shares of the distributing company.
9	Royalties - The 6% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.
10	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnerships) that owns directly or indirectly at least 10% of the issued share capital in the company.
11	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that owns directly at least 10% of the issued share capital in the company.
12	Royalties - The 5% rate applies to royalties for the use of, or the right to use, patents, brands, plans, secret formulas, computer software, any industrial, commercial or scientific equipment and copyright; otherwise 0%.
13	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company.
14	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
15	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation subject to CIT that owns directly or indirectly at least 10% of the issued share capital in the company.

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Footnotes	
16	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
18	Dividends - Maximum rate of 15%. Reduced rate of 10% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
19	Royalties - The 10% rate applies to royalties paid to a shareholder that owns more than 50% of the issued share capital in the company; otherwise 0%.
20	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that ownes directly or indirectly at least 10% of the voting shares in the company for a period of six months, or the recipient of the dividends qualifies as a pension fund.
21	Dividends - Maximum rate of 10%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
22	Royalties - The 15% rate applies to royalties for the use of, or the right to use films; otherwise 10%.
23	Royalties - The 0% rate applies to royalties for the use of, or the right to use licences regarding literature, art and scientific. The 10% rate applies for other licences.
24	Dividends - Maximum rate of 10%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
25	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly or indirectly at least 25% of the issued share capital in the company.
26	Royalties - The 10% rate applies to royalties paid to a shareholder that owns directly or indirectly more than 50% of the issued share capital in the company.
27	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) or to the goverment.
28	Dividends - Maximum rate of 25%. Reduced rate of 10% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
29	Royalties - In case the recipient of the royalties holds more than 50% of the issued share capital in the company, the withholding tax for royalties amounts to 10%, otherwise 5%.
30	Dividends - Maximum rate of 5%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
31	Dividends - A protocol was signed on 5 June 2018 which amended the requirements for the reduced withholding tax rate to reflect the OECD standards. Therefore, the reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company. Otherwise the withholding tax amounts to 15%.

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Footnotes	
32	Royalties - The 5% rate applies to royalties for the use of, or the right to use licences regarding literature, art and scientific as well as films. The 10% rate applies for other licences.
33	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company or to the goverment.
34	Royalties - The 2% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.
35	Dividends - Maximum rate of 15%. Reduced rate of 10% applies to dividends paid to a corporation (not partnership) that ownes directly at least 50% of the issued share capital in the company for a period of twelve months.
36	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 20% of the issued share capital in the company or to the goverment.
36	Dividends - Standard rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly or indirectly at least 10% of the voting shares in the company (except if the company is a relevant investment vehicle), or the recipient of the dividends qualifies as a pension fund. The increased rate of 15% applies to dividends paid by a relevant investment vehicle.
38	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the voting shares in the company.
39	Royalties - The 10% rate applies to royalties for the use of, or the right to use films; otherwise 0%.
40	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 15% of the issued share capital in the company.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

No.	Category	Description of Request
1	Tax Due Diligence	Financial Statements for the last three years
2		Tax returns and tax assessments for the last three years
3		Tax adjustments for the last three years
4		FinanzOnline-Account statement for the Due Diligence period
5		Tax audit reports for the Due Diligence period
6		Correspondence with tax authorities (e.g. rulings, etc)
7		Documents regarding pending and closed appeals of the last five years
8		Transfer Pricing documentation
9		Amount of tax loss carry forwards as of [date] and the development of the tax loss carry forwards
10		Existing or expected significant tax issues
11		Aggressive or unusual tax strategies
12		Information regarding Value Added Tax
13		Information regarding real estate transfer tax
14		Information regarding stamp duty

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