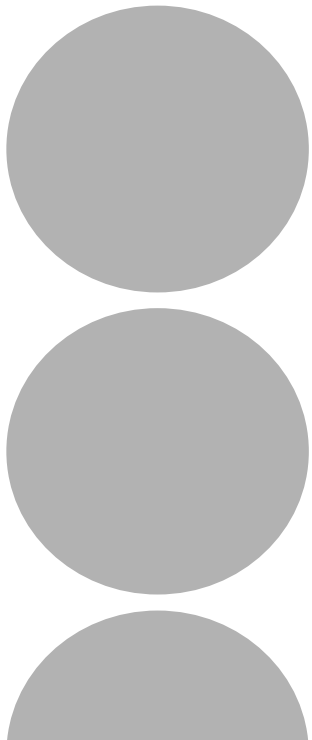


Austria as a Holding Jurisdiction

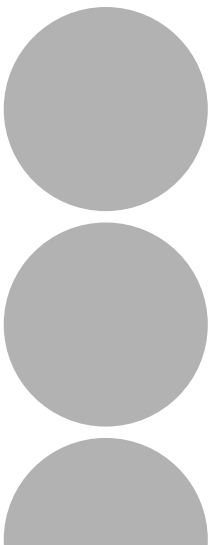
presented by Robert Schneider

TTN Seminar New York 2009, May 18th, 2009



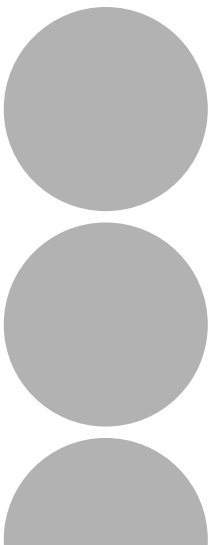
Topics

- Why Austria?
- Setting up an Austrian Holding
- Taxation of an Austrian Ltd
- The Austrian Participation Exemption
 - Domestic Participations
 - International Participations
- Tax on Repatriation of Profits/Capital Gains
- Tax Treaty-Network



Why use Austria as Holding Jurisdiction?

- Reliable legal framework
- Attractive corporate income tax rate of 25%
- Flexible Group Taxation System
- International participation exemption without Subject-To-Tax Clause
- Interest expenses for debt financing of participations tax deductible
- No thin capitalisation rules
- No CFC-rules
- No withholding tax on interest paid to non-residents
- Extensive network of tax treaties (> 80)

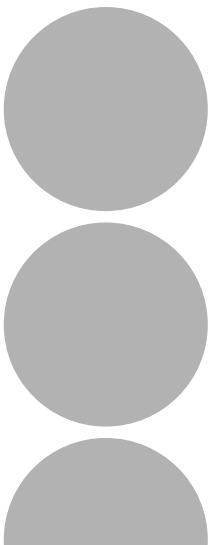


Setting up an Austrian Ltd (GmbH)

- Minimum Share Capital: **€35,000**, half to be paid in before registration
- **Notary Deed** required; min. **1 shareholder**, natural person or corp.
- May be represented for establishing company, requires **legalised and supra-legalised** (Apostille!) **special power of attorney**
- **Min. 1 Director**, must be **natural** person, Austrian residence generally not required; director files legalised application for registration of Ltd
- Time from 1st contact to registration: generally about **2 weeks**
- **Costs** of setting up: legal costs for standard articles of association in German (lawyer plus notary) about € 2,400 plus VAT; 1% capital transfer tax; court fees for registration and publication appr. € 400
- **Current** Costs: holding without activities appr. € 4,500 plus VAT p.a.

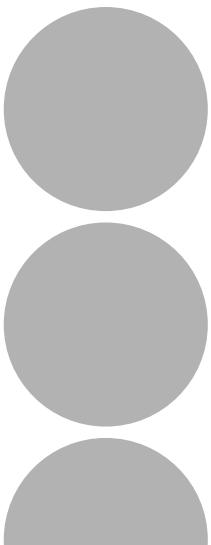
Capital Transfer Tax

- 1% on equity contributions of direct shareholders
- Tax Planning Techniques:
 - Grandparent contributions or equity contributions of sister companies are not subject to tax
 - Exemptions apply under the Reorganisation Tax Act
 - In particular contributions in kind of $\geq 25\%$ participations held for at least two years
 - Exemption under sec. 6 Capital Transfer Tax Act: Transfer of all property or a business of a company to Austrian company



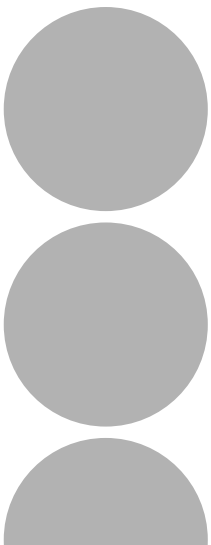
Current Taxation of Austrian Ltd

- No specific Holding status; Ltd is subject to Austrian **Corporate Tax, no wealth tax or local income tax!**
- Flat tax rate of **25%**
- Minimum tax per year: **€1,750**, payable in 4 instalments
 - Can be set off against future tax on profits
- Taxable Profit:
 - derived from profit shown in the financial statements, plus/minus certain amendments for tax purposes, e.g. participation exemption (see below)
 - current income and capital gains form **one** tax basis
 - losses can be carried forwarded (no time restriction, but annual set-off restriction: 25% of profit remain taxable)



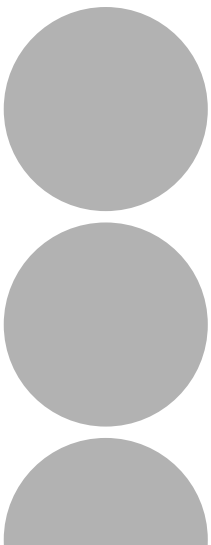
Group Taxation

- Parent company can opt for group taxation of subsidiaries, in which it holds more than 50%
- Foreign (EC/non-EC) subsidiaries can be group members
- Only **foreign losses** (but not profits!) are **allocated to group parent**, proportionate to the shareholding
- Losses are calculated according to Austrian Tax Law, i.e. allowances for R&D-expenses can be used
- Claw-back of losses deducted
 - to the extent that foreign losses become deductible abroad
 - if the foreign subsidiary ceases to be a group member (e.g. sale)



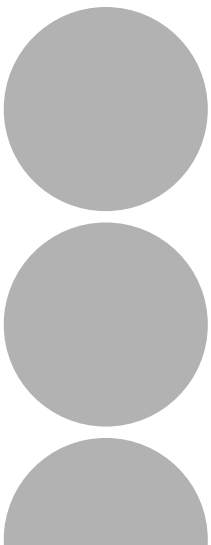
Domestic Participation Exemption

- **Dividends** received (but not capital gains derived!) by Austrian holding company from domestic subsidiaries are **tax exempt**
- **No** further requirements regarding **extent** of participation or **holding period**
- Write-Offs on acquisition costs are tax-deductible over a period of 7 years (but not deductible if caused by distributions of capital)



International Participation Exemption

- Privileges
 - **Dividend** income is tax exempt (including dividends from profits made prior to the acquisition of the participation)
 - **Capital gains** are tax exempt
 - Capital losses are not deductible (except final losses due to the liquidation or insolvency of the participation)
 - However, Austrian holding company may irrevocably elect that capital gains and capital losses are included in its tax base; option must be exercised upon filing of first tax return after acquisition of qualifying participation



International Participation Exemption

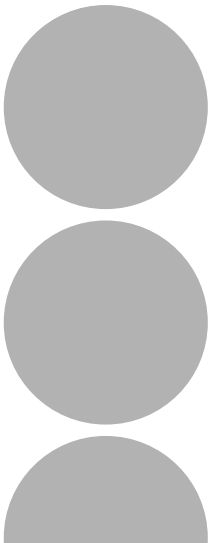
- Requirements
 - Participation in foreign
 - **EC subsidiary** listed in the Annex to Parent/Subsidiary Directive
 - **non-EC subsidiary** comparable to an Austrian company
 - Minimum holding of **10%**
 - Minimum **holding period** of **one year**

Note: *minimum requirements will be abolished with regard to dividends (but not capital gains!) received from EU/EEA-subsidiaries*

- **No abuse of law** (i.e. legal structures whose sole purpose is to lower Austrian tax burden are disregarded, in particular tax haven letter-box-companies; substance required!)

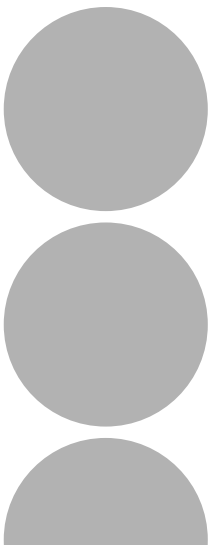
Switch Over to Credit Method

- Switch-Over from exemption to credit method if
 - subsidiary is a ***Passive Investment Holding Company***
and
 - resident in ***a low tax jurisdiction*** (tax rate \leq 15%)
- But no Subject-to-tax clause; i.e., switch-over only
 - if **both** requirements are met, or
 - if one threshold is slightly missed and the other requirement is strongly fulfilled
- Switch-Over means that
 - dividends and capital gains are taxable income
 - foreign tax (corporate/WHT) is credited against Austrian tax on grossed-up dividends received



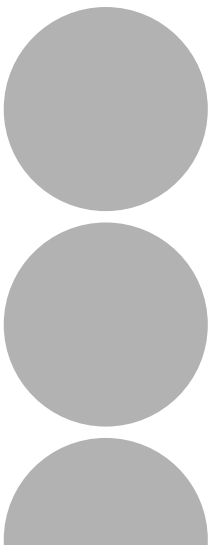
Passive Investment Company

- Main activities (> 50%) consist in deriving
 - Income from **interest, royalties, leasing**
 - capital gains from the sale of **portfolio holdings** (i.e. <10%)
- Other income not harmful, in particular
 - **Dividend** income, but pro rata attribution of activities of lower-tier passive investment companies
 - Income from **real property**
 - Income of managing holding companies
 - Income of banks; group finance companies might qualify
 - Income of commercial leasing companies with substance (employees, office) used for working out of Austria



Low Tax Jurisdiction

- No comparable corporate income taxation system
- Foreign tax basis is calculated pursuant to Austrian corporate tax provisions applicable to resident companies
- Foreign corporate taxation is not comparable if the foreign average tax burden (taking into account any direct or indirect tax on income) amounts to ***not more than 15%***
- Lower tax burden is not harmful if it is the result of different tax rules regarding
 - the depreciation of fixed assets (e.g. progressive or digressive depreciation is allowed)
 - loss deduction (e.g. loss carry-back allowed)

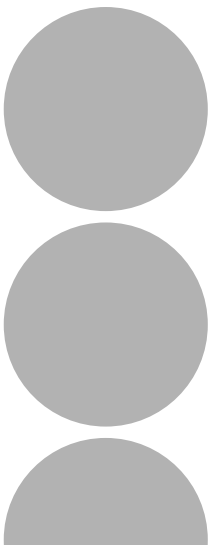


Tax on outbound payments by Ltd

- Dividends (also “hidden” distributions):
 - Generally 25% withholding tax
 - Final tax for Austrian residents
 - Tax exemption for dividend distributions by qualifying subsidiaries (10% holding, 1 year) **to EU parent** (but: anti-abuse provision, if no **substance** – switch over to refund!)
 - Tax exemptions or reductions of withholding tax rate provided by **double tax treaties**
- Interest:
 - Generally **no withholding tax** (unless mortgage)
- Royalty payments:
 - Generally 20% withholding tax on gross income
(no WHT on payments to EU-companies; exemptions or reductions provided by DTTs; EEA residents may opt for 25% on net income)

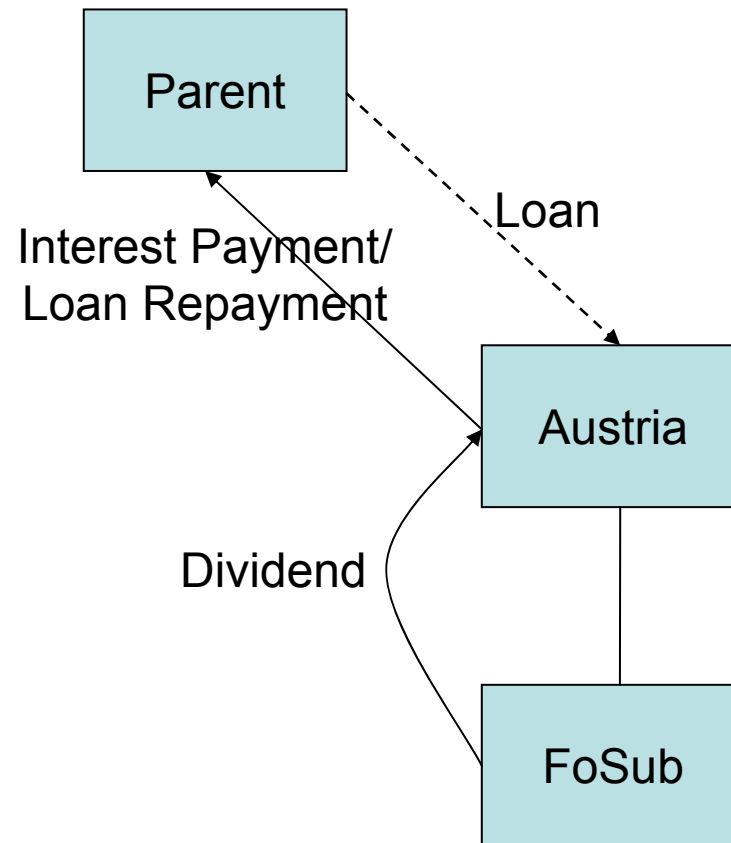
Tax Planning: Shareholder Loans

- **Interest payments** to non-Austrian residents are generally **not subject to Austrian tax!**
- No thin capitalisation rules
- Tax-planning instrument for repatriation of profits:
profit-participating loans
(caveat: 1% capital transfer tax!)
- If debts are secured by Austrian mortgages, interest payments to non-Austrian residents are subject to WHT at the rate of 25%, unless beneficial owner of interest is an affiliated EC company within Directive 2003/49/EC



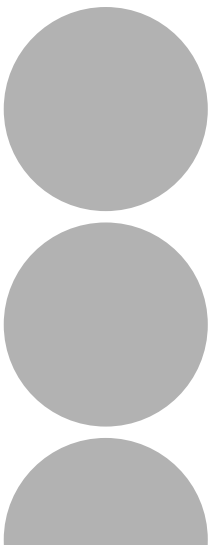
Tax Planning: Shareholder Loans (contd.)

- Parent grants loan to Austrian Holding to acquire foreign company
- Effects:
 - No Austrian tax on interest payments to foreign parent
 - Interest expenses deductible in Austria
 - Dividends paid by foreign subsidiary tax exempt in Austria under participation exemption



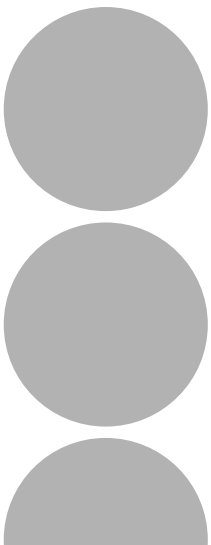
Capital Gains derived by Non-Residents

- Capital gains from the sale of shares in Austrian companies are exempt from Austrian taxation under most tax treaties (cf Art 13/4 OECD model tax convention)
- If no treaty benefit available, capital gains are taxable
 - in case of shareholdings of at least 1% (at any time during the preceding five years) and
 - the winding-up of an Austrian company irrespective of the extent of the shareholding
- Tax rate: 25% for corporations; progressive rate of up to 25% for natural persons
- No transfer taxes on the transfer of shares!



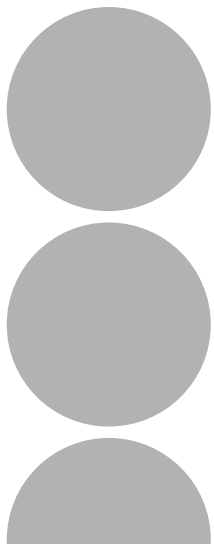
Tax Treaties

- Extensive net of tax treaties (> 80 countries)
- Elimination of double taxation by applying the exemption method, also in cases where the treaty partner applies the credit method (exceptions: USA, United Kingdom, Canada, Finland, Japan, Sweden, Italy)
- Matching credit (e.g. Brazil, China, Israel, Korea and other – mostly developing – countries)
- Holding privilege (e.g. Brazil, Canada, Germany, Israel, Malta)
- Dividends, interest and royalties paid to non-residents are tax exempt under some tax treaties (e.g. Bulgaria, Georgia, UEA)



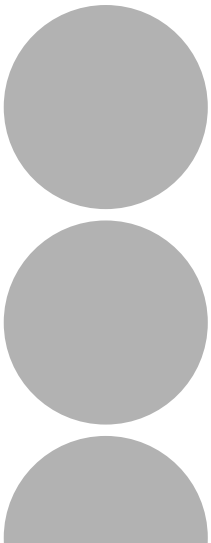
Tax Treaty – United Arab Emirates

- Main Characteristics
 - ***Tax Residence in UAE not required***
 - ***No limitation-on-benefits-clause***: i.e. UAE companies controlled by non-UAE residents benefit
 - ***No WHT on dividends, interest, royalties***
 - ***Capital gains*** generally taxable in residence state, i.e. no Austrian tax charge on the sale of Austrian subsidiary
- No corporate tax or WHT in UAE
- Avenue to channel funds tax-free into/out of EU
- Caveat: abuse of law may be an issue
 - substance requirement
 - advance tax ruling recommended



Other Tax Treaties

- **Barbados**
 - DWT: 5% (10% holding); tax credit for Austrian corporate tax
 - No WHT on interest, royalties
- **Belize**
 - DWT: 5% (25% holding); dividends exempt from Belize tax
 - No WHT on interest, royalties
- **Cyprus**
 - DWT: 10; no WHT on interest, royalties
 - No capital gains tax in Austria
- **Ireland**
 - DPE applies to Irish dividends (same with Sweden, Luxembourg)
- **Liechtenstein**
 - Only tax treaty; tax-exempt vehicles that are foreign-controlled do not benefit
- **Malaysia**
 - Labuan companies should benefit; 5% DWT (25% holding)
- **Malta**
 - 25% holding: no switch-over
- **Switzerland**
 - Not DWT (20% holding); no withholding tax on interest and royalties
- **Singapore**
 - No DWT (10% holding); no capital gains tax on sale of subsidiary



Thank you for your attention!

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