Business Breakfast
Commercial Counsellors Europe

Selected Tax Issues

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Austrian Tax Reform 2020 & Selected EU Tax Issues

- Austrian Tax Reform 2020
- EU Legislation - Implementation
  - Common (Consolidated) Corporate Tax Base
  - Digital Taxation
  - Value Added Tax (VAT)
  - ATAD Anti Tax Avoidance Directive

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Austrian Tax Reform 2020 (1)

- Financial discharge of taxpayers with small income and pensioners through diverse **tax refunds (e.g. social security contributions)**
- Reduction of the **health insurance contribution** for self-employed and farmers
- Raise of the **low value fixed assets threshold** from 400 Euro to 800 Euro (qualifies for immediate deduction)
- Increase of the **small business limit** (turnover limit above which VAT is payable) from 30.000 Euro to 35.000 Euro annually
- Introduction of a **lump sum taxation for small businesses;** expenses will be calculated at a rate of 45 % of total earnings; in case of service businesses, the expenses will be 20 %
- Reduction of the VAT tax rate for **electronic publications** to 10 %

Austrian Tax Reform 2020 (2)

- Favourable taxation of **alternative fuels** (e.g. H^2, Biogas)
- Tax benefits for the **private generation of power** through photovoltaic power plants
- Ecological transformation of the **car registration & insurance tax** (NoVA, ‘’standard fuel consumption tax’’)
- New disclosure and VAT rules for **digital retail platforms**, especially on B2C supplies
- **Recapture** of **acquisition costs** to the previous level (if higher) for tax purposes following a tax-neutral **corporate restructuring**
- Implementation of anti-hybrid rules in accordance with Article 9 of the EU Anti-Tax Avoidance Directive (ATAD), as amended in **ATAD II**

Common (Consolidated) Corporate Tax Base

Relaunch of 2011 CCCTB-proposal in 2016

Two-step approach with proposals

1. CCTB – Common Corporate Tax Base
   A single and common set of tax accounting rules across Member States would replace the currently existing national rules for the determination of taxable income. Rules on how a company's profit will be taxed.
2. CCCTB – Common Consolidated Corporate Tax Base
   As a second step, the individual group members' tax bases shall be consolidated to a common corporate tax base and allocated to the group members based on a three-part formula with equal weights on assets, labour and sales (CCCTB).

Position of the Austrian Federal Economic Chamber

Consolidation is an essential element of such a system. Without consolidation it would not bring sufficient benefits to the business environment to offset the reduction in competitiveness and increase in administration costs.

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Common Corporate Tax Base (CCTB) (1)

Flexibility

The Austrian Federal Economic Chamber emphasizes that common rules are not bad, but a common EU tax base might put Member States in a much too rigid system in the future that does not allow for addressing trends in taxation (principle of unanimity).

Application

The rules shall apply to a consolidated group with total revenues that exceed 750 million Euro during one financial year.
The Austrian Federal Economic Chamber opposes the introduction of an additional corporate tax system (implementation of threshold) and thus two classes of entrepreneurs.

Common Corporate Tax Base (CCTB) (2)

Tax rates

In order to obtain the same tax revenues, different tax rates have to be used for different tax bases.

Overlap between ATAD and CCTB

In respect of Anti-Tax Avoidance rules.

Austrian Federal Economic Chamber: interest limitation and switch-over clause should not be inserted in CCTB

Austrian Federal Economic Chamber

Tax policy measures such as the promotion of R & D should remain at the level of the Member States

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Common Corporate Tax Base (CCTB) (3)

Cornerstone issue of debate

Whether or not to extend the CCTB scope to all corporate income taxpayers

(Proposal: The rules shall apply to a consolidated group with total revenues that exceed 750 million Euro during one financial year.)

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Digital Taxation Package

1. Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence
2. Commission recommendation relating to the corporate taxation of a significant digital presence
3. Proposal for a Council Directive on the common system of a digital service tax on revenues resulting from the provision of certain digital services
4. Communication „Time to establish a modern, fair and efficient taxation standard for the digital economy“

Austrian Federal Economic Chamber position

It would be best to solve problems where they arise. The taxation of new business models is a global phenomenon, which is not limited to the borders of the single market. Therefore, a global approach (OECD-level) is preferable.

Developments at international level with regard to digital taxation (1)

OECD **BEPS** – Base Erosion and Profit Shifting

Action 1: Tax Challenges Arising from Digitalization

October 2015: Final Report; March 2018: Interim Report

Three characteristics for digitalization

1. Cross-jurisdictional scale without mass
   Digitalization has made it possible for businesses to locate various stages of their production processes across different countries and to provide access to a greater number of customers around the world.
2. Heavy reliance on intangible assets
   Increasing invest in intangibles, especially intellectual property assets (e.g. software, websites and algorithms)
3. Importance of data, user participation and synergies with intangible assets

January 2019: Policy Note

Two-Pillar System for the first time mentioned

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Developments at international level with regard to digital taxation (2)

OECD G20

Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalization of the Economy

On 13 February 2019 a public consultation document was released

On 13 March 2019 OECD Conference in Paris

May 2019 the work program was adopted, which contains a plan to explore the technical design and implementation issues that must be worked out to develop a comprehensive and consensus-based solution within the agreed 2020 timeframe.

OECD - Workprogramm

OECD Work program
Two Pillars

Pillar One Review of the profit allocation and nexus rules	Pillar Two Remaining BEPS-issues
1. user participation proposal 2. marketing intangibles proposal 3. significant economic presence proposal	1. income inclusion rule 2. tax on base eroding payments

Digital taxation: legislation in Austria (1)

- **New tax bill (Abgabenänderungsgesetz 2020)**
  introduction of new digital services tax
  - tax on digital advertising revenue
  - tax rate: 5 % on revenue
  - other activities like making available to users of digital interfaces or transmission of data collected are not subject to Austrian digital services tax
  - for all groups with worldwide revenue of at least 750 million Euro <u>AND</u> digital advertising revenue in Austria of at least 25 million Euro
  - effective 1 January 2020

  other measures regarding VAT-taxation in the same bill
  - minimum threshold of 22 Euro for imports of goods from non-EU countries is abolished
  - new VAT rules for internet selling platforms
  - distance selling from other EU countries to non-entrepreneurs in Austria will be subject to Austrian VAT from the first Euro (exceptions for small businesses)
  - new reporting obligations and liability rules for online platforms

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Digital taxation: legislation in Austria (2)

- **New tax bill (Abgabenänderungsgesetz 2020)**

  Position of Austrian Federal Economic Chamber
  - uncoordinated national effort is viewed critically (efforts on coordinated solution on EU- and OECD-level should be made)
  - digital services tax rate should be reduced from 5 % to 3 %
  - national revenue threshold (25 million Euro) should be raised substantially (e.g. to 50 million Euro)
  - regular tax on non-digital advertising revenue shall be reduced from 5 % to 3 % (in case the abolition of the tax is not feasible)

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VAT - Value Added Tax (1)

Definitive VAT System

- Two-step legislative approach

  First part contains three legislative proposals

  1. „quick fixes"
  2. concept of the certified tax payer
  3. cornerstones of the definitive VAT system

  Second part is the legislative proposal on detailed technical measures for the definitive VAT system

VAT - Value Added Tax (2)

Simplified treatment for call-off stock

- Uniform rules to simplify chain transactions
- Mandatory VAT ID number verification for EU cross-border supplies
- Harmonization of the rules for documenting EU cross-border movements of goods

Concept of the certified tax payer (CTP)

The Austrian Federal Economic Chamber and a number of Member States opposed the idea to introduce a CTP-concept and to apply different rules dependent on whether the customer is a CTP or not

Cornerstone of the definitive VAT System

- Taxation in the Member State of destination

Anti-Tax Avoidance Directive - ATAD (1)

ATAD forms part of a larger anti-tax avoidance package adopted by the EU in response to the OECD’s BEPS action plan

ATAD will apply to all taxpayers (including EU permanent establishments of non-EU companies) that are subject to corporate tax in EU

ATAD contains **five** legally binding anti-abuse measures

ATAD (2)

1. Interest Limitation Rule

The deductibility of interest is limited under the ATAD insofar as the net interest exceeds 30 % of the taxable EBITDA. Implementation has to be completed by 31 December 2018. Member States, whereby existing comparable measures may delay the implementation until 1 January 2024.

Implementation Austria
Not yet. The European Commission does not allow Austria to postpone the implementation until 1 January 2024. Austrian interest limitation rules (section 12 para 1 ref 10 CITA Act -KStG) should not qualify as comparable measures to the ATAD.

ATAD (3)

2. Exit Taxation

Mandatory taxation of hidden reserves upon relocation of entities/assets. The aim is to prevent companies from avoiding tax when relocating assets.

Implementation Austria

Amendment of section 6 para 6 lit d of the ITA (EStG) by reducing the instalment period for fixed assets from 7 to 5 years. Entry into force: 1 January 2019

ATAD (4)

3. General Anti-Abuse Rule

Arrangements with the main purpose of obtaining tax advantages shall be ignored when calculating the Company's tax.

Implementation Austria

Amendment of section 22 of the Austrian Federal Fiscal Code (BAO).

Implementation and reflection of Higher Administrative Court case law. Special arrangements must have a valid economic reason and reflect economic reality.

Previously required: tax avoidance as sole purpose

Now sufficient: tax avoidance as essential/main purpose

ATAD (5)

4. CFC (Controlled foreign company) Rules

Mandatory inclusion of certain types of non-distributed income of foreign subsidiaries/PEs in tax base of parent/head office

Implementation Austria

New section 10a CITA (KStG); Low taxation of a CFC defined as effective taxation not exceeding 12,5 %. The income of the foreign company must be calculated in accordance with domestic regulations and compared with the effective taxation abroad.

ATAD (6)

5. Hybrid Mismatches

Mandatory add-back (denial of deduction or requirement for inclusion) of double deductions or deductions without inclusions due to different qualification of payments, entities, financial instruments, etc.

Implementation Austria

New section 15 CITA (KStG); limitation of aggressive tax hybrid mismatches

ATAD (7)

Position of Austrian Federal Economic Chamber

- the original aim of ATAD was to fight against Base Erosion and Profit Shifting (BEPS),
- but ATAD implemented only some parts of the OECD Project - very quickly after the first OECD–release,
- the prevention of BEPS works within the global market and not just on EU level.

Thank you for your attention.

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