

Private Client Tax

Jurisdictional comparisons

Third edition 2015

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Foreword

John Rhodes Stonehage Law Ltd

Welcome to the third edition of *Private Client Tax* in the European Lawyer Reference Series. In the foreword to the first edition in 2010, I recounted how, against the advice of my peers, I had opted for a career on the private client side of the City of London law firm I joined after studying law at Cambridge. This proved to be an immensely stimulating choice, opening a world of challenging clients and problems with which I am still engaged some 47 years later.

Anyone opening this volume needs no convincing about the relevance and excitement of acting for wealthy private clients. Amongst them we count the wealth and job creators, whose role in our societies has never been more important than today.

Politicians spend at least as much time in aeroplanes as private client lawyers, but swept along in their motorcades from one meeting to another they fail to pick up the essential message that what western economies need at this stage of the cycle is less government interference, regulation and taxation and more stimulus from entrepreneurs. This is despite the clear evidence of history that countries adopting a tax-cutting, smaller government approach by and large provide more choice and a better standard of living for their citizens. In the foreword to the second edition in 2012, I questioned whether the policies advocated by François Hollande would serve his country well. The outcome is clear whatever statistics you choose – the French economy, his popularity rankings, or the number of his countrymen who have recently brought their families and their ingenuity across the Channel to England.

The simple truth is that western governments have become addicted to spending more than they raise in taxes. This, combined with dramatic increases in longevity, is a toxic brew, leaving them with two obvious solutions: increasing taxes or cutting expenditure, neither of which appeal to their electorates. But whatever combination of these two main policy strands governments adopt, the third weapon in their arsenal is making dramatic improvements in tax collection. In the years since our first edition was published, the focus on this last subject has been unrelenting, with the US authorities taking the lead after finally and very publicly losing patience with those who brokered the “banking secrecy” model. A new era of transparency has been ushered in via multiple Tax Information Exchange Agreements, complex Foreign Account Tax Compliance Act regulations and headline-grabbing penalty settlements paid by Swiss and other banks for encouraging past tax evasions.

All this was predictable, and indeed predicted by me and others from the early 1990s onwards. Some banks have responded by significantly reducing

the services provided for wealthy international families. All such families have to rethink their objectives and their strategies depending where they and their assets are located. One function of this volume is to enable such families and those who advise them to keep abreast of developments in this respect.

One general comment I would make is that, whilst it is still possible for families to organise their affairs so they quite legitimately pay well under the standard level of tax levied on permanent residents of the main western jurisdictions, it will undoubtedly become increasingly difficult to maintain such a lifestyle. This is a result not only of the greater transparency I have already mentioned, but also of hardening attitudes even in those jurisdictions which have traditionally welcomed foreign wealth, such as the UK and Switzerland. In the 2014 UK Autumn Statement, the cost of the Remittance Basis Charge for non-UK domiciled taxpayers was increased, for those who have been resident in 17 of the past 20 years to £90,000 a year. Already we see clear evidence that only the extremely rich are prepared to pay such an annual levy. In Switzerland, the November 2014 referendum on the forfait has allowed cantons to continue that regime if they so wish, but the mere fact that the question was ever put to a country-wide vote underlines a general perception that too much wealth has become concentrated in the hands of too few. This same theme was highlighted by President Obama in a recent major speech and I am told also lies behind current political unrest in Hong Kong, where wage earners can no longer afford to live centrally.

Does all this mean that if the very wealthy are to head-off a concerted attack they should willingly contribute more generously towards their share of the social contract?

As before, the authors of our different chapters are all experts in their own jurisdictions. One sure sign of competence is an ability to distil a complex subject down to its essentials. That you will find here. None of the chapters however is intended to provide more than an overview: any detailed case will have to be analysed on its own facts. But the list of authors here provides a ready guide to those who are well able to undertake that task, jurisdiction by jurisdiction and across jurisdictions too.

The publishers and I were delighted with the enthusiastic reaction received to the first and second volumes, which has given us the confidence to move ahead with the third. I have no doubt it will be similarly well received. Thanks are due to all our contributors for making time in their busy schedules to enable us to do this.

John Rhodes
London
March 2015

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1. NON-TAX ISSUES

1.1 Domestic law

1.1.1 Briefly describe your legal system and its origins

Austria is a civil law country with a legal system based on Roman law. The influence of Roman law is still present and can be seen in the fundamental distinction between public law and private law. Private law matters are adjudicated by ordinary courts, public law matters by administrative authorities and by specialised courts. Public law includes constitutional law, criminal law and procedural law. Private law consists of general private law (contract, tort, family, succession) and special private laws such as commercial law or corporate law.

Austrian law is primarily codified law. Its civil law tradition provides for many areas of law codified in separate codes. Examples of this tradition are the Civil Code 1811 and the Civil Procedure Code, 1895. Case law is not recognised as formal precedent, though rulings of the supreme courts may have guideline character.

The Austrian normative system is structured in hierarchical layers and thus provide that laws and regulations must comply with the standards set by the higher norm. The highest ranking laws in the Austrian legal hierarchy are outlined in the fundamental principles of the Austrian Federal Constitution, followed by individual constitutional laws. Constitutional law is given a higher status by virtue of the fact that it is harder to amend. With entry to the EU, Austria adopted its legal framework. Austrian constitutional law was thus joined with EU law as the most fundamental source of law. Consequently EU law now takes precedence over domestic Austrian law including the federal constitution, but is subordinate to the fundamental principles of the Austrian federal constitution. Corresponding to national constitutional law and national law is regional constitutional law and regional laws relating to each of the nine Austrian federal regions. As Austria is a federal state, regional constitutional law is subordinated to national constitutional law and must not conflict with federal constitutional law. However, national laws that are not constitutional in nature take no priority over regional laws.

1.1.2 What is the scope of your succession law?

Under Austrian inheritance law, the principle of testamentary freedom applies. If the deceased did not appoint an heir in a valid testament, the successors of the deceased are family members who share the estate on the

basis of a modified per capita system.

The principle of testamentary freedom is restricted by forced heirship rules. According to these rules, the children and the spouse (and in some cases the parents) of the deceased are entitled to a forced heirship claim amounting to half (parents: one-third) of their share of the estate where no testament was made by the deceased.

It should be understood in this context that in principle the claim of the forced heir, technically, is a cash claim against the testamentary heirs. This cash claim has to be calculated on the basis of the total fair value of the deceased's assets. Gifts made by the deceased to family members prior to their demise have to be taken into account for the calculation of the forced heirs claim.

1.1.3 When are individuals and their property subject to succession rules?

Austrian law acknowledges three possibly coexisting bases of the right of inheritance: last will, hereditary contract or statute. Inheritance contracts may only be concluded between married spouses. The right to inherit comes with the death of the person in question. Under Austrian law, no person can acquire an inheritance of his/her own volition. The acquisition of all property rights over the estate requires a writ of possession by order of the courts. Prior to this order, a legal succession procedure is automatically instituted by the civil law notary on behalf of the courts. With this procedure the Austrian system differs from most EU member states. Before an heir can acquire an estate, he/she must sign a declaration accepting the estate and provide proof of his/her entitlement to inherit. In principle, the heir is liable for the debts of the deceased. However, the heir can limit his/her liability by accepting the inheritance under benefit of inventory. Joint heirs are together liable for the debts of the inheritance.

1.2 Private international law

1.2.1 What is the jurisdiction of local courts in international disputes?

Austrian law does not provide specific rules for transnational disputes. Due to the lack of specific Austrian rules, the traditional national rules of jurisdiction for cross-border cases are applicable. The main legal sources of jurisdictional rules are the Introductory Law of the Court Jurisdiction Act, the Court Jurisdiction Act, the Introductory Law of the Code of Civil Procedure and the Code of Civil Procedure. In addition, several bi- and multilateral treaties cover and regulate the international jurisdiction between Austria and third countries. The jurisdiction of Austrian courts in international disputes is further governed by European regulations such as Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II).

1.2.2 What approach do local courts take to conflict of laws?

The basic principles regarding conflict of laws are regulated in the Conflict of Laws Act. In addition there are several bi- and multilateral treaties such as Regulation No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) and Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III). Both Austrian law and the treaties incorporated into Austrian law deal with the determination of the applicable substantive law, they do not provide for substantive law themselves. These legal sources do share some common principles that are applicable to situations where conflict of laws is an issue. As such the most significant relationship is the dominant principle, stating that issues with a connection with more than one country are governed by the law to which these facts have the most significant relationship. If Austrian conflict rules refer a case to foreign law, the conflict rules of that foreign system then apply and that country may either accept the referral of the matter to the foreign forum or refer the case back to the Austrian *lex fori* (laws of the forum). Provisions of foreign law will not be applied by Austrian courts if the application of that provision would lead to a result which is contrary to basic values that are imminent to Austrian law (*ordre public*). Legal theory and practice provides that the *ordre public* prevents the application of foreign law only in very exceptional cases.

2. TAXATION OF INDIVIDUALS

2.1 What are the criteria for liability to main taxes?

Austrian resident individuals are subject to national federal income tax. There are no local income taxes. Any individual having a domicile or permanent abode available in Austria is deemed to be an Austrian resident. Exemptions apply to Austrian resident vacation homes which are not used for more than two months per year.

Resident taxpayers are taxable on their worldwide income, whether received in cash or in kind. The individual income tax law contains an exhaustive list of categories of taxable income. Income not falling under any of these categories is not taxable. For individuals these categories are:

- Agriculture and forestry.
- Professional and other independent services.
- Trade and business.
- Employment income.
- Investment income.
- Rents, lease payments and royalties.
- Other specified income such as certain annuities and capital gains upon the disposal of certain privately held assets.

For the purposes of this chapter, we will focus on employment income, investment income and income from trade and business.

2.2 What are the relevant main taxes in your jurisdiction?

Employment income tax

Income from employment includes all remuneration in cash or in kind derived by an employed person and paid by the employer or by a third party. As a general rule, the tax is levied by way of withholding.

The applicable tax rate is progressive going up to 50%. However, please note that in the case of employment income, about 14% of the annual salary (so-called Christmas and vacation salary) is subject to a reduced flat tax rate of 6%. This substantially reduces the total effective tax burden of employees.

Pension payments received by a former employee from social security, from a pension fund, or from the employer himself are included in employment income. The applicable tax rate is progressive going up to 50%.

Trade and business income tax

Business income is all income that is derived within the independent business activities of an Austrian tax resident. Income from partnership interest is generally regarded as business income (except if the partnership's sole function is the mere holding and administration of assets).

The applicable tax rate for income from trade and business is progressive going up to 50%.

Dividend income tax

Dividend income produced by domestic or foreign stocks is taxed at a flat special rate of 25%. This tax has the effect of final taxation (that is, no further Austrian income tax falls due, even if the actual personal income tax rate of the investor is higher).

Taxation of interest income

Domestic and foreign source interest income produced by bonds (corporate and government), bank deposits and certain other bank investment products are generally also subject to a flat 25% tax rate. This tax has the effect of final taxation (that is, no further Austrian income tax falls due, even if the actual personal income tax rate of the investor is higher).

Where the bonds are held in an Austrian deposit account, the 25% income tax is withheld by the bank. Otherwise the income has to be included in the tax return and is subject to a flat and final income tax rate of 25%.

Capital gains tax

In general, capital gains are also included in taxable income of an individual and are subject to 25% withholding tax in the case of Austrian deposit accounts. Otherwise the income has to be included in the tax return and is subject to a flat and final income tax rate of 25%.

If the capital income is paid out by a domestic securities depository or paying agent (which is an Austrian bank or the Austrian branch of a EU resident bank or investment firm) the capital gain is subject to a 25% withholding tax. The 25% withholding tax deduction will result in a final income taxation for individuals who hold bonds or stocks (securities) as

private assets (provided that the holder of the securities has evidenced the acquisition costs of the Certificates to the securities depository) and the respective capital gains do not have to be included in the investor's income tax return.

Withdrawals and other transfers of bonds or stocks from an investor's securities account are deemed to be a disposal unless certain requirements are met such as a transfer to a securities account owned by the same taxpayer (i) with the same domestic bank, (ii) with another domestic bank if the taxpayer instructs the transferring bank to disclose the acquisition costs of the securities to the transferee bank or (iii) with a foreign bank, if the taxpayer instructs the transferring domestic bank to notify the competent Austrian tax office or, where the transferring bank is also a foreign bank, the taxpayer himself notifies the competent Austrian tax office within one month.

A transfer of securities without consideration from a domestic securities account to a securities account of another taxpayer will not result in a deemed disposal if the transferor evidences the transfer without consideration to the securities depository or instructs the securities depository to notify the competent tax office.

Where there is no deduction of Austrian withholding tax because the payments in relation to bonds or stocks are not received in Austria (not paid out by a domestic securities depository or paying agent), Austrian investors will have to include the income in relation to the securities in their income tax returns pursuant to the Income Tax Act. For individuals, no matter whether they act as private investors or hold securities as business property, as well as for corporate investors with other income than business income, a special 25% flat tax rate is available. As a consequence, expenses in connection with such securities are not deductible.

Taxpayers, whose regular personal income tax rate is lower than 25% may opt for taxation of the capital gain from investment income (together with all other income subject to the special 25% tax rate) at their regular personal income tax rate. Expenses in connection with the capital gain are not deductible. Losses from the sale of securities which are held as private assets may only be offset against other investment income (excluding, among others, interest income from bank deposits) of the same calendar year. This will be done by the Austrian depositories. Where there is no Austrian depository it will be necessary to file an income tax return with the competent tax office. Further, such losses cannot be offset against any other income or carried forward.

Capital income derived from securities which are held by individuals as business assets and are acquired after 1 April 2012 are also subject to the special 25% withholding tax. The capital income will not be subject to any higher income tax than 25% but has to be included in the income tax return of the individual taxpayer holding the certificates as business assets. Losses from a write-down or sale of securities which are held as business assets must primarily be set off against income and capital gains from financial instruments and only half of the remaining loss may be set off against other business income or carried forward.

For Austrian resident companies capital income in relation to securities is generally subject to corporate income tax at the standard rate of 25%. Corporate investors deriving business income from investments may avoid application of Austrian withholding tax by filing a declaration of exemption with the Austrian securities depository or paying agent. There is, among other things, a special tax regime for Austrian private foundations.

If Austria loses its taxation rights in respect of securities to other countries (for example, by a transfer of residence of the investor outside of Austria), a capital gain is recognised amounting to the difference between the acquisition cost and the fair market value of the securities (exit tax). Taxation of the capital gain shall be deferred, however, upon request, if the investor moves to an EU member state or to an eligible EEA member state. The deferred tax shall be levied upon actual disposal of the securities as well as upon transfer of the investor's residence for tax purposes to a state other than an EU member state or an eligible EEA member state. The deferred tax can only be levied within 10 years after the investor has moved his residence outside of Austria.

Corporate income tax

A corporation is subject to Austrian corporate income tax on its worldwide income if its statutory seat or the place of management is in Austria. However, tax treaties usually provide for exemptions or credits for profits earned in non-Austrian branches.

Generally, if a foreign corporation operates a branch in Austria, this branch is subject to Austrian corporate income tax. Branches are subject to Austrian corporate income tax on the basis of the assumption that the branch constitutes a permanent establishment in Austria of its non-Austrian parent. Thus the non-Austrian parent company becomes subject to Austrian corporate income tax on all profits attributable to the Austrian permanent establishment.

Inheritance tax

Austria abolished inheritance and gift tax in 2008.

Net asset wealth tax

Austria does not impose any net asset wealth tax.

Property tax

Real estate property located in Austria is subject to property tax. The tax base for property tax is the historically-assessed standard value of the respective property, which is generally substantially below its actual fair value. The property tax is levied at a basic federal rate multiplied by a municipal coefficient. The basic federal rate is 0.2% of the historically assessed value; the municipal coefficients range up to 500%.

Indirect taxes

In Austria, generally, all goods and services provided by an entrepreneur are

subject to VAT. Tax exemptions apply in certain cases. The regular tax rate is 20%. For certain goods and services a reduced tax rate of 10% applies.

For certain goods, also excise duties are levied. These include electricity, fuel, alcohol and tobacco.

2.3 Enforcement/collection of taxes

2.3.1 What are the basic procedures for collection and enforcement?

Generally, taxes on income are levied through an annual tax declaration and advanced payments executed during the taxation period. However, some taxes are withheld at source. Once a tax is assessed and not due, payment has to be made within a certain period of time. Late payment is subject to penalty interest. If no payments occur after repeated reminders, the tax is collected by freezing and liquidating the taxpayers assets.

2.3.2 To what extent is non-compliance an issue?

Minor non-compliance offences lead to administrative penalties. In the case of tax fraud, fiscal criminal law charges also apply. In general, fines are levied in fiscal criminal procedures. However, where the tax evaded by fraud is higher than EUR250,000, prison penalties may apply.

2.3.3 In which circumstances can default result in imprisonment?

Default would lead to a bankruptcy procedure. Fraudulent setting aside of assets can lead criminal charges and ultimately to imprisonment.

2.3.4 What are your laws on extradition for tax offences?

Austria does generally not extradite for tax offences.

2.3.5 Have there been any recent changes of behaviour by tax authorities?

No.

2.3.6 Are there any voluntary disclosure or amnesty programmes?

Yes, in the case of voluntary disclosure of tax evasion, fiscal criminal law procedures are avoided for the taxpayer. However, such voluntary disclosure has to be made in full prior to the initiation of a tax audit.

3. EXEMPTIONS AND/OR EXIT TAXES FOR NEW IMMIGRANTS AND EMIGRANTS

3.1 Which taxes are relevant in your jurisdiction?

There are no tax exemptions for new immigrants.

Exit tax applies if an Austrian resident person holding securities or participations ceases to be Austrian resident and due to this emigration Austria loses its taxation rights in respect of the securities or participations to other countries. In this case a capital gain is recognised amounting to the difference between the acquisition cost and the fair market value of the securities (exit tax). Taxation of such capital gain shall be deferred, however, upon request, if the investor moves to an EU member state or to an eligible EEA member state. The deferred tax shall be levied upon actual

disposal of the securities as well as upon transfer of the investor's residence for tax purposes to a state other than an EU member state or an eligible EEA member state. The deferred tax can only be levied within 10 years after the investor moved his residence outside of Austria.

4. USE OF ASSET HOLDING VEHICLES

4.1 Which vehicles are available in your jurisdiction and how are they treated by the courts?

The Austrian private foundation has recently received increased attention and popularity as an onshore alternative to the usual foundation and trust solutions in jurisdictions such as Liechtenstein or the Channel Islands. The reason for the increased popularity is the search for onshore solutions which benefit from tax treaty protection whilst accepting a certain (not too excessive) level of taxation.

Typically, common motives for the establishment of a private foundation or elsewhere are the preservation of property, the protection from outside influences and the support of the family members over the next generations.

The basic essentials of Austrian private foundations from a legal and tax perspective can be summarised below.

Foundations

A private foundation is established by natural or legal persons through a notarised declaration of establishment. It is possible to establish a private foundation via an authorised proxy who will then appear as the official founder. This is important for founders who do not want to appear in person in the publicly accessible foundation registry.

The foundation's establishment and its activities are not subject to supervision by public authorities. The only competent authority for a private foundation is the Austrian court, which cannot be influenced by external parties.

The private foundation may not carry on a trade and is not allowed to exercise management functions in a company or to be a partner with unlimited liability in a registered partnership.

In the declaration, the purpose of the foundation, as well as the assets contributed, the name, the seat and the term, have to be included. A private foundation may be established for a specified or for an unlimited period of time. The beneficiaries may be determined in the addendum to the deed. This addendum is not filed with the court. Therefore, the names and identities of the beneficiaries are not accessible to the public and only a third party inspecting the Austrian Register of Companies will learn that a person has formed a private foundation and has paid up the minimum amount.

The founder is basically free to choose the purpose of the private foundation, which serves the purpose of managing, increasing and securing the assets of the private foundation. Therefore, typically, the purpose is the support of the founder and their family in the present and future generations. After registration, amendments to the declaration or the addendum are only possible if the founder has reserved his right to do so in

the declaration. Amendments require a notary deed. The founder is also free to reserve the right to revoke the foundation.

The main bodies of the foundation are the board of directors, the auditor of the private foundation (both legally required bodies) and, as the case may be, the supervisory board (upon exceeding of legally prescribed thresholds). Moreover, additional bodies may be established (such as an advisory board).

The governing body of the private foundation is the board of directors, which represents the private foundation and administers its assets. It has to comply with the founder's intentions, as stated in the declaration of establishment, and is responsible for the implementation of the purpose of the foundation. The beneficiaries of the foundation may not be members of the foundation's board of directors.

The first board of directors is appointed by the founder. During their lifetime, the founder can retain the right to remove and appoint directors (but in this case the founder cannot be a beneficiary).

The board of directors consists of at least three members. Two of them must have their permanent residence in the EU or EEA.

An advisory board is optional. Where an advisory board is established, typically the founder and the beneficiaries are members of the advisory board. The advisory board supervises the board of directors and has to be consulted in important matters. Moreover, the declaration may provide a catalogue of transactions which require the approval of the advisory board, reducing the potential that fraudulent or negligent members of the board of directors could harm the foundation.

Taxation of the private foundation

- In general, donations of the founder to the foundation are taxed at a tax rate of 2.5%.
- A private foundation is, in principle, subject to 25% corporate income tax. However, full tax exemptions apply for various groups of income, such as dividend income.
- A private foundation has to withhold 25% tax upon distributions to beneficiaries. However, if the beneficiary is resident outside Austria, in most cases (depending on the beneficiary's country of residence) the withholding tax is reduced to 0% by the applicable tax treaty.

5. PHILANTHROPIC AND CHARITABLE OPTIONS

5.1 Is there a compulsory registration system for charities?

No.

5.2 Are there any tax reliefs available?

Donations to certain charitable organisations are tax deductible.

5.3 Are there any particular distribution requirements and can domestic charities apply funds outside your jurisdiction?

No.

6. REGULATORY ENVIRONMENT

6.1 What is the financial environment like for funds and other investment vehicles?

Funds are subject to strict regulatory rules and subject to registration and approval by the Austrian Financial Markets Authority. They are not an interesting vehicle for investments for private individuals.

6.2 What is the impact of anti-money laundering legislation on professional/banking confidentiality?

Banking secrecy and professional secrecy are protected by Austrian constitutional law. Nevertheless, the banks are required to collect internally sufficient evidence and documentation to verify the legitimate source of funds deposited.

6.3 Is it necessary to comply with tax and other information exchanges?

Within the EU information exchange applies, outside of the EU information exchange applies on the basis of specific (not all) tax treaties.

6.4 What is the impact of US and other FATCA rules?

US Foreign Account Tax Compliance Act rules are fully implemented and applied by the Austrian banks.

7. KEY PLANNING POINTS FOR LONG TERM RESIDENT FAMILIES

Austrian immigration law is characterised by a distinction between visas on the one hand and residence-related permits on the other hand. For legal entry into Austria third country nationals, that is, persons who are neither EU nor EEA citizens, are required to hold a valid passport and visa, unless otherwise stated by intergovernmental agreements, EU law or international practice. A visa may entitle its holder to stay in Austria for up to 180 days. If a third country national intends to stay in Austria for a period exceeding 180 days, a residence-related permit under the Act on Residence and Sojourn (Residence Act), rather than an entry visa, is required.

Since 1 July 2011, residence-related permits are issued as:

- Residence permits for applicants who envisage mid- to long-term residence in Austria (Red-White-Red Cards or RWRCs for “highly-skilled employee”, “skilled employee in an understaffed profession” and “other key employee/employer”). RWRC plus is for family members of RWRC holders, residence permits for “limited”, “dependent” and “private” (excluding gainful employment).
- Stay permits, which allow for temporary stays for a total of 10 specifically defined purposes (including student, special executive, assignee, artist, and so on).

While some types of residence permits (for example, residence permits for private purposes) are subject to quotas allocated to each Austrian province for different categories of residential purposes in the annual Residence

Ordinance, no such restrictions exist for Red-White-Red Cards and stay permits.

Only holders of residence permits (including RWRCs and RWRCs plus) are eligible for long-term resident status within the meaning of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents after five years of continuous residence in Austria (provided that the applicant proves a command of German at B1 level within the meaning of the Common European Framework of Reference for Languages. EU/EEA citizens (except for Romanian and Bulgarian nationals) and Swiss nationals are free to live and work in Austria. These immigrants merely have to obtain a registration certificate within three months from having taken up residence in Austria if their overall stay in Austria exceeds three months.

There is no special residence-related permit for investors, who may nevertheless obtain a RWRC for self-employed key persons if their envisaged business activity (i) is of particular importance for the region or the relevant part of the labour market, (ii) directly or indirectly contributes to the creation of new jobs or helps avoiding the loss of existing ones, and/or (iii) triggers a transfer of foreign investment capital to Austria. Upon the issuance of a favourable statement on the beneficial effects of the business activities under review by the regionally competent Labour Market Supervisory Authority, investors may be granted a RWRC for self-employed key persons.

Recent amendments to the Residence Act and the Aliens Employment Act:

- Replaced the former general key employee concept by a set of altogether four schemes for highly skilled third country nationals including (i) RWRC for highly skilled employees, (ii) RWRC for professionals with a high school leaving certificate/undergraduate degree who intend to take up employment in industries suffering from a shortage of qualified labour, (iii) RWRC for other skilled third country nationals and (iv) Blue Card for highly skilled professionals within the meaning of Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.
- Established an essentially merit-based points system in lieu of the former quota system. As a result, third country nationals may earn points for (i) academic achievements (bachelor's degrees and higher, preferably in one of the so-called MINT subjects (mathematics, information sciences, natural sciences, technology)), (ii) professional experience in positions which reflect the applicant's previous education/training and/or managerial positions, (iii) knowledge of German and/or English and (iv) age (below 35, 40 or 45).

In order to acquire Austrian citizenship by naturalisation, applicants have to fulfil several general requirements for naturalisation (for example, absence of previous convictions or pending criminal proceedings; absence of residence bans; proof of sufficient financial means; positive attitude towards Austria; absence of threat to public order and security). In addition, citizenship is in general only granted to applicants who can prove continuous

legal residence in Austria for a period of at least 10 years. From this overall time span, at least five years must be backed by residence permits in the strict sense (rather than just stay permits). Save for exceptional circumstances, applicants are required to renounce previous citizenship(s) in order to acquire Austrian citizenship. Applicants also have to adduce proof that they have a command of German at B1 level within the meaning of the Common European Framework of Reference for Languages and to pass a written multiple-choice naturalisation test on Austria's political system and history.

If an applicant meets the general requirements for the acquisition of citizenship, his/her spouse and/or children can be included in the naturalisation process but extension of citizenship is only possible in the event of the main applicant's naturalisation.

An applicant who has already made and is still expected to make extraordinary achievements in the fields of science, economy, arts or sports may be granted citizenship without having previously resided in Austria, renounced his/her current citizenship(s), mastered German at B1 level and passed a citizenship test, provided that the federal government confirms that the Republic of Austria has a particular interest in the applicant's naturalisation.

8. KEY POINTS FOR MIGRATING/TEMPORARY RESIDENT FAMILIES

Pre-entry income tax planning is generally not required in Austria.

It is worth noting in this respect that the Austrian income tax system grants a step up in basis to the fair value of the taxpayer's assets held upon the point of entering Austrian tax residence, that is, capital gains tax in the event of disposal of an asset is calculated on the basis of the value of an asset upon entering Austrian residence.

It could therefore make sense to collect and file evidence of the fair value assets upon entry (prepare a valuation) in order to have a documented entry value to be used in the case of a future disposal.

9. FORTHCOMING LEGISLATION/OTHER CHANGES

There are political discussions at the moment on reduction of the income tax rates. In exchange for these reductions the social democratic party demands the re-introduction of inheritance and gift tax. The conservative party is strictly against such re-introduction. Since any change of tax legislation requires the vote of both coalition parties (social democrats and conservatives) at this point a re-introduction of inheritance tax appears unlikely. Other points under discussion are an increase of the property tax and an increase of the 25% tax rate on capital income to a new rate of 30%. On 17 March 2015 the draft new law shall be presented and until this point any of these possible changes are only speculations.

10. USEFUL REFERENCES

Ministry of Finance – www.bmf.gv.at.

Ministry of Economics for non-Austrian investors – www.investinaustria.at.

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