



Austria
The perfect place
for a holding company





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Accounting Professions**



Our firm

Our firm is a Certified Tax Law and Accounting Office established in 1987. The founder of the offices, Mr. Erich Baier, MBA, LL.M. (Int'l Tax Law), was born in 1956 in Vienna, Austria. He made his practice years in a large accounting firm already during his studies at the University of Economics and Business Administration in Vienna. Having successfully passed his professional exams the Austrian Ministry of Economic Affairs awarded him the title Certified Tax Advisor.

Our services

Confronted with an always faster changing world of taxes and business situations our clients can rely on our experience in these areas. Not only finding solutions for problems our clients might face but planning ahead to smooth the way for our clients is our daily routine.

Among other activities services for our clients include:

Financial accounting

Book keeping and financial accounting is not as spectacular as international transactions, nevertheless performed fast and precisely this data is a cornerstone of the daily business. A large number of useful information can be extracted from these figures and build the basis for further decisions. Quite obviously we are prepared to provide these services in English and in German and with the help of our modern software we are ready to submit information according to the wishes of our clients.

Annual accounts and tax returns

Setting up annual accounts and filing tax returns is always a very delicate situation for the client.

Backed with our experience and equipped with the feeling for the demands of our clients they feel comfortable and safe when this work is done by our firm.

Negotiating specific situations with the local tax authorities before filing annual accounts and tax returns is an additional service for our clients and is highly appreciated by them.

Taxation and tax planning

When it comes to taxes one almost never can stop. Either to complain about or to make use of all the possibilities existing in tax law.

For the benefit of our clients we decided not to complain about taxes but to show, and we do that very successfully, how tax law can be utilized for the benefit of a company or an individual.

The reorganisation of a business taxwise, the establishment and management of Private Foundations and of holding companies and working out international structures saving taxes for our clients are areas of our professional practice, where we feel fine to work in and this is reflected by the satisfaction of our clients.

Other activities of our firm in this area are:

- Corporate and individual tax planning
- Inheritance and gift tax planning
- Corporate reorganisations
- Mergers
- Tax litigation
- Representation of clients in front of tax authorities
- Working out and obtaining advance tax rulings with respect to the tax consequences of planned transactions
- VAT matters
- Tax aspects of the establishment of companies and corporations
- Fiduciary services
- Nominee and trustee services
- Administration services

Please contact us for a personal meeting !

Domestic and international tax planning

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The Austrian Holding Company

The following documentation shall explain the system of the Austrian holding company and its use for international tax planning. Austria, at the gateway between West and East, is a perfect hub for making investments into foreign countries tax efficiently. For being able to obtain the benefits of the Austrian Holding Tax Regime one does not need a special purpose company but any Austrian corporate entity like a GmbH (company with limited liability) or AG (stock corporation) as well as permanent establishments of European corporate entities in Austria can benefit from the Austrian Holding Tax Regime.

What are the key features of that Austrian holding regime ?

Domestic holding:

Intercompany dividends paid between two Austrian companies are tax exempt in the hands of the receiving Austrian company. Capital gains arising from the sale of shares in an Austrian corporation held by another Austrian corporation are taxable and are due to the standard flat corporate tax of 25 %. This percentage is also applicable to any other income achieved by an Austrian GmbH, unless tax exemptions according to the Austrian Income Tax Act are granted. Furthermore almost all tax treaties foresee that income resulting from foreign permanent establishments are tax exempt in Austria. Nevertheless foreign losses can be deducted from the domestic Austrian tax base.



Foreign holdings:

Provided that the Austrian company holds at least 10 % of the shares of a foreign corporate entity, which is comparable to an Austrian GmbH, for at least one year, any dividends received by the Austrian company and any capital gains resulting from the sale of the shares of the foreign corporation are tax exempt in Austria.

Regardless whether Austria has a treaty with that foreign country or not.

Austria does not apply any CFC-legislation or thin capitalization rules or debt-equity-ratios so that Austrian corporations can leverage the acquisition of foreign shareholdings. Interest is fully tax deductible and can compensate any other income which is achieved by the Austrian corporation.

Example:

An Austrian corporation is running a hotel in Vienna and is holding shares in another corporation in a foreign country. This foreign shareholding was leveraged with a loan from a BVI company. The BVI company is receiving interest for that loan. Dividends paid by the foreign subsidiary to the Austrian company amount to €50.000 per year whereas the profit of the hotel amounts to €150.000. The total income of the Austrian company therefore is €200.000. €50.000, namely the dividends, are tax exempt leaving a taxable income of €150.000. On the other hand interest payments to the BVI company amount to €50.000 and are reducing the tax base to €100.000.

There is no withholding tax on interest paid to foreign lenders.



The Austrian “check-the-box”-system

As mentioned above the general rule in Austria is, that foreign source dividends and capital gains resulting from the sale of foreign participations are tax exempt in the hands of the receiving Austrian corporation. Nevertheless the Austrian corporation can make capital gains taxable if it wishes to do so. The Austrian company just has to “check-the-box” in its tax return and can select for which participation any capital gains resulting from a sale should be taxable. This does not have any impact on the dividends received, they stay tax exempt. This might be a helpful tool for those shareholders, which can use an underlying tax credit in their home country.

The foreign subsidiary

As already mentioned we do not know any CFC-legislation or similar regulations. Nevertheless it is important to know how the income achieved by the foreign subsidiary has impact on the tax situation in Austria.

Provided that the Austrian corporation holds shares in a foreign entity which achieves passive income the sale of such a participation and the dividends, paid to the Austrian company, will be taxable. The mere holding of such corporations does not have any tax impact.

What is seen as passive income ?



The Austrian tax authorities categorize income as passive if the following income is achieved by the foreign subsidiary and, at the same time, the overall tax burden is not more than 15 % of the foreign country:

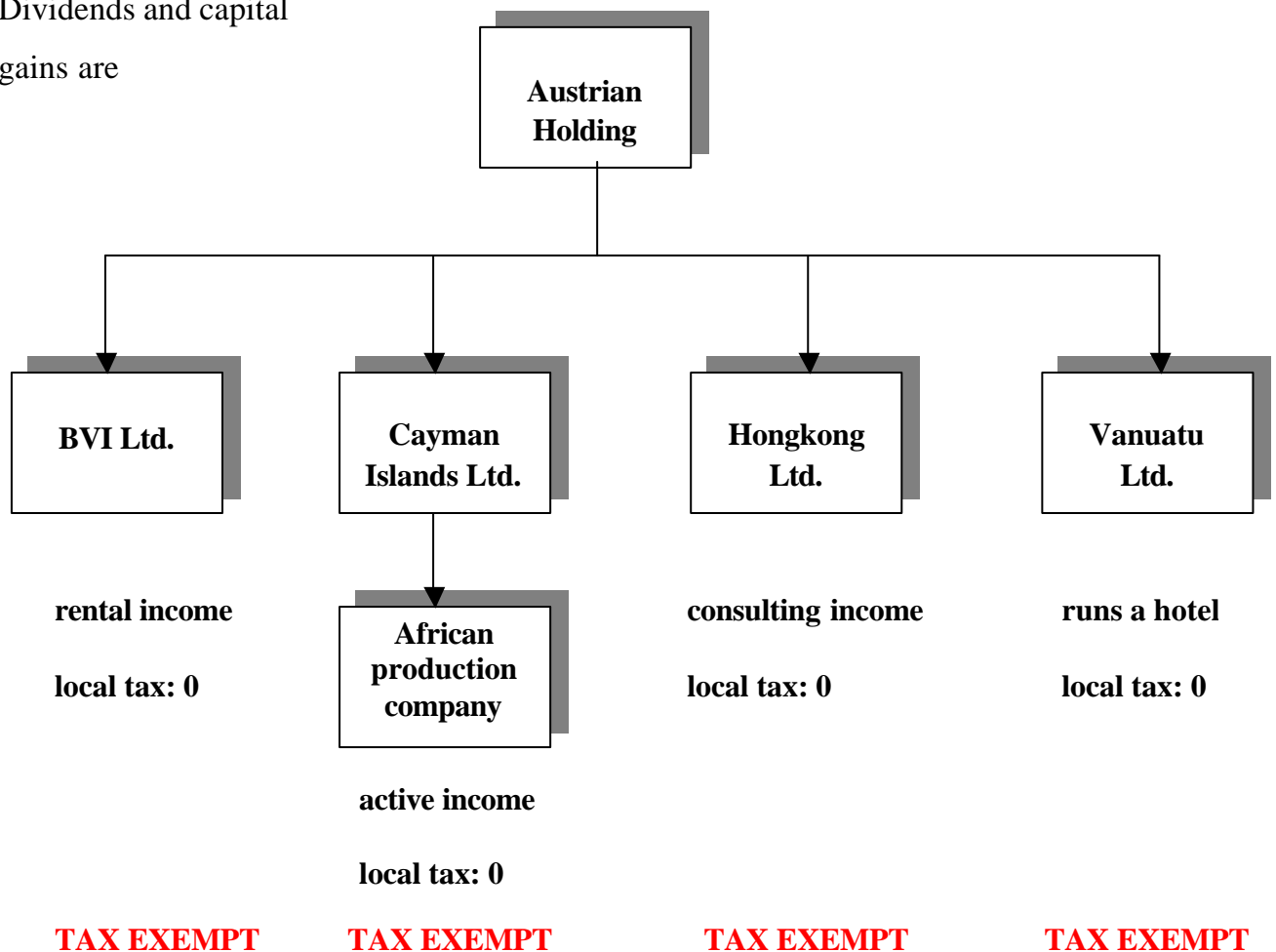
- Interest income
- Royalty income
- Capital gains achieved by selling shareholdings of less than 10 % in other corporations

Dividends are *tax exempt* if resulting from rental income

Dividends are *tax exempt* even if the foreign subsidiary does not pay taxes

Example:

Dividends and capital gains are





Any other income achieved by the foreign subsidiary is seen as active income (even if no tax is levied locally) and therefore leads to tax-free dividends and tax-free capital gains for the Austrian parent company. Also rental income, achieved by foreign subsidiaries is seen as active income. Furthermore please keep in mind, that if the foreign subsidiary is achieving dividend income and is paying this income as dividends to the Austrian company again this is active income. When the foreign subsidiary acts as a “management holding” this income achieved is seen as active income by the Austrian tax authorities. A “management holding” is a company which manages shareholdings for the Austrian company and is controlling these shareholdings.

As you will learn from the following examples also factoring via an off-shore subsidiary is seen as active income and therefore not taxable.

The foreign subsidiary is making losses

Due to the *new group taxation system*, which is second to none, we no longer bother about the outcome of the decision concerning Marks & Spencer, but live in our own tax paradise. Losses, suffered by foreign subsidiaries, can be set off from the domestic tax base of the Austrian company holding shares in such a subsidiary provided, that the Austrian company holds more than 50 % of the shares of the foreign subsidiary. These foreign losses have to be calculated according to Austrian regulations and have to be recaptured in the hands of the Austrian corporation, when the foreign entity is using these losses as a loss-carry-forward to compensate its own tax burden.

Please keep in mind, that it might happen that the foreign entity is not suffering losses due to local regulations but seen from the Austrian point of view this company is making a loss. Therefore such losses never will be recaptured since the foreign entity cannot carry forward such a loss which it never made according to local regulations.



Nevertheless although losses from the foreign subsidiary can be set off from the tax base of the Austrian shareholder dividends paid by such a foreign entity are tax exempt.

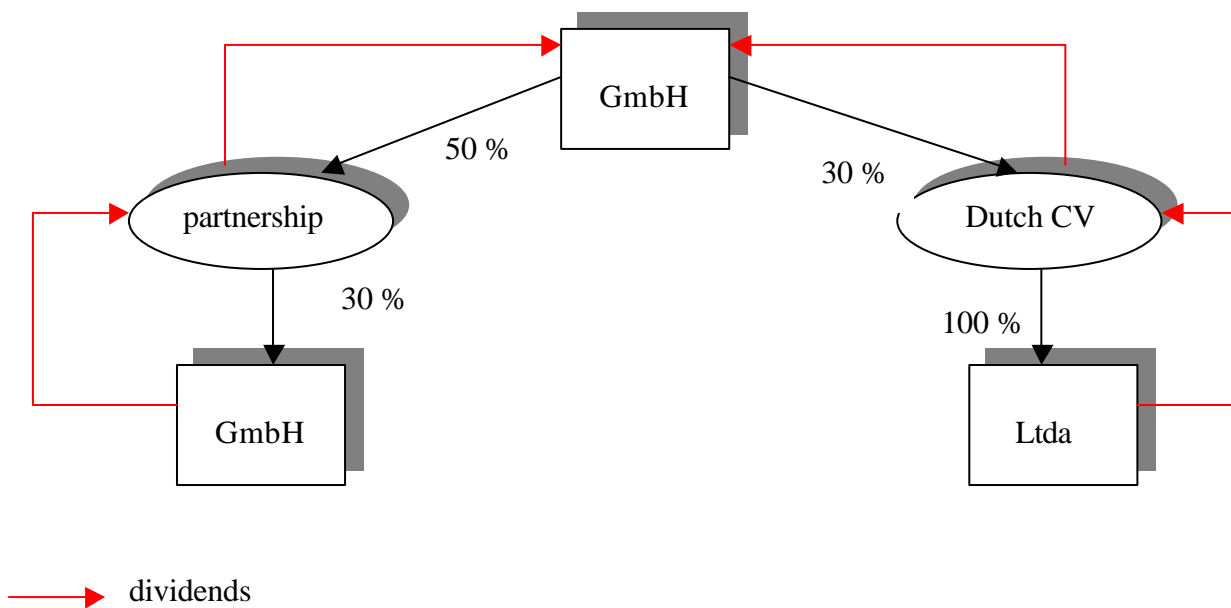
Such dividends from foreign entities are tax exempt even if the foreign entity does not pay taxes in the country where it is seated.

A perfect tool for tax planning purposes.

An Austrian corporation, holding shares in a BVI company, which is running a hotel and is tax exempt, can receive dividends from the BVI tax exempt and can sell the shares and achieve a capital gain without any taxation.

Indirect holdings

According to Austrian law also indirect participations via partnerships lead to tax exempt income for the Austrian holding company as the following graphic shows:





Taking into consideration that we do have a *far reaching treaty network* including countries like Barbados (2008), Belize, Estonia, Liechtenstein, Luxembourg, Malta, San Marino, Switzerland, Singapore, UAE and Cyprus just to name a few of those, which also have very interesting tax regimes, it is of course a fact, that these very interesting tax treaties open a bundle of tax planning opportunities.

Hybrid structures

It is also possible to use Austrian corporations for hybrid structures. The tax exemption for income does not only include dividends and capital gains but also any type of profit related income an Austrian corporation achieves either from domestic source or foreign source. If an Austrian company does not have a direct shareholding in a foreign entity but grants a loan to that foreign entity, the interest paid to the Austrian company is tax exempt and seen as a kind of dividend income, provided that the interest is profit related and the Austrian company is entitled to participate in the liquidation proceeds of the foreign entity. That does not mean, that there will be liquidation proceeds, the corporation just has to have the right to participate in. Even if the foreign entity is deducting these payments, made to the Austrian corporation, from its own tax base these payments stay tax-free in the hands of the Austrian company.

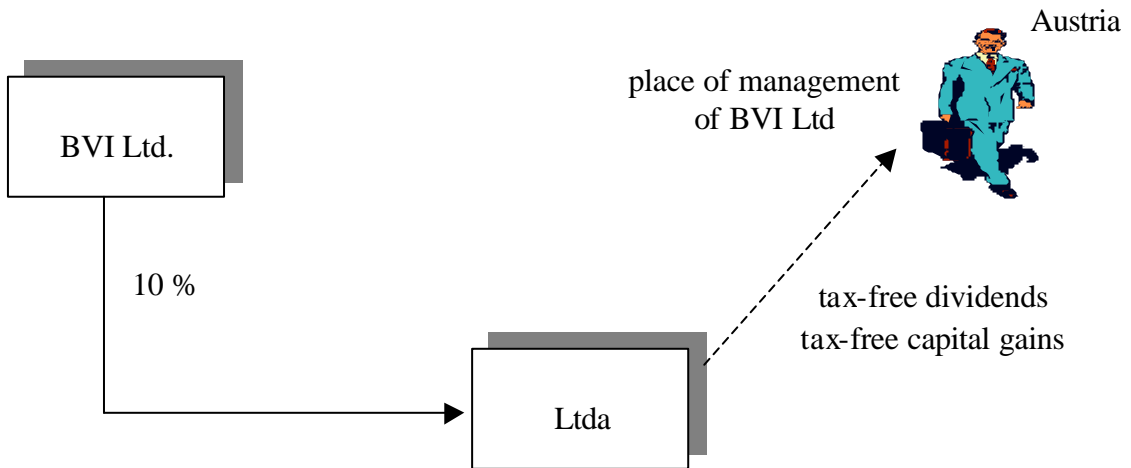
Ruling

Such a hybrid structure can be implemented with the help of the Austrian tax authorities from which written rulings in such and other cases can be obtained.



Dual resident companies

Such companies have access to the Austrian holding system provided that the management of the foreign parent company is in Austria.





Obtaining royalty income via Austrian companies

Austrian companies are quite often used to obtain royalty income from foreign sources.

Austria has a large number of tax treaties (more than 70) with other countries and among them are a large number of treaties which provide for a zero withholding tax rate levied upon royalty payments to or from Austrian companies. These treaties are:

Belgium	Germany	Slovenia
Belize	Greece	South Africa
Bulgaria	Hungary	Sweden
Canada	Ireland	Switzerland
Croatia	Italy	Tadjikistan
Cyprus	Luxembourg	Turkmenistan
Czech Republic	Malta	Ukraine
Denmark	Netherlands	United Arab Emirates
Egypt	Norway	United Kingdom
Faroer Islands	Russia	United States
France	San Marino	
Georgia	Slovak Republic	

In case of other treaty countries the withholding tax rate is significantly reduced and is in most cases between 5 % and 10 %, only in some cases 15 %.

By using domestic regulations laid down in Austrian tax law such royalty income routed via an Austrian company can lead to a profit exposed to a tax bracket of only 4 % to 8 %.



Summary of the Austria Holding System

- Domestic dividends tax exempt
- Domestic capital gains taxable (25 %)
- Foreign dividends } tax exempt
- Foreign capital gains } (10 % holding for at least one year)

- **NO** tax treaty required
Dividends from foreign corporations and capital gains resulting from the sale of shares in such foreign corporations are tax exempt, regardless whether a treaty with this country is existing or not.

- **NO** CFC legislation
Only dividends received from foreign companies earning interest income or royalties are taxable as are capital gains resulting from the sale of shares in such companies. The mere holding of shares in such companies does not trigger taxes.
Any other dividends or capital gains, even from off-shore companies, are tax exempt.

- **NO** debt-equity rules
Interest fully deductible, even if effectively connected with tax exempt income.
NO withholding tax on interest paid to foreign lenders (e.g. off-shore company)



- Notional interest deduction
For a foreign shareholder's loan notional interest can be deducted for tax purposes thereby reducing the tax base

- Losses of foreign subsidiaries tax deductible in Austria (Group taxation)
Losses of a foreign subsidiary can be set off from the tax base of the Austrian parent company
Condition: shareholding of more than 50 % in the foreign subsidiary

- "Check the box" system
Austrian parent companies can decide for each holding in a foreign subsidiary whether capital gains resulting from the sale of such shareholdings shall be tax exempt (as foreseen by law) or be taxable.

- Dual resident companies can use the Austrian holding system



Tax planning with an Austrian holding company

The following practical examples should illustrate how an Austrian (holding) company can contribute to international tax planning. The date of decision indicates the date when the Austrian Ministry of Finance issued their legal opinion reflected in these examples:

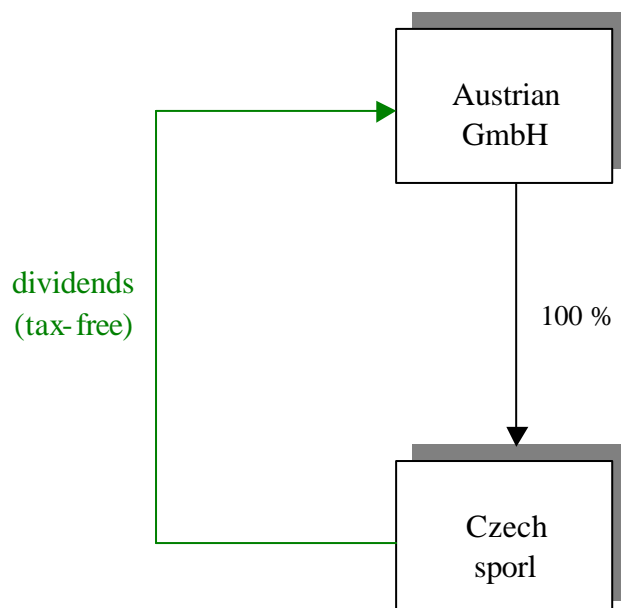
Holding Privilege vs. Substance over form

Date of decision: April 21, 1995

The repatriation of dividends via an off-shore subsidiary of an Austrian corporation to avoid inflation losses can be seen as a misuse.

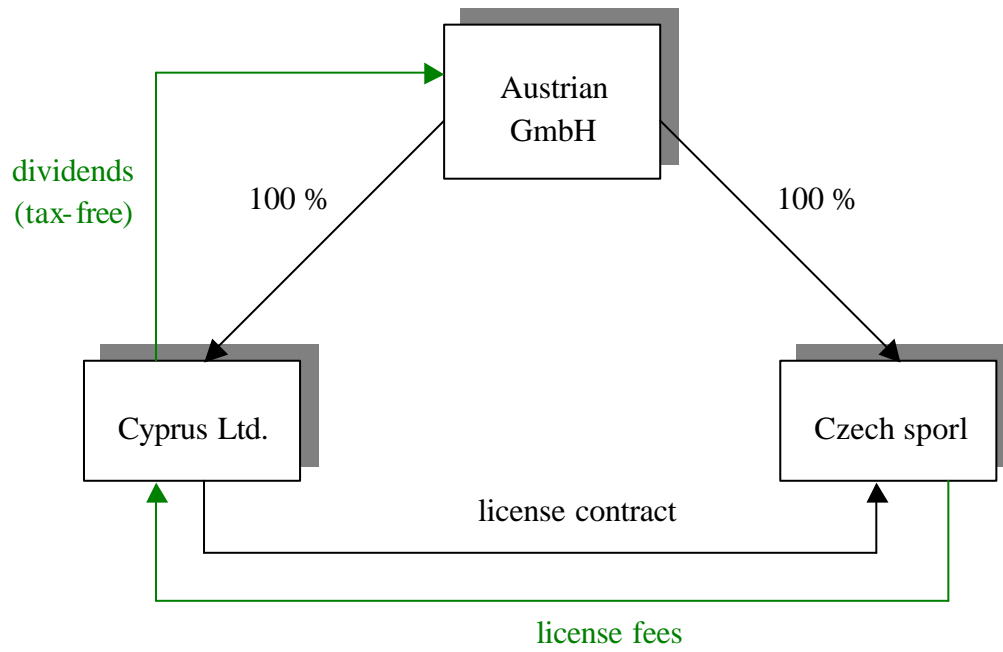
Nevertheless a 100 % dividend received deduction is granted if the dividends result from an active business.

Step # 1:





Step # 2:



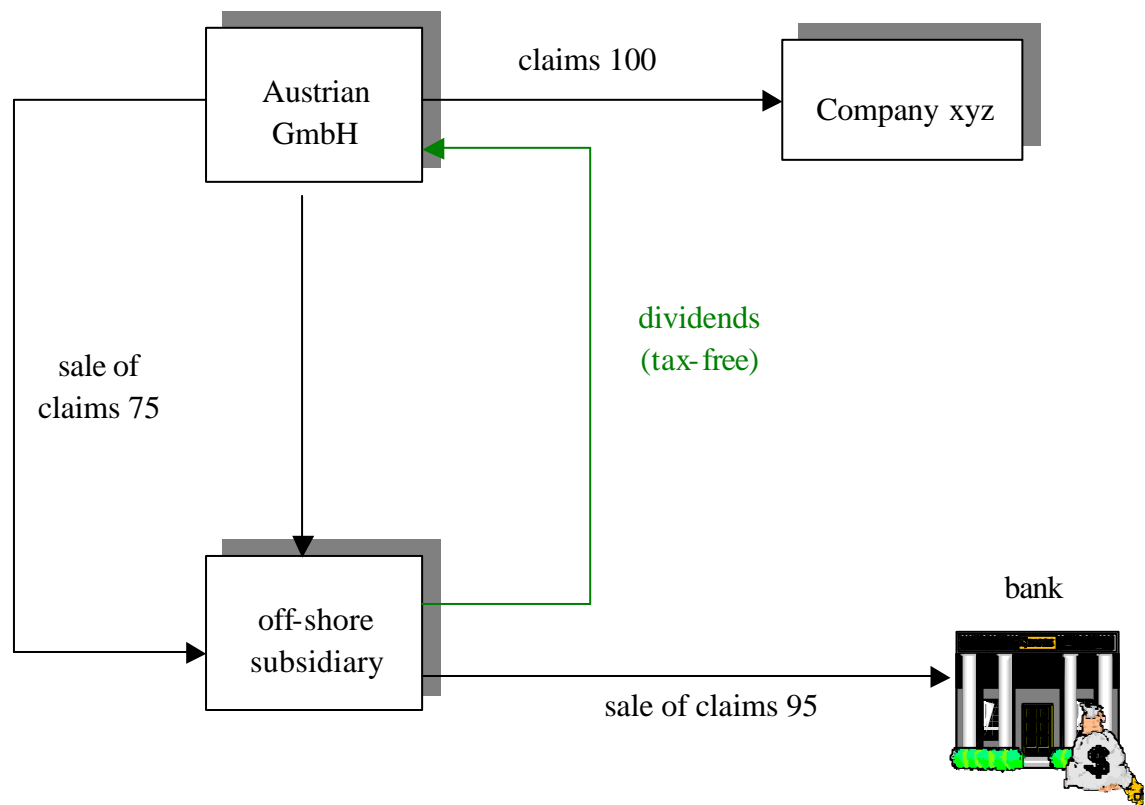


Factoring via an off-shore subsidiary

Date of decision: December 2, 1996

Factoring via an off-shore subsidiary of an Austrian GmbH can lead to tax-free dividends for an Austrian GmbH paid by the off-shore subsidiary.

- Transactions must be at arm's length
- Subsidiary must be properly equipped to carry out that business (e.g. own staff)
- No involvement of the Austrian management (apart from start-up support)



Subsidiary achieves profit of 20 (95 – 75)

Is not seen as passive income from Austrian point of view

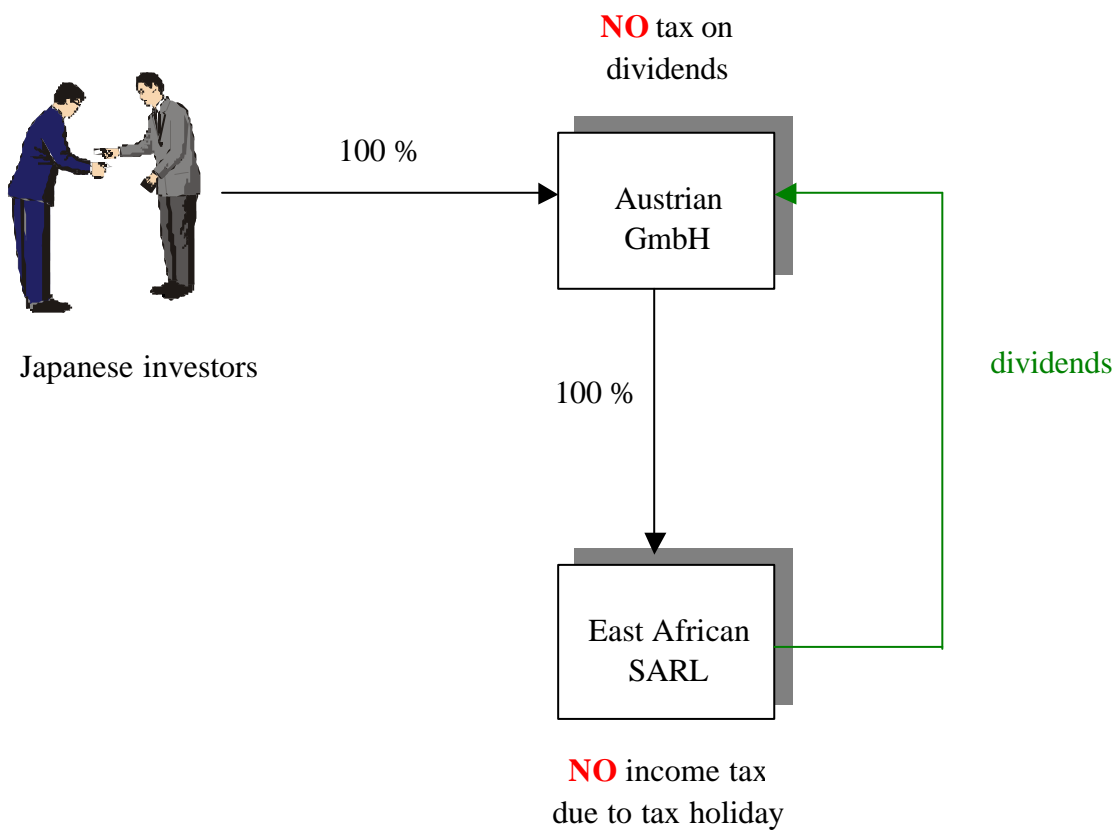
=> Dividends paid to Austrian parent are **TAX-FREE**



Japanese investment into East Africa via Austria

Date of decision: July 6, 1998

A tax holiday granted to a subsidiary of an Austrian company in the country of the seat of the subsidiary does not eliminate the dividend received deduction for the Austrian corporation.





Tax-free dividends from Turkey

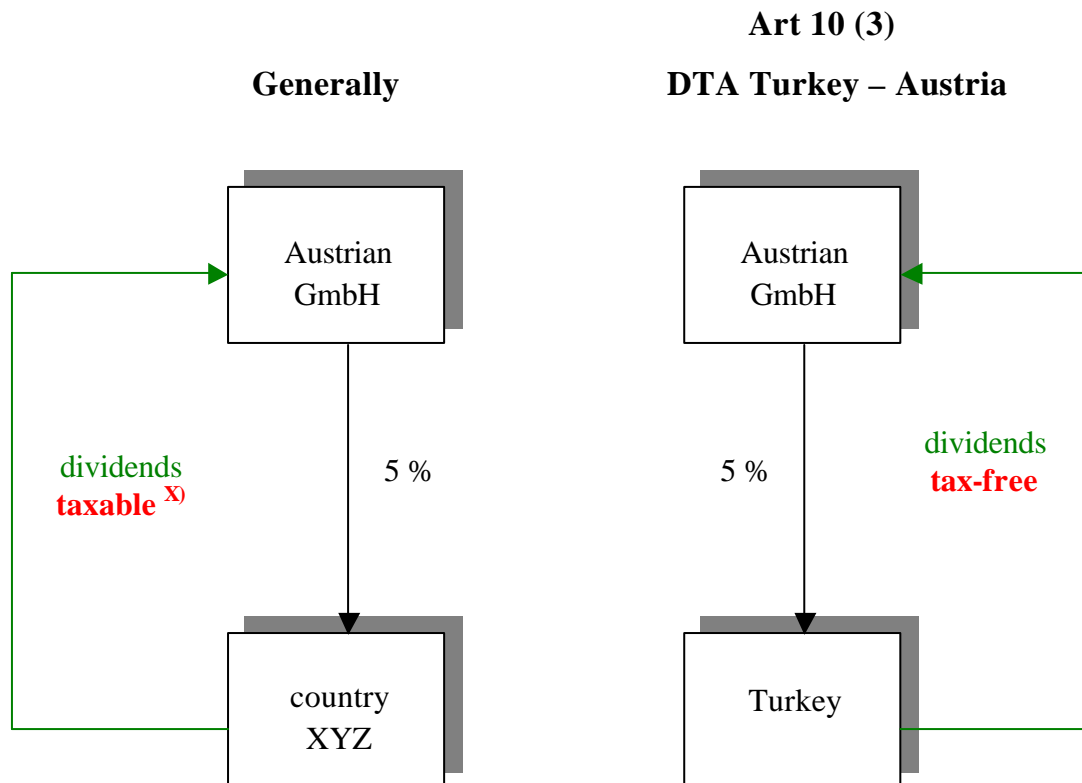
Date of decision: November 24, 1993

According to Art. 10 (3) of the treaty with Turkey dividends, paid by Turkish companies to Austrian corporate shareholders, are always tax exempt in Austria.

The treaty overrules the national Austrian regulations concerning taxation of dividends.

Art. 10 (3) DTA Turkey – Austria:

“Dividends paid by a company resident in one of the Contracting States to a company resident in the other Contracting State shall be excluded from tax in that other State, but only insofar such dividends would have been excluded from the tax in case both companies would have had their residence in that other State.”



X) because general rule foresees a minimum share holding of at least 10 %



Conclusion

Taking into consideration the far reaching tax treaty network of Austria, which is constantly extended, and the very liberal tax climate in Austria there is no doubt about, that Austria should be considered to be one of the first choices when planning a holding company. Not only for this purpose but also for other international business activities Austria and its national as well as international tax law serves as a perfect, stable and reliable base for economic activities.

Vienna, June 2007

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