The introduction of the Transfer Pricing Documentation Law (TPDL) in 2016 established special transfer pricing notification obligations for entities resident in Austria.

The notification obligations related to CbCR apply for constituent entities resident in Austria (basically all members of a group regardless of legal personality, therefore, also including permanent establishments), that are part of a multinational group (MNE group) whose consolidated total turnover of the previous fiscal year amounts to at least EUR 750 million. The term “turnover” should be understood as the sum of revenues generated from activities in the market. Such MNE groups need to prepare a CbCR according to the TPDL.

The competent Austrian tax office has to be informed on an annual basis by the last day of the fiscal year for which a CbCR is prepared whether the entity resident in Austria is the ultimate parent entity of a MNE group or the surrogate parent entity of a MNE group that files the CbCR with the Austrian tax office.

If the Austrian entity is neither the ultimate parent entity nor the surrogate parent entity of a MNE group that files the CbCR, the Austrian tax office has to be informed about the identity and residence of the reporting entity (i.e. the group entity that prepares and files the CbCR in its state of residence).

To standardize the notification process, the Austrian Ministry of Finance published the form “VPDG 1” in its form database (see link below).

https://service.bmf.gv.at/service/anwend/formulare/show_mast.asp?Typ=SM&__CiFRM_STICHW_ALL=VPDG1+&searchsubmit=Suche
Austria: Notification obligation regarding Country-by-Country Reports (CbCR) by 31 December 2018

If the fiscal year of the entity is the calendar year, the notification for 2018 has to be submitted to the competent Austrian tax office by 31 December 2018. An electronic transmission via FinanzOnline is possible.

Please do not hesitate to contact us in case of any questions regarding the reporting obligation.

**Austrian group taxation: issues before year end**

Under the Austrian group taxation regime, tax losses of group members can be offset against tax profits of other group members. Main prerequisite is that there is a participation of more than 50% of the share capital and the majority of voting rights during the whole fiscal year.

If a tax group should be established or if an already existing tax group should be extended for the tax year 2018 (for groups with balance sheet date 31 December 2018), the group application forms have to be verifiably signed by 31 December 2018 at the latest. Furthermore, the signed group application forms have to be filed with the Austrian tax authorities within one month after signing.

Depreciations of participations in subsidiaries made before the subsidiary joined the tax group remain tax deductible and have to be spread over seven years for tax purposes.

If foreign subsidiaries are currently in a loss position and if under foreign tax law tax loss carry forwards are limited timely, the inclusion of the foreign subsidiaries into an Austrian tax group should be considered. Only foreign entities resident in countries with which Austria has agreed on comprehensive administrative assistance can be included into a tax group.

Losses of foreign group members must be calculated based on Austrian tax law. Foreign losses calculated under Austrian tax law may be higher than under foreign tax law. However, the deductibility of such losses is limited to the actual losses calculated under foreign tax law. The utilization of losses of foreign group members is limited to 75% of the domestic group income. Exceeding losses are included in the loss carry forwards for subsequent years.

Depreciations of participations in group members (to their lower fair market value) are tax-neutral at the level of the parent company. If a new tax group should be established in 2019, potential depreciations of future group members should be considered when drawing up the financial statements 2018. Goodwill amortization is no longer possible for share deals after 28 February 2014. Open amortization amounts ("fifteenths") basically remain tax deductible.

The cancellation of an existing tax group in 2018 should be considered, if participations in group members have to be depreciated in the financial statements 2018. If group members suffer high losses in 2018, which cannot be offset against taxable profits of other group members, it may be advisable to (partly) cancel the existing tax group. A new tax group could then be established as soon as the companies are in a profit situation again. Group
members can completely offset their taxable income against “pre-group” tax loss carry forwards (the 75% limitation does not apply). A tax group must exist for at least 3 entire fiscal years before it is cancelled. Otherwise CIT will be reassessed as if the tax group never existed. When establishing a new tax group, a new three year period will start.

Revised Tax Treaty Austria - Japan

On 9 October 2018, the revised Double Taxation Treaty (DTT) between Austria and Japan was published in the Austrian Federal Law Gazette and is applicable from 1 January 2019. So far, there was a DTT from 1963, which was no longer in line with the latest OECD-MTC standards. The revised DTT Austria - Japan is based on the current OECD Model Tax Convention and considers the amendments of the MLI. The DTT is not included in the MLI.

The most important new provisions of the revised DTT are detailed below:

Capital gains
Under the existing 1963 DTT Austria - Japan, capital gains derived from the alienation of shares of a company being a resident of one of the contracting states may be taxed in that contracting state, if the seller holds at least 25% of the shares and the total of such alienated shares amounts to at least 5% of the shares. Therefore, under the existing DTT, Austria has the right to tax certain gains from the disposal of such Austrian companies.

Under Art. 13 para. 5 of the revised DTT, only the state of residence of the seller has the right to tax capital gains. Therefore, with effectiveness of the revised DTT, generally, only Japan has the right to tax gains from the disposal of shares in Austrian companies.

From an Austrian point of view, capital gains for periods up the effectiveness of the revised DTT remain taxable in Austria (see our International Tax Review No. 7 from 3 July 2018). The effectiveness of the revised DTT does, however, per se not trigger exit taxation.

In case Japanese shareholders hold shares of at least 25% in Austrian companies, the fair market value of shares in Austrian companies as of 1 January 2019 should be determined and well documented.

Permanent establishments
The revised DTT adopts the definition of the OECD-MTC 2017. A fixed place of business solely for certain activities is treated as a PE, unless such activities are of a preparatory or auxiliary character. An enterprise is deemed to have a PE if a person acting in a Contracting state on behalf of an enterprise habitually concludes certain contracts, or habitually plays the principal role leading to the conclusion of those contracts that are routinely concluded without material modification by an enterprise.

Dividends
The revised DTT reduces the WHT rate from 10% to 0% if the beneficial owner of the dividends is a company that has owned directly or indirectly at least 10% of the voting power of the company paying the dividends for at least 6 months. In all other cases the WHT rate is reduced from 20% to 10%.
Interest
The WHT rate on interest is now 0% (before: 10%).

Royalties
The WHT rate on royalties is now 0% (before: 10%).

Income from employment
In case of taxation of income from employment, the 183-day rule applies to any 12-month period, which begins in the respective tax year.

Entitlement to treaty benefits
The revised DTT introduces a provision that sets forth the criteria that determine whether a person is considered as qualified person or satisfies any other specified objective tests to be entitled to the benefits (dividends, interests and royalties) in the treaty. This provision is especially relevant for companies to apply for the reduced WHT on dividends, interest and royalties.

Elimination of double taxation
For residents of Austria the exemption method applies (before: credit method). The credit method is still used for dividends and interest. For residents of Japan the credit method still applies.

Mutual agreement procedure
The revised DTT introduces mandatory arbitration proceedings in which the cases not being resolved between the tax authorities of the Contracting States will be resolved within two years pursuant to decision made by third party arbitrators if the taxpayer requests.

The DTT is effective for taxes, which are levied on or after 1 January 2019.

Austria: Chamber contribution - changes as of 1 January 2019

All members of the Austrian Economic Chambers (Wirtschaftskammer Österreich) are liable to calculate, notify and pay chamber contributions (Kammerumlage 1) on a quarterly basis to their tax office by the 15th of the second following month. The basis of assessment for the chamber contribution is generally the total of VAT invoiced to the member of the Austrian Economic Chamber, import VAT, input VAT on intra community acquisitions and input VAT according to the reverse-charge-mechanism. Until 31 December 2018, the chamber contribution amounts to 0.3% of the basis of assessment.

As of 1 January 2019, the following changes enter into force:

► VAT invoiced for investments in fixed assets (new and used, including low-value assets) reduce the basis of assessment for the chamber contribution.
► A new declining staggered tariff takes effect. For a basis of assessment up to EUR 3 million, the new rate is 0.2900%. For the basis of assessment over EUR 3 million and up to EUR 32.5 million, the rate for the exceeding part is 0.2755%. In case the basis of assessment exceeds EUR 32.5 million, the rate for the exceeding part is 0.2552%.
Austria: Chamber contribution – changes as of 1 January 2019

<table>
<thead>
<tr>
<th>Basis of assessment</th>
<th>rate</th>
</tr>
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<tbody>
<tr>
<td>up to EUR 3 million</td>
<td>0.2900%</td>
</tr>
<tr>
<td>over EUR 3 million – EUR 32.5 million</td>
<td>0.2755%</td>
</tr>
<tr>
<td>over EUR 32.5 million</td>
<td>0.2552%</td>
</tr>
</tbody>
</table>

There are also new rates for banks and insurance companies as of 1 January 2019.

**OECD Developments**

- The Latest on BEPS – 5 November 2018 [Read more]
- The Latest on BEPS – 22 October 2018 [Read more]
- OECD releases 2017 Mutual Agreement Procedure statistics [Read more]
- OECD releases Japan peer review report on implementation of Action 14 minimum standard [Read more]
- OECD releases guidance for development of synthesized texts and a note clarifying the entry into effect of BEPS Multilateral Convention [Read more]

**EU Developments**

- EU: Outcomes of the September meeting of EU Member States and the EC regarding Mandatory Disclosure [Read more]
- EU Joint Transfer Pricing Forum releases Report on a coordinated approach to transfer pricing controls as well as statistics on APAs and pending MAPs under the Arbitration Convention [Read more]

**Argentina**

- Argentina publishes regulations clarifying the rules applicable to real estate transactions and severance payments [Read more]
- Argentina issues numerous pieces of guidance on various tax issues [Read more]

**Australia**

- Australian court rules deemed source provision in Indian DTA creates liability to income tax in Australia [Read more]
- Australian Taxation Office issues guidance on GAAR and restructures of hybrid mismatch arrangements [Read more]

**Belgium**

- Belgium acts to ratify MLI and revises position on commissionaire arrangements [Read more]
Country Updates

Brazil
- Brazilian Tax Authority proposes rules for corporate taxpayer classification  
- Brazilian tax authorities provide guidelines for classifying a transaction as an export of services  

Canada
- Finance Canada tables NWMM for tax measures and adjusts proposed filing deadline for T1134s  

China
- China expands scope of withholding tax deferral treatment on direct reinvestments from foreign investors  

Colombia
- Colombia: Details of upcoming tax reform revealed  
- Colombia’s Ministry of Finance provides more details on upcoming tax reform  
- Colombia proposes tax reform  

Costa Rica
- Costa Rica ratifies exchange of information agreement relating to tax matters with Korea  

Egypt
- Egypt implements new transfer pricing guidelines  

El Salvador
- El Salvador updates transfer pricing information return and guidelines  

Finland
- Finland issues government bill on changes to CFC rules to be effective as of 1 January 2019  

France
- France publishes Anti-Fraud Act  

Germany
- German Federal Parliament adopts Annual Tax Act 2018  

Country Updates

Gibraltar
- Gibraltar issues new rules and guidance on tax rulings  
  Read more
- Gibraltar issues guidance on income accrued in and derived from Gibraltar  
  Read more

Honduras
- Honduras extends amnesty program again  
  Read more

Hong Kong
- Hong Kong passes new legislation to grant increased tax deductions for qualifying R&D activities  
  Read more

Indonesia
- Indonesia releases new regulation on tax and non-tax state revenue in the mineral mining sector  
  Read more

Israel
- Israel’s Tax Authority releases circular on business restructuring in multinational groups  
  Read more

Italy
- Italian Revenue Agency ruling clarifies tax issues regarding sale-and-repurchase agreements  
  Read more

Japan
- Japan signs revised income tax treaty with Spain  
  Read more
- Japan and US sign Country-by-Country Reporting exchange of information arrangement  
  Read more

Malaysia
- Malaysia signs Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS  
  Read more

Mexico
- Mexico broadens source taxation on software payments  
  Read more

The Netherlands
- Dutch Government opens internet consultation on anti-hybrid measures of ATAD 2  
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Country Updates

New Zealand

- New Zealand introduces new research and development tax incentive [Read more]

Panama

- Panama’s National Assembly approves bill to amend multinational headquarters regime [Read more]
- Panama: Taxpayers with a concession for call center activities are subject to transfer pricing regulations [Read more]
- Panama establishes new rules for call center activity [Read more]
- Panama: Multinational headquarters companies are subject to transfer pricing regulations [Read more]
- Panama’s National Assembly approves bill for calculating income subject to preferential tax treatment under an IP regime [Read more]

Peru

- Peru issues regulations for the implementation of OECD Common Reporting Standard [Read more]
- Peru extends deadline for submission of country-by-country report to March 2019 [Read more]

Philippines

- Philippines releases draft fiscal regime for mining industry [Read more]

Poland

- Poland’s lower house of Parliament passes 2019 tax reform proposal including strict withholding tax regime [Read more]
- Poland passes 2019 tax reform including Mandatory Disclosure Rules [Read more]

Qatar

- Qatar tax authorities increase attention on withholding tax [Read more]

Saudi Arabia

- Saudi Arabia announces establishment of first Special Economic Zone for integrated logistics [Read more]
- Saudi Arabia to allow foreign investment in four key sectors [Read more]

South Africa

- South Africa introduces tax amendment bills [Read more]
- South Africa amends interaction between dividend stripping rules and corporate reorganization rules [Read more]
Country Updates

Spain
- Spanish Council of Ministers releases draft anti-tax evasion Bill for public consultation  
- Spanish Government proposes to exclude EU ETFs from traspasos (deferral) regime  

Switzerland
- Swiss Canton of Geneva publishes Initial Coin Offerings Guide  

Tanzania
- Tanzania issues request for foreign nationals to update their residential information by 30 November 2018  

Ukraine
- Ukraine's Ministry of Finance and National Bank present draft law to implement anti-BEPS measures  

United Kingdom
- United Kingdom: Highlights of Budget 2018 documents and other consultations  
- UK’s bilateral APA program for financial transactions is in line with growing global approach  
- UK proposes income tax charge on intangible property payments  
- UK publishes response to consultation on corporate intangible fixed assets regime and draft legislation  

United States
- Report on recent US international tax developments - 16 November 2018  
- Report on recent US international tax developments - 9 November 2018  
- Report on recent US international tax developments - 2 November 2018  
- Report on recent US international tax developments - 26 October 2018  
- Japan and US sign Country-by-Country Reporting exchange of information arrangement  
- US: Proposed 956 regulations would limit foreign tax credit planning by reducing Section 956 inclusions for corporate US shareholders  
- US Treasury and IRS release draft Form 8990, Limitation on Business Interest Expense Under Section 163(j)  
