

Tax reforms in Germany and Austria: Role Models for Luxembourg?

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Common Roots

- **Einkommensteuergesetz** of 16 October 1934, Reichsgesetzblatt I 1934, 1005.
- **Körperschaftsteuergesetz** of 16 October 1934, Reichsgesetzblatt I 1934, 1031.
- **Vermögenssteuergesetz** of 16 October 1934, Reichsgesetzblatt I 1934, 1052.
- **Gewerbesteuergesetz** of 1 December 1936, Reichsgesetzblatt I 1936, 979.
- **Abgabenordnung** of 22 May 1931, Reichsgesetzblatt I 1931, 161.
- **Steueranpassungsgesetz** of 16 October 1934, Reichsgesetzblatt I 1934, 925.

Continued application / Eradication of nazi ideology

§ 1 Steueranpassungsgesetz:

(1) Die Steuergesetze sind nach nationalsozialistischer Weltanschauung auszulegen.

(2) Dabei sind die Volksanschauung, der Zweck und die wirtschaftliche Bedeutung der Steuergesetze und die Entwicklung der Verhältnisse zu berücksichtigen.

Continued application / Eradication of nazi ideology

Germany: Laws remained in force.

- Abgabenordnung 1977
- Abolition Vermögensteuer as of 1997

Austria: Rechtsüberleitungsgesetz of 1 May 1945,
Abgabenweitergeltungsgesetz of 8 May 1945

- Bundesabgabenordnung 1962
- Abolition Gewerbesteuer 1994
- Abolition Vermögensteuer 1994

Continued application / Eradication of nazi ideology

Luxembourg: L'arrêté grand-ducal of 26 October 1944

- New Income and Corporate Income Tax as of 1 January 1969, Law of 4 December 1967
- All other laws (Gewerbsteuer, Vermögensteuer, Abgabenordnung, Steueranpassungsgesetz) are still in force.

Continued application / Eradication of nazi ideology

All three countries:

**=> Evolutionary
not revolutionary
development**

Developments after WW2

- Tax laws are drifting apart.
- Harmonization within the European Union
 - Value Added Taxation
 - Change from turnover tax to value added tax in Germany 1968, in Luxembourg in 1970, in Austria in 1972 and 1995.
 - Implementation of the parent-subsidiary directive, merger directive, interest and royalties directive, former savings directive (exceptions for Austria and Luxembourg)
 - Influence of the fundamental freedoms (limited tax liability) e.g. Sec. 1(3) G ITA, 1(4) A ITA, 157ter L ITA.

Developments after WW2

- **International Tax Competition:** Base broadening and rate reduction (Reagan 1986)
- **Mutual Inspiration:** Demi-dividendes: Luxembourgish example for Germany; Final Withholding Tax on Dividends, Interests and Capital Gains: Austrian Example for Germany

Developments in Germany

- **Extremely high tax rates** imposed by the Allied forces made exemptions necessary. These exemptions were difficult to remove after the tax rates could be reduced.
- Major momentum for tax reforms came from the jurisprudence of the **Constitutional Court** and the **ECJ**.

Developments in Germany

Influence of the Constitutional Court

- Taxation of Households introduced in 1934.
- Judgment of the Constitutional Court of 17 January 1957, BVerfGE 6, 55.
- Introduction of splitting system in 1958.
- Extension of splitting system to same sex couples in 2013.

Developments in Germany

Influence of the Constitutional Court

- **Basic tax free allowance** (zero bracket) lower than social security minimum (1995: 2.871 €)
- Judgment of the Constitutional Court of 25 September 1992, BVerfGE 87, 153: Obligation to exempt the subsistence level. (2015: 8.472 €)

Developments in Germany

Influence of the Constitutional Court

- **Abolition of the wealth tax:** Judgment of the Constitutional Court of 22 June 1995, BVerfE 93, 121.
- Modification of the **Inheritance Tax:** Judgment of the Constitutional Court of 7 December 2014,

Developments in Germany

Major Tax Reforms

- 1977: Change from a corporate split rate system to the imputation system
- 2001: Change from imputation system to partial exemption of dividends (Halbeinkünfteverfahren) due to **ECJ judgments** Meilicke and Manninen
- 2009: Final Withholding Tax on dividends, capital gains and interest.
- 2016 (?): Return to progressive taxation of interest payments.

Developments in Germany

Base Broadening

- **1934:** Income dualism
 - Net accretion in Wealth Theory (Schanz)
 - Source Theory (Fuisting)
 - Capital Gain of privately held assets generally not taxable.
 - Exceptions: Capital Gain of qualified participation (25% and at least 1% is sold)
 - Speculative income: Immovable assets sold within 2 years, mobile assets (securities) sold within 1 year.

Developments in Germany

Base Broadening Qualified participation

- 1996: Sale of minimum shareholding requirement (1%) abolished
- 1999: Qualified participation reduced to 10% (Luxembourg followed 2001: Art. 100 LIR)
- 2002: Qualified participation reduced to 1%
- 2009: Final Withholding tax on all capital gains, qualified participation no longer necessary

Developments in Germany

Base Broadening Speculative Income

- 1954: Period for movable assets reduced to 3 months
- 1960: Period for movable assets extended to 6 months (Luxembourg Art. 99bis)
- 1999: Period for immovable assets extended to 10 years (plus newly constructed buildings) and for movable assets to 2 years.
- 2009: Final withholding tax for capital gains on shares.
- => Still **no general capital gains tax** on the sale of immovable property as in Art. 99ter)

Developments in Germany

Base Broadening

- 1972: **Außensteuergesetz**
 - CFC legislation
 - Exit tax
 - Transfer Pricing Rules
- 2008: After ECJ judgment Lankhorst Hoyer abolition of thin capitalization rules and introduction of an interest barrier rule in Sec. 4h ITA, Sec. 8a CITA.

Tax Rates for Individuals

| Year | Rate |
|------|--|
| 1934 | 8%-40% (Household); 8%-50% (Single) |
| 1946 | > 600 RM: 17%; > 4,800 RM: 50%; > 100,000 RM: 95% |
| 1954 | Highest marginal tax rate: 63.45%; cap at 55% |
| 1958 | Highest tax rate: 53% |
| 1975 | Highest tax rate: 56% |
| 1988 | Highest tax rate: 53% |
| 2000 | Highest tax rate: 51% |

Tax Rates for Individuals

| Year | Rate |
|------|---------------|
| 2002 | 19.9% - 48.5% |
| 2004 | 16% - 45% |
| 2005 | 15% - 42% |
| 2007 | 15% - 45% |
| 2009 | 14% - 45% |

Tax Rates for Corporations

| Year | Rate |
|------|---------------------------------------|
| 1934 | Distributed and retained profits: 20% |
| 1936 | Distributed and retained profits: 25% |
| 1937 | Distributed and retained profits: 30% |
| 1946 | Progressive rates: 35% - 65% |
| 1948 | Flat rate: 50% |
| 1951 | Flat rate: 60% |
| 1953 | Split rate: 60% (Ret); 30% (Dis) |

Tax Rates for Corporations

| Year | Rate |
|-------------|--|
| 1954 | Split rate: 45% (Ret); 30% (Dis) |
| 1958 | Split rate: 51% (Ret); 15% (Dis) |
| 1977 (Impu) | Split rate: 56% (Ret); 36% (Dis); 50% (NR) |
| 1990 (Impu) | Split rate: 50% (Ret); 36% (Dis); 46% (NR) |
| 1994 (Impu) | Split rate: 45% (Ret); 30% (Dis); 42% (NR) |
| 1999 (Impu) | Split rate: 40% (Ret); 30% (Dis) |
| 2001 | 25% |

Tax Rates for Corporations

| Year | Rate |
|------|-----------------------------------|
| 2003 | 26.5% (Victims of flood disaster) |
| 2004 | 25% |
| 2008 | 15% |

Developments in Austria

- 1962: Introduction **Bundesabgabenordnung**
- 1972: From Splitting to **Taxation of each individual** (Obstacle for women to start working)
- 1993/1994: Introduction of **final withholding tax** on interest (Luxembourg RELIBI 2005/2006)
- 1994: Abolition of **Municipal Business Tax** and of **Comprehensive Wealth Tax**
- 2005: Introduction of a **group taxation regime** for corporations (Foreign losses are deductible, recapture); abolition of "Organschaft"
- 2008: Abolition of **Inheritance Tax** (Judgment of Constitutional Court)

Developments in Austria

Base Broadening

- 1988 Speculative Income: Immovable Property period of 10 years, movable property period of 1 year.
- 2012: Final Withholding Tax for capital gains on shares (25%, as of 2016: 27.5%) and on immovable property (25%, as of 2016: 30%)
- 2014: Salaries are no longer deductible if they exceed 500.000 €
- 2014: Interest and royalty payments between group members are no longer deductible if recipient is taxed at a rate below 10% (Anti BEPS)

Income Tax Rates

| Income | Tax rates |
|------------|-----------|
| 11,000 € | 0% |
| 25,000 € | 36.5% |
| 60,000 € | 43.2% |
| > 60,000 € | 50% |

Tax Rates on Income from Labor

| Income | Tax rates |
|------------|-----------|
| 11,000 € | 0% |
| 25,000 € | 32.1% |
| 60,000 € | 38.0% |
| > 60,000 € | 43.7% |

Corporate Tax Rates

| Year | Tax rate |
|------|---------------------------|
| 1966 | 24-44% / Distribution 1/2 |
| 1972 | 30-55% / Distribution 1/2 |
| 1988 | 30% |
| 1993 | 34% (abolition MBT) |
| 2005 | 25% |

Consequences for Luxembourg

Obstacles

- **Comprehensive Wealth Tax** for corporations (2006 abolition for individuals)
- **Inter-company dividend exemption** (Art. 166 LIR) Ballooning; Austria: interest payments are deductible; Germany 95% exemption, interest payments are deductible
- **High corporate tax** + MBT (Non-deductibility abolished) + Contributions au fonds pour l'emploi

Consequences for Luxembourg

Revenue neutral compensation measures:

- Splitting
- Catalogue of Art. 115
 - Overtime premiums / Night shift premiums
 - Lunch vouchers
 - Gifts
- Relibi (10% final WHT on interest)
- Capital gains on shares (10% "participation importante" with "demi-taux" or 6 months period)
- Valeur locative d'habitation
- Increase of VAT (17; 3; 8;14) Malta: 18%; Cyprus: 19%

Thank you for your attention



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