

manual

UBELHOER | PFEIFFER | HUISMAN | SCHAFFER

Introduction to Austrian Tax Law

based on
Lang, Rust, Schuch, Staringer
Einführung in das Steuerrecht

2., überarbeitete Auflage



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Kurt Ubelhoer, Sebastian Pfeiffer,
Eline Huisman, Erich Schaffer

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facultas

Dieses Buch basiert auf dem Lehrbuch *Einführung in das Steuerrecht* von Michael Lang, Alexander Rust, Josef Schuch und Claus Staringer, facultas/Wien. / This book is based on the textbook *Einführung in das Steuerrecht* by Michael Lang, Alexander Rust, Josef Schuch und Claus Staringer, facultas/Vienna.

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PREFACE

Since the first edition of Introduction to Austrian Tax Law, a number of changes were made by the Austrian legislator. Amongst others, the Tax Reform 2015/2016 introduced new concepts in Austrian tax law (e.g. regarding the Real Estate Transfer Tax) and amended the tax progression in the Austrian Income Tax Act. Moreover, since 1 January 2016, the Capital Transaction Tax is abolished.

The aim of this book was and is to serve as an introduction to the tax law of Austria. Taking into account the changes in legislation and feedback received from readers and students, we decided that it was time for a second edition of this book. In addition, we added features appealing to non-students who have to work with tax law on a professional basis by adding a complete vocabulary list in German and English, giving guidance on how to use the German tax law terms in English.

This book is the product of the efforts of the Institute for Austrian and International Tax Law, in cooperation with the Institute for English Business Communication, and serves as the textbook for the undergraduate course “Introduction to Austrian Tax Law” offered at WU, the Vienna University of Economics and Business. Introduction to Austrian Tax Law is the English counterpart to the German-language *Einführung in das Steuerrecht*, and as such, this book models itself on that course’s eponymous textbook by Univ.-Prof. Lang, Schuch, Staringer and Rust. While being similar, there are differences, for example regarding the Module on Value Added Tax.

The course has been and continues to be offered to those students who wish to understand the Austrian framework for taxation of personal and corporate income as well as VAT. As such attendees include, but are not limited to, students of all degree levels, both WU and non-WU, of Austrian and international universities, as well as those legal professionals who would benefit from an understanding of Austrian tax law in English.

This text is divided into ten modules, each focusing on a particular aspect of tax law. The theory of these legal aspects is punctuated with examples and short case studies. These, we hope, serve to clarify the tax law and its underlying principles and bring into focus how these theories are applied in more concrete terms.

The lecture itself is divided into five, five-hour sessions, each covering two of the modules of the text. For didactic purposes, the lectures are supplemented with PowerPoint slides and slightly longer case studies. The students are expected to have read the relevant two modules in advance of attending the lecture to ensure that the lecturers serve not simply to introduce the material, but to clarify and deepen the students’ understanding of what they have already read.

In writing this book, several factors had to be taken into account. The students of German-language introductory tax law course can benefit directly from referencing the original Austrian tax code, where students are strongly encouraged to refer to the relevant articles and sections of the *Kodex* in class and in the exam. While similar VAT codes exist in English and

there is an English version of the OECD Model Tax Convention on Income and on Capital, a complete English version of the Austrian tax code does not yet exist.

Finally, this book could not have been published with the support of numerous colleagues from both the Institute for Austrian and International Tax Law, especially Univ.-Prof. Dr. Dr. h.c. Michael Lang, and the Institute for English Business Communication at WU.

Vienna, April 2016

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MODULE 1: THE BASIC PRINCIPLES OF INCOME TAXATION

The central questions of this module are:

- *Which forms of income are taxable?*
- *Which business expenses and operational expenses can be deducted when reporting income?*
- *Which special personal expenses and extraordinary expenses can be deducted when reporting income?*
- *Which tax rate is to be used when?*
- *Which deductible expenses can be subtracted from the total tax burden?*
- *How is income tax levied?*

Tz 1

Ms. Taxable is a self-employed tax consultant in Vienna. In the course of her work, she earns an annual income of €60,000. She has a savings account which drew €1,500 in interest last year. Three years ago, Ms. Taxable purchased property in Upper Austria for €40,000, which she then sold this past year for €35,000. Last year, she paid a total of €600 in church tithes. After last year's floods, Ms. Taxable rented industrial dryers and purchased a new washing machine, totaling €5,000. Ms. Taxable's husband is currently on paternity leave and takes care of their one-year-old daughter. Over the past year, Ms. Taxable has prepaid €11,500 of her income tax.

I Principles of income taxation

1 The ability-to-pay principle

Tz 2 Income is considered to be an indicator of an individual's or company's **economic performance**. Thus, one of the principle goals of income taxation is that of measuring an individual's ability to bear a tax burden, and so the Income Tax Act (ITA) regulates which types of accretion of wealth are deemed to be income and therefore taxable.

Tz 3 Income tax reflects each individual's **ability to pay**, as there is no joint taxation of married couples or households. The ability-to-pay principle for individuals is expressed in various ways in the Austrian tax system. The following provisions can be set as examples:

- An amount equal to the subsistence level is tax exempt. Currently, income accrued up to but not exceeding €11,000 is tax-free (Sec. 33(1) ITA).
- The income tax rates are set up progressively. Progressive taxation refers to the disproportionate taxation of higher incomes. In other words, the higher one's income is, the higher the rate at which it will be taxed.
- Certain provisions take into account the special financial burdens of certain groups of taxpayers, e.g. single parents, sole wage earners, or persons with child support obligations.

2 The principle of universality

Tz 4 In determining income as an individual's ability to pay, the geographic origin of the income, whether domestic or foreign, is irrelevant. The Austrian income tax code is said to follow the principle of **universality**, meaning that individuals are subject to unlimited taxation, and are therefore taxed based on their total **worldwide income**. Only those individuals who are neither residents of, nor have their habitual abode in, Austria are subject to limited tax liability. If this is the case, only income sourced in Austria is subject to Austrian taxation (see the **principle of territoriality**).

3 The principle of periodic taxation

Tz 5 The taxable income for the period of one calendar year serves as the basis for individual taxation. In assessing an individual's overall ability to pay, all income derived by a taxable person over the course of their lifetime would have to be considered. However, tax authorities naturally cannot wait that long for tax revenue. Accurately assessing an entire lifetime of taxes at once would also be almost insurmountably challenging from an administrative point of view. As a result, the ability to pay is evaluated only periodically, namely every **calendar year**.

Still, the taxation based on **annual income** can be rather arbitrary and can ultimately lead to undue hardships. If a person generates losses in one year, but earns a much higher income in the second year, the progressive tax rate will lead to a substantially higher taxation rate than that of someone who has generated a constant stream of income in each of the two years. To avoid such misleading calculations, a **periodic assessment** can be granted to the taxpayer under certain circumstances, but such a periodic compensation serves only as an exception to the principle of periodic income.

II Categories of income

1 The seven categories of income

Tz 6 According to Sec. 2(2) ITA, taxable income is defined as the total amount of income aggregated from all seven categories of income, after the deduction of losses derived from the several categories, the deduction of special personal expenses (Sec. 18 ITA) and extraordinary expenses (Sec. 34 and 35 ITA), and after the consideration of allowable deductions from Sec. 105 and 106a ITA.

Tz 7 Sec. 2(3) lists the following seven categories of income:

Business income	<ul style="list-style-type: none"> 1. Income from agriculture and forestry (Sec. 21), 2. Income from self-employment (Sec. 22), 3. Income from commercial activities (Sec. 23), 	}	Main categories of income			
Non-business income				4. Income from employment (Sec. 25),	}	Ancillary categories of income
				<ul style="list-style-type: none"> 5. Income from capital investments (Sec. 27), 6. Income from renting, leasing and royalties (Sec. 28), 7. Other specific income (Sec. 29). 		

The distinction between **business income** (from profits) and **non-business income** (surplus income) is particularly relevant for tax computation. The three **ancillary categories of income** are ultimately subsidiary to the four **main categories of income**.

2 *Business income and the notion of commercial activities*

Tz 8 The first three categories of income are seen as business income. The applicability of the first three categories of income is predicated on the existence of a business. According to Sec. 23, business income is defined as income from an **independent, continuous activity undertaken in general commerce with the intent to make a profit**. The Austrian Supreme Administrative Court interprets these criteria in the following way:

- **Independence** exists when the taxpayer undertakes his activities at his own risk and expense and thus is subject to business risks. This differentiates an entrepreneur from an employee under tax law. A state of employment exists for tax purposes if it leads to income from employment, and if the employee sells his own manpower to the employer (Sec. 47(2) ITA). A similar notion of independence can be found in Sec. 2(1) Value Added Tax Act.
- **Continuous activity** is an activity exercised professionally by using specific knowledge or skills. Moreover, an activity can be seen as continuous if it is exercised repeatedly or with the intention of repeated exercise. If it occurs over a prolonged period of time, even in the absence of this intention to repeat, an activity is still seen as continuous (VwGH 14.9.1988, 87/13/0248; one time activity lasting for a period of nine months).
- **An intention to make a profit** is recognized when a commercial activity continuously generates income in excess of its total production costs. The focus of the taxpayer is to generate a profit which falls into one of the seven categories of income. To distinguish business-related losses from all non-business-related losses, the Federal Ministry of Finance has defined the term **hobbies** (LiebhabereiVO, BGBl 1993/33) (NB: For the purposes of this book, hobbies are to be defined as activities not engaged in for profit). If expenses are incurred for private reasons (i.e., for the purpose of private consumption), these activities can be seen as hobbies, and are consequently irrelevant for tax purposes.

Example: A businessman (who is at the same time a gourmet of wine) has worked for years as a winemaker on the weekends in Burgenland. For this reason he has acquired certain oenophilic (wine-producing) equipment, restored his wine cellar, and has even sporadically employed staff. In this context he has incurred considerable expenses, without ever turning a profit. Profits are likewise not expected in the foreseeable future. Thus, his activities as a winemaker can be seen as a hobby according to the definition set out by the Federal Ministry of Finance. Consequently, his losses cannot be deducted for tax purposes; at the same time, if he inadvertently generates a profit, this profit will not be subject to taxation.

- **Participation in general commerce** can be assumed when the goods sold or services rendered are made available to the general public, even if the taxpayer at

times only deals with a limited number of people or a single contractor (VwGH 14.9.1988, 87/13/0248).

3 *The definition of the various types of income*

Tz 9 The first three categories of business income and the remaining four categories of non-business income can be defined in the following way:

- **Income from agriculture and forestry** (Sec. 21 ITA): This category consists of particular forms of income from the primary sector (namely from agriculture and forestry), including livestock breeding and animal husbandry and the sale of products produced therefrom, freshwater fish farming, and hunting, as well as income generated by related activities.
- **Income from self-employment** (Sec. 22 ITA): This category comprises:
 - income from scientific, artistic, literary, teaching or educational activities,
 - professional activities, such as those rendered by doctors or other medical professionals, lawyers or legal advisors, tax accountants and advisors, or trustees,
 - income arising from asset and property management,
 - income earned as a member of the supervisory board of directors, and
 - salaries or other forms of compensation of any kind granted by a company to a shareholder-managing director (NB: For it be considered Sec. 22 income, the shareholder-managing director (Gesellschafter-Geschäftsführer) must hold an equity stake that exceeds 25% of the share capital of the corporation; see also *income from employment*). This applies also if the recipient otherwise fulfills all characteristics of an employee (e.g., managing partners who are bound by instructions).
- **Income from commercial activities** (Sec. 23 ITA): Income from commercial activities is defined as income from trade or business which is not considered agricultural or forestry activity, or as income from professional, freelance services (**subsidiarity within the business-related categories of income**).

For the three types of business income, the alienation of an enterprise (or of an operating unit of an enterprise) is deemed to be a taxable event (Sec. 24 ITA). Under special circumstances this alienation of business can enjoy extraordinary tax privileges (Sec. 24(4) to (6) ITA and Sec. 37(2) and (5) ITA).

Example: Mr. A is 65 years old and one of two equal partners of a general partnership. After 10 years in business, he sells his 50% participation in the partnership to his successor, Mr. B. Up to now, A had income from commercial activities according to Sec. 23 no. 2. With the alienation of his ownership, Mr. A realizes a profit of

€12,000, which is seen as income from commercial activities according to Sec. 23 no. 3 icw Sec. 24(1)(1) ITA. The taxpayer can now opt for a tax-free exemption in the amount of €3,650 (€7,300 * 50%). Alternatively, he could also consider the reduction of progressive tax rate described in Sec. 37 ITA.

- **Income from employment** (Sec. 25 and 26 ITA): This category includes:
 - compensation in cash or in kind to employees,
 - pension income received by a retiree from social security, from a private pension fund or from the employer itself,
 - compensation of any kind granted by a company to a shareholder-managing director. (For this to be considered income from employment, the shareholder-managing director must hold stake less than or equal to 25% of the share capital of the company) and
 - compensation granted to particular political officials.

In general, income from employment is subject to wage tax which is withheld by the employer.

- **Income from capital investments** (Sec. 27 ITA): This category of income particularly comprises:
 - income in return for the provision of capital, e.g. profit distributions by legal entities (such as dividends), income from a typical silent partnership (mere participation in the continuous profits of an entrepreneur in contrast to an atypical silent partnership which comprises a share in the hidden reserves and goodwill. Such atypical silent partnerships are treated as normal partnerships for income tax purposes).
 - income from realized capital gains, which includes all income from the sale, redemption or other relinquishment of assets, thus generating a return on investment (Sec. 27(3)), and
 - income from derivatives trades (Sec. 27(4)).
- **Income from renting, leasing and royalties** (Sec. 28 ITA): This category consists of:
 - income from the renting or leasing of real estate,
 - income from renting or leasing of conglomerations of assets, such as those of an enterprise, and
 - royalties/licenses from the license to use works protected by the Austrian Federal Copyright Act, as well as royalties from the assignment of industrial property rights, patents, and know-how.

Examples:

1. A taxpayer rents out his condominium. This activity is not seen as a commercial activity, but only as the administration of an asset. Thus, it constitutes income from renting, leasing and royalties according to Sec. 28 ITA.

2. A taxpayer owns several flats in a touristy region of Austria. In the course of renting the flats to tourists he regularly has to perform various advertising and administrative tasks. In addition, he performs ancillary services for his guests (e.g., cleaning, serving food and beverages). In contrast to the first example, these various activities are clearly not done with the purpose of merely administrating the assets. The taxpayer can thus be regarded as generating income from commercial activities (see VwGH 13.10.1982, 82/13/0125).
- **Other specific income** (Sec. 29 to 31 ITA): The following list of designated other specific income is exhaustive:
- recurrent earnings (such as annuities) (Sec. 29 no. 1 ITA),
 - income from the sale of private real estate (Sec. 30 ITA) and from speculative gains (Sec. 31 ITA). Speculative gains are gains from the sale of personal property (e.g., shares) within a period of one year. However, in the context of Sec. 30 et seq ITA, transition rules for the applicability of the new tax regime after 2012 have to be taken into account (See Sec. 124b no. 185 ITA),
 - income from occasional services (Sec. 29 no. 3 ITA), and
 - income from fulfilling certain official duties (Sec. 29 no. 4 ITA)

Tz 10 The seven categories of income are numbered **comprehensively** in Sec. 2(3) ITA. Within the seven categories, the applicable types of income are again defined exhaustively. As a consequence, income that does not fall under one of the seven categories of income is not subject to income taxation (e.g., income stemming from lottery winnings or awards).

4 *The relevance of distinguishing between the individual categories of income*

Tz 11 If one of the categories of income is applicable, the income of the taxpayer is subject to tax. Nevertheless, it is critical to identify **which category** of income is applicable in each particular case. The regulations dealing with the calculation of income differ within the various categories of income; likewise, there are different regulations for the deduction of losses. To illustrate this point, a loss-carry-forward into consecutive periods is only possible for the categories of business income. Moreover, exemption limits for taxation may apply for some categories.

An example of such an exemption limit can be found in Sec. 29 no. 3 ITA, where income from the renting of movable objects is tax exempt, as long as the income does not exceed €220. However, if the income amounts to €230, the full amount, not just the excess of €10, will be subject to tax. Here the difference between an **exemption limit** and a **tax-exempt amount** can clearly be seen. In the case of a **tax-exempt amount**, only the excess amount of €10, rather than the total amount of €230 would have been taxable.

5 *The principle of subsidiarity within the categories of income*

Tz 12 For the aforementioned reasons, it is of utmost importance to determine which category of income applies in a case where more than one category is generally applicable. The ITA here shows several **rules for primacy**. The last three categories of income (**ancillary categories of income**) are subordinate to the first four categories (**main categories of income**). If a source of income shows elements of both types, it is still considered to be a primary source of income. Very often this sort of **subsidiarity** can be found within the several types of primary and ancillary income, namely according to their order in Sec. 2(3) ITA:

Examples: 1. Interest income from loans is earned in connection with commercial business activities. These earnings are deemed to be income from commercial activities and not capital investments. This rule is set in Sec. 27(1) ITA, where it is stated that income from capital investments only comprises income not deemed to be income according to Sec. 2(3)(1) to (4).

2. Income from a lumber mill would typically be seen as having been generated from commercial activities. Nonetheless, if the lumber mill is integrated in a forestry business, this sort of income is allocated to the agriculture and forestry income category.

6 *The difference between tax-exempt and taxable income*

Tz 13 If one income category is applicable for the taxpayer, it does not necessarily follow that this person has to pay tax. In many cases the legislature has stipulated that specific income is subject to tax (and therefore generally taxable), but then has subsequently granted this income a special tax exemption, rendering it tax-free. The result is the same as if the legislature had excluded this specific sort of income from taxation from the start.

Example: 1. An employer offers its staff free drinks during working hours. The free drinks would be benefits in kind which result in income from employment. In Sec. 3(1)(18) ITA exempts this benefit from taxation.

2. A taxpayer privately sells an expensive diamond diadem which was acquired two years ago. Since the diadem is neither considered a capital investment (Sec. 27 ITA), nor as real estate (Sec. 30 ITA), and the period of one year for speculative gains has already passed, the proceeds from the sale are not taxable (Sec. 31 ITA). A special provision for exemption is no longer required.

7 *The concept of the synthetic notion of income*

Tz 14 Austrian income tax is based on the synthetic notion of income. The sum of the income from the seven categories constitutes the taxpayer's total income for this period (Sec. 2(2) ITA). From the total income, only the special expenses (Sec. 18 ITA), extraordinary burdens (Sec. 34 f. ITA) and some tax-free amounts (Sec. 105 et seq.) still have to be deducted before finally arriving at the assessment base for taxation. Within one category of income several different sources can exist, e.g., if the taxpayer undertakes more than one commercial activity or rents more than one flat. Therefore, the taxpayer must first net out all positive and negative

‘earnings’ within one category of income. This is called the **internal** or **horizontal utilization of losses**. Next, the taxpayer must add all the positive earnings of several categories of income and deduct from it the losses arising from the other categories of income. This is called **external** or **vertical utilization of losses**.

Example:

	vertical	horizontal
1. Income from agriculture and forestry	+10,000	
2. Income from self-employment	0	
3. Income from commercial activities	+10,000	A +15,000 (production) B - 5,000 (distributive trades)
4. Income from employment	0	
5. Income from capital investments	+2,000	
6. Income from renting, leasing and royalties	-1,000	
7. <u>Other specific income (speculative losses)</u>	<u>(-1,000)</u>	
Total value of income	21,000	

First, for the horizontal or internal utilization of losses, the positive earnings are offset, within one category of income, by the negative earnings ($+15,000 - 5,000 = +10,000$ income from commercial activities). This is followed by the external or vertical utilization of losses. According to Sec. 31(4) speculative losses cannot be used for a vertical utilization of losses. Speculative losses may only be offset by speculative gains.

Tz 15 Positive and negative income is summed and used as the assessment base for the uniform tax rate. In this way, it departs from a **schedule system**, where the taxable base is calculated separately for each category, and depending on the relevant category of income, different tax rates are applicable.

Tz 16 Nevertheless, in the Austrian Tax Code, the concept of the synthetic notion of income is not inherently without limitations. The ITA shows countless different **horizontal and vertical limitations to the utilization of losses**. For this reason, it is of utmost importance to keep the order in which income is calculated set by law, which means that the horizontal assessment of income must always precede a vertical assessment. Another breach of the concept of the synthetic notion of income is the fact that essential types of income – such as most of the income from capital investments – are not part of the total income, but subject to an individual tax rate (capital gains tax).

Examples: 1. Speculative losses may only be offset by speculative gains (Sec. 31(4) ITA).

2. Interest from bank savings are, with a few exemptions, subject to a flat tax rate of 25% (i.e., the capital gains tax). Since this is a withholding tax, this income does not have to be taken into account for the assessment procedure.

3. Losses from the alienation of shareholdings and derivative instruments may only be offset against profits from other shareholdings (both dividends as well as profits from alienation of

such shareholdings) or derivative instruments. Offsetting such losses against interest accruing from bank savings or other receivables against banks is not allowed (Sec. 27(8) ITA). The custodian bank of the taxpayer is obligated to properly manage that loss utilization under the provisions laid down in Sec. 93(6) ITA. If the latter of these two rules is not applicable because the custodian is a foreign financial institution, the taxpayer has the option of filing for the utilization of losses pursuant to Sec. 97(2) ITA.

III Computation of taxable income

1 *Income from profits and surplus*

Tz 17 The differentiation between the categories of income is relevant for another reason as well. Depending on the appropriate category of income, the computation of income has to be done according to appropriate provisions. The correct calculation method is determined as follows (Sec. 2(4) ITA):

- The first three (business) categories of income are seen as **profit income**. Here, the income is qualified as profits arising from commercial activities.
- The remaining four (non-business) categories are seen as **surplus income**. Income is determined as the excess of receipts over operational expenses.

(business)	{	1. Income from agriculture and forestry (Sec. 21),
profit income		2. Income from self-employment (Sec. 22),
		3. Income from commercial activities (Sec. 23),
(non-business)	{	4. Income from employment (Sec. 25),
		5. Income from capital investments (Sec. 27),
		6. Income from renting, leasing and royalties (Sec. 28),
		7. Other specific income (Sec. 29)

2 *Dualism in the computation of taxable income*

Tz 18 The differentiation between profit income and surplus income leads to a **dualism in the computation of taxable income**. For profit income, the taxable income is computed using the net equity comparison method. Profit is defined as the difference of the company's net equity at the end of the business year from the preceding business year. This also includes profits from the write-up and alienation of assets, or even the alienation of either individual operating units or the whole enterprise (Sec. 4(1) ITA). For surplus income, receipts and operational expenses (Sec. 15 et seq. ITA) are compared using the cash method (Sec. 19 ITA). Changes in value or profits from the alienation of assets – apart from alienations of shareholdings (Sec. 27 ITA), sale of private real estate (Sec. 30 ITA), or speculative gains (Sec. 31 ITA) – are not considered when assessing taxes.

Tz 19 The results of profit income as well as surplus income are generally net values. This means that not only the profits (for business income) or receipts (for non-business income) are taken into account, but also that from these results, business expenses (for business income) or operational expenses (for non-business income) still have to be deducted. The result of this

calculation – positive or negative – is the income which serves as an assessment base for taxation.

Sometimes, especially regarding the capital gains tax, the gross income is subject to taxation. In this case, no deduction of expenses is possible.

3 *Business expenses and operational expenses*

Tz 20 **Business expenses** are defined as expenses incurred in the process of conducting trade or business (Sec. 4(4) ITA). By comparison, **operational expenses** are defined as expenses for the purposes of generating, protecting or retaining receipts (Sec. 16 ITA). While the different wording may imply that the extent of these two notions is entirely different (final vs. causal notion of business expenses), the prevailing opinion in legal literature argues that the criteria for the deduction of expenses are similar.

Tz 21 This result stems from the fact that, first and foremost, the distinction has to be made whether expenses are made for the **realization of income** or whether they constitute a **use of income**. Business expenses and operational expenses are necessary for the realization of income and therefore deductible; they reduce the taxable income. They have to be distinguished from expenses incurred for private reasons and therefore not deductible.

The distinction between expenses made for business or private reasons, or in other words between deductible and non-deductible expenses, is in practice rather complex. The Constitutional and Supreme Administrative Courts in Austria are often confronted with these issues. In general, courts tend to use rather broad categorizations – probably in order to unburden authorities from having to deal with too many individual case decisions. Therefore, expenses which are partly made for private and partly for business reasons very often are not deductible at all. For example, if a teacher buys a video player for preparing his classes, he might use the video player for private reasons as well. Thus, the expenses are not deductible (VwGH 28.10.1998, 93/14/0195). If the teacher, however, buys a second video player, the costs of the second player may be seen as totally business-related and are therefore tax-deductible (VwGH 20.12.1994, 90/14/0211).

Tz 22 The necessary differentiation between the **realization of income** and the **use of income** is explicitly regulated in Sec. 20 ITA (non-deductible expenses). This section stipulates general principles used for clarification, as well as provisions for cases which would otherwise be difficult to evaluate in practice. Therefore, these cases have been dealt with by the legislature explicitly. In addition, provisions can be found where the legislature expressly did not want to apply general principles, but rather favored more or less restrictive approaches.

Examples:

1. Living expenses, even if they are related to the economic or social position of the taxpayer (Sec. 20(1)(2)(a) ITA) are not deductible. This provision refers to private expenses which may also be beneficial for business reasons. If it is not clearly possible to distinguish between private and professional inducement, the expenses are not deductible

(e.g., VwGH 15.11.1995, 94/13/0142 regarding the deductibility of a dental prosthesis for a professional commercial narrator). Nevertheless, regarding hybrid expenses which can clearly be separated into a private and a professional part, a proportional deduction is granted by the tax authorities (e.g., VwGH 10.7.1957, 800/56 regarding expenses for the use of a car; VwGH 27.1.2011, 2010/15/0197 regarding travelling costs).

2. Costs of an office at home are not deductible, unless the office is the center of business or professional activity or the central workplace of the taxpayer (Sec. 20(1)(2)(d) ITA, see also VwGH 27.5.1999, 98/15/0100).

3. Only 50% of entertainment expenses can be deducted. Here, to avoid any conflict, the tax authorities assume that half of these expenses are attributable to the private sphere (Sec. 20(1)(3) ITA).

4. Wages paid by an employer to his employees are only tax deductible up to an amount of €500,000 per employee and fiscal year (Sec. 20(1)(7) ITA). Payments exceeding this amount are deemed to constitute usage of income by the employee. This provision was introduced in 2014 to reduce disparities between high-wage and low-wage earners.

IV Special expenses and extraordinary burdens

1 *Special expenses*

Tz 23 **Special expenses** (Sec. 18 ITA), **extraordinary burdens** (Sec. 34 and 35 ITA) as well as **tax-free amounts** (Sec. 105 and 106a ITA) shall be deducted from the total amount of income in order to calculate the taxable income (Sec. 2(2) ITA), to which the applicable tax rate (Sec. 33 ITA) shall be applied.

The tax-free amounts regulated in Sec. 105 and Sec. 106a of the ITA may be used by parents and certain other individuals.

Tz 24 In allowing certain expenses to be deducted as special expenses, the legislature is pursuing social, cultural or economic goals. These expenses share the fact that they are essentially private expenses. Nevertheless, the legislature decided to make them tax deductible (unlike the character of the deduction of losses). If such expenses had not been private expenses, but attributable to a source of income, they would have been deductible as business expenses or operational expenses anyway.

1. Contributions to certain insurance funds are deductible as special expenses (Sec. 18(1)(2) ITA). The intention behind this provision is to boost private pension and insurance plans. It should be noted that this regulation will cease to exist in 2020 and shall apply only to contracts that were signed before 1 January 2016 (see Sec. 124b no. 285 ITA). Premiums paid to insurance companies with respect to contracts