

**Convention for the  
avoidance of  
Double Taxation  
between Austria and  
the US**

**Information for Austrian  
scientists and researchers**

**provided by the Office of Science &  
Technology Austria (OSTA)**

**UPDATED: June 2016**

## **CONTENT**

<b>DISCLAIMER</b>	<b>3</b>
<b>INTRODUCTION</b>	<b>4</b>
<b>1 SCOPE OF THE CONVENTION</b>	<b>5</b>
<b>2 DIFFERENTIATION BETWEEN LIMITED AND UNLIMITED LIABILITY FOR TAXATION</b>	<b>5</b>
<b>3 TAXES REGULATED IN THE CONVENTION</b>	<b>7</b>
<b>4 TYPES OF INCOME</b>	<b>7</b>
4.1 INCOME FROM INDEPENDENT PERSONAL SERVICES	7
4.2 INCOME FROM DEPENDENT PERSONAL SERVICES	8
4.3 INCOME OF PUBLIC EMPLOYEES	9
4.4 PENSIONS	10
4.4.1 <i>PENSIONS</i>	10
4.4.2 <i>ANNUITIES</i>	11
4.4.3 <i>PAYMENTS INTO PUBLIC PENSION FUNDS</i>	11
4.5 ALIMONIES	11
<b>5 STUDENTS, APPRENTICES AND TRAINEES</b>	<b>12</b>
5.1 RESEARCH SCHOLARSHIPS FOR STUDENTS AND POSTDOCS	13
<b>6 AVOIDING DOUBLE TAXATION</b>	<b>13</b>

## **Disclaimer**

The authors do not assume any responsibility for the actuality, correctness, completeness, or quality of the provided information. Liability claims against the authors, which are subject to material or non-material damage caused by the use or non-use of the provided information or through the use of incorrect or incomplete information, respectively, are basically barred. The authors take the express right to change, to amend, to withdraw, or to temporarily or definitively suspend the publication.

## **Introduction**

In most countries, taxes are the most important source of revenue for the government. In Austria more than 80 percent of the revenue for the Federal State, the States, and the Municipalities are derived from taxes. International tax law is applied in cases with relations to one or more foreign countries. The goal of the Taxation Convention is to avoid the double taxation of taxpayers for one and the same income.

The current Convention between Austria and the US was signed on May 31, 1996. It has been in force April 1, 1998 regarding the withholding tax since, and since the fiscal year 1999 regarding the assessed tax. The convention regulates the partition of the right of taxation between the Contracting States (in this case between Austria and the US). It regulates the partition of taxation rights subject to incomes between the Contracting States (Austria and the US). The country holding the right to taxation may use this right according to its legal procedures. The Convention applies to natural and artificial persons.

Since this document was primarily produced for the use of Austrian scientists residing and/or working in the US, information concerning legal persons as well as other information not relevant for the target group may be omitted.

## 1. Scope of the Convention

The Convention applies to persons who are **residents of one or both of the Contracting States**. In Article 4 a “resident” is defined as a person who is subject to taxation under the law of a State, due to domicile, residence, citizenship, place of management, or any criterion of similar nature.

The scope of the Convention is determined by a person’s place of residence. It applies to residents of one or both of the Contracting States, who have **unlimited liability to taxation** in one or both of the Contracting States, due to domicile, residence, or similar attribute. Should a person be a resident of both Contracting States, the State of Residence is the one in which the person holds his or her permanent residence. If the person has a residence in both States or in none of them, the State of Residence should be the one to which the person holds the tighter personal and commercial ties (center of vital interests).

## 2. Differentiation between limited and unlimited liability for taxation

Austrian national law distinguishes between limited and unlimited liability for taxation: Persons have **unlimited liability**, if they have a domicile or habitual residence in Austria. Persons with unlimited liability for taxation will be taxed on their worldwide income.

Persons have **limited liability** according to Austrian law, if they have neither domicile nor habitual residence in Austria. Persons with limited liability for taxation will be taxed only on certain income earned in Austria.

Unlimited liability to taxation is a precondition for the Convention to apply.

In addition, the Convention defines the term “Resident Aliens” in **accordance with US law**: It applies to legal Aliens as well as Green Card holders. Green Card holders are subject to the Convention only if they have substantial presence, a habitual residence, or a permanent domicile in the US.

The Internal Revenue Code (IRC) defines two categories of Resident Aliens and respectively “substantial presence”<sup>1</sup>:

- Resident Alien (Green Card): **Green Card** holders are Resident Aliens once they have **entered the US**, no matter if they live in the US or abroad afterwards (see “Permanent Residence Test” or “Green Card Test”<sup>2</sup>).
- “Substantial Presence Test” and “Lookback Formula”: A person can also be deemed a Resident Alien resulting from **physical presence** in the US. After being physically present in the US for at least 183 days, a person will be deemed a Resident Alien, and will have unlimited liability for taxation. (With certain groups of people, some days of presence are

---

<sup>1</sup> § 7701(b) IRC, <https://www.law.cornell.edu/uscode/text/26/7701>

<sup>2</sup> Further information on the Green Card Test and the Substantial Presence Test can be found at <http://www.irs.gov/Individuals/International-Taxpayers/Alien-Residency---Green-Card-Test>

not counted (exempt individuals) – see below.) To avoid tax evasion, the Internal Revenue Service (IRS) has developed the “Substantial Presence Test”:

- 1) A person has to be physically present in the US for **at least 31 days, and**
- 2) be physically present in the US for at least 183 days over the course of the previous three years (consisting of the current year, and the two years directly prior). To calculate the 183 days one has to count:
  - a. all days of presence in the United States in the current year, **and**
  - b. 1/3 of the days of presence in the United States in the previous year, **and**
  - c. 1/6 of the days of presence in the United States two years prior....to be deemed a Resident Alien.

**There are exceptions to the “Substantial Presence Test” and to the “Lookback Formula,” respectively, for persons with certain Visas:**

The International Revenue Code (IRC) includes a catalogue of so called “Exempt Individuals,” whose days of physical presence are not counted in the “Substantial Presence Test,” i.e., days of physical presence in the US spent as an Exempt Individual are **NOT** counted in the “Substantial Presence Test.”

Exempt Individuals are:

- Persons in government service of another State
- Teachers, Researchers, Research scholars and trainees with J- or Q-Visas
- Students with F-, J-, M-, or Q-Visas

**Example 1:**

Substantial Presence Test

A, an Austrian citizen, was physically present in the US:

- for 300 days in 2010,
- for 240 days in 2011,
- for 60 days in 2012, and
- for 30 days in 2013.

→ A is a Resident Alien in 2010 and 2011, because he was physically present in the US for more than 183 days in each of those two years (2010 and 2011).

→ According to the “Lookback Formula,” A is a Resident Alien in 2012, because he was physically present for more than 31 days in 2012, and the accumulated days spent in the US in the current year (60) plus one third of the days in 2011 ( $1/3$  of 240 = 80) plus one sixth of the days in 2010 ( $1/6$  of 300 = 50) exceed 183 days ( $60 + 80 + 50 = 190$ ).

→ A is not a Resident Alien in 2013, since the limit of 31 days was not reached.

**Example 2:  
Substantial Presence Test for persons with certain Visas**

Professor B, an Austrian citizen and holder of a J-Visa, was physically present in the US:

- for 132 days in 2010,
- for 150 days in 2011, and
- for 120 days in 2012.

→ According to the “Lookback Formula,” Professor B is a Resident Alien in 2012. She was physically present in the US for more than 31 days in 2012, and the accumulated days of 2012 (120) plus one third of the days of 2011 ( $1/3$  of 150 = 50) plus one sixth of the days of 2010 ( $1/6$  of 132 = 22) exceed 183 days. However, since Professor B held a J-Visa during her stay, these days are not counted, and B is not a Resident Alien in these years!

### **3. Taxes regulated in the Convention**

The Convention regulates income taxes. These include:

In Austria:     **Income Tax** (*Einkommensteuer*)  
                  **Corporate Income Tax** (*Köperschaftsteuer*)

In the US:     **Federal Income Taxes** (All taxes imposed by the IRC, excluding social security taxes). The details below refer to Federal Income Taxes only. Individual US States may impose additional taxes.

### **4. Types of Income**

The Convention defines different types of income and regulates the distribution of the taxation right between the Contracting States. Different types of income will be discussed separately.

#### **4.1. Income from Independent Personal Services**

Independent personal services are regulated in Article 14 of the Convention. “Independent personal service” is defined as entrepreneurship on the basis of a defined contract (e.g., a contract for work and services). A personal service is rendered independently if there is no employment status involved. The self-employed person works independently, not bound by directives, and at his or her own risk.

In general, the right to taxation lies with a person’s **State of Residency**. According to Article 14, income from independent personal services rendered by a resident of Austria in the US, are subject to taxation in the US only if they are connected to a **permanent establishment** (fixed place of business; e.g., garage, office, or similar) in the US. In this case, all income connected with the

permanent establishment in the US is subject to taxation in the US. This income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

**Example 3:**

Professor C, an Austrian resident, has his own institute and offers independent personal services in Austria. He sometimes gives lectures in the US, for which he receives remuneration. Professor C has unlimited liability to taxation in Austria. If the independent personal services rendered by Professor C in the US are connected for a certain period (in case of doubt, longer than six months) to a permanent establishment in the US, the US will have the right to taxation. His income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

If the services rendered are not connected to any permanent establishment in the US, only Austria will have the right to taxation.

## 4.2. Income from Dependent Personal Services

Dependent personal services are regulated in Article 15 of the Convention. A person rendering dependent personal services is organizationally involved in a company or business and bound to follow the instructions of his or her employer, who actually bears the business risk.

Income from instructional activities (e.g. as professor, lecturer, etc.) at Austrian universities, universities of applied science (*Fachhochschulen*), academies, or similar educational establishments is regularly categorized as income from dependent personal services, according to Austrian national law. A respective general rule such as the former Decree BGBl. II Nr. 287/1997 – according to which income from teaching activities was considered income from dependent personal services – does no longer exist.<sup>3</sup> It is therefore necessary to verify fulfillment of the conditions for each individual case.

In general, the right to taxation lies with the Contracting State **in which the service is rendered**. However, this depends on the actual physical presence of the employee (the so called “Principle of Exercise”).

**Example 4:**

Professor D is an Austrian citizen, but a resident of the US (see chapters 1 and 2). She is employed by George Washington University, from which she receives her salary. The US has the right to tax Professor D’s income. Austria has no right to taxation in this case.

---

<sup>3</sup> [http://www.ris.bka.gv.at/Dokumente/Vfgh/JFT\\_09929686\\_06V00082\\_00/JFT\\_09929686\\_06V00082\\_00.pdf](http://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_09929686_06V00082_00/JFT_09929686_06V00082_00.pdf)



**Example 5:**

Professor E is a resident of Austria (see chapters 1 and 2). E is employed at George Washington University, from which he receives his salary. The US has the right to tax Professor E's income. His income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

**Exception:**

As an exception, the right to taxation lies with the contracting State of Residence *only* under certain conditions:

- The natural person does not stay any longer than 183 days (within a 12-month-period) in the other Contracting State (where the service is rendered), **and**
- the remuneration is paid by, or on behalf of, an employer not a resident of the Contracting State, in which the service is rendered, **and**
- the payment is not derived from a place of business or permanent establishment the employer has in the other Contracting State (in which the service is rendered).

**Example 6:**

Professor F, Austrian citizen and resident of the US, receives his salary from George Washington University in Washington, DC. George Washington University is organizing a lecture series for Austrian students in Linz, held by Professor F. Professor F spends 25 days in Austria. F's income from the lecture series is subject to taxation in the US only, because he is still employed by an employer from the US and is in Austria for less than 183 days. Should Professor F go back to Austria several times in the course of the fiscal year and his days of physical presence exceed the limit of 183 days, the income received in Austria would be subject to taxation in Austria. The income would also be subject to taxation in the US, but Austrian taxes would be deducted from US taxes to avoid double taxation.

**Example 7:**

The University of Linz employs professor G, an Austrian citizen and resident of Austria. For a lecture series at George Washington University in Washington, DC, she receives separate payment directly from George Washington University for dependent services rendered. G is lecturing a total of 25 days in the US. The income from the lecture series is subject to taxation in the US, because Professor G's employer is based in the US. Thus, the US has the right of taxation from the first day on. This income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

### 4.3. Income of Public Employees

According to Article 19 of the Convention, the basic rule concerning wages, salaries, and similar remuneration paid from a Contracting State to an individual is that they are subject to taxation only **in this Contracting State**. This also means that income and pensions from public funds are taxable in the Contracting State in which the public fund is based.

**Example 8:**

Civil servant I, an Austrian citizen, receives a pension from an Austrian public fund. Professor I is a resident of the US. Professor I's pension is only subject to taxation in Austria. The US does not issue any additional Federal Income Taxes.

### 4.4. Pensions and Annuities

#### 4.4.1. Pensions

Pensions that do not fall within a category of Article 19 of the Convention (Income from Public Pension Funds, government pension, etc; see Chapter 4.3 for details) are taxable only in the Contracting State **in which the beneficial person resides**. Exemptions to this rule are payments from the national insurance institutions and other public pensions, which are only taxable in the Contracting State from which the payment is received.

Further information for retirees living abroad, as well as the fiscal treatment of pensions, is provided by the Austrian National Pension Administration (*Pensionsversicherungsanstalt, PVA*)<sup>4</sup>.

**Example 9:**

Professor J, based in the US, receives a pension from the Massachusetts Institute of Technology (MIT). Professor J's pension is taxable in the US. Austria does not issue additional Federal Income Taxes.

**Example 10:**

Professor K receives a pension from the Massachusetts Institute of Technology (MIT). Professor K now resides in Austria. Professor K's pension is taxable in Austria. The US does not issue any additional Federal Income Tax.

---

<sup>4</sup> Document in German:

<http://www.pensionsversicherung.at/portal27/portal/pvaportal/content/contentWindow?contentid=10007.707739&action=2>

#### 4.4.2. Annuities

Annuities are defined as stated sums of money paid periodically at stated times over a certain number of years in return for adequate and full consideration (other than services rendered). Like pensions, annuities are taxable only in the Contracting State **in which the taxpayer resides**.

**Example 11:**

Professor L, based in Austria, receives an annuity from the US. Professor L's annuity is taxable in Austria. The US does not issue any additional Federal Income Tax.

**Example 12:**

Professor M, an Austrian citizen based in the US, receives an annuity from Austria. Professor A's annuity is taxable in the US. Austria does not issue any additional Federal Income Tax.

#### 4.4.3. Payments into Public Pension Funds

According to Article 18, the Convention regulates those cases of payments into public pension funds in which a resident of Contracting State A makes payments into a public pension fund in Contracting State B. Concerning taxation, these payments are to be handled by Contracting State A in the same way as if they were rendered to a pension fund in Contracting State A.

The rule is **applicable under two conditions only**:

- the individual was not a resident of that State, and was contributing to the pension scheme immediately before he or she began to exercise employment in that State **and**
- the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognized as such for tax purposes by that State.

#### 4.5. Alimonies

Alimonies, like pensions, are regulated in Article 18 of the Conventions. They are defined as periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory (child) support. Alimonies are taxable in the Contracting State **in which the person responsible for support resides**.

Periodic payments to support a minor child are generally **exempt from taxation** in both Contracting States.

## 5. Students, Apprentices and Trainee

Special rules for students, apprentices, and trainees are regulated in Article 20 of the Convention. Basically, students, apprentices, and trainees are exempt from taxation, according to the following conditions:

- **Either:** the Purpose of the stay is full-time education at a recognized educational institution
- **Or:** the Purpose of the stay is full-time training

**AND** (applicable for both full-time education OR full-time training)

- The student/apprentice/trainee is a resident in the other Contracting State or was a resident before the beginning of his studies, apprenticeship, or traineeship, **and**
- he/she receives payments from sources in the other Contracting State, **and**
- these payments are for his/her maintenance, education, **or** training.

**Attention:** The tax exemption for apprentices and trainees is valid for three years only!

### Example 13:

Student N, based in Salzburg, begins full-time study at Stanford University in the US. Student N receives a scholarship from the Austrian Ministry of Science, Research and Economy (BMWFV) in the amount of €3,000,- per month. The scholarship is exempt from taxation in the US. This rule also applies if student N should move his place of residence from Austria to the US.

If Student N receives €2,000,- a month for his maintenance (e.g., from his parents), he also does not have to pay taxes on this income.

If Student N takes on a part-time job with an American employer and if he keeps his residence in Austria during the time of his scholarship, he has to pay taxes on his earnings according to Article 15 of the Convention. This income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

### Example 14:

Student O, an Austrian citizen based in Austria, studies in the US for one year. She receives a scholarship from an American institution. Student O has to pay taxes on her scholarship in the US. This income is also subject to taxation in Austria, but US taxes are deducted from Austrian taxes to avoid double taxation.

## 5.1. Research Scholarships for Students and Postdocs

Scholarships granted for the purpose of postgraduate research are **taxable only in the person's State of Residence** according to Article 21 of the Convention and the according decree<sup>5</sup> (in effect since November 30, 2006), if the purpose of the person's visit is research only, not full-time studies or full-time education.

According to U.S. Code 26 § 872 (b) number 3<sup>6</sup> the taxable gross income does not include compensation of participants in certain exchange or training programs if they are present in the US as nonimmigrants with a F, J, or Q visa paid by a foreign employer even if the overall income is taxable in the US.

## 6. Avoiding Double Taxation

According to Article 22 of the Convention, and the exemption method used in the Convention, the taxes paid in one Contracting State are deducted from the taxes to be paid in the State of Residence ("**Tax Credit Method**"). Following the Tax Credit Method, the Country of Residence maintains the right to taxation of a person's world income. The actual taxes paid in a foreign country (Source Country) will be deducted from the taxes to be paid in the country of residence. Also, the US deducts the taxes paid in Austria.

In practice, the Tax Credit Method is limited in several ways:

- The taxpayer has to make use of all options of tax benefits in the source country. If the taxpayer neglects any options, the deductible tax refund will not be deducted from his or her taxes in the country of residence.
- The maximal amount of deducted taxes corresponds to the amount of taxes actually paid in the foreign country.
- The tax credit cannot be higher than the sum with which foreign incomes are pro rata taxable under the Austrian Income Tax. The tax credit cannot be higher than the average Austrian tax burden for foreign incomes. The maximum contribution for tax credit has to be calculated with the following formula<sup>6</sup>:

$$\text{Maximum Contribution} = \frac{\text{Austrian Income Tax} \times \text{Income in Source Country}}{\text{Entire Income}}$$

The formula can be used to compute the Average Austrian Tax Rate, to be applied to the foreign income.

<sup>5</sup> Decree GZ BMF-010221/0623-IV/4/2006 from 11/06/06 to be found on <http://findok.bmf.gv.at/findok> (in German)

<sup>6</sup> <http://codes.lp.findlaw.com/uscode/26/A/1/N/II/A/872>

**Example 15:**

Professor Q is based in Austria and is taxable in the US for parts of his income. He receives payment of the equivalent of €20,000,-- in the US and payment in the amount of €15,000,-- in Austria. If the tax rate in Austria can be assumed to be 25 percent, and the tax rate in the US to be 30 percent, maximum tax credit and the effective creditable foreign taxes are computed as follows:

World Income €35,000,--  
Tax on world income €8,750,-- (25% of €35,000,--)  
Tax on income from the US €6,000,-- (30% of €20,000,--)

**Example 16:**

Professor R an Austrian resident and a taxpayer in the US for parts of her income, receives payment of the equivalent of €20,000,-- in the US and payment in the amount of €15,000,-- in Austria. If the tax rate in Austria can be assumed to be 35 percent, and the tax rate in the US to be 30 percent, maximum tax credit and of the effectively creditable foreign taxes are computed as follows:

World Income €35,000,--  
Tax on world income €12,250,-- (35 percent of €35,000,--)  
Tax on income from the US €6,000,-- (30 percent of €20,000,--)  
Maximum Tax Credit  $€12,250,-- \times €20,000,-- / €35,000,-- = €7,000,--$

Professor S can deduct the full amount of €6,000,-- of taxes paid in the US. Taxes in the amount of €6,250,-- (€12,250,-- – €6,000,--) have to be paid in Austria.