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Austria's Steps Towards a Dual Income Tax[1]

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Abstract

The paper comments on the introduction of a final withholding tax on certain forms of capital income in Austria in the early nineties. Economic and legal problems of the reform measures are discussed and they are appraised as policy responses to weak points of the traditional comprehensive income tax system rather than reform steps towards a new system of dual income taxation.

1 Introduction[2]

Since January 1, 1994, Austrian capital owners who earn interest income from domestic bank deposits and bonds or who receive dividend income from domestic companies are no longer liable to the progressive income tax but pay a final withholding tax levied at a flat rate of 22%. Compared to the top rate of 55% of the progressive income tax schedule (fig.1) this tax reform constitutes a considerable tax relief for capital owners and might be regarded as a switch to a dual income tax[3].

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[1] Revised version of a paper presented at the seminar "Towards a Dual Income Tax?" at the Erasmus University Rotterdam on May 19, 1995. Forthcoming in the proceedings of the seminar edited by Sijbren Cnossen (1996):

[2] I owe thanks to Gerald Heidinger (Graz) for informative discussions and to Sijbren Cnossen (Rotterdam), Andreas Haufler (Konstanz), and Ruud Okker (The Hague) for critical remarks and helpful comments on a prior version of the paper.

[3] The notion dual income tax characterizes a schedular tax system which separates the taxation of capital income (interests, dividends, capital gains) from the taxation of other sources of income (wages and salaries, self-employed labour income, pensions). Cf. Sørensen (1994).

Capital income from domestic financial assets earned by companies is subject to the withholding tax as well, but for them the source tax remains a tax prepayment which is credited against the corporation tax liability.

Although the new Austrian withholding tax regime has not been implemented under the banner „dual income taxation" it has attracted attention in other countries where such a separation of labour and capital income taxation is a matter of discussion (cf. Sørensen 1994, Cnossen 1995, Muten 1995). The main objective of the paper is a description and evaluation of the final withholding tax to answer the question if Austria has really adopted a dual income tax or has at least made a major step in that direction.

The paper is organized as follows. We start out with the characteristic features of the long term restructuring process of the Austrian tax system (Sect. 2). Following we concentrate on the Austrian income tax reform of 1988 (Sect. 3) and the traditional problems of interest income taxation (Sect. 4). The steps towards the final withholding tax made in 1993 are described in Sect. 5 and its legal (constitutional) foundation is summarized in Sect.6. Sect. 7 comments on the extension of the final withholding tax in 1994. Sect. 8 presents a first evaluation of the final withholding tax compared to the benchmark cases of a comprehensive income tax and a perfect dual income tax. Sect. 9 concludes with an outlook for further reform steps which should

vorherrschend

be considered in order to eleminate some inconsistencies of the prevailing

voll entwickelt

Austrian tax structure, but which do not necessarily lead to a full-fledged dual income tax.

2 The Basic Features of the Austrian Income Tax System

Since 1945, the Austrian income tax system has been oriented towards the Schanz/Haig/Simons-standard of comprehensive and progressive income taxation[4].

Nevertheless, two important departures from the progressive and synthetic income tax system can be identified. In the early seventies, the first purely social-democratic government changed from household taxation to individual taxation and replaced traditional, personal tax allowances by personal tax credits. Both measures were based on equity arguments in favour of dual labour-income households in the lower income classes. Although a couple of counter arguments have been raised against the validity of these views[5], the individual is still the taxable unit and personal tax credits are still the most important tax instrument in the income tax code of 1995. A remarkable exception from comprehensive income taxation is the introduction of a separate tax schedule for the holiday and christmas bonuses of wage income earners and pensioners. These bonuses are taxable at a preferential flat rate of 6% as long as they do not exceed an upper threshold of one sixth of the annual amount of regular wages and salaries[6]. The preferential treatment of extra bonuses has led to collective wage agreements and social insurance

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[4] In 1945, the tax code of the German Reich was adopted in Austria as well as in Germany and despite major tax reforms in both countries over the last 50 years there are still similarities in the present tax codes, which can be traced back to this common root.

[5] The equity argument is severely eroded by the possibility of a "de facto"-splitting of household income from other sources. There has been empirical evidence of asset sharing by spouses in order to spread household income and to benefit from individual income taxation. The superiority of the tax credit over the tax allowance is only a formal one, as long as the tax allowance, which is equivalent to a tax reduction which increases with the marginal tax rate, is a fixed amount of money. It is always possible to compensate for the rising tax relief of the tax allowance by increasing the marginal rates of the tax scale. This is the case for the German income tax, where the basic tax allowance (Grundfreibetrag) is not deducted from the tax base, but is integrated in the tax formula.

[6] In 1995 extra bonuses up to 23 000 AS are exempted under the flat rate regime. Preferential flat rates below 6% for labour income earners according to the number of dependent children were abolished in 1989, as well as the preferential treatment of another 8500 AS of extra bonuses in excess of two monthly wages.

pensions based on 14 instead of 12 monthly wage payments. The two extra monthly wages are paid either semi-annually or quarterly and labour income earners are entitled to proportional shares of these extra bonuses if their job ends within the year. This tax preference for employed income must be seen as the first important deviation from comprehensive income taxation in Austria[7].

In the 1980s the double taxation of distributed profits by the corporate income tax (CIT) and the personal income tax (PIT) was put on the tax policy agenda, since it was considered as an impediment to the development of the Austrian capital market. A tax relief which mitigated the double taxation of dividends had already been granted before. Only half the regular corporate tax rate[8] had been levied on distributed profits since 1969[9]. In addition, a withholding tax of 25% was levied on cash dividends. Whereas this capital returns tax was credited against the personal income tax liability, the reduced corporate income tax on distributed profits was not. Interestingly, Austria did neither extend its income tax credit system to corporate income taxes (as e.g. Germany did since 1967) nor exempt dividend payments, but introduced a preferential treatment of capital income from distributed profits at the personal level. The tax rate to be applied was only half the average income tax rate determined in the notice of annual income tax assessment. This "double semi-rate method" eliminated the

[7] The flat rate schedule is also applied to compulsory severance payments based on law or on collective wage contracts. The entitlement for severance pay depends on the duration of the work contract within one enterprise and rises progressively from 1 month's pay after 3 years up to 12 month's pays after 25 years.

[8] An average tax rate of 55% was levied on corporate profits exceeding a threshold income of about 1.1 mill. AS. For small scale companies with lower annual profits lower tax rates, viz. 30%, 40% and 50% were applied.

[9] The effective corporate tax rate on dividends was higher because the the corporate tax liability had to be paid from retained profits which were charged with the full corporate tax rate t^c. This "shadow effect" increased the preferential distribution rate $t^c/2$ according to $(t^c/2)/(1-t^c/2)$ by more than one third in the highest rate schedule, viz. from 27,5% to 37.9%.

double income taxation of dividends and largely leveled the playing field for the returns on investment. The tax load on retained corporate profits (55% CIT plus 0% PIT), on distributed corporate profits (37.93% CIT plus 19.24% PIT yielding a total tax burden of 57.17%)[10] and on non-incorporated entrepreneurial profits (62% PIT) approximated each other.

Nevertheless a couple of loopholes remained in the level playing field envisaged for the taxation of capital income. Private capital gains, for instance, were tax exempt after a holding period of one year for equities and ten years for private property; corporate profits distributed to a parent company were taxed at the reduced CIT rate but there was no recouping tax, when the profits were retained in the holding company; and finally interest on financial assets escaped personal income taxation to a large extent, since the tax authorities were unable to monitor the correct filing of interest income in tax returns.

Although the tax reforms of the seventies and eighties improved the Austrian tax system judged by commonly accepted equity and efficiency standards, some loopholes in labour and capital income taxation remained, and the comprehensive income standard, although still the general principle, continued to be violated.

3 The Austrian Tax Reform of 1989

The tax reform of 1989 was considered as the first stage of a major restructuring of the Austrian tax system by the incumbent coalition

[10] Due to the shadow effect (footnote 9) the corporate income tax burden on distributed earnings rises to $(t^c/2)/(1-t^c/2)$, viz. 37.93% instead of 27.5% in the top bracket. The tax base of the income tax is the cash dividend and thus the effective income tax rate related to the dividend gross of corporate tax amounts to $(t^i/2)/(1+(t^c/2)/(1-t^c))$, viz. 19.24% instead of 31% in the top bracket.

government; it was largely influenced by the worldwide trend of lowering tax rates and broadening tax bases.

The top income tax rate was reduced from 62% to 50%. The corporate income tax rate was reduced from 55% to 30%. In addition, the lower tax rate was abolished and since 1989 the same rate is levied on both retained and distributed profits. Austria thereby returned to the classical corporate income tax, but the double taxation of dividends is still mitigated by the semi-rate income tax. Neutrality largely prevails for distributed profits from corporate (30% CIT plus 17.5% PIT) and non-corporate enterprises (50% PIT), but the preferential treatment of retained corporate profits (30% CIT) provides a strong incentive to incorporate and to retain earnings. But this has been the underlying economic objective, since the government envisages a long-term improvement of the international competitiveness of Austrian firms which are organized in corporations rather than in the traditional form of proprietary businesses or partnerships.

To cope with the dramatic income tax evasion of interest income[11], a withholding tax of 10% was introduced on interest bearing assets. Banks and financial institutions were obliged to withhold a flat tax on interest at source when interest payments to the creditor were made and the interest rate was higher than 1%. The source tax on interest income became the third withholding tax within the Austrian income tax system and like the other two withholding taxes (viz. the wage tax and the capital returns tax on dividends) it was creditable against the assessed, annual income tax liability.

[11] The percentage of interest income declared in tax returns was estimated to be less than 10%. The income tax statistic of 1988 includes an amount of less than 4 bill. AS of income from capital compared to an estimate of roughly 100 bill. AS based on national accounts. Taking into account statistical problems in the separation of various income sources as well as the existence of specific income tax allowances, the share of income tax evasion with respect to interest income is nevertheless estimated to be more than 80%.

The rate of 10% was chosen at a much lower level than the traditional withholding tax on dividends of 25%. Three reasons have influenced that decision: Firstly, the flat rate of 10% corresponded to the interest surtax (Zinsertragsteuer), which had been introduced in 1983 but abolished two years later due to political opposition and a decision of the Austrian Constitutional Court that the tax was unconstitutional. Secondly, in 1989 a 10% withholding tax on interest income became also effective in Germany which reduced the danger of cross border capital flight. Finally, the 10% withholding tax was regarded sufficient with respect to budgetary needs, compensating about one fourth of the revenue forgone through the tax reform of 1989.

The introduction of the source tax on interest proved very successful in particular to the federal fisc which receives the major part of the revenue. The aggregate savings quota was hardly affected by the interest tax. For domestic financial investors no major incentive for capital flight existed, and foreign holders of interest bearing assets were exempt although they had to certify their residency and thus to give up anonymity. But foreign as well as domestic investors were convinced that the introduction of the source tax was a credible guarantee for the continuance of the Austrian bank secrecy law and the influx of financial assets across the border even increased. This experience was in remarkable contrast to Germany, where the introduction of the 10% source tax led to a short term portfolio adjustment and the source tax was abolished already by the end of June 1989, after only half a year. Fiscal revenue from the new source tax turned out to be very stable and much higher than expected between 1989 and 1992 (Table 1). Basically, the higher revenue reflects the rise in nominal interest rates. Besides this effect, which was not fully anticipated in the budget planning process, an additional portfolio allocation effect was triggered by the increasing sensitivity of domestic private investors to interest rate differentials in face of an increased competition among financial institutions.

4 The Violation of Tax Equity through Anonymity and Bank Secrecy

In post-war Austria the savings quota was particularly low and there was little readiness in the population to deposit money in personal savings accounts. To promote bank saving the parliament repealed a paragraph of the general tax code (Abgabenordnung) in 1948 and permitted the opening of bank savings and deposit accounts under fictitious names or numbers without any identification. This anonymity protection has been supported and extended by the bank secrecy guarantee in the financial market law (§ 23 Kreditwesengesetz), a paragraph which became constitutional law in 1988 and can only be repealed or amended by a qualified majority of two-thirds in the Austrian parliament.

Bank secrecy in Austria is therefore of a higher quality than in most other European countries and consequently it is nearly impossible for the tax authorities to monitor and to control the correct payment of income taxes on interest income. As in Germany, an appeal was made to the Constitutional Court, arguing that anonymity and bank secrecy violate equality befor the tax law.

In contrast to the German Constitutional Court which argued that bank secrecy violated constitutional rights and required an efficient form of interest income taxation, the Austrian Constitutional Court rejected the view that anonymity violates constitutional rights. The decision conceded that the federal legislator may take measures to avoid capital flight or to protect privacy, even if these measures create problems in the administration and control of tax laws. Even if tax loopholes are used for tax evasion and equity norms of taxation are infringed upon, this does not render tax laws unconstitutional. The Court took as given that the tax authority tries its best to detect tax evasion and that offenders are fined sufficiently to deter evasion.

The Court's decision confirmed that the declaration principle, viz. the reliance on individual filing of interest income, is in line with the constitution although the verification principle, viz. the efficient control of interest income filing, is severely eroded. The decision did not compel the government to modify the prevailing Austrian income tax code, in particular the principles of self-assessment and of synthetic income taxation.

It is noteworthy that the decision of the German Constitutional Court issued in June 1991 on the nearly identical case was the opposite. The German Court called for a new regulation of interest taxation in Germany within 18 months, based on its view that (i) equality before the tax law must be attained in reality as well, (ii) the declaration principle of individual filing has to be complemented by the verification principle through effective control, and (iii) even economic objectives of national importance do not overrule the obligation for sufficient control of tax equity.

A second question concerns an apparant economic inconsistency between two decisions of the Austrian Court on interest taxation. The revealed conformity of unenforcable Austrian interest taxation with constitutional equity norms stated in 1991 contrasts with the ban of the 10% interest surtax, which was levied as a source tax between 1983 and 1985. This surtax was declared unconstitutional, since it was not credited against the income tax liability and therefore created a light double taxation burden for honest tax compliers.

Although the Austrian government was not forced to enact an income tax reform like the German one, equity problems and revenue losses were nevertheless regarded serious and paved the way to the political support of the final tax on interest income.

Two arguments were important: Firstly, income and wealth taxes are levied on the nominal values of interest income and principal, and the combined imposition of these taxes is likely to turn the net real return on financial assets negative. Even the rather favourable nominal interest rate of 8% in the late 1980s gave rise to a real loss of the principal for the honest taxpayer due to the combined tax burden of the income tax (50%) and the wealth tax (1%), when the inflation rate exceeded 3%. The danger of real loss in financial assets is exacerbated when increasing interest rates reduce the price of a loan, but income and wealth taxes do not take account for this change in wealth. A negative real return or a loss in wealth induced by the tax system is regarded as a violation of the constitutional right of property protection.

Secondly, interest bearing assets are discriminated compared to returns on other forms of wealth, physical or human capital, where the Austrian tax code provides shelters against inflation. The distortionary effects of inflation are caused by the fiscal drag of a progressive income tax, which increases the tax burden even if nominal income growth only compensates for rising prices. Further distortions are produced by fictitious profits due to the inadequate valuation of depreciation costs or inventories based on historical prices or by the strategic postponement of income tax payments. Tax shelters against inflationary losses comprise investment tax credits, accelerated depreciaton, tax free reserves for enterprises and self-employed, employee tax credits, labour related allowances, the flat rate taxation of holiday and christmas bonuses, preferential presumptive taxes on farm and forestry income and the preferential taxation of capital gains. The only source of income which is fully exposed to inflationary erosion is interest income, since nominal interest is taxed, irrespective of the fact whether the interest compensates for losses of the principal or generates gains in real wealth.

5 The Move to the Final Withholding Tax in 1993

Oncemore parallel to Germany, Austria modified its source tax on interest income in 1993. In Germany, the new 30% withholding tax on interest income (Zinsabschlagsteuer) is credited against the personal income tax liability. At the same time the personal interest income allowance was raised by a factor 10 to 6000 DM per capita and year. In order to avoid tax rebates for the majority of citizens with interest income below the threshold, tax payers are entitled to an exemption from the withholding tax for their interest income below the personal allowance level. Special exemption forms can be submitted to the financial institutions who will pay out gross interest without a withholding tax as long as interest payments are below the individually specified exemption level. Exemption forms are subject to control by the tax authorities, since the personal exemption allowance will generally be split among different financial institutions and banks cannot monitor an excessive application for exemption. Due to the generous level of the interest income allowance, about 80% of the German citizens earn their interest income tax-free, and they do not have to file a tax return. Nevertheless, the administrative burden of the exemption procedure was heavily criticised as complicated and costly.

In Austria there was an ongoing discussion about the future of interest taxation within an expert committee[12] since 1990. When the German solution became known, the Austrian government decided to implement the new system of interest taxation in 1993, one year ahead of the second stage of the tax reform announced by the then incumbent coalition cabinet.

The basic feature of the interest tax reform of 1993 was the move to a final withholding tax on interest income. The withholding tax rate of 22% became the final tax for interest income of domestic savers earned on private financial assets held in domestic banks. The final tax did not only cover the income tax liability but also the wealth tax and the inheritance tax. The tax base of the final tax is the amount of gross interest payments. Costs of earning interest income cannot be deducted and there is no basic exemption for low income earners. Low income earners are, however, offered an assessment option for their gross interest income in their annual tax return, and they will receive a tax rebate if the prepaid withholding tax exceeds the personal income tax liability. Foreigners which are not subject to unrestricted income taxation in Austria are exempted from the withholding tax upon personal application and declaration of their residency status.

Interest income on financial assets held in the business sphere continued to be taxable under the income tax or the corporate income tax and the withheld tax on interest income was creditable. An assessment regulation was also chosen for those private financial assets which are used as collateral for business debt.

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[12] This expert group is a working group of the "Tax Reform Commission" installed as early as in 1979. Whereas the large Commission was mainly a discussion forum especially in the first years, the working group on business taxation, headed by Gerald Heidinger, became very influential and took the lead in sketching the guideline for the majority of reform steps in the last 15 years.

From an economic point of view the final withholding tax on interest income serves three primary targets: (i) The withholding tax covers all interest income and stops the discrimination of honest taxpayers. Equity among interest earners is reestablished in the sense that all of them pay an income tax on interests, and tax evasion is reduced to returns from financial assets, which are not taxed at source (e.g. interests from foreign banks or from private debtors). (ii) The final tax rate of 22% is less than half of the maximum income tax rate on other forms of taxable income (Fig. 1). If we assume that half of the interest income is compensation for the inflationary erosion of the principal, the lower withholding tax on total interests is by and large equivalent to an exemption of the inflation element and re-establishes the equal treatment of interest income with other sources of income which do not include inflationary gains (capital gains of equity shares or private property) or which enjoy tax preferences to mitigate the effects of nominal tax bases. (iii) The final withholding tax on gross interest income is a very cheap and efficient way of collecting taxes.

6 The Legal Foundation of the Final Withholding Tax

The final withholding tax on interest income was introduced by means of a constitutional law, the Endbesteuerungsgesetz (BGBl. 11/1993), and of amendments of various tax laws involved, viz. the income tax law, the wealth tax law, the inheritance and gift tax law, the valuation law, etc.

The government's and the parliament's decision to back the tax reform by a constitutional law was regarded indispensible for two reasons: (i) A final withholding tax at a preferential rate of 22% was regarded as a break with the general principle of synthetic income taxation. Furthermore, the final tax option was only offered to private holders of interest bearing assets, whereas interest on financial assets in the business sphere was excluded from this favourable tax treatment. This discriminatory feature of the final withholding tax would certainly have led to complaints against the tax law on the ground that it violated fundamental equity rules granted in the constitution. These reactions were avoided by passing a constitutional law. (ii) The introduction of the final withholding tax was accompanied by a general tax amnesty for the large number of undisclosed cases of interest tax evasion before 1993, apart from cases already under investigation. An amnesty, of course, may also be regarded as a source of inequity, discriminating against honest taxpayers.

The constitutional law comprises eight paragraphs (see annex 1) which compel the legislator, viz. the federal parliament

- to introduce the final withholding tax which substitutes for income taxation, wealth taxation and inheritance taxation by 1993 (§1(1) and (2)),
- to define one single withholding tax rate within the narrow band of 20% and half the prevailing maximum income tax rate (§1(4)), viz 25% presently,
- to provide an assessment option with a rebate of the withholding tax (§1(5)),
- to exclude the deductiblity of any costs associated with interest income (§2), and
- to restrict the applicability of preferential final taxation to interest income subject to the withholding tax (§3).

In addition the constitutional law entitles the legislator

- to restrict the final tax to private assets that are not used as collateral for business debt (§1(3)), and

- to extend the final tax to income and wealth tax liabilities according to open distributions of corporate profits (§1(6)).

The remaining paragraphs force the administrative and judicial bodies

- to grant a tax amnesty for violations of tax laws in connection with interest bearing assets, if the withholding tax is correctly paid in 1993 (§4,5),
- to enact a special regulation for 1992 (§6), and
- to extend the amnesty to potential violations of the foreign exchange law (§7).

The legislative foundation of the final withholding tax in a constitutional law was heavily criticised by legal experts (cf. Gassner, 1993, 8ff.). They emphasize that the constitutional law severely erodes the control power of the Constitutional Court. In particular, potential violations of equity norms as well as the guarantee of property norms caused by the final tax can no longer be scrutinized and disclosed, because the bulk of the tax rules has become part of the Constitution.

Prominent experts of public law (e.g., Gassner 1993, 11) hold the view that the final tax could have been introduced as a simple, federal tax law without constitutional backing as well, in line with past decisions of the Court. Experts also complained that there had been no official appraisal procedure of the government bill which would have allowed to discuss the legal problems of the final withholding tax proposal both in public and among experts.

7 The Extension of the Final Withholding Tax within the Tax Reform of 1994

The main objective of the Austrian tax reform of 1994 was a relief in business taxation to secure the international competitiveness of Austria in the

European internal market. The most important signals of the tax reform are the abolition of the business tax (Gewerbesteuer)[13] and the abolition of the wealth tax[14]. The tax relief offered by these measures was compensated partly by the rise of the CIT rate to 34% (compared to 30% before) and by reducing a number of traditional tax preferences[15].

With respect to the final withholding tax three extensions were implemented (see annex 2): (i) The "business collateral security proviso", which excluded interest on private financial assets used to secure business debt, was abolished retroactively from January 1993, and thus never became effective. (ii) The final withholding tax was extended to interest income of non-incorporated enterprises. In the amendment to the constitutional final tax law (§1(3)) the legislator is obliged to exempt interest income in the business sphere from the assessed income tax base. The withholding tax on gross interest payments is thus final. But the final tax for businesses does not include the inheritance tax. (iii) The most important extension is the final taxation of distributed profits from equity shares of domestic companies (§1(1)). Again the final tax replaces only the PIT liability and not the inheritance tax liability.

Two general principles of the first-round final tax version carry over to the second-round extension. Firstly, the option for income tax assessment remains and in these cases the withheld tax is credited against the PIT

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[13] The business tax on business assets, under discussion in Germany at the moment, had already been abolished in three steps between 1984 and 1986; a reduction of the tax rate and tax preferences for small scale businesses were elements of the tax reform of 1989 (see Genser/Holzmann 1993).

[14] The Austrian wealth tax was raised on personal as well as corporate assets and thus gave rise to a double taxation of the capital stock of corporations. A first relief of double taxation was offered in 1989, when the wealth tax of corporations was acknowledged as deductible from the corporation tax base. A second tax burden on corporate wealth, the "Inheritance Tax Equivalent" (Erbschaftsteueräquivalent) was abolished as well.

[15] The tax-free investment reserve was abolished and the investment allowance reduced to 15% (and finally to 9% in 1995). A minimum CIT was also introduced.

liability. Secondly, gross capital income is the relevant tax base for the withholding tax as well as for filed income. It is not possible to deduct business expenses related to the purchase of financial assets. The break with the principle of net income of course reduces the attractiveness of the filing option and is likely to render superfluous the preferential taxation of income from distributed profits introduced in 1989.

8 A First Economic Evaluation of the Austrian Dual Income Tax

The extension of final withholding taxation to interest and dividend income flowing to non-incorporated businesses gives the impression of a rather generous treatment of capital income in Austria. This shift towards a dual income tax is certainly the reason, why the Austrian tax reform has received attention in the academic world, but it would certainly not suffice to explain the remarkably positive echo from tax practitioneers and the broad political support in the Austrian parliament.

Two evident attractive features of the Austrian final withholding tax are the low costs of its administration and its contribution to distributional equity.

Whereas the cost argument is certainly true for the collection of the withholding tax, it is questionable for the filing option. Compliance costs may not be larger for taxpayers, who have to file anyway. For them there is just an additional comparison between the final tax option and the filing option ex-post. But there will be considerable compliance costs for taxpayers who gain from filing due to low income. On the other hand, the number of tax payers opting for filing is expected to be low.

Distributional equity has two facets which work in opposite direction. Since only a small part of interest income had been reported in the past due to anonymity and bank secrecy, a positive contribution to equity by taxing a huge amount of evaded income at source can hardly be denied. Imposing a final tax on interest income at 22% which would otherwise have been taxed at 10% when not filed, certainly reduces the inequality of after-tax incomes. On the other hand, one has to keep in mind that the 22% final tax is a remarkable tax relief to those high income earners who did not want or were not able to evade taxes on capital income in the past and who will face an increase of their after-tax income.

The tax relief argument which rests on of the low final rate of 22% also needs some economic qualification. From a comprehensive income perspective the change in real wealth is the relevant indicator of ability-to-pay and we must judge interest income to be overtaxed if we do not account for inflationary losses of financial assets. If we regard overtaxation as a discriminatory flaw of the prevailing income tax system and base our comparison on an income tax system which taxes real interest income, then the tax relief shrinks to the difference between the regular tax rate on real interest income and the hypothetical tax rate on real interest income that is equivalent to the low withholding tax rate on nominal interest income. With i and r being the nominal and the real interest rate, respectively, and p the inflation rate we get for the hypothetical tax rate t^h

$$t^h r = 0.22i = 0.22(r+p) = 0.22(r+\beta i) = (0.22/(1-\beta))r$$

where β is the inflation component of nominal interest, viz. $p = \beta i$. For β between 30% and 60%, we get t^h between 30% and 55%. A tax relief will presumably turn out only for top decile income earners, who face a low β given the fact that they earn a higher nominal interest rate on their assets. In this income group the hypothetical rate might therefore be smaller than the regular marginal income tax rate of 50%, the top rate of the Austrian income tax schedule.

The tax relief due to final taxation of distributed profits must be measured in comparison to the prevailing semi-tax rate for dividends at the personal level. The cumulative tax rate T^c from corporate and final withholding taxes on a gross dividend of 1 is

$$T^c = 0.34 + 0.22(1-0.34) = 0.4852$$

Under the semi-rate income taxation of 1993 and a CIT rate of 30% an overall tax burden of 48.52% would have resulted only from an average PIT rate $\bar{T}^h$ of 52,91%, given implicitly by

$$T^c = 0{,}4852 = 0.3 + (T^h/2)(1-0.3)$$

But this fictitious PIT rate T^h is higher than the top PIT rate of 50%. Thus, apart from the tax relief generated by the abolition of the wealth and the business tax, no further net income gain can be expected through the final withholding taxation of dividends.

Interest income that does not qualify for the final withholding tax must still be taxed according to the regular income schedule. This is true for interest income from private loans or from foreign assets. These forms of interest income will remain overtaxed and thus discriminated against if they are reported.

The preferential treatment of capital income raises the question whether there exist possibilities to transform income from regularly taxed sources into capital income subject to the flat-rate final tax. While it is true that strategic tax arbitrage is of primary importance in a full-fledged, dual income tax system, when problems of monitoring and controlling tax avoidance through the transformation of labour income into lowly taxed capital income are well known, the Austrian withholding tax does not offer such arbitrage opportunities on a noteworthy scale. The withholding tax on distributed profits offers only a neglegibly low arbitrage gain of less than 2% (see above), and so it hardly pays to swap labour income for dividend income. Swapping labour income for interest income does not pay either, since private interest income from non-banks is not subject to the final withholding tax and there does not seem to exist a promising way to rechannel factor income via interest payments through banks or investment funds.

The final withholding tax, however, does not close tax loopholes created by tax preferences offered to financial intermediaries like pension funds or non-profit foundations. If these institutions qualify for CIT exemption, no withholding tax is levied on the interest income which they earn on their financial assets. The preferential treatment of certain forms of contractual savings via pension claims, life insurance claims, as well as private capital gains is not touched by the final withholding tax and thus remains unresolved.

Another general problem introduced by final withholding taxation is the break with the net income principle (Beiser 1994, 150 ff.). While there is broad agreement that source taxation should be based on gross income and this fact is also the justification for using the low withholding rate, the final withholding tax law states that the gross income principle has to be applied also if the filing option is chosen. It is clear that final withholding taxation of capital income can lead to much higher tax burdens once the deductibility of business expenses, e.g. debt services, is excluded. Since the main objective of the introduction of the withholding tax was to reduce tax evasion, there is no economic justification for levying an additional tax burden on capital income.

Although the Austrian income tax code already contains a number of limitations on the deductibility of business expenses (e.g. business meals, business cars), the non-deductibility of costs for business credit creates a new and disturbing departure from the net income principle. A distortion of financing decisions, given their importance and sensitivity in business policy, may generate high costs and complementing the filing option by a deductibility of business expenses should be considered.

A final problem raised (cf. Beiser, 1994) which needs further discussion is the interaction of the withholding tax on dividends and the capital gains tax upon sales of assets. If shares are sold before the annual dividends are paid out, then distributed profits will be double-taxed. They are included in the equity price and taxed (at a reduced rate) as capital gains upon sale. They will be taxed again, when the withholding tax is levied on the dividends. This form of double taxation does not occur for securities, because the interest payment is known in advance and can be precisely attributed to the seller and the buyer, whenever the purchase takes place. The solution for equity sales might thus be a deduction of anticipated dividends or an equivalent tax concession, whereas no change is required for the final withholding tax. But it must be stressed that this problem is not a new one, generated by the final withholding tax.

9 Tax Reform Perspectives for the Austrian Final Withholding Tax

Critical remarks on the existing final withholding tax regime raise the question whether there is further scope for improving the dual income tax.

There are a series of legal problems which should be taken seriously. In particular, the passing of a tax bill as a constitutional law must be regarded as an alarming precedent and any attempt to continue such a policy must be avoided. Although specific constitutional amendments have some tradition in the Austrian parliamentary history, the federal elections of October 1994 might have changed the situation, since the two large parties have lost their qualified (two thirds) majority in the Austrian parliament for the first time since 1945 and constitutional laws require political support by members of one of the three other parties.

A further extension of final withholding taxes does not seem very promising as long as the tax authorities cannot efficiently control these source taxes. But proposals to avoid discriminatory taxation of assessed interest income should be considered, e.g., the application of the semi-rate to nominal interest income. This solution would not only end allocative distortions in the capital market, it would also be in line with the distributional target of reducing the tax burden for low income earners by assessment.

Another discriminatory element from a distributional perspective is the inheritance tax component included in the final withholding tax on interest payments to non-business persons but not on other capital income or business interest income. Although it is argued that the creation of different degrees of final taxation is undesirable, I doubt that there will be a gain in equity if the final flat-rate tax would cover the inheritance tax generally. There is an ongoing discussion in Austria about the future of the inheritance tax (cf. Heidinger, 1994b). However, since we have it now, a preferential treatment of financial assets seems justified as long as real property is greatly undervalued[16] in the inheritance and gift tax base.

An amendment to the final withholding tax law would be necessary to reintroduce the net-income principle for capital income that is declared in the income tax return. Trading off the economic costs of tax collection and potential distortions of business financing, it might be preferable to offer the possibility of net-income filing only to businesses which have to report their business income anyway. This would of course discriminate against capital income in the private sphere, where no such deductibility is allowed. But in quantitative terms one would expect that the final withholding tax is the attractive taxation method in general. If a large number of private individuals would be better off by filing their net capital income, then lowering the withholding tax rate level is likely to be the preferred policy response.

Although the change-over to a flat-rate capital income tax is widely regarded as a farewell to the traditional equity standard and the ability-to-pay principle of modern income taxation, I do not think that this view does justice to the recent Austrian tax reforms. I would rather appraise the measures in terms of a response to equity loopholes of income taxation in economic reality, in line with second-best tax rules if income cannot be efficiently monitored by the tax authorities. I think that future tax reforms will have to pay more attention to other deviations from the pure synthetic income tax standard and further elements of presumptive taxation might offer a welfare improving solution to tax policy problems.

[16] Unit values (Einheitswerte) which reflect only a small fraction of market values of real property are the tax base for the property tax and the property acquisition tax as well.

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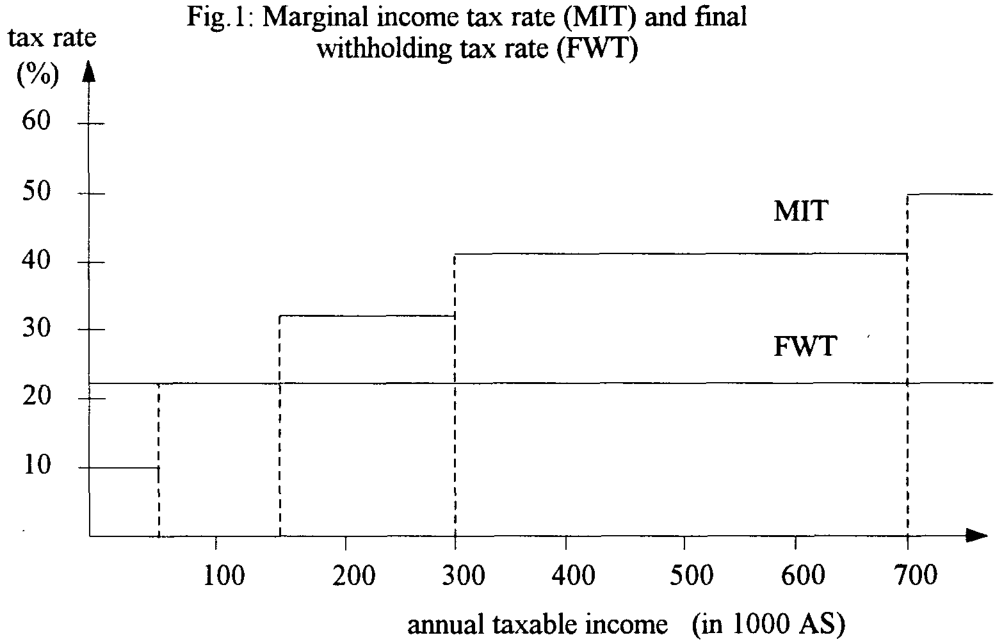
Table 1: Tax Revenue[a] (in billions of Austrian Schillings)			
Year	Source Tax on Interest	Assessed Income Tax	Total Taxes on Income and Wealth
1983	-	23.2	124.3
1984	0.4	24.9	135.5
1985	3.4	26.0	151.4
1986	2.9	25.6	159.6
1987	1.3	25.5	155.9
1988	-	27.1	170.8
1989	3.3 (3.5)	31.3	169.5
1990	7.2 (4.5)	33.8	194.5
1991	9.6 (7.8)	35.8	220.2
1992	11.4 (8.8)	37.0	244.4
1993	16.6 (20.0)	32.7	245.9
1994	19.7 (23.0)	31.6	238.0
1995	(21.5)	(28.0)	(239.7)

[a] Figures in brackets refer to the budget plan (Bundesvoranschlag)

Source: Amts(Arbeits-)behelf zum Bundesfinanzgesetz. Vienna, various years.

Fig. 1: Marginal income tax rate (MIT) and final withholding tax rate (FWT)



Annex 1

The Austrian Final Withholding Tax Law

BUNDESGESETZBLATT

FÜR DIE REPUBLIK ÖSTERREICH

Jahrgang 1993 **Ausgegeben am 12. Jänner 1993** **8. Stück**

11. Bundesverfassungsgesetz: Endbesteuerungsgesetz
(NR: GP XVIII RV 810 AB 881 S. 99. BR: AB 4428 S. 563.)

11. Bundesverfassungsgesetz über eine Steuerabgeltung bei Einkünften aus Kapitalvermögen, bei sonstigem Vermögen und bei Übergang dieses Vermögens von Todes wegen durch den Abzug einer Kapitalertragsteuer, über eine Steueramnestie, über eine Sonderregelung bei der Einkommen- und Körperschaftsteuerveranlagung für das Kalenderjahr 1992 und über eine Amnestie im Bereich des Devisenrechts (Endbesteuerungsgesetz)

Der Nationalrat hat beschlossen:

ABSCHNITT I

Steuerabgeltung bei bestimmten Einkünften aus Kapitalvermögen und sonstigem Vermögen durch Abzug von Kapitalertragsteuer

§ 1. (1) Es ist bundesgesetzlich vorzusehen, daß bei der Besteuerung

1. von Einkünften aus Kapitalvermögen (§ 27 des Einkommensteuergesetzes 1988), und zwar von
   a) Kapitalerträgen aus Geldeinlagen bei Banken und sonstigen Forderungen gegenüber Banken (§ 1 des Kreditwesengesetzes), denen ein Bankgeschäft zugrunde liegt,
   b) Kapitalerträgen aus Forderungswertpapieren, wenn sich die kuponauszahlende Stelle im Inland befindet, sowie
2. des sonstigen Vermögens (§ 69 des Bewertungsgesetzes 1955), aus dem die Kapitalerträge im Sinne der Z 1 fließen, sowie des Erwerbes dieses Vermögens von Todes wegen

die Steuern (Abs. 2) — soweit diese Kapitalerträge nach der für das Kalenderjahr 1993 geltenden Rechtslage einem Kapitalertragsteuerabzug unterliegen — mit dem Kapitalertragsteuerabzug abgegolten sind. Für abzugsfreie Forderungswertpapiere ist bundesgesetzlich vorzusehen, daß die Abgeltung der Steuern auch dann eintritt, wenn im Wege der kuponauszahlenden Stelle ein Betrag in Höhe dieser Kapitalertragsteuer geleistet wird.

(2) Abs. 1 gilt für

1. die Einkommensteuer (Körperschaftsteuer) und Vermögensteuer, soweit die Steuerschuld ab 1. Jänner 1993 entstanden ist, sowie
2. die Erbschafts- und Schenkungssteuer, wenn der Erblasser nach dem 31. Dezember 1992 verstorben ist.

(3) Es kann bundesgesetzlich vorgesehen werden, daß die Steuern mit der von den Kapitalerträgen einzubehaltenden Kapitalertragsteuer oder mit dem in Höhe der Kapitalertragsteuer geleisteten Betrag nicht abgegolten sind, wenn das sonstige Vermögen, aus dem die Kapitalerträge fließen, der Besicherung betrieblicher Verbindlichkeiten des Steuerpflichtigen dient.

(4) Die Kapitalertragsteuer für Kapitalerträge im Sinne des Abs. 1 ist mit einem einheitlichen Satz festzusetzen. Sie darf nicht weniger als 20% und nicht mehr als die Hälfte des für das betreffende Jahr bei der Einkommensteuer geltenden höchsten Steuersatzes betragen.

(5) Es ist bundesgesetzlich vorzusehen, daß die einbehaltene Kapitalertragsteuer insoweit erstattet wird, als sich aus der Anwendung des für die

Einkommensteuer (Körperschaftsteuer) jeweils geltenden Steuertarifs auf das Einkommen eine niedrigere Steuer ergäbe. Dabei ist das Ausmaß der Steuererstattung bei einem unterhaltsberechtigten Steuerpflichtigen um die steuerliche Abgeltung der Unterhaltsverpflichtungen zu kürzen. Ferner ist bundesgesetzlich vorzusehen, daß bei der Erstattung der für 1993 einbehaltenen Kapitalertragsteuer der für 1994 geltende Einkommensteuertarif anzuwenden ist.

(6) Es kann bundesgesetzlich vorgesehen werden, daß auch bei der Besteuerung von offenen Ausschüttungen im Sinne des § 37 Abs. 4 des Einkommensteuergesetzes 1988 und des damit zusammenhängenden Vermögens im Abs. 2 genannte Steuern mit der von diesen Kapitalerträgen einzubehaltenden Kapitalertragsteuer abgegolten sind.

§ 2. Es ist bundesgesetzlich vorzusehen, daß für Kapitalerträge und Vermögen, für die eine Abgeltung der Steuern (§ 1 Abs. 2) eintritt, bei der Ermittlung des Einkommens (§ 2 Abs. 2 des Einkommensteuergesetzes 1988, § 7 Abs. 2 des Körperschaftsteuergesetzes 1988), des Einkommens für Zwecke der Erstattung (§ 1 Abs. 5), des Gesamtvermögens (§ 76 des Bewertungsgesetzes 1955) und des Erwerbes von Todes wegen (§ 20 des Erbschafts- und Schenkungssteuergesetzes 1955) Werbungskosten, Schulden und Lasten nicht berücksichtigt werden.

§ 3. Von den Maßnahmen im Sinne der §§ 1 und 2 bleiben unberührt:

1. Die Besteuerung von Einkünften und Vermögen, die nicht dieser Kapitalertragsteuer unterliegen.
2. Die Besteuerung von Erwerben von Todes wegen von Vermögen, aus dem keine Kapitalerträge im Sinne des § 1 fließen, sowie von Schenkungen unter Lebenden.

ABSCHNITT II

Steueramnestie

§ 4. (1) Für die Jahre vor 1993 sowie für Todesfälle vor dem 1. Jänner 1993 sind Einkünfte und Vermögen im Sinne des § 1 Abs. 1 weder bei der Festsetzung der Einkommensteuer (Körperschaftsteuer) und Vermögensteuer sowie bei der Festsetzung der Erbschafts- und Schenkungssteuer von Erwerben von Todes wegen noch finanzstrafrechtlich zu berücksichtigen (Steueramnestie). Die Steueramnestie ist ausgeschlossen, wenn der Steuerpflichtige bis zum 31. Dezember 1992 davon Kenntnis hatte, daß die Einkünfte für das maßgebliche Kalenderjahr oder die Vermögen für den maßgeblichen Zeitpunkt Gegenstand abgabenrechtlicher oder finanzstrafrechtlicher Ermittlungen sind oder daß sie den Abgabenbehörden bekannt waren.

(2) Hat ein Steuerpflichtiger im Jahr 1993 Kapitalerträge und Vermögen im Sinne des § 1 Abs. 1 letzter Satz, so treten die vorgenannten Amnestiewirkungen nur dann ein, wenn für das Jahr 1993 ein Betrag in Höhe der Kapitalertragsteuer entrichtet oder der Offenlegungspflicht nachgekommen wird.

(3) Unter die Steueramnestie im Sinne des Abs. 1 fallen nicht Kapitalerträge der Jahre 1990 bis 1992, soweit sie aus Vermögen stammen, deren auf das jeweilige Vorjahr entfallende Kapitalerträge entweder schon steuerlich erfaßt wurden oder wenn der Steuerpflichtige bis zum 31. Dezember 1992 davon Kenntnis hatte, daß diese Vorjahreserträge den Abgabenbehörden bekannt waren. Diese Vermögen sind bei der Vermögensteuer hinsichtlich der Zeitpunkte 1. Jänner 1990, 1. Jänner 1991 und 1. Jänner 1992 und bei der Erbschafts- und Schenkungssteuer für Erwerbe von Todes wegen, wenn der Erblasser in den Jahren 1990 bis 1992 verstorben ist, von der Steueramnestie ausgenommen.

(4) Die für die Zeit vor dem 1. Jänner 1993 einzubehaltende Kapitalertragsteuer bleibt von der Steueramnestie unberührt und hat auf die Anwendbarkeit der Abs. 1 bis 3 keinen Einfluß.

§ 5. Wird der Offenlegungspflicht für die Einkommensteuer (Körperschaftsteuer) und Vermögensteuer für das Kalenderjahr 1993 hinsichtlich von

1. Einkünften aus Kapitalvermögen, und zwar von
   a) Kapitalerträgen aus Geldeinlagen bei ausländischen Banken und sonstigen Forderungen gegenüber ausländischen Banken, denen ein Bankgeschäft zugrunde liegt,
   b) Kapitalerträgen aus Forderungswertpapieren, wenn sich die kuponauszahlende Stelle im Ausland befindet, sowie
2. sonstigem Vermögen (§ 69 des Bewertungsgesetzes 1955), aus dem Kapitalerträge im Sinne der Z 1 fließen,

entsprochen, so tritt für solche Einkünfte und Vermögen die Wirkung der Steueramnestie im Sinne des § 4 ein.

ABSCHNITT III

Sonderregelung für die Einkommen- und Körperschaftsteuerveranlagung 1992

§ 6. (1) Für das Jahr 1992 gilt folgendes:

1. Es entsteht hinsichtlich jener Einkünfte, für die eine Abgeltung der Steuerschuld vorzusehen ist (§ 1 Abs. 1), bei der Einkommensteuer (Körperschaftsteuer) keine Steuerschuld. Dies gilt jedoch nicht, wenn die Amnestiewirkungen nach § 4 Abs. 2 ausgeschlossen sind.

2. Die Z 1 gilt nicht für die von diesen Kapitalerträgen nach den für 1992 geltenden gesetzlichen Vorschriften einzubehaltende Kapitalertragsteuer.
3. Es entsteht hinsichtlich von Einkünften im Sinne des § 5 Z 1 bei der Einkommensteuer (Körperschaftsteuer) keine Steuerschuld. Dies gilt jedoch nicht, wenn die Amnestiewirkungen nach § 5 ausgeschlossen sind.

(2) Soweit nach Abs. 1 keine Steuerschuld entsteht, sind die Kapitalerträge weder beim Gesamtbetrag der Einkünfte noch beim Einkommen (§ 2 Abs. 2 des Einkommensteuergesetzes 1988, § 7 Abs. 2 des Körperschaftsteuergesetzes 1988) zu berücksichtigen. Dies gilt nur bei Berechnung der Einkommensteuer (Körperschaftsteuer) des Steuerpflichtigen. Die Vorschriften über eine Anrechnung der Kapitalertragsteuer bleiben unberührt.

ABSCHNITT IV

Amnestie im Bereich des Devisenrechts

§ 7. Liegen die Voraussetzungen des § 4 Abs. 1 und 2 oder des § 5 vor, so darf ein Strafverfahren nach dem Devisengesetz in der geltenden Fassung nicht eingeleitet werden, wenn

1. sich die strafbare Handlung auf Kapitalvermögen im Sinne des § 4 Abs. 1 und 2 oder des § 5 bezieht, und
2. der dem Devisengesetz entsprechende Zustand bis zum 31. Dezember 1993 hergestellt oder das Vermögen bis zu diesem Zeitpunkt ins Inland rückgeführt wird.

ABSCHNITT V

Vollziehung

§ 8. Mit der Vollziehung dieses Bundesverfassungsgesetzes ist der Bundesminister für Finanzen betraut.

Klestil

Vranitzky

Annex 2

The 1994 Amendment to the Austrian Final Withholding Tax Law

BUNDESGESETZBLATT

FÜR DIE REPUBLIK ÖSTERREICH

Jahrgang 1993 Ausgegeben am 30. November 1993 300. Stück

818. Bundesgesetz: Steuerreformgesetz 1993
(NR: GP XVIII RV 1237 AB 1301 S. 137. BR: 4662 und 4663 AB 4657 S. 576.)

818. Bundesgesetz, mit dem das Einkommensteuergesetz 1988, das Endbesteuerungsgesetz (Verfassungsgesetz), das Körperschaftsteuergesetz 1988, das Umgründungssteuergesetz, das Investmentfondsgesetz 1963, das Investmentfondsgesetz 1993, das Gewerbesteuergesetz 1953, das Umsatzsteuergesetz 1972, das Normverbrauchsabgabegesetz 1991, das Weinsteuergesetz 1992, das Bewertungsgesetz 1955, das Vermögensteuergesetz 1954, das Erbschaftssteueräquivalentgesetz, das Gebührengesetz 1957, das Versicherungssteuergesetz 1953, das Kapitalverkehrsteuergesetz, das Straßenverkehrsbeitragsgesetz, das Kraftfahrzeugsteuergesetz 1992, das Altlastensanierungsgesetz, das Bundesgesetz über den Schutz vor Straftaten gegen die Sicherheit von Zivilluftfahrzeugen, das Bundesgesetz vom 26. November 1980, mit dem eine Sonderabgabe von Erdöl erhoben wird, das Bundesgesetz betreffend Maßnahmen im Bereich der Bundesstraßengesellschaften, das Familienlastenausgleichsgesetz 1967, die Bundesabgabenordnung, das Abgabenverwaltungsorganisationsgesetz und das Finanz-Verfassungsgesetz 1948 geändert werden, eine Sonderregelung zur Mittelstandsfinanzierung auf dem Gebiet der Gebühren sowie der Verkehrssteuern, weiters eine Sonderregelung betreffend die Fälligkeit von Abgabenschuldigkeiten getroffen wird, das Mineralölsteuergesetz 1981 geändert wird sowie eine Sonderregelung für Banken (Kreditinstitute) auf dem Gebiet des Umgründungsrechts getroffen wird (Steuerreformgesetz 1993)

Der Nationalrat hat beschlossen:

Artikel II

Endbesteuerungsgesetz

(Verfassungsbestimmung) Das Endbesteuerungsgesetz (Verfassungsgesetz), BGBl. Nr. 11/1993, wird wie folgt geändert:

1. Im § 1 Abs. 1 Z 1 lit. b entfällt das Wort „sowie" und werden folgende lit. c) bis f) angefügt:

„c) Kapitalerträgen aus Ausschüttungen inländischer Kapitalgesellschaften oder Erwerbs- und Wirtschaftsgenossenschaften auf Gesellschafts- und Genossenschaftsanteile sowie auf Genußrechte,

d) Kapitalerträgen aus Ausschüttungen auf Partizipationskapital im Sinne des Bankwesengesetzes oder des Versicherungsaufsichtsgesetzes,

e) Rückvergütungen aus Anteilen an Erwerbs- und Wirtschaftsgenossenschaften mit Ausnahme der Rückvergütungen gemäß § 13 des Körperschaftsteuergesetzes 1988,

f) Zuwendungen jeder Art von Privatstiftungen an Begünstigte und Letztbegünstigte sowie"

2. § 1 Abs. 2 lautet:

„(2) Abs. 1 gilt hinsichtlich

1. Lit. a und b für die Einkommensteuer (Körperschaftsteuer) und Vermögensteuer, soweit die Steuerschuld ab 1. Jänner 1993 entstanden ist, sowie die Erbschafts- und Schenkungssteuer, wenn der Erblasser nach dem 31. Dezember 1992 verstorben ist.
2. Lit. c bis f für die Einkommensteuer, soweit die Steuerschuld ab 1. Jänner 1994 entstanden ist.

3. § 1 Abs. 3 lautet:

„(3) Es ist bundesgesetzlich vorzusehen, daß für natürliche Personen bei Kapitalerträgen im Sinne des Abs. 1 die Einkommensteuer, soweit die Kapitalerträge nach dem 31. Dezember 1993 zugeflossen sind, auch dann mit dem Kapitalertragsteuerabzug oder mit einem im Wege der kuponauszahlenden Stelle geleisteten Betrag in

Höhe der Kapitalertragsteuer (Abs. 1 letzter Satz) abgegolten sind, wenn sie zu den Betriebseinnahmen gehören."

4. § 1 Abs. 6 entfällt.

5. Der bisherige Inhalt des § 2 erhält die Bezeichnung „(1)" und wird der Klammerausdruck „(§ 1 Abs. 2)" durch den Klammerausdruck „(§ 1 Abs. 2 Z 1)" ersetzt und folgender Abs. 2 wird angefügt:

„(2) Es ist bundesgesetzlich vorzusehen, daß für Kapitalerträge, die zu den Betriebseinnahmen gehören und für die eine Abgeltung der Einkommensteuer eintritt (§ 1 Abs. 3), bei der Ermittlung des Einkommens (§ 2 Abs. 2 des Einkommensteuergesetzes 1988) Betriebsausgaben nicht berücksichtigt werden."

6. Im § 4 Abs. 1 wird die Zitierung „§ 1 Abs. 1" durch die Zitierung „§ 1 Abs. 1 Z 1 lit. a und b" ersetzt.

7. Im § 4 werden folgende Abs. 5, 6 und 7 angefügt:

„(5) Für die Jahre vor 1994 sind Einkünfte und Vermögen im Sinne des § 1 Abs. 1 Z 1 lit. c bis f weder bei der Festsetzung der Einkommensteuer (Körperschaftsteuer) und Vermögensteuer noch finanzstrafrechtlich zu berücksichtigen (Steueramnestie). Die Steueramnestie ist ausgeschlossen, wenn der Steuerpflichtige bis zum 31. Dezember 1993 davon Kenntnis hatte, daß die Einkünfte für das maßgebliche Kalenderjahr oder die Vermögen für den maßgeblichen Zeitpunkt Gegenstand abgabenrechtlicher oder finanzstrafrechtlicher Ermittlungen sind oder daß sie den Abgabenbehörden bekannt waren.

(6) Unter die Steueramnestie im Sinne des Abs. 5 fallen nicht Kapitalerträge der Jahre 1991 bis 1993, soweit sie aus Vermögen stammen, deren Kapitalerträge in den Jahren 1990 bis 1992 entweder schon steuerlich erfaßt wurden, oder wenn der Steuerpflichtige bis zum 31. Dezember 1993 davon Kenntnis hatte, daß diese Kapitalerträge den Abgabenbehörden bekannt waren. Diese Vermögen sind bei der Vermögensteuer hinsichtlich der Zeitpunkte 1. Jänner 1991, 1. Jänner 1992 und 1. Jänner 1993 von der Steueramnestie ausgenommen.

(7) Die für die Zeit vor dem 1. Jänner 1994 einzubehaltende Kapitalertragsteuer bleibt von der Steueramnestie gemäß Abs. 5 und 6 unberührt und hat auf die Anwendbarkeit der Abs. 5 und 6 keinen Einfluß."

8. Der bisherige Inhalt des § 5 erhält die Bezeichnung „§ 5 (1)" und wird folgender Abs. 2 angefügt:

„(2) Wird der Offenlegungspflicht für die Einkommensteuer (Körperschaftsteuer) für das Kalenderjahr 1994 hinsichtlich von Einkünften aus Kapitalvermögen, und zwar von Kapitalerträgen aus Ausschüttungen ausländischer Kapitalgesellschaften oder Erwerbs- und Wirtschaftsgenossenschaften auf Gesellschafts- und Genossenschaftsanteile entsprochen, so tritt für solche Einkünfte und Kapitalvermögen die Wirkung der Steueramnestie im Sinne des § 4 Abs. 5 ein."

9. § 6 Abs. 1 Z 1 lautet:

„1. Es entsteht hinsichtlich jener Einkünfte, für die eine Abgeltung der Steuerschuld gemäß § 1 Abs. 1 Z 1 lit. a und b vorzusehen ist, bei der Einkommensteuer (Körperschaftsteuer) keine Steuerschuld."

10. § 8 lautet:

„**§ 8.** Mit der Vollziehung dieses Bundesverfassungsgesetzes ist der Bundesminister für Finanzen, hinsichtlich der §§ 4 und 5 im Einvernehmen mit dem Bundesminister für Justiz, betraut."