Crowe Horwath

Austrian Information Day

Social Security and Income Tax
Impact on Austrian Expats and Austrian Companies in the UAE

1 November 2015 – Mövenpick Hotel IBN Battura Gate Dubai

Audit | Tax | Advisory

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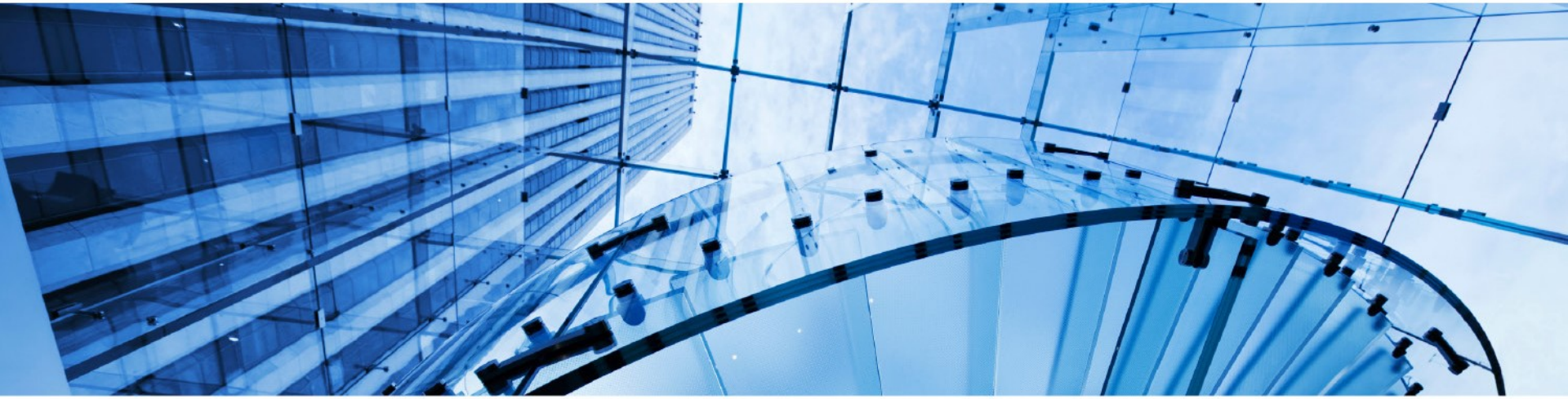


Tax Liability

Tax Liability in Austria

- Fully Tax Liability
  - Only natural persons
  - Residence or
  - Habitual abode in Austria
    - Place the tax payer does not stay merely temporarily
      - ➡ if the taxpayer lives in Austria for more than six months (Par. 26 (2) AFFC).

➡ Taxation of your world income in AT

- Restricted Tax Liability
  - If the natural person has no residence or habitual abode in Austria
  - Obligation to file an income tax return only if requested by the tax authorities or if the income exceeds EUR 2.000

➡ Generally, taxation of certain types of income in AT

Basics – Residence according Double Tax Treaty AT and UAE

- Austrian Individual or Individual from the UAE

TEST STEPS

1. Permanent Residence
   Where does a person have his/her permanent residence?
2. Centre of vital interests
   Where is the person's center of vital interests?
3. Habitual abode
4. Citizenship

- Legal Entity
  - Domicile of the company or
  - Place of Management

→ Residence in both countries: place of management is decisive

Dual Residency

- Federal Minister of Finance decreed an edict called “Verordnung betreffend inländische Zweitwohnsitze” (decree concerning secondary residence)

- Vital interests lie abroad for a period longer than five years

  → unlimited tax liability only in those years, in which this domicile alone or in combination with another domestic flat is used for more than 70 days

- The edict is applicable for the first time in the year following the year, in which the tax payer has shifted his centre of vital interests abroad
  - If the tax payer shifts his centre of vital interests to Austria, the edict is applicable in the preceding year for the last time

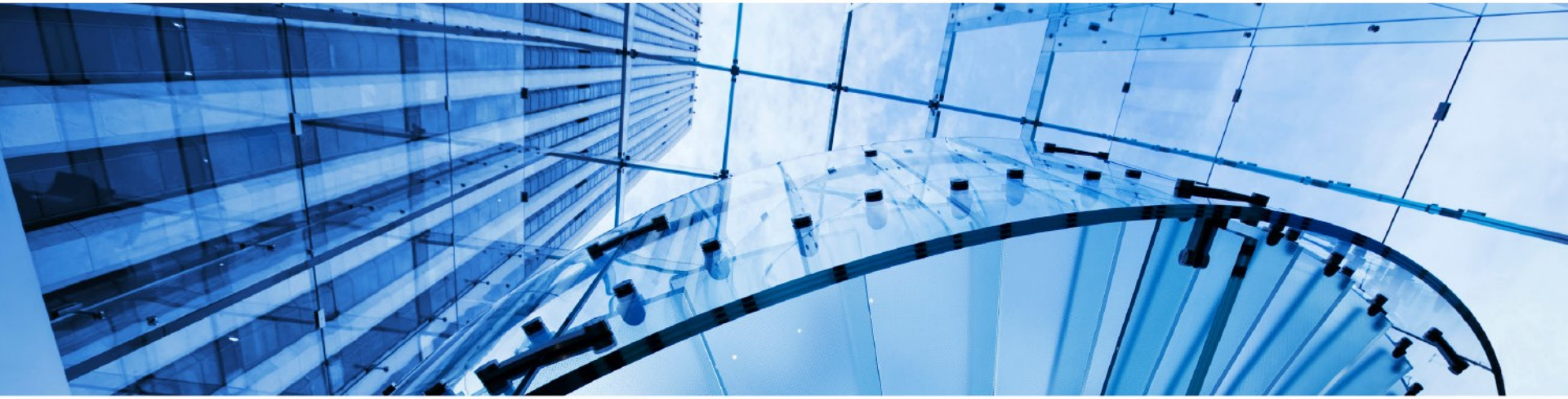
  → In case a person returns to Austria on December 30, 2015 he will be unlimited tax liable in Austria for the whole year 2015

- In the periods in which the edict is applicable, the tax payer has to prove how many days he stayed in Austria
  - For example, this could be done via a calendar in which the days he stayed in his Austrian flat are marked; flight tickets, taxi receipts, restaurant invoices, etc. could be helpful as well.

Purchase of real estate in Austria

- For private purposes
  - In case of usage for less than 70 days, restricted tax liability in AT
  - Center of vital interests is still in UAE
  - In case you sell the property in Austria, the profit is subject to tax in Austria (Art 13 (1) DTT AT – UAE)

- For rental purposes
  - Income from the rental of real estate is subject to tax in Austria (Art 6 (1) DTT AT – UAE)
  - In case you sell the property in Austria, the profit is subject to tax in Austria (Art 13 (1) DTT AT – UAE)



Exit Taxation and Taxation as regards the Establishment of Unrestricted Tax Liability Taxation ("*Zuzugsbesteuerung*")

Exit Taxation of Capital Investments - Individual

- A movement from AT to UAE leads to a fictional disposal of capital investments according to Par 27 (3) “Income from realized capital increase” and (4) “Income from derivative trade” ITA

→ Special tax rate of 25 % in Austria (in 2016 tax rate of **27,5 %**)

- Example:

- A (tax resident in AT) bought a stock portfolio in AT in 2012 in the amount of EUR 300k. In 2015 A moves to UAE. The value of the depot in AT amounts to EUR 350k in 2015
- A is now tax resident in UAE. AT loses the right to tax the income from sale of the capital investments (Art 13 (4) DTT AT – UAE)

A has to pay 25 % (27,5 % 2016) flat rate tax for the income from realized capital increase in Austria in the amount of EUR 12.5k (EUR 50k * 25%)

Exit Taxation – Companies

- Acc. to Par 6 item 6 ITA, a movement from AT to UAE leads to the taxation of hidden reserves in Austria

- The regulation includes individuals, limited companies as well as partnerships

- The transferred assets have to be assessed at arm's length

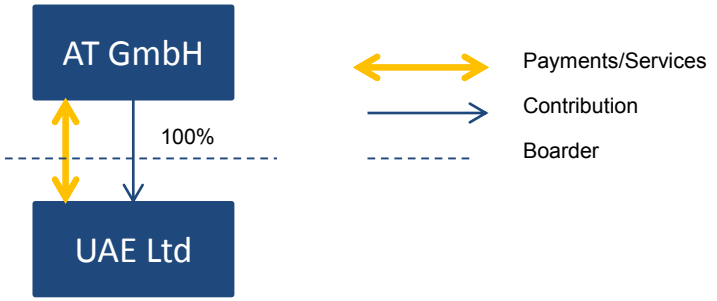
  → An arm's-length sale price has to be calculated

Procedural law

- Disclosure obligation
  - Taxpayers have to disclose all circumstances to the tax office which affect their personal tax liability with respect to a tax on income, assets, income or revenue
- Legal obligation to keep records
- Duty to cooperate
  - At the request of the tax authority and to avoid any doubts, the taxpayer has to explain the contents of their attachments and has to provide additional information and prove the accuracy of the fulfillment of their disclosure obligations
  - If evidence cannot be expected owing to different circumstances, substantiation is sufficient

Transfer price calculation

- OECD Transfer Price Methods

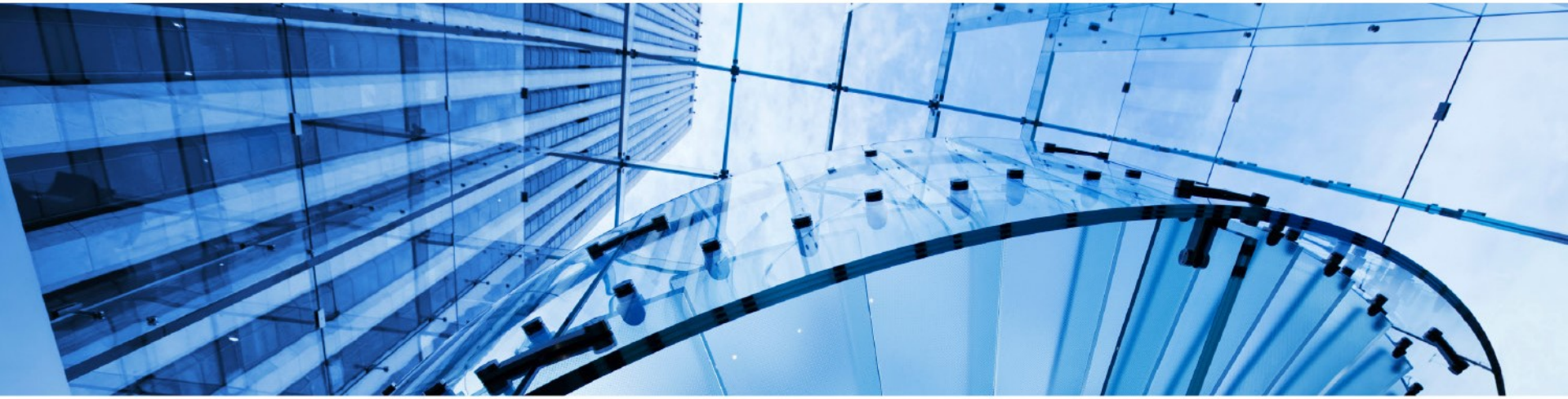


  - Business between associated companies has to be at arm's length (Elimination of the transfer of profits)
  - Different variations of transfer price calculations to find individual methods for each case.
    - Analysis of the strengths and weaknesses of the methods
  - 1st Step
    - Analysis if intercompany services are really made („Benefit Test")
  - 2nd Step
    - The intercompany payment for this service has to be at arm's length

Relocation from UAE to AT

- Only used goods are duty-free as relocation goods. These goods have to be intended for personal use of the person moving (no new goods)
  - Household contents (personal effects, clothes, furniture, appliances)
  - Bicycles and cars
    - Attention: For cars you have to pay Austrian car registration tax ("Normverbrauchsabgabe")
  - Portable instruments for freelance or craft activities to practice your profession

- Requirements
  - The personal property belongs to you
  - You have used the personal property abroad at least six months prior to the change of domicile
  - Use of the personal property at the new place of residence in AT for the same purposes
  - Former habitual residence abroad for at least twelve consecutive months
  - Has to remain in the taxpayer's personal property within twelve months of taking up residence in Austria



Income in Austria – DTT between AT and UAE

Income from AT I

Company Profits

- Income from a company and a permanent establishment in AT is liable to tax in AT

Dividends

- Dividends from an Austrian Company received by a natural person in UAE are only taxable in UAE (Art 10 DTT AT – UAE), 0 % withholding tax in Austria

Interest

- Interest from Austria paid to a natural person in UAE is only taxable in UAE (Art 11 DTT AT – UAE), 0 % withholding tax in Austria

Income from AT II

Income from employment in AT

- Basically taxable in AT
  - Tax paid in Austria is deductible from income tax in UAE
    → Problem: No income tax in UAE
  - Exemptions:
    - Tax payer is not in AT for more than 183 days and
    - payment is made by an employer who is not a resident in AT and
    - payment is not made by a permanent establishment of the employer in AT

    → If the exemptions are fulfilled the income from employment is taxable in UAE

Income from AT III

Income from self-employment in AT

- Basically taxable in UAE
  - Only if the individual person has a permanent institution where he works, the income from this permanent institution is taxable in AT

Methods provided for the elimination of double taxation in UAE

- UAE
  - Tax paid in Austria is allowable against income tax in UAE

→ But no income tax in UAE

Income from AT IV

Compensation for the supervisory board in AT

- Basically taxable in the company's country of residence

Compensation for the managing director in UAE and resident in AT

- Stake in company > 25 % → Income from self-employment
  - Basically taxable in AT
  - Only if the individual person has a permanent institution where he works, the income from this permanent institution is taxable in UAE
- Stake in company < 25 % → Income from employment
  - Basically taxable in UAE
  - Exemptions:
    - Tax payer is not in UAE for more than 183 days and
    - payment is made by an employer who is not a resident in UAE and
    - payment is not made by a permanent establishment of the employer in UAE
      - If the exemptions are fulfilled the income from employment is taxable in AT

Excurses: Taxation Qatar

- Methods provided for the elimination of double taxation in Qatar

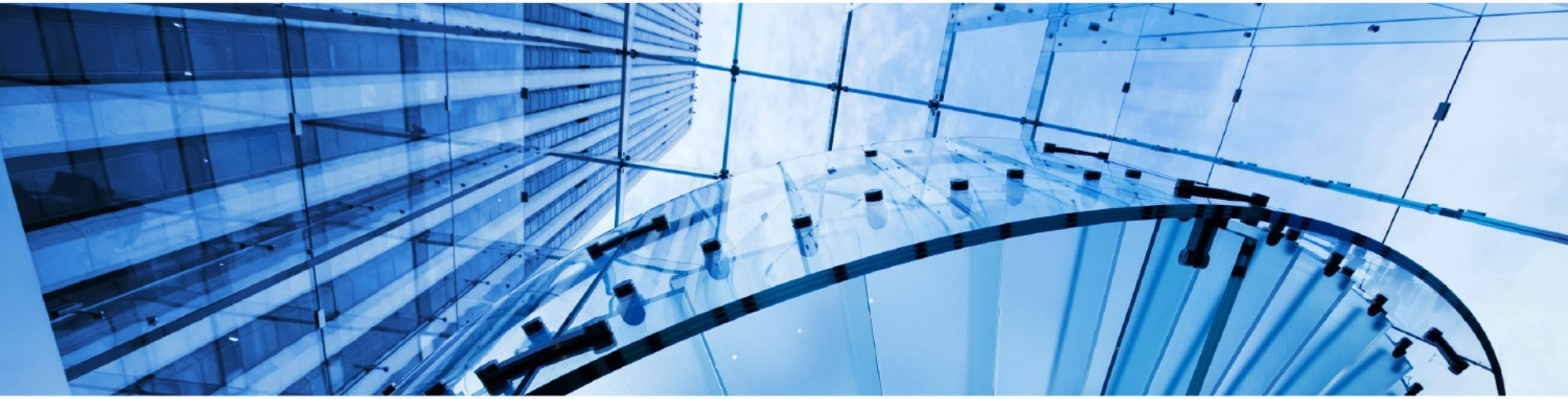
  - Tax paid in Austria is allowable against income tax in Qatar vice versa Tax paid in Qatar is allowable in Austria

  - Example Qatar:
    - An Austrian resident person which have income that is tax liable in Qatar (0 % percent tax), has to be taxed in AT too
    - According to zero tax in Qatar, there is no allowable against the income tax in AT

      → Full tax payment in AT

  - Example Dubai:
    - An Austrian resident person which have income that is tax liable in UAE (0 % percent tax), has to be excluded from taxation in AT
    - According to zero tax in UAE, there is whether a taxation in UAE nor in AT

      → Income from UAE is just subject to Progression in AT



Social security

Social Security in Austria

- What are the possible options in order to be subject to compulsory social insurance in Austria?

- Secondment to UAE
- Maintaining an activity in Austria and simultaneously in UAE
- Voluntary self insurance in health insurance
- Voluntary self- or continued insurance in the pension insurance
- Private insurance

Secondment

- § 3 para 2 lit d General Social Insurance Act ("GSIA")
- Employees, whose employer has his/her registered office in Austria, remain, in the case of a secondment, for a period of max. 5 years in the Austrian social security law
  - Automatically, after 5 years: application for an exemption to the Ministry of Social Affairs
- There is no bilateral agreement on social security with the UAE.
- Therefore it should be examined whether additional compulsory insurance is needed in the country of employment
- After the five years: exemption from the Ministry of Social Affairs or self-insurance according to the GSIA

Parallel activities in Austria and UAE

- In the case of a valid employment relationship in Austria and a parallel activity in Austria and Dubai, the employee remains under the Austrian social security law as long as the activity continues to be executed in Austria
- In the case of an exclusive activity in UAE, there is again a secondment and the above applies
- If an independent or commercial activity is executed with a business license in Austria, compulsory insurance in the Business National Insurance Act ("BNIA") is available
  - This applies even if the activity is partially carried out in UAE
- Even in the case of parallel activities in Austria and UAE, it is to be clarified whether, if necessary, there is compulsory insurance in Dubai

Self Insurance in Health Insurance

- According to the GSIA, self insurance in health insurance can be claimed if:
  - one is not compulsorily insured in any public health insurance in Austria
  - and one has residence in the home country
- The co-insurance of family members is possible
- As a contribution to self-insurance, 7.55 % of the contribution base is to be paid per month (GSIA)
  - The (maximum) contribution amounts to EUR 388.04 from 01.01.2015
- Please note: the waiting period of 6 months in the case of a claim, unless directly insured beforehand under the GSIA or any other federal law

Self Insurance in Pension Insurance

- According to the GSIA, self insurance in pension insurance can be claimed if:
  - Over 15 years old
  - Residency in Austria
  - No legal pension insurance
- As a contribution to self-insurance, 22.8 % of the contribution base is to be paid per month
- The self insurance costs:
  - when no compulsory insurance existed: EUR 618.45
  - when a compulsory insurance already existed - depending on the contribution basis - between EUR 169.63 and EUR 1,236.90
- Self insurance is out of the question if there is an entitlement to continued insurance

Continued Insurance in Pension Insurance

- Before the end of compulsory or self insurance:
  - in the last 24 months, at least 12 insured months or
  - in the last 5 years annually at least 3 insured months or
  - 60 insured months prior to the application

  must exist in one or more pension insurances

- As a contribution to continued insurance, 22.8 % of the contribution base is to be paid per month (GSIA and BNIA)

- Taking the minimum and maximum amounts into account, between EUR 169.63 and EUR 1,236.90 is to be paid monthly for the voluntary continued insurance

Penalties

- If an employee had to be registered or deregistered from social insurance in Austria, the penalties could be faced:
  - Premium surcharges if not registered before commencement of work (entry by FinPol)
    - EUR 500 per person plus EUR 800 for the checking process
  - Administrative sanctions if not registered before the commencement of work
    - between EUR 730 and EUR 2,180; if repeated EUR 5,000
  - Fines for late registration
    - For insured persons who are not or have not deregistered in time, the general contributions are to be paid by the employer up to the date of a written cancellation, but no longer than for a period of three months after the end of the insurance
  - Default interest rates according to the GSIA
    - Currently 7.88 % per annum of the contribution arrears, if the employee was not registered

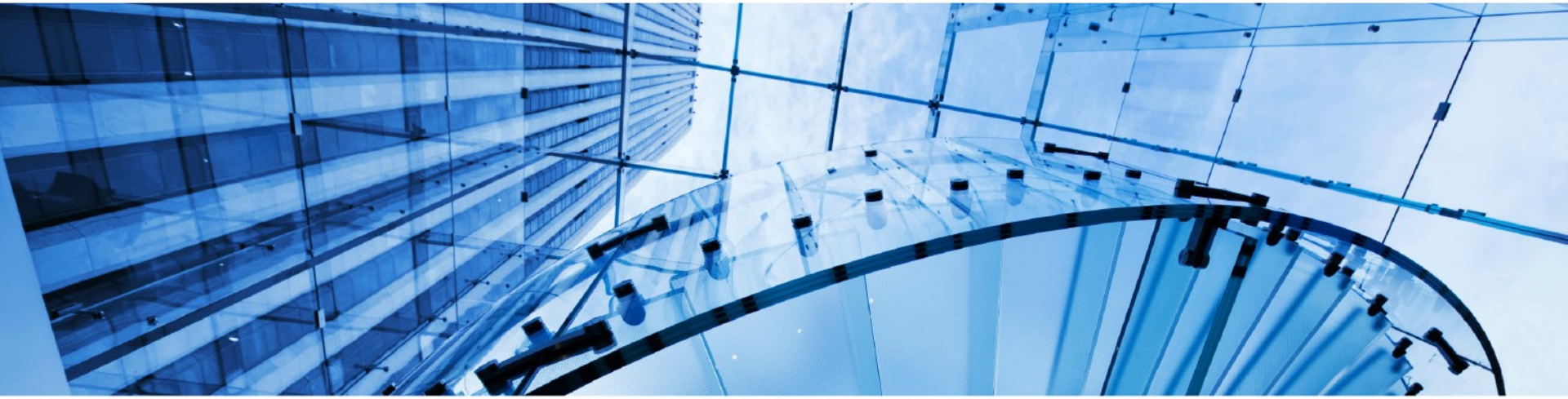
Child Benefit (in Non-Contracting States)

- Entitlement to child benefit exists for a child if the parent´s life is based in Austria and he/she lives with the child in a common household
  - This means that you permanently live with your family in Austria and have a closer personal and economic relationship to Austria than to any other country
  - The mother is primarily entitled to child benefit
- The application for child benefit is submitted to the tax authority in the place of main residency
- Basically all children **who have not yet turned nineteen** have a claim
- If the family´s life is based in the UAE, there is in principle no entitlement to child benefit

Childcare Allowance (in Non-Contracting States)

- Entitlement to childcare allowance exists when the following conditions are met:
  - Shared household with the child
  - Entitlement to – and actual drawing of - child benefit
  - The family´s life is based in Austria
  - Implementation and verification of the mother-child pass examinations
  - The additional income may not exceed the individual limit on additional income (this is 60 % of the final revenue, but at least EUR16.200,- per calender year)

- If the family´s life is based in the UAE, there is in principle also no entitlement entitlement to child benefit



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Crowe Horwath

Horwath Mak and Crowe Horwath International

Horwath MAK is a firm of Chartered Certified Accountants, Auditors and Business Advisors. Established in UAE since 1981, the Horwath MAK network has fifteen branches in UAE, two branches in Sultanate of Oman, one each in London, Azerbaijan, India & Iran and is a part of Crowe Horwath International worldwide which is serving the globe from over **726 office** locations across **125 countries** worldwide. On a worldwide rating, Crowe Horwath International is ranked as 9th largest Network, while Horwath MAK is rated among the **top 5** auditing and consulting firms operating within the **United Arab Emirates**.

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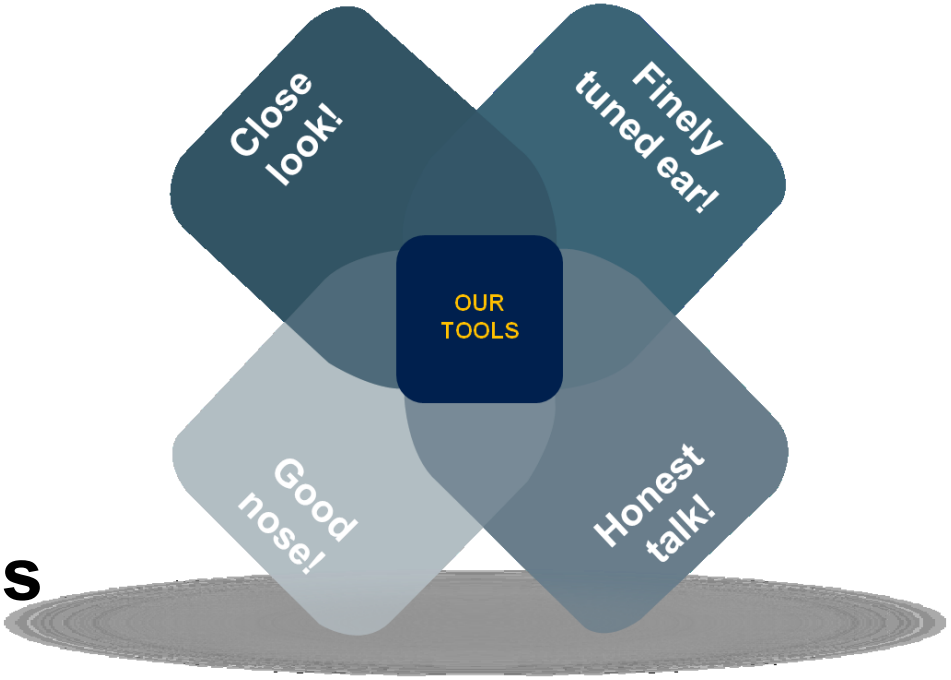
Our most important tools are not calculators, tables and the latest technology but rather

- a close look
- a finely tuned ear
- a good nose
- and an honest talk



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Face-to-Face-Business by

Dubai, November 1st 2015

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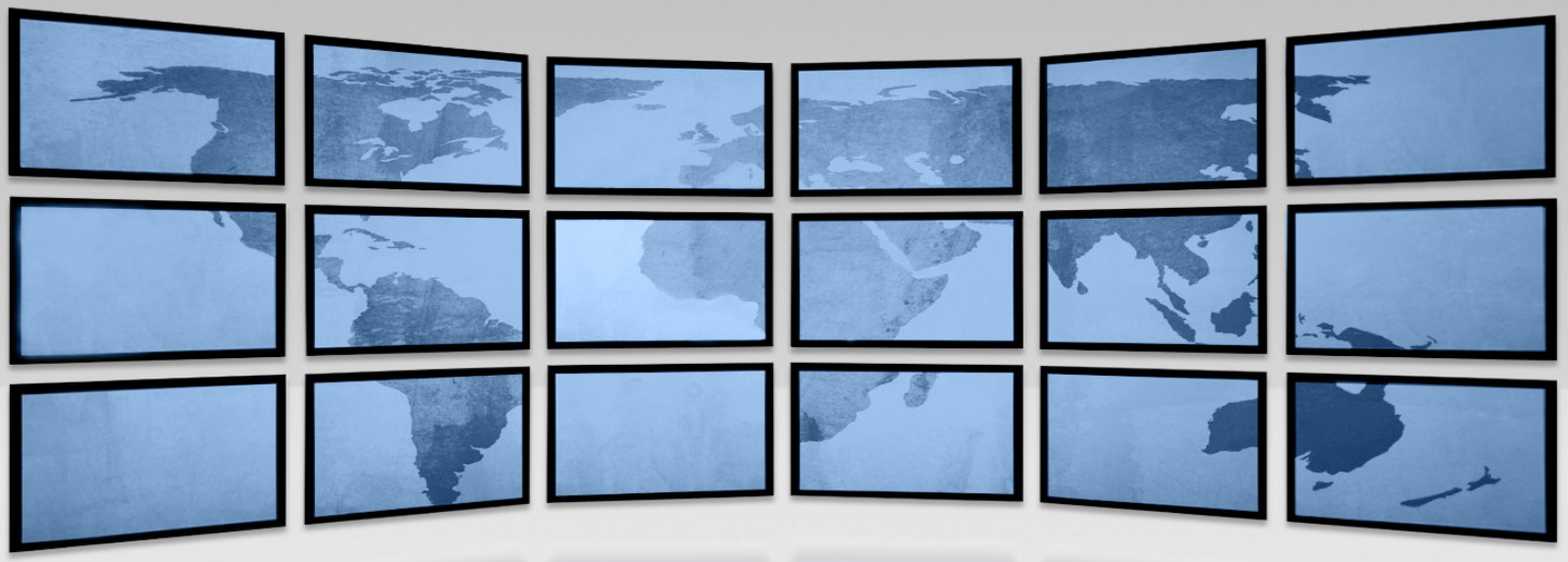

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