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prior consent of the tax office in a ruling. The tax office must agree if such reasons exist. The achievement of a tax advantage shall not be deemed an important business reason.

1) BGBl 1996/201 abolished the deduction for reorganization gains (§ 36) from 1998 onwards.

Second Chapter Exclusions

§ 3. (1) The following items are excluded from individual income tax liability:

No 1–28 (*omitted*)

No 29. Shares received through a capital increase out of a corporation's own funds.

(2) (*omitted*)

(3) (*omitted*)

Third Chapter Profit

§ 4. (1) Profit is the difference between net equity at the end of the financial year and the equity at the end of the last preceding financial year. It shall be computed under double entry book keeping. Profit shall not be reduced by withdrawals and shall not be increased by contributions. The term “withdrawals” means every reduction of value (e.g. cash, goods, products and other current assets, services, fixed assets or the use of such assets) not caused by the trade or business. The term “contribution” means every transfer of assets to the business from the private sphere. Intangible fixed assets may be capitalized only, if they have been acquired for consideration. Gains and losses from the disposition or from a withdrawal of land and other changes in the value of land constituting a fixed asset shall not be recognized. 17.2
19.3.2.

(2) The taxpayer shall set up the balance sheet (Jahresabschluss, Bilanz)¹⁾ according to generally accepted accounting principles. The taxpayer shall correct the balance sheet even after the filing with the tax office if it does not comply with these principles or if it violates mandatory provisions of this Act. Other subsequent changes of the balance sheet shall be made only if supported by business reason, and with consent of the tax office. The tax office must consent if the changes are supported by business reason.

(3) Profit may be computed as the excess of business receipts over business deductions, if there is no legal obligation to keep books, and if books are not kept voluntarily, either. (*balance omitted*) 17.2

(4) The term business deductions means expenses or expenditures caused by a trade or business. In any case, business deductions are: **19.3**

1. *(omitted; concerns social welfare contributions)*
2. a) Contributions fixed by a contract to pension funds in the meaning of the Pension Fund Act . . .²⁾
(balance omitted)
 - b) Contributions to hardship and other relief funds of a trade or business . . .
(balance omitted)
3. Contributions to the worker's council fund not exceeding 3% of the total salaries.
4. An "invention allowance" is granted for expenses incurred for the development or improvement of inventions valuable for the (Austrian) economy, except for administration costs and distribution costs, as well as for expenses on fixed assets ("research and development expenses"). The value for the economy of an aimed at or an achieved invention has to be shown by a certificate by the Federal Minister for Economic Affairs. The certificate is not required, if the invention is already protected under patent law. **19.8.3**
 - As a general rule, the invention allowance amounts to a maximum of 12% of the research and development expenses.
 - A special invention allowance of up to 18% may be applied for if the inventions are not left to another person for substantial exploitation. There is substantial exploitation if the income derived from the exploitation by another person in one financial year exceeds 25% of the research and development expenses of such financial year.
5. Dotations from business property for the realization of
 - research tasks or
 - teaching tasks for the education of adults concerning academic teaching in the fields of science or art and corresponding with the General University Studies Act or the University of Arts Studies Act,
 as well as for scholarly publications and documentation connected herewith, if made to the following institutions:
 - a) Universities, Universities of Arts *(balance omitted)*
 - b) – e) *(omitted)*

The requirements of lit d) and e) . . . (*balance of this sentence and next sentence omitted*). The dotations are deductible in as far as they do not exceed together with dotations in the meaning of No 6 a total of 10% of the profit of the last preceding financial year.

6. Dotations from business property, if made to
 - a) the Austrian National Library, the Diplomatic Academy, the Austrian Archeological Institute and the Institute for Austrian Historical Research for the performance of the tasks to which such institutes are bound by law,
 - b) Museums of corporate entities under public law,
 - c) The "Bundesdenkmalamt".

The last three sentences of No 5 of this paragraph shall be applied.

(5) (*omitted*)³

(6) If prepayments for the cost of counsel, surety, debt, guarantee, rent, trusteeship, agency, distribution, and administration need not be capitalized, they shall be spread proportionately over the period for which they are paid, unless they concern only the current and the following year.

(7) (*omitted*)⁴

(8) (*omitted*)⁵

(9) (*omitted*)⁶

(10) (*omitted*)⁷

(11) Concerning the dotations to and distributions from incorporated foundations the following shall apply: Dotations to incorporated foundations are business deductions, if the purpose of the incorporated foundation serves exclusively the purpose of a trade or business of the founding entrepreneur or several financially affiliated enterprises. Dotations from a founding employer to incorporated foundations made with the purpose of supporting employees of the business are only deductible as business deduction to the extent mentioned in § 4 No 2 lit b and under the following requirements:

- The sole purpose of the incorporated foundation is the support of the employees of the business in case of age, invalidity and helplessness to an appropriate extent.
- The category of beneficiaries of the incorporated foundation is limited to employees or former employees of the trades or businesses of one employer or several financially affiliated businesses (sponsoring businesses). The spouse or lifetime companion of (former) employees and children (§106) and persons, whose salaries and other remunerations of any kind for their activity in the business are classified as income from other professional services according to § 22 No 2 are also treated as employees.
- The category of beneficiaries is stated explicitly in the foundation instrument or in the additional instrument.

- The exclusive and immediate use of the property and the income of the incorporated foundation for the support of the employees is insured by the foundation instrument and in fact permanently.
 - The persons belonging to the category of beneficiaries are not obligated to pay fees or other contributions continually.
 - It is provided by the foundation instrument that in case of the liquidation of the incorporated foundation the property shall be distributed only to the beneficiaries and in the absence of beneficiaries, it may only be used for social welfare, charitable or religious purposes in the sense of the fiscal code.
2. a) The distributions from incorporated foundations to beneficiaries or ultimate beneficiaries are assessed with the cost which would have been incurred for the single asset or for other property at the moment of the dotation (deemed acquisition costs).
 - b) The distributions of trades or businesses, separate divisions of a trade or business, or shares of co-entrepreneurs shall be treated as universal succession concerning tax-free reserves and tax-free amounts according to §§ 10, 12 and 116 par 2.

(12)⁸⁾ The repayment of contributions to capital from a corporation to its shareholders shall be deemed as a disposition of a participation, even if it is classified as a consumption of income. Both for the net-equity comparison method (§ 4 par 1, § 5) as well as for the cash method of accounting (§ 4 par 3) a reduction or an increase of the assets of a trade or business according to the following provisions shall result for the shareholder:

1. Contributions to capital in the sense of this provision are the paid-in share capital of a corporation or commercial cooperatives and other contributions which have to be reported as capital reserves – in the case of commercial cooperatives: had to be reported as capital reserves – including participation capital and participation rights in the sense of § 8 par 3 No 1 of the Corporate Income Tax of 1988, as well as those liabilities which are classified as hidden share capital or as capital of a corporation for tax purposes.
2. Contributions which fall within the terms of § 32 no 3 or which have lost the character of a profit reserve or of a balance sheet profit as a consequence of a reorganization according to the reorganization which falls within the terms of the Reorganization Tax Act are not classified as repayments.
3. The corporation has to record the amount of the contributions to capital in an evidence account and must keep continuous track of its increase through further contributions to capital and dotations and of its reductions through distributions or otherwise. The evidence account must be enclosed to the annual tax return in an appropriate way.

1) These are different German denominations for virtually the same meaning.

2) Wording recently changed by BGBI 1990/281.

- 3) This paragraph concerning travel expenses is not applicable, by common sense, for the computation of profit of a corporation.
- 4) Concerning the capitalization of certain costs of buildings rented to non-employees for housing purposes.
- 5) Concerning certain forestry income.
- 6) Concerning voluntary membership in certain business or professional clubs.
- 7) Concerning change in the method of computation of income.
- 8) Par 12 introduced by BGBI 1996/1997 effective 1996/12/31.

(Computation of) Profit of Registered Trades or Businesses 17.2

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§ 5. (1) For the computation of the profit of tax payers whose firm name is registered with the Commercial Register and who derive income from other trade or business (§ 23) the accounting principles of commercial law shall be applicable unless mandatory provisions of this Act require otherwise. However, § 4 par 1 last sentence shall not be applied. If a person participates, as a co-entrepreneur, in the trade or business of a person registered with the Commercial Register then also such partnership¹⁾ is deemed to be a registered trade or business.

(2) For registered professional partnerships the first paragraph of this section shall be applicable only if books must be kept under sec 125 of the Fiscal Code.²⁾

1) Silent partnership regulated by §§ 21–23 of this Act.

2) This paragraph added by BGBI 1990/257. Applicable from January 1, 1991 on.

Valuation

§ 6. The following applies for the valuation of each single asset of the business property: 17.2
19.2.3

- 1. Depreciable fixed assets shall be stated at acquisition or production costs, less depreciation according to §§ 7 and 8 of this Act. As for land and forestry and (other) trade or business,¹⁾ the good will is deemed to be a depreciable fixed asset. If the going concern value is lower, it may be stated. The term “going concern value” means the amount which would be assessed by a purchaser of the enterprise as part of the total purchase price for the single asset; for such purposes, the purchaser shall be assumed to carry on with the trade or business. Notwithstanding the cases of No 13 of this Section, the value of assets having belonged to the fixed assets of the business at the close of the preceding financial year must not exceed the preceding balance sheet value.²⁾
- 2. a) Non-depreciable assets and current assets shall be stated at acquisition or production costs. If the going concern value is lower it may be stated. The taxpayer can state assets which have belonged to the business property at the close of the preceding financial year in the following financial years with the going concern value even if this value exceeds the preceding balance sheet value; 19.2.1