

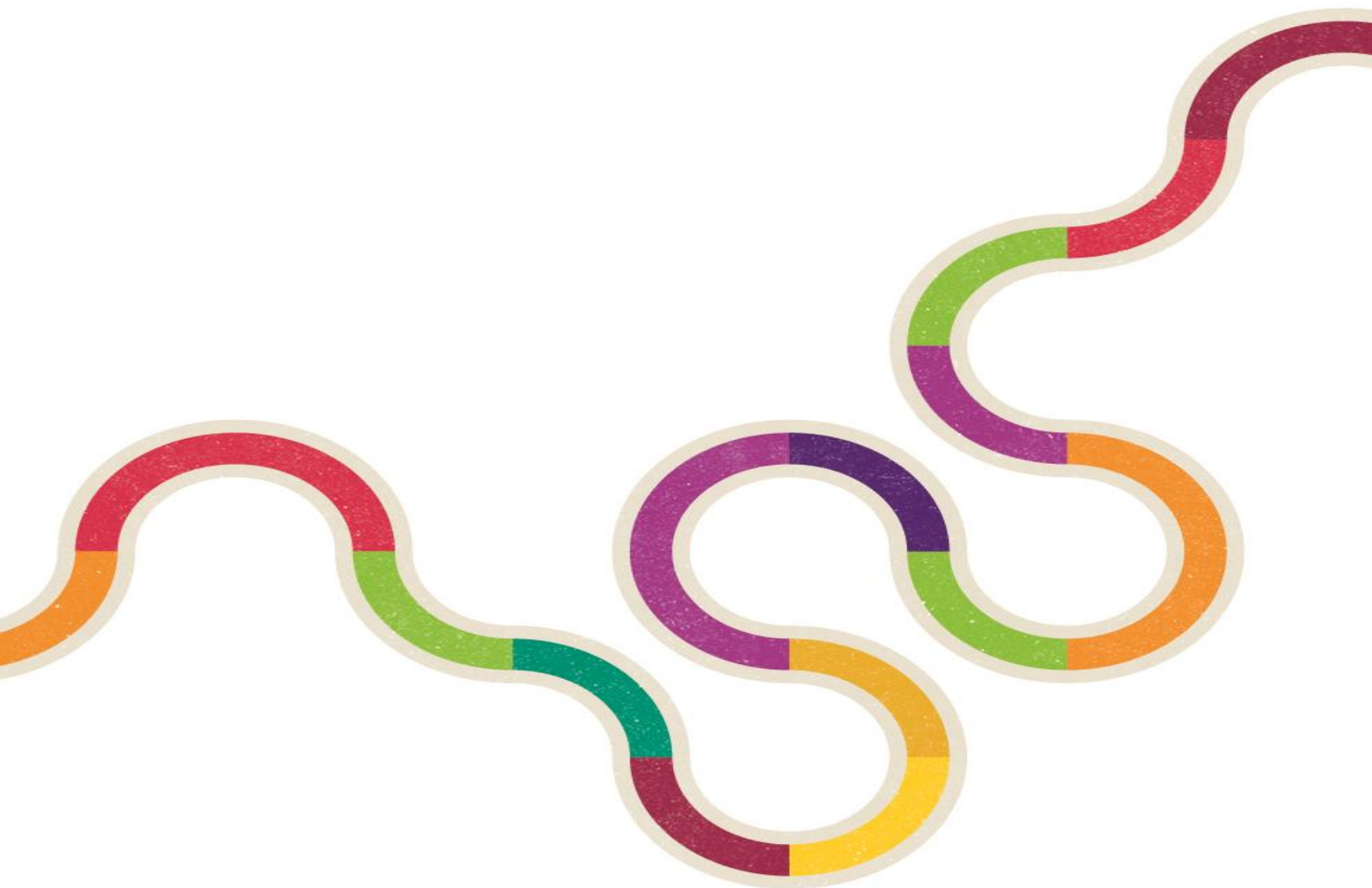


Grant Thornton
Unitreu

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Doing business in Austria 2016

A guide for investors



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Introduction

Purpose of this guide

Its favorable geographic location in the middle of Europe, bordering on Western European and Eastern European countries, its positive business climate, highly skilled labor force and its stable political environment make Austria attractive to foreign investors worldwide.

This guide has been prepared for the assistance of those interested in doing business in Austria. It is intended to afford general information on Austria's tax and legal system and other matters of interest for anybody looking into investment opportunities in this country. In spite of our efforts to deliver up to date and accurate information, we cannot guarantee its accuracy in all cases or in the future as unclear wordings or inadvertent errors can occur and applicable laws, rules and regulations often change. The information offered in this brochure is not intended to serve as legal, accounting, financial or tax advice. Its purpose is to make you aware of the various issues so that, if the need arises, you have the chance to consult an auditor, tax advisor or lawyer of your choice, who will consider the specific circumstances of each and every individual case and on this basis will be able to provide a thorough analysis of the situation. This guide contains only a brief summary of the various subjects and includes legislation in force as of January 2016.

If you require any further information, please do not hesitate to contact your nearest Grant Thornton member firm office.

About us

Grant Thornton Unitreu is ranked among the top 8 in the industry in Austria and offer an extensive portfolio of services in assurance, tax services, outsourcing and specialist advisory services.

Client relationships are partnerships. They are based on personal commitment, expertise, diligence and service quality as well as on trust and confidentiality. The over 140 employees of Grant Thornton Unitreu are not only highly skilled auditors and advisors, they go all the way to help build our clients' success. Our tried and tested partner-led teams stand for a risk-oriented audit approach and a solution-oriented consulting approach. Our Austrian offices (see at the end of this brochure) provide services to national and international clients in cooperation with our partners in the network of Grant Thornton International.

Short Facts :

Grant Thornton International Ltd

733 offices
133 countries
more than 42.000 employees

Grant Thornton Austria

3 offices
140 employees

I. Country profile

Geography and population

Austria is a federal republic with a total area of 83.879 square kilometers (i.e. 32.377 square miles) and consists of nine provinces (Bundesländer). The nine provinces are: Burgenland, Carinthia (Kärnten), Lower Austria (Niederösterreich), Salzburg, Styria (Steiermark), Tyrol (Tirol), Upper Austria (Oberösterreich), Vienna (Wien) and Vorarlberg. It lies in southern central Europe, covering parts of the eastern Alps and the Danube region.

The country has a population of more than 8 million people (8.584.926 in 2015), whereby 1,8 million live in Vienna, the capital of Austria. Its other major cities such as Graz, Linz, Salzburg, Innsbruck or Klagenfurt have populations between 50.000 and 300.000.

Neighboring countries are Germany, the Czech Republic, Slovakia, Hungary, Slovenia, Italy, Switzerland and Liechtenstein.

Political system

Austria is a parliamentary democracy. Parliament consists of two chambers, the National Council (Nationalrat) and the Federal Council (Bundesrat). The National Council is elected directly by the people and has 183 members. Members of the Federal Council are delegated by the parliaments of the Austrian provinces whereby each province is represented according to its population (3-12 members).

Following the general elections for the National Council in 2013 the seats were distributed among the political parties as follows:

- 52 Social Democratic Party of Austria (Sozialdemokratische Partei Österreichs – SPÖ);
- 50 Austrian People's Party (Österreichische Volkspartei – ÖVP);
- 38 The Freedom Party (Freiheitliche Partei Österreichs – FPÖ);
- 6 Team Stronach for Austria (Team Stronach für Österreich);
- 24 Green Party (Die Grünen);
- 9 Neos – The New Austria (Neos – Das neue Österreich)
- 4 Non-attached/independent deputy



The Austrian Federal Chancellor (Bundeskanzler) is the head of government. As of May 9th 2016 Christian Kern of the Social Democratic Party of Austria (SPÖ) was sworn in as Federal Chancellor of Austria. In September 2014 Reinhold Mitterlehner of the Austrian People's Party (ÖVP) was appointed as Vice Chancellor. Together the two parties head a coalition government between the Social Democratic Party of Austria and the Austrian People's Party. All members of the government are responsible to the National Council, which is elected by the people at least every five years.

The initiative for legislation is taken by the government in most cases, whereby the bill must be adopted unanimously at the Council of Ministers (Ministerrat) and is then voted on by the National Council. The Federal Council or petitions for a referendum may also lead to legislative initiatives. The head of state is the Federal President (Bundespräsident). Heinz Fischer of the Social Democratic Party of Austria (SPÖ) was elected in 2004 as the Federal President of Austria and re-elected in 2010 for a second term. The Federal President is elected directly by the people for a six-year term and can run again for a second term. His involvement in day-to-day governmental activities is limited as he may only act at the request of the Cabinet (i.e. the Ministers), pending approval of the competent minister. His powers are limited to vetoing and rejecting proposals, appointing and dismissing the Cabinet and dissolving the parliament. One of his main functions is the representation of Austria abroad. The Chancellor countersigns the federal acts executed by the President. If the President is unavailable, all his duties are assigned to the Chancellor for a period not to exceed 20 days.

The nine federal provinces (Bundesländer) of Austria are ruled by provincial governments presided over by a Governor (Landeshauptmann). On a community level City Councils (Gemeinderäte) enact regulations but have no law-making powers. They are elected by the people living in the respective community.

International relations

Austria joined the European Union (EU) on January 1st, 1995 and is also a member state of the Schengen Accord (generally no border controls are required when crossing between states that are parties to that Treaty). Furthermore Austria was among the very first members of the Economic and Monetary Union (EMU). In addition Austria headquarters the International Atomic Energy Agency, the United Nations Industrial Development Organization (UNIDO), the United Nations Commission on International Trade Law (UNCITRAL) and the Organization of Petroleum Exporting Countries (OPEC) and is a member of the most important international organizations, including:

- United Nations (UN);
- International Monetary Fund (IMF);
- World Trade Organization (WTO);
- Organization of Economic Cooperation and Development (OECD);
- Council of Europe (Europarat);
- World Bank;
- Interamerican Development Bank;
- Asian Development Bank;
- NATO Partnership for Peace.

Legal system

Austria has an independent judiciary applying a “civil law” system that goes back to Roman law and partly to other legal sources. Austrian law is predominantly statute law. Statutes are passed by the federal legislature as well as by that of the provinces. The provinces have e.g. the power to legislate on the acquisition of certain types of real estate, land zoning and environmental protection.

Constitutional law is at the top of the hierarchy of legal norms in Austria, but subordinate to European law. The main source of constitutional law is the Constitution. Subordinate to constitutional law are ordinary statutes (einfache Gesetze). Within the frame of these statutes administrative authorities may issue regulations (Verordnungen) on matters within their area of competence if the statute formally authorizes them to do so. Decrees (Erlässe) are issued by

administrative authorities and directed at the officials of the respective authority. Orders (Bescheide) are administrative decisions that address an individual. Court judgments are only legally binding to the parties to the court proceeding.

The Jurisdiction Act (Jurisdiktionsnorm) defines the following hierarchy of ordinary courts that have jurisdiction over all civil and commercial disputes that are not referred to special courts (e.g. Cartel Courts, Labor Courts etc.):

- District Courts (Bezirksgerichte);
- Superior Courts (Landesgerichte);
- Courts of Appeal (Oberlandesgerichte);
- The Supreme Court (Oberster Gerichtshof).

A claim must be filed in the first instance either with a District Court or Superior Court, depending on the nature of the claim and the amount in litigation. Appeals from District Courts are decided by the Superior Courts in panels of three judges. Appeals from the Superior Courts as trial courts are heard by the Courts of Appeal in panels of three judges. In cases that are deemed important due to the nature of the claim or the amount involved a further appeal to the Supreme Court in Vienna is possible. The Supreme Court decides in panels of five judges. Its decisions are frequently used in legal argument, though they are only binding for the parties to the case.

In Vienna there is a special court for commercial matters, the Commercial Court (Handelsgericht und Bezirksgericht für Handelssachen), in the other provinces the local Superior Courts act as Commercial Courts.

The Constitutional Court (Verfassungsgerichtshof) and the Administrative Court (Verwaltungsgerichtshof) review the activities of the various administrative bodies including those of the provinces. The Constitutional Court thereby reviews whether laws are in conformity with the Constitution, while the Administrative Court examines whether acts of administrative bodies such as e.g. assessments by a tax office are in conformity with the respective law.

Language

German is the business language in Austria. Traditional regional languages are not relevant in terms of business communication.

Austrian dates are written DD.MM.YYYY. Austrian digits of thousands are separated by a dot, not by a comma.

Summary

Austria is a highly developed country in the heart of Europe. Many factors make Austria an interesting business location for investors. Among these are the stability of its political and legal system influenced by the country's membership in the European Union and the European Monetary Union, a good infrastructure, a well trained labor force and a high standard of living.

Currency

Since 2002 Austria has been using the EURO as its official currency.

Business hours/time zone

The working week of about 40 hours begins daily between 7 and 9 am. Since January 1st 2008 the federal restrictions on opening hours for retail outlets have been amended. Per the current regulations shop opening is allowed from Monday to Friday between 6 am and 9 pm and on Saturday between 6 am and 6 pm, with certain exceptions for bakeries. Total opening hours within a calendar week may however not exceed 72 hours. The Governor (Landeshauptmann) may issue a regulation that allows longer opening hours under certain conditions.

Austrian standard time is +1 hour GMT. Like in other countries, Austrian standard time is set forward for one hour during the summer (so-called summertime or daylight saving time).

Public holidays

There are thirteen public holidays per year: New Year's Day (January 1st), Epiphany (January 6th), Easter Monday (dates vary), Labor Day (May 1st), Ascension Day (dates vary), Whit Monday (dates vary), Corpus Christi (dates vary), Assumption of the Virgin Mary (August 15th), National Holiday (October 26th), All Saints' Day (November 1st), Immaculate Conception (December 8th), Christmas Day (December 25th) and Boxing Day (December 26th).



Economy

Austria has a social market economy, in which the economics of the free market are controlled by restrictions and the Austrian Social Partnership (Sozialpartnerschaft), a cooperation of the representatives of employer associations and employee associations that negotiates compromises to realize social and economic welfare. This system contributes to Austria's low strike statistics and economic stability.

Membership in so-called Chambers (Kammern), business organizations which have significant influence on day to day political decisions, is compulsory for most working people. The most important ones are the Economic Chambers (Wirtschaftskammern), the Federation of Austrian Industrialists (Vereinigung österreichischer Industrieller), the Chambers of Agriculture (Landwirtschaftskammern), the Austrian Trade Unions Federation (Österreichischer Gewerkschaftsbund) and the Chambers of Employees (Kammern für Arbeiter und Angestellte). Auditors and tax advisors are represented by the Chamber of Public Accountants (Kammer der Wirtschaftstreuhänder).

Germany and Italy are among Austria's most important trade partners. Germany accounts for approximately one third of Austria's exports and 38% of Austria's imports.

The major sector of the economy is services (70%) followed by industry, energy, building and extraction (28,5%), and agriculture and forestry (1,5%).

The Gross National Product amounted to EUR 337,29 bn. in 2015 (36.608 EUR per inhabitant). Inflation according to the consumer price index was 0,9 % in 2015.

Economic growth

GDP growth amounted to 2,4% in 2015 (compared to 2,0% in 2014). Per comparison the average growth rate of EU member countries amounted to 1,4% in 2014, those of members of the European Monetary Union to 0,9% (Source: Eurostat Database, June 2015).

Employment levels

The average unemployment rate 2015 was 5,7% according to the international definition.

Standard of living

Austrians enjoy a comparatively high standard of living with a high proportion of middle class earners. Levels of tax and social security payments are comparatively high within Western Europe. The average life expectancy is 79,2 years for men and 84,0 years for women.

Cost of living

The cost of living in Austria is slightly above the EU average. According to the Eurostat Database the comparative consumer price level amounted to 110,7, whereby the average over 27 EU member countries forms the basis and therefore equals 100. In 2006 it amounted to 102.

II. Regulatory environment

Trade registration

The Austrian Trade Code (Gewerbeordnung) defines trade as any activity carried out on a commercial scale meaning independently, on one's own account, at one's own risk, regularly and with the intention of making profit. The code does not apply to agriculture and forestry, the professions and activities subject to specific regulations such as banking and insurance.

As a general rule anyone can carry on a trade in Austria after notifying the Trade Authority (Gewerbebehörde). For foreign natural persons the right to carry on a trade is subject to the condition that the person holds a residency title which allows the exercise of a trade. Individuals who are allowed to trade in another country are allowed to sell goods in Austria if reciprocity applies and thus an Austrian would also be allowed to trade in the foreigner's home country. Citizens of EU member States are treated just as Austrian citizens by the Austrian Trade Authorities.

For many trades a proof of qualification (Befähigungsnachweis) is required, which demonstrates that the individual has the technical and commercial qualification as well as the skills and experience to carry out independently all such activities as may be typical of his trade. Such qualification can usually be demonstrated by passing an examination or by evidence of prior experience in the respective field of business. Only for a few types of business a license must be obtained as a prerequisite for being active in that line of business. Depending on the type of trade additional conditions, such as suitability of the premises or proof that the applicant is sufficiently reliable, might need to be met before the Trade Authority issues a license. Since legal entities cannot personally carry on a trade, they must appoint a suitable representative under trade law.

The Trade Authority can impose a fine when anyone is doing business in Austria without having applied for the necessary trade license (Gewerbeberechtigung). In addition any competitor could seek a cease and desist order in such circumstances as carrying on a business without the necessary license is considered a violation of the Austrian Unfair Trade Practices Act (Gesetz gegen den unlauteren Wettbewerb).

As part of the registration procedure a registration fee needs to be paid for each trade applied for in addition to the fee for the mandatory membership in the local Economic Chamber (Wirtschaftskammer). The amount of the fee depends on the type of trade applied for.

For operating a plant or factory, an industrial license (Betriebsanlagengenehmigung) is necessary. The trade authority requires compliance with safety or environmental provisions for issuing an industrial license (also after the license has been issued).

Firm names

The name of the company must be suitable to identify the company and distinguish it from other companies and must not include details that may be misleading concerning the business. The Federal Economic Chamber issued guidelines regarding company names and can also be consulted prior to registration in order to avoid unlawful registrations. Austrian law is rather strict regarding the usage of terms that imply a certain regional standing, size or type of company or business. Examples are certain geographical terms ("Austria", "Europe", "International") or words that describe the business such as "factory", "bank", "finance". Furthermore, the legal form of the company must be clearly indicated in its name.

Business letters

Business letters, such as invoices, receipts, lists of prices, faxes and e-mails of companies must conform to certain standards which are mostly laid down in the Austrian Companies Code (Unternehmensgesetzbuch) and the Austrian Trade Code (Gewerbeordnung).

All business letters and order forms which are directed to a specified addressee, including e-mails, must generally contain:

- the company name;
- the legal form (commonly known abbreviations are allowed);
- the seat of the company;
- the location where the trade has been registered;
- the court where the company is registered with the Registrar of Companies;
- the number under which the company has been entered into the Registrar of Companies;
- the data processing number (DVR number).

Depending on the legal form of the company additional disclosures need to be made such as:

- sole entrepreneurship: the name of the entrepreneur if different from the firm name;
- Austrian branch office of a foreign company: the information above must be provided both regarding the Austrian branch and regarding the foreign company;
- GmbH & Co KG: In addition to the company name of the GmbH & Co KG, the company name of the GmbH as general partner as well as the information for the GmbH mentioned above.

Invoices must meet additional requirements according to the Value Added Tax Act (Umsatzsteuergesetz) in order to be acceptable for VAT deduction purposes. Please refer to Chapter VII. for details.

Anti-trust regulations

According to the Cartel Act (Kartellgesetz) cartels are defined as agreements and other coordinated behavior between entrepreneurs or enterprises etc. which are intended to restrain competition or which result in a restraint of competition, effectively, even if no intent to such restraint exists. Even in the absence of a written or informal agreement any concerted market behavior unless coincidental is also deemed to be a cartel. Thus recommendations regarding prices, profit margins or rebates are also deemed to be a cartel unless it is expressly stated that the recommendation is nonbinding and no economic or other pressure is exercised to enforce the recommendation. Such anticompetitive practices are prohibited unless an exception applies. The most important exceptions are for cartels of minor importance considering the market share and economically justified cartels.

Per the Cartel Act all cartels are legally void and can not be enforced by any party to the agreement. Furthermore the Cartel Court may impose fines of up to 10% of worldwide turnover in the last business year.

The Cartel Court is also entitled to prohibit an entrepreneur from abusing a dominant market position and e.g. order changes to the structure of the undertaking such as deconcentration measures.

The Austrian Federal Competition Authority (Bundeswettbewerbsbehörde) is part of the European Network of Competition Authorities and investigates alleged competitive distortions.

Public procurement law

The Federal Act on Public Procurement (Bundesvergabegesetz) applies to all public contracts procured by contracting authorities or sector contracting entities (in the water, energy and transport sector) and sets down the rules for the award procedure and the remedy regulations for procurement of public contracting entities. Above certain thresholds the EU Publication Office has to be informed and a standard notice is published in the Official Journal of the EU.

Merger control

Austrian merger control requires pre-merger notification to the Federal Competition Authority (Bundeszweibewerbsbehörde) and clearance before the closing of concentrations that fulfill certain turnover thresholds on the worldwide market and on the Austrian market. Foreign and international concentrations are subject to Austrian merger controls if the thresholds are met and the transaction affects the Austrian market. Concentrations to which the EC Merger Control Regulation applies are exempt from Austrian merger control law unless they are media concentrations. If the concentration meets the requirements for pre-merger notification but is implemented without prior clearance the transaction is void under civil law and a fine of up to 10% of the worldwide turnover in the last business year may be levied.

Insolvency law

In the case a company becomes insolvent, i.e. when it is unable to pay its debts when they become due or is excessively levered, each managing director is obliged to file for insolvency proceedings (bankruptcy or composition) immediately (within 60 days).

After the bankrupt or an entitled creditor filed for bankruptcy at the court an administrator (Masseverwalter) is appointed. The administrator is usually an attorney-at-law and takes over control of the insolvent company. The administrator's main target is to save the company's existence.

All creditors must file their claims in court to retain their claim during the proceedings. The employee's claims are covered by the insolvency fund (Insolvenz-Entgelt-Fonds, IEF).

Shareholder loans given to a company during a financial crisis may be classified as equity capital (eigenkapitalersetzende Gesellschafterdarlehen) under the Equity Capital Substitution Act (Eigenkapitalersatzgesetz) leading to a subordination to claims of other creditors. Under this law, a company is considered to be in a financial crisis if it is insolvent or its liabilities exceed its assets or if the financial statements show an equity ratio of less than 8% and the fictional debt repayment period exceeds 15 years. The regulations apply to shareholders with a share of at least 25%.

Unfair competition

The Unfair Trade Practices Act (Gesetz gegen unlauteren Wettbewerb) prohibits specific misleading or aggressive measures such as deceiving the consumer in relation to one or more essential elements of the contract or harassment, coercion, undue influence or psychological pressure to buy. Comparative advertising is unlawful unless such comparison is true and complete, without aggressive tendency and does not abuse the competitor's trade name. Bribery constitutes a criminal offense. Trade names are protected and it is unlawful to use a name or specific designation of a business in a way likely to cause confusion with another person with a superior priority to that name or designation. The Act on Price Labeling (Preisauszeichnungsgesetz) requires visible display of the prices of merchandise and services offered to consumers. Free of charge premiums are permitted only under certain conditions e.g. when they are of minor value, product samples or closely related to the product sold.

Summary

Doing business in Austria entails observing and complying with a relatively complex regulatory environment. Apart from lawyers and consultancy firms, legal and other advice can be obtained from the Federal Ministry for Economics and Labor or the Federal Economic Chamber.

Consumer protection

In addition to the Consumer Protection Act (Konsumentenschutzgesetz), the regulations regarding contracts and general conditions of sale according to the General Civil Code (Allgemeines Bürgerliches Gesetzbuch), the Product Liability Act (Produkthaftungsgesetz) and the controls established for certain businesses (pharmaceutical and food industry, insurances, banks etc.) all serve the protection of consumer rights.

Rights of cancellation exist for direct selling, i.e. so called door-to-door contracts. Austria has also implemented the EU directives regarding e-commerce and distance contracts which foresee similar rights of cancellation. Companies that sell via the internet have to comply with certain regulations including the timely information in writing of consumers on the conditions of the contract.

Contractual clauses that violate legal provisions such as e.g. a waiver of any and all damage claims are null and void. Both the Consumer Protection Act and the General Civil Code give examples of such illegal clauses and also foresee clauses that are invalid if not explicitly agreed in the course of specific negotiations between the parties to the contract.

Other aspects of consumer protection are detailed regulations on warranties for products and on general product liability. A warranty claim must be raised within two years for movable property and three years for immovable property. For defects appearing within six months after delivery the seller has the burden of proof on whether the goods were defective at delivery /take-over or not.

Import and export controls

Regarding restrictions on imports and exports EU law takes precedence over conflicting Austrian foreign trade law. The framework of EU rules on external trade does as a general rule not subject imports and exports to restrictions, but there are certain exceptions such as e.g. regarding art objects or radioactive waste. The export of war materials and of items that can be used for both civil and military purposes as well as the export of nuclear substances and technology for the production of nuclear materials require an authorization by the Federal Minister for Economics and Labor (Bundesminister für Arbeit und Wirtschaft). Regarding certain toxic chemicals and raw materials a notification of the Federal Minister for Economics and Labor is required. Import and export of drug precursors is subject to authorization in advance by the Federal Minister for Health, Family and Youth (Bundesminister für Gesundheit, Familie und Jugend). Austria is bound by decisions of the UN Security Council (UNO – Sicherheitsrat) regarding embargoes.

The Trade Statistics Act (Handelsstatistisches Gesetz) imposes the obligation to report goods that are traded within the EU or with third countries.

Customs duties

According to the principle of the free movement of goods no customs duties are levied on the trade of goods between EU member states. For statistical purposes trade movements are registered (INTRASTAT).

In general goods entering the EU are subject to European customs duties according to the Common Customs Tariff (Gemeinsamer Zolltarif) and European customs law applies regarding exemptions and preferences.

For imports of goods from non-EU countries import value added tax (Einfuhrumsatzsteuer) is levied at the normal Austrian VAT rates.

Price controls

Presently only pharmaceutical drugs, petroleum, certain agricultural goods and very few other products are subject to price control. In 2002 the markets for electricity and natural gas were liberalized but are monitored and regulated by an authority called E-Control when necessary.

Real Estate Transactions

All nine Austrian provinces have special statutes that deal with the acquisition of real estate in Austria and also with real estate transactions involving foreigners. Since Austria's accession to the EU real estate transaction laws ensure equal treatment of EU and Austrian citizens. Under certain conditions the purchase of real estate and certain other rights involving real estate require the approval of the land transfer authorities (Grundverkehrsbehörden).

The land in Austria is divided into separate pieces of real estate which carry a lot number and are registered in the Land Register (Grundbuch). The Land Register is a public document. It is administered by the District Courts (Bezirksgerichte). Each lot is registered in a separate file, disclosing the ownership, mortgages, easements, real burdens, construction rights, leases, rights of repurchase, rights of pre-emption and prohibitions of sale and encumbrance. According to the principle of confidence one may assume that the Land Register reflects all rights and obligations with respect to a given piece of land accurately. Therefore the acquisition, the transfer, the limitation and the suspension of rights to real estate can only be effected by registration in the Land Register. As long as a legal transaction involving real estate is not registered, the party to the contract has only a contractual claim for performance against the other party but not legal title to the real estate. Since the registration of the title usually takes some time an application for entry of priority notice (Rangamerkung) should be filed with the Land Register in the mean time.

Exchange control

Capital transactions and monetary transactions with foreign countries are in principle not subject to any restrictions other than those required in the context of European foreign and security policy. In order to collect the data required for the compilation of the national balance of payments, the Austrian National Bank requires natural persons and legal entities to report foreign direct investments, portfolio investments, cross-border derivative transactions etc. for statistical purposes. Austrian banks must establish and register whether a customer is a resident or a non-resident so that transfer activities to residents by non-residents and vice versa can be reported.

III. Finance

Banking system

Since the European Central Bank sets the guidelines for EU monetary policy, the function of the Austrian National Bank (Österreichische Nationalbank) became mainly a supervision function. Centralized clearing and the issuance of guarantees in connection with exports and foreign investments are the duty of the Austrian Control Bank (Österreichische Kontrollbank).

The Financial Market Authority (Finanzmarktaufsichtsbehörde) supervises all matters regarding banking, insurance, pension funds and securities and also grants banking licenses. The Austrian National Bank (Nationalbank) has also certain hearing and information rights and can conduct investigations on behalf of the Financial Market Authority. Foreign credit and financial institutions that wish to operate in Austria have to obtain a banking license. Any cross-border provision of banking services conducted in Austria is unlawful unless a banking license has been obtained. In order to qualify for the issuance of a license a certain legal form, requirements regarding minimum staff, minimum premises etc of the Austrian branch, minimum equity capitalization and requirement concerning the managing directors and members of the managing board have to be met. If a license has already been obtained in a EU member state only certain notifications to the Financial Market Authority are necessary.

While the anonymity of savings accounts has been meanwhile abolished, banking secrecy is well protected in Austria. Although an obligation to disclose information e.g. exists in a criminal proceeding including those resulting from an intentional financial offense according to tax law (vorsätzliches Finanzvergehen), the authorities cannot demand information in proceedings concerning minor financial irregularities or in the process of obtaining information for the initiation of a criminal proceeding. In 2015 the Austrian Federal Ministry established a new central register of all bank accounts containing the bank account number and personal data of the account holders for fraud combating purposes. This database is available to the tax authorities as well as public prosecution department and criminal courts under certain limitations. The EU directives regarding money laundering have been implemented and the identity of customers has therefore to be verified and the competent authorities need to be notified if a money laundering transaction is suspected.

Any credit institution which receives deposits from the general public must join a deposit insurance scheme (Einlagensicherungssystem) which covers deposits without limitation up to December 31st 2009. Beginning January 1th 2010 coverage is limited to EUR 100.000 per person per bank. In some cases, even up to EUR 500.000, limited to a period of 12 months.

Capital markets

The Vienna Stock Exchange (Wiener Börse) is the only securities exchange in Austria. It is regulated by the Financial Market Authority (Finanzmarktaufsichtsbehörde). The requirements for admission into the official market (Amtlicher Handel) are more rigorous so that mainly securities with a high trading volume are traded on this market. In addition there is the semi-official market (Geregelter Freiverkehr) where less strict regulations apply.

Austrian banks are the key players on the Austrian securities market. They deal in securities for their clients on a commission basis and are able to match the bulk of the orders in off-floor transactions which reduces the volume of trade on the Vienna Stock Exchange itself.

The Vienna Stock Exchange has a cooperation agreement with the German Stock Exchange (Deutsche Börse Gruppe) and also uses the same computerized trading system XETRA.

The regulations that apply to first public offers of transferable securities or other investments are laid down in the Capital Market Act (Kapitalmarktgesetz) and include an obligation to publish a prospectus, and the scrutiny of the prospectus by qualified persons. The Stock Exchange Act (Börsegesetz) also contains provisions regarding the publishing of a prospectus and prospectus liability in connection with transferable securities traded on the Vienna Stock Exchange. Raising finance through the Stock Exchange is normally only suitable for well established companies and will require the support of an investment bank and the publication of detailed information in support of the proposed issue. Consequently, the costs of such a public offering are considerable.

The Takeover Act (Übernahmegesetz) provides among others that anybody who acquires a direct or indirect controlling interest in an Austrian stock company listed on the Vienna Stock Exchange must notify the Takeover Commission (Übernahmekommission) and must make a public bid.

The EU insider trading regulations have been implemented in Austria.

The Austrian derivative market is operated by ÖTOB Austria's futures and options exchange (Österreichische Termin- und Optionenbörse). It is supervised by the Vienna Stock Exchange and its members are also members of the Vienna Stock Exchange. Spot trading in electricity takes place on the Energy Exchange Austria (EXAA) which is also controlled by the Vienna Stock Exchange.

Securities that do not fulfill the requirements for admission to the Vienna Stock Exchange can be traded via the multilateral trading facility (Multilaterales Handelssystem). It is operated based on a market-maker system and securities have only to comply with certain minimum standards set by the Financial Market Authority.

Venture Capital

Venture Capital plays a minor role in Austria and the volume of funds raised through venture capital funds is below the European average. This is partly due to the legal framework and the lack of government incentives that would make this investment type more attractive.

Subsidies and other sources of financing

The governmental agency in charge of financing and subsidies is the Austria Economic Service (Austria Wirtschaftsservice GmbH, AWS). Its services are mainly directed at small and medium-sized firms, start-ups and firms active in technology and innovation. It supports companies in all phases of growth.

There are various types of direct state support as well as subsidies, interest subsidies, low interest loans, state equity capital financing, state assumption of liabilities and state guarantees.

The main legal sources are the Federal Law on the Promotion of Small and Medium-Sized Enterprises (KMU-Förderungsgesetz), the Federal Law for the Establishment of the Austria Wirtschaftsservice (Austria Wirtschaftsservice – Errichtungsgesetz), the ERP Fund Act (ERP-Fonds-Gesetz) and the Start-Up Promotion Act (NeuFöG).

The European Recovery Programme (ERP Fund) for Austria is also run by Austria Wirtschaftsservice GmbH (AWS) and manages the funds provided by the former US European Recovery Program for the reconstruction of the European infrastructure after the Second World War. These funds are mainly provided in the form of low interest loans.

There are several support programs for research and innovation. A program run by the Federal Ministry for Transport, Innovation and Technology (BMVIT) supports small and medium-sized enterprises to gain access to research and innovation. Companies can apply annually to the Austrian Research Promotion Agency for this assistance which entitles them to use the services of research institutions free of charge. The Austrian Research Promotion Agency (Österreichische Forschungsförderungsgesellschaft) is the national funding institution for applied industrial research in Austria. The Austrian Science Fund (Wissenschaftsfonds, FWF) is Austria's central organization for the promotion of fundamental research.

The Austrian Hotel and Tourist Industry Bank (Österreichische Hotel und Tourismusbank) provides funding for the tourist industry.

Per the Start-Up Promotion Act (NeuFöG) corporate start-ups are exempt from stamp duties, federal administration fees, various payroll taxes, real estate transfer tax on the contribution of real estate, court fees for the registration with the Registrar of Companies etc. under certain conditions.

Summary

As in most countries available sources of finance in Austria are:

- public offering of shares and bonds via the Stock Exchange;
- banks;
- mortgages on property and leasing of equipment;
- investment from outside partners (private capital/ venture capital);
- governmental subsidies and grants for certain business undertakings.

IV. Company Law

Legal forms

Austrian company law (Gesellschaftsrecht) provides for a number of corporate and non-corporate legal forms. Those are:

Austrian legal name	Abbreviation	Translation
Aktiengesellschaft	AG	public limited company
Gesellschaft mit beschränkter Haftung	GmbH	limited liability company
Gesellschaft bürgerlichen Rechts	GesbR	civil law partnership
Offene Gesellschaft	OG	general partnership
Kommanditgesellschaft	KG	limited partnership
GmbH & Co KG	GmbH & Co KG	limited partnership with a limited liability company as a general partner
Societas Europaea	SE	European company
Niederlassung		branch
Einzelunternehmen		sole proprietorship
Stille Gesellschaft		silent partnership
Europäische wirtschaftliche Interessenvereinigung	EWIV	European Economic Interest Grouping

Corporate legal forms

Limited liability company (GmbH)

A limited liability company is a private limited company, governed by the Austrian Limited Liability Companies Act (GmbHG) and its respective articles of association.

Regulations applying to the limited liability company are more flexible than those for the public limited company, which makes it the most frequently, used corporate legal form in Austria. Since the shareholders of a limited liability company give direct binding instructions to the management (which the shareholders of a public limited company cannot), foreign investors generally prefer to establish a subsidiary or joint venture in the form of a limited liability company. Due to the limited liability of the shareholders of a GmbH, this type of company imposes a risk on its creditors. For this reason banks usually demand personal credit assurances of

shareholders such as guarantees or other securities for loans. Certain types of business can only be operated by companies with a certain legal form such as e.g. the insurance business in the form of a public limited company.

Formation costs of a limited liability company amount to approximately EUR 5.000.

Establishing a limited liability company

Founding a limited liability company requires the execution of a deed of incorporation, which must be in the form of a German-language notarial deed (Notariatsakt), before an Austrian notary public. The deed of incorporation contains the articles of association (Gesellschaftsvertrag) including a statement on the share quotas subscribed to by each shareholder.

The articles of association must contain at least the following provisions:

- firm name and corporate seat (within the boundaries of Austria) of the company;
- business purpose;
- amount of capital stock;
- exact amount of paid-in capital stock and each shareholder's portion thereof.

The shareholders are free to include other additional provisions e.g. regarding voting rights, representative authority of the managing directors or a authorized signatory (Prokurist), transfer of shares etc. A limited liability company can also be founded by one person.

Founders need not be Austrian citizens or residents and no official approval to incorporate a limited liability company is required. Founders may be represented by proxies in the incorporation process, but in this case the representative must be vested with a power of attorney which must be signed by the founder before a notary public and is attached to the deed of incorporation. If the power of attorney is signed outside Austria, the requirements regarding superlegalization of notary's signature depend on the applicable bi- or multilateral conventions.

The company begins to exist as a legal entity upon its entry into the Registrar of Companies. Registration requires the execution of a notarial deed of the articles of association and the appointment of the management. Various other documents such as specimen signatures of the managing directors, a list of shareholders etc. have to be attached to the application.

If the founders act in the name of the company and enter into contracts prior to the registration, they are personally and severally liable for any obligations towards third parties. After the entry of the company into the Registrar of Companies it may assume any liability created by its founders.

This may be done even without the consent of the creditor, as long as the liability is assumed within three months from the company's registration and if the creditor is notified thereof.

Summary

Foreign investors in Austria usually operate through a subsidiary or a branch. While branches are not set up as separate legal entities, subsidiaries can be Austrian companies of any legal form with all rights and obligations applicable to the legal form chosen.

A corporation commences to exist when the articles of association are adopted before a notary public. It exists as a legal entity upon its registration at the Austrian Registrar of Companies. The law regarding corporations is rather strict and formal. A partnership starts to exist if two or more persons, legal entities or corporations enter into a business relationship with a common business purpose. The structure of a partnership is often less complicated and more flexible than that of a corporation and its incorporation less formal. As opposed to corporations the partnership itself is not a legal entity but partly dealt with as if it was.

Capital stock and shareholders

The minimum stated capital stock was reduced from EUR 35.000 to EUR 10.000 for foundations between 1.7.2013 and 28.2.2014. Since 1.3.2014 the minimum share capital amounts EUR 35.000 again, but newly formed companies are able to use the foundation privilege (Gründungsprivileg). This means that the share capital (Stammkapital) amounts EUR 35.000 whereby the newly founded company has the possibility to limit capital contribution

(Stammeinlage) to EUR 10.000. One-half of this amount must be paid-up in cash prior to the company's entry into the Registrar of Companies. Payments must be made to a bank account of the company or of a managing director at their disposal and a confirmation by the bank must be provided. As regards the remaining part of the capital stock, the managing directors of the company have the statutory right to request payment from the shareholders at any time, as business may require.

Capital transfer tax in the amount of 1% of the capital contribution is levied. The Austrian Tax Amendment of 2014 disestablishes the capital transfer tax at the end of 2015. This means that capital transfer tax is only levied if the tax liability arises before January 2016.

Please refer to Chapter VII. in regard to the minimum corporate income tax.

The managing board

The managing board of an Austrian limited liability company consists of one or more managing directors (Geschäftsführer). The limited liability company is in principle represented by and acts through these managing directors. Only individuals, Austrian or foreign, resident or non-resident, may be appointed as managing director, not legal entities.

Upon formation of the company, one or more managing directors must be appointed. Thereafter, managing directors are appointed by separate resolution of the shareholders.

A managing director's appointment may be revoked by the shareholders at any time. The appointment and resignation of managing directors as well as the scope of their representation powers must be promptly reported to the competent Registrar of Companies.

The law provides for joint representation of the company by all managing directors. However the articles of association may foresee other rules of representation.

The managing directors are fully responsible for keeping all necessary company books and must also prepare the financial statements and the annual report.

Supervisory board

The Limited Liability Companies Act (GmbHG) requires the appointment of a supervisory board (Aufsichtsrat) only for certain types of limited liability companies. Companies not meeting the compulsory appointment requirements may voluntarily establish such a corporate body.

A supervisory board must be appointed e.g. when:

- the stated capital stock exceeds EUR 70.000 and there are more than 50 shareholders or
- or the average number of employees is more than 300 or
- if the company itself is the controlling entity in a group whose subsidiaries are obliged to have a supervisory board and the average number of employees of all companies together is more than 300 or
- if the company is the main partner of a limited partnership and the number of employees of all companies exceeds 300.

The members of the supervisory board are appointed by shareholders' resolution. Members of the supervisory board may not become members of the management board. The appointment and resignation of members of the supervisory board must be promptly reported to the competent Registrar of Companies. The works council (Betriebsrat) is entitled to nominate one-third of the members (one member) of the supervisory board.

The supervisory board has the duty to supervise the management of the company. It may request a report from the management concerning company matters at any time and is entitled to inspect and review all books and accounts. Certain transactions such as e.g. acquisition of real estate, starting up of lines of business etc. require approval of the supervisory board otherwise management will be held liable for any damages resulting from such transaction.

Shareholders' rights and general shareholders' meeting

A limited liability company does not have shares per se but rather share quotas (Geschäftsanteile) which are not evidenced by share certificates. Each shareholder holds only one share quota in the company. Unless otherwise agreed in the articles of association such share quota corresponds to each shareholder's capital contribution.

Share quotas are freely inheritably and transferable and can be pledged as a security. The articles of association may provide for approval procedures for these transactions. The transfer of share quotas requires the form of a notarial deed and must be filed with the Registrar of Companies.

Shareholders are entitled to distributed profits in accordance with the annual financial statements of the company if they did not exclude the distribution of such profits in the articles of association or by shareholders' resolution. Shareholders may not request repayment of their capital contributions.

Shareholders also have the right to take part and vote in the shareholders' meeting.

The general shareholders' meeting (Generalversammlung) is called by the managing board or by the persons designated by the articles of association. It must be held at least once a year and also whenever the best interests of the company require a meeting, particularly whenever a loss of one-half of the stated capital

stock has occurred. In addition shareholders holding 10 per cent of the stated capital stock or any other percentage provided for in the articles of association may request a meeting in writing.

Certain formal requirements of convening the shareholders' meeting must be met otherwise resolutions made by the shareholders' meeting can be contested.

Certain matters such as the appointment and revocation of managing directors, approval of the annual report, the distribution of profits, the release from liability of the managing directors and supervisory board for a specific fiscal year, the amendment of the articles of association, etc. require a resolution by the shareholders.

Resolutions may be passed if a quorum of at least 10 per cent of the stated capital stock of the company is present at the meeting and resolutions are normally passed by a simple majority of the votes cast. Voting by proxy is allowed. Certain matters such as a change of the business purpose of the company require unanimous vote, other matters such as a merger of the limited liability company with a stock corporation require a majority of three-fourth. The articles of association may provide otherwise.

The Limited Liability Companies Act (GmbHG) provides for certain minority rights such as requesting the calling of a shareholders' meeting, requesting that a certain matter be put on the agenda, veto the appointment of certified auditors, etc.

Dissolution

A limited liability company may be dissolved for various reasons that are regulated by statute and/or in the articles of association. Statutory reasons for dissolution are for instance:

- the expiration of the period for which the company was set-up per the articles of association;
- a notarial shareholders' resolution;
- a merger;
- a court or other official decision;
- insolvency.

The dissolution must be registered with the Registrar of Companies. Following this registration, the company does not cease to exist, but continues as a limited liability company under liquidation. Liquidation is managed by liquidators, usually the former managing directors of the company. After satisfying the company's creditors any remaining assets may be distributed to the shareholders but not before a waiting period of three months after public notice to creditors of the insolvency has lapsed. Following this and after obtaining tax clearance, the company is removed from the Registrar of Companies.

Short Facts GmbH

- private limited company;
- minimum share capital EUR 35.000,- ;
- may hold rights and bear obligations;
- formalized incorporation;
- liability limited to corporate capital and assets;
- generally no personal liability of its shareholders;
- transfer of shares requires notarial deed.

Public Limited Company (AG)

Establishing a Public Limited Company

The formation of a Public Limited Company (AG) requires one or more individuals or corporate bodies as founders. There are no restrictions on nationality or country of residence of the founding members. Formation begins when the members have the deed of incorporation and articles of association notarized by a notary public.

The articles of association must include

- name of the company and its registered office (which must be in Austria);
- the object of the company;
- the amount of share capital;
- statement as to whether the shares are bearer shares or registered shares;
- composition of the share capital including the face value of par shares/ the number of non-par shares;
- names of the founding members;
- information on the types of shares;
- number of members of the board of management, composition of the managing board;
- regulations as to the form in which official notices of the company are to be made;
- advantages granted to any shareholder or third person and the reimbursement shareholders or other persons receive for their activities in the formation process.

Following the adoption of the articles of association in the presence of a notary public, the founders are required to subscribe for all shares and to appoint the first supervisory board and the auditor for the first fiscal year. The first managing board needs to be elected by the supervisory board. At least one quarter of the capital stock needs to be paid in. Once these and other steps have been completed an application for registration is made by filing the articles of association and certain other documents with the local Registrar of Companies (Firmenbuch). In practice the public notary in charge will take care of these procedures.

Managing directors and other persons acting on behalf of the company and founders who agree to pre-incorporation trading are jointly and severally liable without limitation for any liabilities incurred prior to the registration. The founders of the public limited company are liable to the company for the correctness and completeness of the information furnished in the formation process.

Capital stock and shareholders

The minimum share capital is:

- authorized EUR 70.000,- ;
- for certain businesses such as e.g. investment companies a higher capital stock is required;
- paid up: 25% in cash and/or 100% in kind of the nominal value of each share plus all of any share premium;
- the payment of outstanding capital contributions can be requested by the managing board according to the process foreseen in the articles of association or in the absence of such a provision by published request.

In general, there are stricter requirements for contributions in kind than for cash contributions. Contributions in kind must be stated in the articles of association. The value of such contributions in kind is subject to a special audit. Proof of value of the contribution in kind is a prerequisite for registration in the Registrar of Companies.

The Public Limited Company Act (Aktiengesetz) distinguishes between bearer shares (Inhaberaktien) and registered shares (Namensaktien). Registered shares are registered to the name of the shareholder in the company's

share register (Aktienregister) and can be transferred only by endorsement whereby the company needs to be notified of the transfer. Preferred shares (Vorzugsaktien) may be issued without a voting right and entitle the owner to receive a preferred dividend. Par value shares (Nennbetragsaktien) have a nominal face value; non-par value shares (Stückaktien) confer equal parts of the company's capital stock and do not have a face value.

Managing board and its members

A public limited company may have one or several director(s) who form the managing board (Vorstand) and are in charge of representing the company in all matters. If not provided otherwise by the articles of association all members of the managing board represent the company jointly. They are appointed by the supervisory board for a term of five years. There are no restrictions regarding their reappointment after expiration of this term.

The managing board is reportable to the supervisory board at least quarterly and when an important event occurs. Yearly and quarterly reports need to be provided in writing. A member of the managing board can be revoked for good cause only. Changes to the managing board or to the representative authorities of its members must be promptly reported to the Registrar of Companies

Supervisory board

A public limited company is legally required to have a supervisory board (Aufsichtsrat) with at least 3 and up to 20 members depending on the articles of association. The works council (Betriebsrat) is entitled to nominate one-third of the members of the supervisory board. In addition certain minority rights regarding the appointment of supervisory board members apply. Individuals are precluded by law from being on the supervisory boards of more than 10 companies, whereby a position as chairman of a supervisory board is counted twice.

The members of the supervisory board are determined by shareholders' resolution and can

be revoked by a qualified majority vote (three-quarters). Changes to the supervisory board must be promptly reported to the Registrar of Companies.

The supervisory board elects and controls the managing board. It reviews the annual financial statements, the proposed profit distribution and the management report. Certain types of transactions require the supervisory board's consent such as the acquisition or alienation of shareholdings and real estate, investments that exceed a certain amount, starting up or closing of lines of business, the issuance of bonds, defining the general business policy etc.

Shareholders' rights and shareholders' meeting

The shareholders' meeting (Hauptversammlung) is called by the managing board by publication of the convocation at least 28 days before an ordinary general meeting, and 21 days before an extraordinary general meeting. The purpose of the meeting and the agenda need to be stated. An annual shareholders' meeting is required by law and takes care of the approval of the annual financial statements, the distribution of profits and the discharge of the board members. Shareholders holding at least five percent of the capital stock can also request the convocation of a shareholders' meeting. Certain corporate matters require a shareholders' resolution such as an amendment of the articles of association or the appointment of the members of the supervisory board.

In general resolutions can be passed by simple majority; a qualified majority is required for certain matters such as an amendment of the object of the business of the company, a dissolution of the company, a transformation of the company, capital increases, an amendment of the articles of association etc.

Voting by proxy is allowed. With the exception of preferred shares a voting right is granted for each share. A new legal regulation that became effective on August 1st 2009 enables "remote voting" under certain circumstances, e.g. by e-mail or internet, as well as electronic attendance of the meeting.

Dissolution

A public limited company may be dissolved for various reasons such as a shareholders' resolution with a majority of three quarters, a court order, expiry of the period for which the public limited company was established according to the articles of association and insolvency. The dissolution must be registered with the Registrar of Companies. Following this registration, the company does not cease to exist, but continues as a public limited company under liquidation. During this period it is represented by the liquidators. After the conclusion of the liquidation any remaining assets may be distributed to the shareholders, but not before one year after the third public notice to creditors of the insolvency was made. Then the company is cancelled from the Registrar of Companies.

Short Facts AG

- public limited company;
- minimum share capital EUR 70.000,-;
- may hold rights and bear obligations;
- strictly formalized incorporation;
- low flexibility as regards its articles of association;
- two tier system: managing board and supervisory board;
- liable with corporate capital and assets;
- generally no personal liability of its shareholders;
- easier transfer of shares/ raising of capital;
- may be quoted at the stock exchange.

Partnerships

Civil law partnership (Gesellschaft bürgerlichen Rechts)

The civil law partnership is regulated by the General Civil Code (Allgemeines bürgerliches Gesetzbuch) and is the basic form of partnership. It is not a separate legal entity but the result of a contractual arrangement by which two or more persons combine assets or labor in order to achieve a common goal or achieve a common profit. No particular form of contract is required, therefore a civil law partnership can also be established by verbal agreement or implied behavior. Formation is completed by the conclusion of such contract and no registration is required. This legal form is often used in joint ventures or construction projects.

Profits derived from the joint activities are distributed in proportion to the contributed capital. The value of services contributed by the partners is considered equal unless provided otherwise in the agreement.

A civil law partnership cannot hold title to real estate, sue or be sued. All partners are personally and directly liable for their portion of the partnerships debts. Each and every partner must have the necessary qualification under trade law and register the trade under his own name if required for the respective trade under the Trade Code (Gewerbeordnung).

Short Facts GesbR

- civil law partnership;
- not a legal entity but a contractual arrangement;
- informal foundation;
- great flexibility as regards its constitution;
- unlimited personal liability of its partners.

General partnership (Offene Gesellschaft)

The general partnership is an association of two or more general partners (individuals or companies) established for carrying out a business under a common company name. It

must be registered with the Registrar of Companies providing the name, date of birth and residence of each partner in addition to the company name and seat. All partners have unlimited personal liability for the obligations of the partnership.

The general partnership can sue or be sued in court, is entitled to acquire rights and property, and can enter into contracts. It is however not a legal entity separate from its partners. The general partnership is regulated by the Austrian Companies Code (Unternehmensgesetzbuch).

No formal requirements exist regarding the content or execution of the partnership agreement. Since the Austrian Companies Code does not contain detailed provisions it is however advisable to include certain regulations such as how to deal with the resignation, death or removal of a partner, internal authority arrangements and representation arrangements, contributions, the distribution of profits and losses etc. Unless the partnership agreement provides otherwise all partners are entitled and obliged to manage and represent the partnership.

A general partnership is not required to file annual financial statements with the Registrar of Companies or disclose them otherwise. There is an exception for general partnerships having a corporation as sole partner with full liability. In this case the legal provisions for corporations concerning filing and auditing of financial statements applies. Since a general partnership is not considered a separate legal entity it is not subject to corporate income tax. Instead the individual partners are subject to personal income tax on their share in the income of the partnership.

Short Facts OG

- partnership;
- not a legal entity separate from its partners;
- may however hold rights and bear obligations, sue and be sued;
- informal formation process, but registration at Registrar of Companies;
- unlimited personal liability of the partners.

Limited partnership (Kommanditgesellschaft)

A limited partnership is different from the general partnership in that the personal liability of one or more of its partners is limited to the amount (Haftsumme) specified in the Registrar of Companies. These are called limited partners (Kommanditisten). At least one partner (individual or corporation) needs to qualify as a general partner (Komplementär) and thus be personally liable for the partnership's debts.

Limited partners are excluded from management and have no representative authority. They are entitled to a profit share and have certain limited control rights such as to review the financial statements or to inspect the books of the partnership.

The general partner may also be a limited liability company. This legal structure is a so-called GmbH & Co. KG which is very popular in Austria. By using this type of company no associated partner assumes unlimited liability.

Sole proprietorship (Einzelunternehmen)

An individual may operate a business as a sole proprietorship and be solely and without limitation liable for the liabilities relating to this enterprise. A sole proprietor whose business requires a commercial business organization because of its type or size must be registered with the Registrar of Companies (mandatory when annual turnover exceeds EUR 1.000.000,- within one year or EUR 700.000 in two consecutive years)

Short Facts

Sole proprietorship

- no separate legal entity;
- may require registration at Registrar of Companies;
- unlimited personal liability of its proprietor.

Short Facts KG

- partnership;
- not a legal entity separate from its partners;
- may however hold rights and bear obligations, sue and be sued;
- informal formation process, but registration at Registrar of Companies;
- unlimited personal liability of the general partners;
- liability of limited partners limited to the amount specified in the Registrar of Companies;
- general partner can also be a limited liability company.

Austrian and foreign company branches (registered)

In contrast to a subsidiary, branches are no separate legal entities. This means that they cannot hold rights or bear obligations. Consequently, branches are ruled by the parent firm. A disadvantage of the establishment of branches is the liability of the parent firm for its branches. Foreign enterprises with their corporate seat outside of the European Union must designate a fiscal agent based in Austria.

Whether a representative or sales office constitutes a branch office depends on the organizational structure and representative authority. Branch offices must be entered into the Registrar of Companies.

Branches are obligated to maintain accounting records. The non-resident parent firm is taxed in Austria on profits which are attributable to the permanent establishment in Austria (limited taxation). Regarding the definition of a permanent establishment the rules of double taxation conventions apply.

Short Facts

Company branches (registered)

- no separate legal entity;
- cannot hold rights and bear obligations;
- registration at the Registrar of Companies;
- compliance with Austrian law;
- liability of parent firm for its branches.

Other entities/legal forms of business organization

European Company (Societas Europaea)

On October 8, 2001 the European Council formally adopted the Regulation to establish a European Company Statute (ECS) and the related Directive concerning worker involvement in European companies. Both introduce a new legal form, the European Company (Societas Europaea = SE).

The European Company Statute gives companies operating in more than one EU member state the option to set up a single company under Community Law and so be able to operate throughout the EU with one set of rules and a unified management and reporting system rather than being subject to the national legislation of the various member states where subsidiaries are located. The company is registered in the member state where its head office is located and the registration is published in the Official Journal of the European Community.

The SE with a minimum share capital of EUR 120.000 is able to operate throughout Europe and is governed by Community law directly applicable in every Member State. The EU Directive on worker involvement regulates that the creation of a European Company requires negotiations regarding the involvement of employees. Since the implementation of the regulations in Austria very few European Companies have been established.

Silent partnership (Stille Gesellschaft)

This kind of partnership is called a silent partnership because it is not disclosed to the public and not registered with the Registrar of Companies. It has no legal personality and cannot act under a common name. In a silent partnership a partner contributes a certain amount to the business of another individual or corporation, in exchange for a participation in the profits of the partnership, but not in the property of the business. The silent partner's participation in losses can be excluded in the partnership agreement. Apart from the silent partner's contribution, the silent partner has no further liability. The silent partner also does not take part in the management or representation of the business. The silent partnership is formed by a partnership agreement and is governed by a special section of the Austrian Companies Code, which leaves considerable leeway for self-regulation.

Practice and jurisdiction have created the atypical silent partnership (Atypische Stille Gesellschaft) whereby the silent partner participates in the accumulated hidden reserves and the goodwill of the partnership. In this case the silent partnership is treated like a partnership for tax purposes and the profit share is not subject to withholding tax and treated as income from carrying out a trade.

Joint ventures

Joint ventures are most frequently founded in the legal form of a civil law partnership or a silent partnership (see above). Usually they are formed for a limited period and allow the investors to participate in a company or a certain project. The participation may be in the form of capital, but production means or know-how can also be contributed. Usually it is agreed that the risk is shared between the parties.

V. Labor

Industrial relations

Industrial relations are shaped by the so-called Social Partnership (Sozialpartnerschaft) which has no legal framework and is thus informal and flexible. It involves several interest groups in the decision making process including the Austrian Federal Economic Chamber (Wirtschaftskammer), the Federal Chamber of Employees (Kammer für Arbeiter und Angestellte), the Austrian Trade Unions Federation (Österreichischer Gewerkschaftsbund) and others. No labor or employment regulation is passed without the consent of the Social Partners.

Legal framework

In addition to the large number of federal statutes that regulate employment, collective bargaining agreements (Kollektivverträge) apply to specific industries. They are negotiated between the institutions of the Austrian Federal Economic Chamber and the institutions of the Austrian Trade Unions Federation and are mandatory. In many cases they impose minimum salaries or minimum salary increases. Such collective bargaining agreements apply to most industries. In addition agreements with the works council (Betriebsvereinbarung) that are negotiated between the individual employer and the works council are binding. In some cases the collective bargaining agreement limits the matters that can be regulated by an agreement with the works council and e.g. does not permit them to apply to wage policy matters. Such an agreement with the works council cannot change regulations of collective bargaining agreements or statutory regulations to the detriment of the employee, likewise an individual employment contract cannot change provisions of an agreement with the works council to the detriment of the employee.

Standard working hours and overtime

Regular working-time is eight hours a day and 40 hours a week although shorter standard working times apply under some collective bargaining agreements. With a few exceptions actual hours worked must not exceed 10 hours a day or 50 hours per week. Overtime is payable at the regular hourly rate plus a mark-up of 50%. A higher mark-up generally applies to overtime during the night time, on weekends or on public holidays. Part-time workers are entitled to a mark-up of 25% on hours exceeding the agreed hours per week but below the standard-work week. Regulations regarding working hours have become exceedingly restrictive and complex during the last years and in practice they are frequently not complied with. As a result the administrative fines levied in the case of non-compliance have also been increased considerably.

13th and 14th salary

In general the annual salary comprises 14 salary payments. The 13th and 14th salary payment relate to a Holiday Bonus, payable mostly at the end of June, and a Christmas Remuneration, payable mostly at the end of November. These payments are mandatory under most collective bargaining agreements and they are taxed at a fixed income tax rate of 6% (above a certain limit regular tax rates apply). For employees joining or leaving during the year they are mostly prorated. For periods after 31 December 2012 and before 1 January 2017 a higher solidarity tax rate is applied to 13th and 14th salaries exceeding EUR 25.000 net of social security per year. The solidarity tax is progressive and equals the regular tariff tax rate when and to the extent that 13th and 14th salaries exceed EUR 83.333 net of social security per year.

Holidays

In general employees are entitled to 5 weeks of holiday per year. The vacation entitlement can be higher due to seniority and for certain other reasons. The scheduling of the vacation must be agreed between employer and employee and it is not possible for the employer to determine vacation times unilaterally.

In Austria the holiday entitlement lapses when the holidays are not consumed within 2 years after the end of the year in which the entitlement was earned. When holidays are taken it is assumed that the oldest holiday entitlement is consumed first. An agreement to compensate the employee for unconsumed vacation by payment is legally invalid in an ongoing employment relationship. When the employment relationship ends the employee is entitled to receive compensation for accrued unconsumed vacation.

Social security

Austria has a highly developed and comprehensive system of social security (Sozialversicherung) which covers health insurance, pension, accidents, unemployment and child care benefits. Unlike e.g. in Germany

Social security contributions vary depending on the type of the employment relationship, the age of the employee and other factors. A ceiling called monthly maximum assessment basis (Höchstbemessungsgrundlage) applies to social security. To the extent the monthly remuneration exceeds this ceiling no social security is payable.

employees cannot choose the social security carrier freely, but are assigned depending on the type of employment relationship and their place of work. If the employee's regular place of work is in Austria he is generally subject to social security in Austria. Exceptions apply when both the employer's seat and the employee's residence are abroad and when the employee is covered by a foreign social security system. Austria has entered into a number of bilateral social security agreements and is also subject to the EC-regulation that lays down which social security system takes precedence in which cases.

It is the employer's duty to register and de-register employees with the social security authorities, to report changes in personal data, to withhold, report and administer social security contributions and to make employer contributions to social security.

Self-employed persons are also subject to social security but with a different carrier at different rates and are not covered by unemployment insurance. There are detailed regulations how to distinguish between employment relationships, contracts with self-employed persons and certain intermediary forms, so it is generally not an option to classify someone as self-employed to avoid the application of employment regulations.

A separate such ceiling applies on an annual basis to certain irregular payment items such as e.g. the 13th and 14th salary and certain types of bonuses. For salaried full-time employees and workers the rates are in 2016:

	Contribution by employee	Contribution by employer	Total	Monthly maximum assessment base
Pension insurance (Pensionsversicherung)	10,25%	12,55%	22,80%	4.860 EUR
Accident insurance (Unfallversicherung)		1,30%	1,30%	4.860 EUR
Health insurance (Krankenversicherung)	3,87%	3,78%	7,65%	4.860 EUR
Unemployment insurance (Arbeitslosenversicherung)	3,00%	3,00%	6,00%	4.860 EUR

Various other minor contributions are payable: e.g. for housing purposes and to a special fund intended to safeguard wages and salaries in cases of insolvency.

Employer payroll taxes

The following taxes and contributions are based on payroll and are borne by the employer:

The municipalities in whose area the enterprises are located collect a municipal tax (Kommunalsteuer) amounting to 3% on the salaries and wages paid.

A contribution to the Family Burdens Equalization Fund (Dienstgeberbeitrag zum FLAF, DB) is payable at a rate of 4.5% on the gross wages and salaries - this tax is also levied for employees working in Austria when no permanent establishment in Austria is setup by the employer.

Chamber of Commerce Contribution (Zuschlag zum Dienstgeberbeitrag, DZ) is payable by members of the Chamber of Commerce.

Membership is mandatory for most companies with a permanent establishment in Austria depending on the nature of their business. In Vienna the contribution amounts to 0.40% (percentage varies from 0.36% to 0.44% in the various provinces).

Enterprises with staff employed in Vienna are subject to Vienna City Tax (Wiener Dienstgeberabgabe, WDGA), a special levy of EUR 2 per week per employee for the financing of the Vienna underground transportation.

Employee payroll taxes - Wage tax

Income tax, in the case of income from employment also known as wage tax (Lohnsteuer), is withheld by the employer and paid to the tax authorities on a monthly basis. On an annual basis income tax is computed as follows:

annual income (in EUR)	tax rate
up to 11.000	0,00%
11.000 – 18.000	25%
18.000 – 31.000	35%
31.000 – 60.000	42%
60.000 – 90.000	48%
more than 90.000	50%

Starting on the 1st January 2016 (till 2020), the top tax rate is 55% for portions of income above EUR 1 million.

The above income rates, in principle, apply to taxpayers subject to limited tax liability, as well. In the income tax assessment process with the tax office however, an amount of EUR 9.000 is added to the tax basis when computing the income tax for these taxpayers with the effect that the 0% tax rate only applies to an annual income of up to EUR 2.000 in these cases.

The income tax is reduced by the following deductions (annual amounts):

- deduction for sole income earners in a family 1 child (Alleinverdienerabsetzbetrag): EUR 494;
- deduction for sole income earners in a family 2 children (Alleinverdienerabsetzbetrag): EUR 669;
- deduction for sole income earners in a family additional EUR 220 per child from the third child on;
- commuter's deduction for employees (Verkehrsabsetzbetrag): EUR 400;
- deduction for pension earners (Pensionistenabsetzbetrag): up to EUR 400 (this amount is proportionately reduced to 0 for pensions between EUR 17.000 and EUR 25.000 and equals 0 for pensions above.)

Pensions

Since pensions are part of public social security system it is not common for employers in Austria to set up a pension plan or to grant pensions. Additional pensions can take the form of a participation in a pension fund, life-insurance paid by the employer or a direct pension entitlement. These schemes can be introduced by agreement with the works council or contractual agreement when no works council is in place. Various tax benefits are available for such pension arrangements.

Illness/ Pregnancy/ Maternity

In the case of illness or injury, employees are entitled to receive continued full remuneration for a certain period of time. The maximum period depends on the years of service with the employer and is longer in the case of an accident at work or an occupational illness. It ranges from 6 to 12 weeks. Thereafter the employee is entitled to half his regular remuneration for another 4 weeks and receives a payment from the social security carrier on top. Different schemes apply to blue-collar workers and white-collar workers with regard to the application of these periods of continued remuneration in the case of repeated illnesses. To the degree the employee is no longer entitled to receive continued remuneration from the employer he generally receives sick pay from the social security authorities, which is however capped at certain amounts and covers only a certain percentage of the regular remuneration.

For certain important personal reasons such as marriage, relocation or the funeral of a close relative, employees can take paid days off which are not deducted from their holiday entitlement. If the person usually caring for the child becomes unavailable due to an emergency or in connection with the illness of a close relative living in the same household similar regulations apply.

The maternity protection period starts in general 8 weeks before the prospective date of birth and ends 8 weeks after birth though longer periods can apply. During this period the public health insurance system compensates the employee for her full salary and she is not allowed to work. After this period the employee is entitled to an unpaid maternity leave until the second birthday of the child. Alternatively the father can take paternity leave and alternating leaves are also possible. During parental leave the employee receives child care benefits from the social security carrier. Different schemes are available depending on the duration of the parental leave and the way it is shared between mother and father. Parents are legally entitled to part-time work until the seventh birthday of the child (with certain, limited exceptions). During pregnancy, parental leave and parental part time the employee can in general not be terminated.

Summary

Austrian employment and social security matters are regulated by a complex legal framework that grants many rights to employees. The Austrian Equal Treatment Act has in most respects been brought in line with the EC-Directive concerning the prevention of discrimination. The Labor Relations Act grants works councils a number of participation rights. There are detailed provisions regarding occupational safety and health. Mandatory employment conditions are prescribed both by statutory law and by collective bargaining agreements.

Work and residence permits

Employees with EU citizenship do not require residence permits. They only need to apply for a registration certificate at the relevant local authority within three months of their stay in Austria.

Employees with EU citizenship do not require a work permit. Non EU nationals usually need to apply for a visa at the Austrian Embassy or Consulate in their home country before travelling to Austria.

Different regulations apply to foreign placements, e.g. where employees are sent to Austria by a foreign employer to fulfill a contractual obligation. If certain other conditions are met in addition (duration of the project, type of industry, etc.) it is sufficient, if the Austrian contractor applies for a so-called foreign placement.

Obtaining a work permit is facilitated for highly qualified labor, skilled labor in professions that are not sufficiently available in the Austrian job market and key staff members. The so called red-white-red card for these categories of employees is issued for a period of one year at first. Once the individual has been employed in such a function in Austria for at least 10 months, he/she is entitled to a so called red-white-red card plus which grants unlimited access to the labor market.

Non EU nationals who hold a blue card as issued within the EU can obtain a work permit in Austria if they have a binding offer to work in a highly skilled job in Austria for at least a year. Once the individual has been employed in such a function in Austria for at least 21 months, he/she is entitled to a so called red-white-red card plus which grants unlimited access to the labor market. The issuance of other types of employment visas is subject to quotas.

Termination of employment

An employment relationship can be terminated in several ways:

- by ordinary termination subject to certain notice periods (a cause is not required);
- by mutual agreement between employer and employee;
- by lapsing of the contractual period of an employment contract with a definite term;
- during an agreed-upon trial period at will of either employer or employee with immediate effect;
- for good cause.

The applicable notice periods depend on the collective bargaining agreement and on the service period. For the termination of a salaried employee by the employer they range in general from six weeks to five months. Employees need to observe a notice period of one month when they terminate the contract. It can be extended by contractual agreement but it cannot exceed the notice period that has to be observed by the employer.

Several groups of employees enjoy protection from termination by the employer such as members of the works council, pregnant employees and employees taking parental leaves or opting for parental part-time, handicapped employees and employees doing their military service.

The works council or the employee may appeal to the Labor Court against “socially unjustified” termination.

In the case of employment contracts that started before January 1st 2003 and where employees did not switch over to the new severance scheme, employees are entitled to severance pay in the case of termination by the employer or by mutual agreement depending on their number of service years. For employment relationships that started thereafter the employer has to contribute 1,53 % of gross wages and salaries to an occupational retirement fund (Mitarbeitervorsorgekasse) each month. For these contracts no severance becomes payable by the employer upon termination.

VI. Financial reporting and audit

Legal sources

In Austria there is no standard setting board for accounting matters as such. Financial accounting regulations are passed as laws (i.e. by act of parliament). The main legal source is the Austrian Companies Code (Unternehmensgesetzbuch), additional requirements are e.g. laid down in the Federal Fiscal Code (Bundesabgabenordnung), the Act on Public Limited Companies (Aktiengesetz) and the Banking Act (Bankwesengesetz).

The Austrian Financial Reporting and Auditing Association (AFRAC) is a not-for-profit organization that conducts research on the continuing development of financial reporting and auditing in Austria and takes international developments in these areas into account. The AFRAC comments on proposed legal amendments, advises the Ministry of Finance in the drafting of laws concerning matters of accounting and publishes recommendations on issues of accounting. Its members represent the academic community, the audit profession, companies subject to reporting requirements, financial analysts, investors, the financial market authority etc.

Financial accounting standards are also developed by court decisions as well as by interpretation through the expert groups of the Austrian Chamber of Public Accountants and Tax Advisors (Kammer der Wirtschaftstreuhänder), the Institute of Chartered Accountants (Institut der Wirtschaftsprüfer) or the academic and professional community. Since the accounting rules follow in many aspects the German accounting regulations, interpretations by the German academic and professional community are sometimes also consulted in matters of doubt.

The Austrian accounting system is creditor orientated and there are interrelations between tax and accounting regulations. Listed companies are required to prepare their consolidated financial statements according to IAS/IFRS as adopted by the European Union (EU). Audit standards are issued by the Chamber of Public Accountants (Kammer der Wirtschaftstreuhänder) and the Institute of Chartered Accountants (Institut der Wirtschaftsprüfer). Beside some add on's due to local requirements the auditing standards are in compliance with International Standards on Auditing (ISAs).

Record keeping and financial statements

Financial statements according to the Austrian Companies Code (Unternehmensgesetzbuch) have to be compiled by corporations and partnerships where the general partner is not an individual (GmbH & Co KG) on the one hand and by enterprises (sole proprietorships and partnerships) with a turnover exceeding EUR 700.000 in two subsequent years or EUR 1.000.000 within one year on the other hand. Companies active in the professions or in agriculture and forestry are mostly exempt. Companies that do not need to maintain accounting records according to the Austrian Companies Code (Unternehmensgesetzbuch) can determine their income by applying tax regulations only.

The records need to be maintained in a living language. Transactions must be recorded chronologically. All entries must be made completely, accurately, timely and in a way that ensures these entries cannot be subsequently altered. All entries must be traceable to a source document. Double-entry bookkeeping is the only legally accepted method.

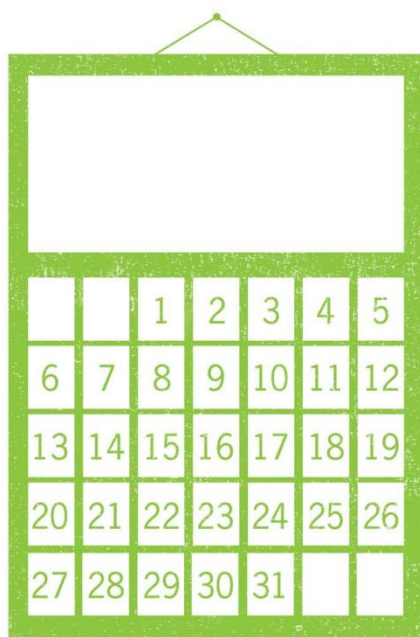
Financial statements cover a maximum of 12 months. Fiscal years other than the calendar year are possible but subject to approval by the commercial court and the tax office.

A group of companies is required to prepare consolidated financial statements (Konzernabschluss) if at least two of the following size criteria are exceeded on two consecutive balance sheet dates prior to the reporting balance sheet date:

	Total Assets	Turnover	Number of employees
Unconsolidated	EUR 24 million	EUR 48 million	250
Consolidated	EUR 20 million	EUR 40 million	250

Listed companies and certain other companies covered by Art 4 of EC Regulation No 1606/2002 concerning the mandatory application of IAS/IFRS are required to prepare consolidated financial statements according to IAS/IFRS. Austrian parent companies may also voluntarily prepare consolidated financial statements according to IAS/IFRS instead of preparing consolidated financial statements according to Austrian generally accepted accounting principles.

The record retention period is generally 7 years and applies not only to the accounting records, inventory records, opening balances, financial statements and management reports but also to correspondence and source documents for accounting entries. Longer retention periods are required in the case of ongoing proceedings by tax or other authorities.



Basic accounting principles

Although it is not possible to present all accounting and disclosure requirements as part of this publication, a few basic principles can be highlighted:

- Financial statements must give a true and fair view of a company's assets and liabilities, financial position and profit or loss.
- Principle of completeness: all assets, liabilities, revenues and expenses must be accounted for except when legal requirements provide otherwise.
- Assets and liabilities or revenues and expenses, respectively, must not be netted.
- Principle of consistency: financial statements of successive periods must be comparable. Changes in the classification and valuation of assets and liabilities and changes in the format may only be made for a compelling reason.
- Matching principle: Expenses incurred in generating revenue must be reported in the same period as that revenue.
- Going-Concern Principle: Unless there is evidence to the contrary it is assumed for valuation purposes that the entity will continue in operation for an indefinite period.
- Principle of separate valuation: All assets and liabilities must be valued individually as of the balance sheet date.
- Principle of Prudence: Only profits realized until the end of the financial year can be taken into account. Risks or losses that have been originated by an event before the balance sheet date, must be considered even if they are not yet realized or have become known only after the balance sheet date. Current assets are valued at the lower of cost or market principle. Fixed assets are valued at the lower of cost or market value if the decreases in value are deemed permanent. Investments can also be written-down in the case of a non-permanent decrease in value. Liabilities must be valued at the amount to be repaid.
- Manufacturing costs include direct cost of material, direct production cost, special costs of production and the attributable portion of material and production overheads. General administrative and selling expenses must not be capitalized as part of manufacturing costs with certain exceptions concerning long-term contracts. Interest expenses related to loans for the financing of production may be included in manufacturing cost as long as they relate to the manufacturing period.
- Intangible assets that have been generated by the company itself must not be capitalized.
- Formation, start-up and business expansion costs as well as costs incurred in raising equity funding must not be capitalized.
- A purchased goodwill may be amortized over its estimated useful life. If it is not possible to estimate the useful life the goodwill must be amortized over ten years. For tax purposes it is amortized over 15 years which is frequently adopted for accounting purposes when appropriate.
- The income statement can either be presented in the total cost format or in the cost of sales format.
- It is not required that the balance sheet is structured in current and long-term assets and liabilities, but receivables and liabilities exceeding a term of one year are either disclosed in a separate caption in the balance sheet or disclosed in the notes.

Disclosure, filing and publication requirements

Different filing and publication requirements apply depending on the legal form and size of the company. For example small limited liability companies only need to file the balance sheet and a synthesis of the notes. Certain disclosures in the notes can also be omitted by small and medium sized companies such as e.g. a detail of revenues by segment. Size classes for corporations and partnerships where the general partner (Komplementär) is not an individual are defined as follows:

	Medium-sized	Large
Total assets	Over EUR 5,0 million	Over EUR 20,0 million
Net turnover	Over EUR 10,0 million	Over EUR 40,0 million
Number of employees	Over 50 (on average)	Over 250 (on average)

A corporation is always considered as large when its shares or other securities are traded on a public stock exchange (public interest entity). The legal requirements tied to these size classes apply beginning with the following year when a company has met at least two of the criteria at two consecutive balance sheet dates.

A publication in the official gazette Wiener Zeitung is mandatory for listed companies, banks, insurance companies, investment funds and large public limited companies. All other companies have to file their financial statements only with the Registrar of Companies (Firmenbuch) which in turn publishes a notice in Wiener Zeitung that they have been filed. Partnerships (except those with a corporation as unlimited partner, which are treated like corporations) need not file their financial statements at all.

The management report (Lagebericht) includes a verbal presentation of the business development and the situation of the business enterprise as to provide a true and fair view of its assets, financial position and earnings situation. Important events after the balance sheet date, major risks and uncertainties, the probable future development of the business, research and development, the risk management system and other matters are also covered. Small limited liability companies are exempt from compiling a management report. Large corporations need to make additional disclosures such as e.g. on environmental and labor matters.

Listed public limited companies have to compile a Corporate Governance Report which explains which Corporate Governance Code is applied and if there are any deviations to the practice recommended by this Code.

In general the filing in the official gazette or with the Registrar of Companies needs to take place within nine months after the balance sheet date. If required due to the legal form etc. submission of the financial statements to the supervisory board, approval by the shareholders' meeting and the audit by an independent auditor need to be completed prior to the filing.

Audit requirements

A statutory audit is required for

- banks, insurance companies and investment funds;
- all public limited companies;
- large and medium sized limited liability companies;
- small limited liability companies with a mandatory supervisory board;

Capital market-oriented companies and companies with a balance sheet total of more than Euro 96,25 million or more than Euro 192,5 million turnover (also referred to as: very large companies) are required to have an audit committee that monitors the financial reporting process, the company's internal control and risk management system, the statutory audit of the annual and consolidated accounts as well as the independence of the statutory auditor.

Summary

Financial statements cover a maximum of twelve months. The content of the notes, the publication requirements and the need to compile a management report or corporate governance report depend on the legal form and the size of the company. An audit is only required for corporations whereby small limited liability companies that do not have a mandatory supervisory board are exempt.

Regulation of the audit profession

The EU directives 2006/43/EC (Statutory Audit Directive) and 2006/46/EC (Company Reporting Directive) have been implemented in Austria as part of the Business Law Amendment Act 2008 (URÄG 2008). The amendments mostly apply to financial years starting after December 31st 2008.

An engagement for a statutory audit must not be accepted when financial interests in the client, undue dependence on fees from the client, certain employment relationships with the client or the provision of certain non-assurance services that give rise to a self-review threat impair the independence of the auditor. Detailed regulations on auditor independence are contained in Art 270 to Art 271c of the Austrian Companies Code (Unternehmensgesetzbuch). The auditor must confirm independence in a letter to the supervisory board (or to the shareholders' respectively) and list the fees for all services provided to the company in the past financial year.

A rotation of the audit partner and manager is required for audits of very large companies (five times the size of a large corporation as mentioned above) after five years. The audit firm with which this audit partner is associated is allowed to continue as the statutory auditor, but a different partner has to be assigned to the audit.

With the EU regulation 537/2014 a mandatory auditor rotation (starting in June 2016) for public interest entities with a basic external rotation period of 10 years was implemented.

The accounting profession in Austria is represented and regulated by the Chamber of Public Accountants (Kammer der Wirtschaftstreuhänder). Membership is mandatory for all auditors and tax advisors. The Chamber holds the examinations for admission into the profession, monitors ongoing formation requirements, sanctions non-compliance with the professional regulations etc.

In addition the Institute of Chartered Accountants (Institut der Wirtschaftsprüfer) (voluntary membership only for auditors) contributes to the development of professional standards.

All companies that submit to the voluntary Austrian Corporate Governance Code have to be audited according to International Standards on Auditing (ISA). In a recent audit standard issued by the Institute of Chartered Accountants (i.e. Fachgutachten KFS PG 1) that became effective for audits conducted in 2008 the key ISA requirements have been adopted. Therefore audits under Austrian regulations essentially follow International Standards on Auditing.

The auditor can be held liable by the client and related parties to the client if the auditor fails to exercise due care in conducting the audit or to maintain independence either intentionally or by neglect. Depending on the size of the client the maximum liability can range from 2 Mio EUR up to 12 Mio EUR (increases in four steps).

According to § 275 Abs. 2 UGB the maximum amount of liability can exceed 12 Mio EUR in the case of criminal intent or in the case of a deliberate or grossly negligent independence violation.

The Austrian law regarding quality assurance for auditors (Abschlussprüfungsqualitätssicherungsgesetz A-QSG) requires a mandatory peer review every three years for firms who conduct audits of listed clients, banks or insurance companies, otherwise every six years. Two independent public bodies are in charge of establishing standards for these reviews, monitoring the independence and qualifications of the peer reviewer, assigning a peer reviewer to the audit firm, reviewing the reports issued by the peer reviewer and issuing a certificate if the quality control system is deemed adequate as a result of the peer review.

The reviewers are members of the audit profession who have received specific training to conduct the audit quality assurance reviews by the governmental body responsible for these peer reviews and have been certified as audit quality control reviewers.

VII. Tax

Austrian Tax Administration

Taxpayers whether individual or corporate may be represented by tax advisors or other third parties acting under a power of attorney in all tax proceedings. The local tax offices decide on all tax matters in the first instance. Appeals may be lodged with the federal finance court (Bundesfinanzgericht). The last instance of appeal rests with the Administrative Court (Verwaltungsgerichtshof) or the Constitutional Court (Verfassungsgerichtshof) depending on the reasons for the appeal.

Based on the use of tax revenue, three types of taxes can be distinguished:

- federal taxes such as corporate income tax and customs duties;
- taxes where the revenue is divided between the federal, provincial or municipal governments such as personal income tax and value added tax;
- taxes levied by the provinces or municipalities such as land tax, local community taxes payable as part of the payroll and other minor taxes.

There is also a distinction between taxes in the narrower sense (Steuern) and fees (Gebühren) which the administrative authorities collect as payment for a specific service.

Most tax laws contain procedural provisions with respect to tax assessment and tax collection. General rights and obligations of the taxpayer are laid down in the Federal Fiscal Code (Bundesabgabenordnung).

Corporate Income Tax (Körperschaftsteuer)

Legal entities such as public limited companies and limited liability companies are not subject to personal income tax but rather to corporate income tax. The income of partnerships and associations on the other hand, which do not qualify as separate legal personalities, is taxed at partner level instead of partnership level and subject to personal income tax.

No trade tax or net worth tax is levied in Austria, so Corporate Income Tax makes up the bulk of tax expenses of corporations in Austria. Furthermore no thin-capitalization rules apply.

Residence Criteria

Unlimited tax liability applies to corporate entities whose seat or head office is located in Austria. Such resident corporations are taxable in Austria with their worldwide income. In cases where income from foreign sources is also taxed in the foreign country, the provisions of double taxation treaties or in the absence of such a treaty a decree for unilateral relief granted by the Austrian Minister of Finance can help to avoid double taxation.

Otherwise limited tax liability applies and the corporation is only taxed on income deriving from specific Austrian sources as enumerated in the Income Tax Act.

A subsidiary of a non-resident company is subject to unlimited tax liability if it is registered and managed in Austria. An Austrian branch of a non-resident company is taxed only on profits which are attributable to the permanent establishment in Austria. The rules as to when a business location qualifies as a permanent establishment follow the double taxation convention.

Austria has entered into double taxation treaties with about 90 countries. These tax treaties follow the OECD model convention closely and apply either the exemption or the tax credit method.

Minimum Corporate Income Tax

The minimum corporate income tax for limited liability companies founded after 30 June 2013, amounts to EUR 500,- in the first five calendar years and EUR 1.000,- in the next five calendar years. (EUR 1.750,- per year for limited liability companies founded before 30 June 2013). For public limited companies the minimum corporate income tax amounts to EUR 3.500,- per year. The minimum tax is credited against corporation tax in subsequent years. Different amounts apply to e.g. banks and insurance companies. The tax is payable in quarterly installments.

Tax rates

The corporate income tax rate for corporations amounts to 25 percent flat. A minimum corporate income tax applies (see above).

Summary

- individual income tax rates between 25% and 55%;
- corporate income tax rate: 25% (No trade tax nor net worth tax is levied, no thin-capitalization rules apply);
- group taxation possible;
- standard VAT rate 20%, reduced rate 10% or 13%.

Tax base (differences between book and taxable profits)

The annual financial statements prepared in accordance with the Austrian Companies Code (Unternehmensgesetzbuch) are the basis for determining taxable income. Valuation methods applied in these financial statements are also binding for tax purposes unless tax regulations to the contrary apply. Adjustments to the profit and loss per the financial statements are used to account for non-deductible items and different methods of valuation according to tax law.

Such adjustments are e.g. required for:

- 50% of business related meal-expenses (non-deductible);
- expenditures for business entertainment and gifts to non-employees;
- deviation from mandatory fiscal depreciation methods;
- lump-sum accruals (non-deductible);
- accruals for severance, jubilee and pension schemes (different valuation method);
- expenses related to passenger cars, hunting, antiques etc. when certain amounts are exceeded.

Loss carry forwards can be used to offset 75% of the profits and do not expire.

Group taxation (Gruppenbesteuerung)

A pooling of profits and losses is possible for corporations which are subject to unlimited tax liability in Austria and their first-tier foreign subsidiaries (as long as these are comparable to Austrian corporations) as far as more than 50% of the capital and voting rights are held by an Austrian group member or the Austrian parent.

A written application to form a tax group must be signed by all Austrian group members and submitted to the tax authorities.

The taxable income (profit or loss) of the group members is attributed to the parent company. Concerning foreign group members, only losses are considered (they are calculated according to Austrian tax law, and subject to re-taxation in Austria when losses can be offset in the foreign state).

The tax group must exist for a period of at least three years. If one of the group members withdraws before the end of this period, all tax effects derived from its group participation must be reversed.

With effect from 1st March 2014, foreign entities are only entitled to join an Austrian tax group if the foreign entity is resident in an EU member state or in a country with which Austria has concluded a comprehensive administrative assistance agreement. Existing group members, that don't meet the resident requirements will be excluded from the Austrian tax group with effect from 1st January 2015.

The possibility to deduct the amortization of goodwill will be abolished for acquisitions of shares after 28th February 2014.

Participation exemption and deduction of interest/royalty payments

Dividends received by an Austrian corporation are exempt from corporate income tax as well as dividends received from an EU resident company or a foreign company with which Austria has concluded a comprehensive administrative assistance agreement. Foreign dividends of corporations that don't satisfy the above criteria are only tax exempt if the shareholding amounts

to at least 10% for an uninterrupted period of at least one year.

The dividend tax exemption doesn't apply if the tax rate in the foreign country isn't comparable to the Austrian corporate income tax or the tax rate is comparable but less than 15 %. As well as dividends paid by foreign corporations are not exempt from taxation if these dividends are tax deductible expenses in the source state.

In case royalties or interest are paid from an Austrian company to another company, which is subject to a corporate income tax rate of less than 10% and is part of the same group of companies, these payments are not deductible for Austrian tax purposes.

Filing of tax returns

Prepayments of corporate income tax have to be made on February 15th, May 15th, August 15th and November 15th of each year whereby the amounts are prescribed by the tax authorities based on prior year's tax payments. If current year's tax liability is expected to fall short of such prescribed prepayments a reduction can be applied for. Interest is due on the difference between corporate income tax prepayments and the assessed amounts.

Corporate income tax returns have to be filed until April 30st of the following year (or until June 30th when filed electronically). An extension of this deadline to March 31st of the second following year applies if the entity is represented by a tax advisor. The tax authorities review the tax return and issue a notice of assessment (Bescheid) which shows the amount of corporate income tax payable or the amount of prepayments to be refunded. Within one month of receipt of the assessment notice the company can lodge an appeal.

Tax audits conducted by the tax authorities may result in a revision of the tax assessment. If no proper records are maintained the tax authorities can assess taxes due based on estimates.

An administrative fine of up to 10% (Verspätungszuschlag) can be imposed if a tax return is filed late. Interest of 2% above the base rate is applied in the case of late payment.

Income tax concerning individuals (Einkommensteuer)

Residence criteria

Individuals are considered to be resident in Austria if they have either a permanent accommodation (e.g. house or apartment) in Austria or their habitual abode (i.e. when they remain in Austria for 183 days or more during any tax year). Citizenship or nationality is irrelevant. Residents are subject to income tax (Einkommensteuer) in Austria on their worldwide income. Non-residents are only taxed on income from Austrian sources such as e.g. rental income from real estate located in Austria, trade or business carried out through a permanent establishment in Austria, employment if the activities are performed or used in Austria etc.

Income and taxable income

The Income Tax Act (Einkommensteuergesetz) distinguishes between seven different categories of income to which different tax regulations apply. These seven categories are:

- income from agricultural and forestry activities;
- income earned in the professions or in self-employed activities;
- income from carrying out a trade;
- income from employment;
- income from capital investments;
- income from rentals and leasing;
- other income as enumerated in the income tax act.

Income that does not fall in any of these categories is not taxable under the income tax act such as e.g. lottery gains, gifts received, certain insurance payments received.

Income from capital investments and income from rentals and leasing are subsidiary in nature, meaning that if the investment or property generating the income is a business asset then the income would be classified as income from carrying out a trade rather than as income from capital investments or income from rentals and leasing, respectively. There are certain restrictions as far as the netting of losses and profits among the categories is concerned.

In order to arrive at taxable income, tax exemptions such as lump-sum tax-exemptions (Veranlagungsfreibeträge), special expenses (Sonderausgaben) such as certain insurance premiums and extraordinary expenses (Außergewöhnliche Belastungen) such as expenses connected with being handicapped etc. may to be deducted.

Tax rates

The rates equal the ones detailed in chapter V. on labor.

Filing of tax returns

Income tax on income from employment (wage tax) is withheld at source. Therefore no filing of a tax return is required for individuals if any income in addition to such employment does not exceed certain limits. Voluntary tax assessment is however possible and recommended if the employee wants certain expenses or exemptions to be considered that are not accounted for as part of the regular payroll process.

Income tax returns have to be filed until April 30th of the following year or until June 30th in case of electronic filing. An extension of this deadline to March 31st of the second following year applies if the taxpayer is represented by a tax advisor. The tax authorities review the tax return and issue a notice of assessment which shows the amount of income tax payable.

Prepayments of income tax have to be made on February 15th, May 15th, August 15th and November 15th of each year and are based on prior year's tax or on an estimate.

Tax Incentives

Under Austrian tax law, the following important tax incentives are available:

- Allowance of 12% (starting January 1st 2016) of expenses can be claimed for in-house and contract research expenses (maximum of EUR 1.000.000 in expenses in case of contract research).

Capital yields tax (Kapitalertragsteuer)

Income from capital investments is mostly taxed by withholding at source whereby the capital yields tax is 25% flat for interest on bank and deposits and 27,5% flat (starting with 2016) for all other capital gains. Income to which this capital yields tax applies is not subject to further income tax. In the case of corporations the withholding tax is credited against the corporate income tax liability or refunded upon request.

The capital yield tax is withheld from the following types of income when paid through an Austrian agent:

- interest on deposits with Austrian banks;
- dividends and other distributions of profit from public limited companies and limited liability companies;
- distributions of profit on certain participation bonds;
- income from bonds and convertible bonds;
- income from investments in investment funds (Investmentfonds) or real estate investment funds (Immobilien-Investmentfonds) or funds of funds (Dachfonds);
- partnership profits paid to silent partners.

If these types of income are not paid out by an Austrian coupon paying agent, a special income tax at the rate of 25% or 27,5% is applied as part of the taxpayer's tax assessment.

If a domestic corporate shareholder holds at least 25 % in a company, dividends are exempt from withholding tax. Per the EU Parent-Subsidiary Directive dividends to an EU parent company are exempt if the shareholder is a corporation resident in the EU and the shareholder has held a 10% interest in the company for at least one year, whereby any withholding tax collected during the first year will be refunded once this period has lapsed. Under certain conditions such as circumstances that suggest tax abuse or in the case of mere holding companies a different procedure applies whereby the tax is withheld at source but can be claimed back when the requirements are met.

Value Added Tax (Umsatzsteuer)

Taxable transactions

Value added tax is levied on the sale of goods and the performance of services for consideration by commercial enterprises within Austria and on the import of goods into Austria from a state outside of the EU unless there is a specific provision to the contrary in the Value Added Tax Act (Umsatzsteuergesetz). VAT also applies when an entrepreneur uses business assets for non-business purposes.

Imports from member states of the EU are no longer subject to the import VAT concept; instead a transfer tax (Erwerbssteuer) system applies whereby deliveries to business undertakings that are subject to tax in another member state are treated as tax exempt. The business undertaking receiving the goods computes and pays over transfer VAT and can deduct it as prepaid VAT at the same time (reverse charge system). This system applies only if both the buyer and the seller are business undertakings according to the definition of the Value Added Tax Act, carry a VAT identification number and the goods are acquired for business purposes.

Deliveries to private individuals or undertakings that do not have a VAT identification number are subject to VAT in the country of origin. Certain exceptions to this system apply e.g. regarding the delivery of new cars and deliveries through a mailing service if the total deliveries of the entrepreneur to Austria exceed a certain level. In these cases the goods are subject to VAT in the country of destination. Regarding services, detailed regulations depending on the type of service involved and the structure of the transaction lay down where the transaction is effected for VAT purposes and where it should therefore be taxed. The requirements of directive 2008/8/EC regarding the place of supply of services have been adopted and become effective in Austria effective with 1 January 2010.

Tax rates

The standard VAT rate is 20 %. A reduced rate of 10% or 13% applies to certain goods such as food, agricultural products, rental of residential property, passenger transportation etc. These rates are applied on the net sales price. If consideration for the goods or services is in kind, not in cash, VAT is determined based on the fair market value of the consideration. In the case of imported goods customs duties and fees are also part of the basis to which the VAT rate is applied.

Methodology of applying the tax

VAT paid by business undertakings for goods and services used as part of the business process does not constitute a cost since it can be deducted in the monthly VAT assessment. Thus only the ultimate consumer bears the VAT burden. In order for the VAT to be deductible the invoice needs to meet certain requirements. It needs to contain the following:

- the exact name and address of the supplying company;
- the exact name and address of the recipient of the goods or services;
- an exact description of the goods delivered or services performed including the amount of goods/ period during which the services were performed etc.;
- the day of the delivery;
- the net price and the VAT amount separately (not necessary for invoices not exceeding EUR 400 including VAT);
- the date of issuance of the invoice;
- the invoice number (consecutive numbers are required for invoices);
- the VAT number of the supplying company;
- the VAT number of the receiving company if the total invoice amount exceeds EUR 10.000 or when reverse charge applies;
- the applicable VAT rate or the reason why the invoice does not include VAT.

VAT payments have to be made monthly (or quarterly) and preliminary VAT returns (Umsatzsteuer-voranmeldung) have to be filed with the tax authorities within one month and 15 days after the close of the month when the goods or services were invoiced. In addition a final VAT return for the year has to be filed until April 30st (or until June 30th if filed electronically) of the following year. An extension of this deadline to March 31st of the second following year applies if the entity is represented by a tax advisor.

For intra-community deliveries of goods additional reports have to be filed with the tax office on a monthly basis. In addition intra-community deliveries and purchases have to be reported to Statistik Austria when a certain threshold is exceeded.

Real Property tax (Grundsteuer)

Real estate is subject to real property tax based on the assessed value (Einheitswert), which is substantially below market value. The tax rate depends on the municipality.

Real Estate Transfer Tax (Grunderwerbsteuer)

Real estate transfer tax is levied on all real estate transactions at 3,5% of the taxable base. The real estate tax is to be calculated on the basis of the consideration paid, but at least from the market value. A progressive tax rate applies in case of real estate transfers without consideration. It is to be 0,5% with property market values below 250.000, 2% up to 400.000 and 3,5% over 400.000. The progressive tax rate also applies for transfers with consideration below 30% of the market value. The Real Estate Transfer Tax Act provides reduced tax rates for real estate transactions in connection with reorganizations that fall under the Reorganization Tax Act and in case of transfer of shares in real estate holding companies. Further the transfer of agricultural land is favored with regard to the tax rate and tax base.

For purpose of registration in the land register (Grundbuch) the acquirer has to pay a registration fee (Eintragungsgebühr) of 1,1%.

Real estate income tax (Immobilienvertragssteuer)

Capital gains deriving from the sale of real estate property by private persons were only taxed within the speculation period of ten years after acquisition. In 2012 this regulation was replaced by a new taxation regime.

New Taxation

Profits from the sale of so called new properties (acquisition as of March 31, 2002 and later) are subject to a flat income tax rate of 30% (starting 2016; before the flat tax rate was 25%). Real estate property purchased prior to March 31, 2002 are taxed at 4,2% (until end of 2015: 3,5%) of the sale proceeds (old properties). If the real estate asset, has been converted from land into building land after 31 December 1987, the tax rate amounts to 18% (until end of 2015: 15%) of the sale proceeds.

Exemptions

Real estate property which was used as the principal residence (certain prerequisites exist) or which was self-constructed is exempt from taxation.

Reorganization Tax Act (Umgründungssteuergesetz)

Under the Reorganization Tax Act tax-free reorganizations of corporations and partnerships are facilitated, both for domestic and cross-border transactions.

Private Foundation (Privatstiftung)

A private foundation according to the Private Foundations Act (Privatstiftungsgesetz) is a legal entity founded by one or more founder(s) (Stifter). It is necessary to contribute assets of at least EUR 70.000 to the private foundation. In case of contributions in kind, an initial audit is required.

The private foundation is set up by deed of foundation (Stiftungsurkunde), including the denomination of contributed assets, the foundation's purpose, the beneficiary (Begünstigter) as well as other mandatory content. A supplement to the deed of foundation (Stiftungszusatzurkunde) is permitted. The declaration of establishment needs to be filed with the Registrar of Companies (Firmenbuch). Both the deed of foundation and the supplements thereto require the form of a notarial deed.

A private foundation is required to have a managing board (Stiftungsvorstand). It is subject to a statutory audit of its financial statements..

Under the provisions of the foundation contribution tax act (Stiftungseingangssteuergesetz), the contribution of assets to the foundation is subject to a flat-rate tax of 2,5%. Later contributions made by the founder or by third parties are equally taxed at a rate of 2,5%.

However, in some cases the foundation contribution tax increases from 2,5% to 25% e.g.:

- the private foundation is not comparable to a foundation according to the Austrian Private Foundations Act (Privatstiftungsgesetz) or
- certain documents, e.g. the deed of foundation, are not disclosed to the tax office or
- there is no administrative and legal co-operation agreement (umfassende Amts- und Vollstreckungshilfe) in place between Austria and the country in which the private foundation is located

The distribution of the substance of assets contributed after 31.07.2008 to beneficiaries is tax-exempt. However, for tax purposes it is assumed that the private foundation distributes taxable capital gains first before distributing any tax-free substance. An additional requirement for treating a distribution as tax-exempt is maintaining a reconciliation of contributions and distributions of assets (Evidenzkonto).

Inheritance tax/gift tax

Inheritance and gift taxes (Erbschafts- und Schenkungssteuer) are no longer levied in Austria, however reporting obligations apply if the fair market value of the gift exceeds certain amounts (Schenkungsmitteilgesetz). Donations of property are now subject to real estate transfer tax.

Capital transfer tax

Capital contributions to a corporation, the issuance of stock and capital increases are subject to a 1% capital transfer tax. The Austrian Tax Amendment of 2014 disestablishes the capital transfer tax at the end of 2015. This means that capital transfer tax is only levied if the tax liability arises before January 2016.

Stamp duties

Stamp duties (Gebühren) are levied in connection with written agreements connected with certain types of legal transactions such as e.g. lease and rental agreements or marriage agreements. Such a stamp duty is levied in Austria if either both parties to the agreement are resident in Austria or if the transaction concerns an asset situated in Austria or the performance of contractual rights or obligations in Austria. Different rates apply to different types of contracts and are based on the value of the contract.



VIII. Contact details



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