



THE POWER
OF BEING
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AUDIT | TAX | CONSULTING

DOING BUSINESS IN AUSTRIA

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1. Why Austria?

Austria is an exceptionally secure location for investments and doing business. It is a prosperous country in the heart of Europe with the worldwide highest quality of life. The low crime rate and the high level of legal certainty particularly attract foreigners.

Since the fall of the Iron Curtain, Austria is considered as the ideal hub for lucrative business operations between Western Europe and the booming markets of Eastern and South Eastern Europe. Outstanding Central and Eastern European know-how of the Austrian service providers such as banks, law firms and advisory companies, a historically matured cultural understanding of Austrians for the CEE region, political stability and security along with transparent laws make Austria an ideal East-West interface.

The Austrian register of real estates (Grundbuch) is especially worth mentioning at this point as it provides exceptional legal security. It is administered by the district courts and its importance lies primarily in the fact that rights with respect to real estate such as ownerships, mortgages, servitudes, etc. are recorded in it and come into existence upon registration. Moreover, certain legally considerable facts can be pointed out in the register of real estates. Consequently, everyone can rely on the validity and integrity of the information provided by it. The register of real estates is publicly accessible at the district courts to those who can prove legitimate interest whereas lawyers, notaries public and other registered users can obtain excerpts online.

Furthermore, Austria's economic and social partnership between management and trade unions is not only the basis for low strike rates but also ensures a relatively low unemployment rate.

Finally, as will be described in the following chapters, the attractive corporate tax rate and group taxation are particularly business-friendly measures benefitting multinational companies. Especially the group taxation scheme is a major competitive advantage for headquarters in Austria.

2. About RSM

2.1. About RSM International

RSM International is a worldwide network of independent accounting and consulting firms. RSM International and its member firms are separate and independent legal entities. RSM International does not itself provide accounting and consultancy services. All such services are provided by affiliate members practising on their own account.

RSM is represented by affiliate independent members in over 120 countries and brings together the talents of over 41,400 individuals in over 800 offices worldwide.

The network's total fee income of USD 4.87bn places it among the top six international accounting organisations worldwide. Member firms are driven by a common vision of providing high quality professional services, both in their domestic markets and in serving the international professional service needs of their client base.

RSM International is a member of Forum of Firms. The objective of the Forum of Firms is to promote consistent and high quality standards of financial and auditing practices worldwide.



2.2. About RSM Austria

RSM Austria Steuerberatung GmbH, RSM Austria Wirtschaftsprüfung GmbH, RSM Austria Transaction Services Wirtschaftsprüfung GmbH, RSM Austria Consulting GmbH, RSM Austria Business Process Improvement GmbH and RSM Austria Immobilien GmbH, provide professional services to local and internationally active firms and organisations. Its services portfolio covers three main areas: tax, consulting, audit, and business services in related fields such as establishment and domiciliation of companies under Austrian law.

Effective and innovative tax consulting is more than just traditional services that one normally associates with the field. Compilation of annual financial statements, tax returns and bookkeeping services are, of course, part of the picture. However, with services such as tax optimisation, business consulting and a comprehensive domiciliation service, we go the critical extra mile for our clients – and we offer comprehensive access to all our services.

In recent years, the importance of diligent and professional auditing has become more firmly entrenched in the consciousness of both the business world and the wider public. Careful auditing is the foundation on which trust in the value of a company is built – and gaining the trust of investors, the media and the general public is essential. For this reason, RSM Austria regards its service portfolio in this field as a basis for substantiating and communicating not only corporate value, but also the financial and structural potency of the institution under audit. The audit teams at our office the highest levels of technical proficiency, reliability, diligence and personal integrity.

Our approach to consultancy is comprehensive. In particular, in addition to our consulting expertise, we make our resources available to foreign companies and groups seeking to establish a local presence in Vienna.

RSM Austria operates through RSM Austria Steuerberatung GmbH, RSM Austria Wirtschaftsprüfung GmbH, RSM Austria Transaction Services Wirtschaftsprüfung GmbH, RSM Austria Consulting GmbH, RSM Austria Business Process Improvement GmbH and RSM Austria Immobilien GmbH.

The aim of this publication is to provide general information about doing business in Austria and every effort has been made to insure accuracy and timeliness of the information provided.

3. General Information

3.1. *Geography and Population*

Austria is a landlocked country in Central Europe bordering the Czech Republic and Germany to the north, Slovakia and Hungary to the east, Slovenia and Italy to the south, and Switzerland and Liechtenstein to the west. The territory of Austria covers 83,855 square kilometres and has a temperate and alpine climate.

Austria's terrain is highly mountainous due to the presence of the Alps; only 32% of the country is below 500 metres and its highest point is 3,798 metres. The majority of the population speaks local Austro-Bavarian dialects of as their native language and German in its standard form is the country's official language. Other local official languages are Burgenland Croatian, Hungarian and Slovene. The religion most widely practised is the Catholic religion.

Austria's population amounts to about 8.7 million people and it comprises nine federal states. Its capital and largest city, with a population exceeding 1.7 million, is Vienna. Austria is one of the richest countries in the world, with a nominal per capita GDP of USD 44,176 in 2016. The country has developed a high standard of living and in 2015 was ranked 23th in the world for its Human Development Index. Furthermore, Vienna has



been ranked first for 8 consecutive years (2009–2016) in the "Quality of Living" – survey provided by the human-resource-consulting firm Mercer. Austria has been a member of the United Nations since 1955, joined the European Union in 1995, and is a founder of the OECD. Austria also signed the Schengen Agreement in 1995; in 1999 the Euro was introduced to financial markets as an accounting currency replacing the ECU, and was finally circulated in 2002.

The Public Holidays are:

- 1st January (New Year's Day)
- 6th January (Epiphany)
- Easter Monday
- 1st May (Labour Day)
- Ascension Day
- Whit Monday
- Corpus Christi
- 15th August (Assumption)
- 26th October (Austrian National Holiday)
- 1st November (All Saints' Day)
- 8th December (Immaculate Conception)
- 25th December (Christmas Day)
- 26th December (St. Stephen's Day/Boxing Day)

3.2. Political Institutions

Austria is a parliamentary, democratic republic. In Austria the president (currently Alexander van der Bellen) functions as head of state and has little authority over the actions of the government. The parliament of Austria consists of two chambers: The National Council (Nationalrat) which is elected directly by the people and the Federal Council (Bundesrat) local, federal which represents the interests of Austria's federal states and whose members are appointed by their parliaments. The chancellor Sebastian Kurz is the head of government and political power is in his hand. In addition to that, the chancellor, his cabinet, and administration have extensive executive powers and are the authors of most legislation. Yet, they are politically responsible to The National Council and can only govern with its approval. The chancellor and the cabinet, together with their party's representatives in The National Council, are the main centre of government activity and power.

Under Austria's federal structure the authority to enact and enforce laws is divided between the federation (Bund) and the nine states (Bundesländer). The nine states are: Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg. The legislative body of the federation is the parliament whereas those of the states are called "Landtage". The "Landtage" primarily enact and execute the laws of the laws of the states.

Executive power is exercised by the governments, both local and federal. Federal legislative power is vested in both the government and the two chambers of parliament, the National Council and the Federal Council. Since 1949 the political landscape has been largely dominated by the conservative Austrian People's Party (ÖVP) and the centre-left Social Democratic Party of Austria (SPÖ).

The judiciary is independent of the executive and the legislature, and exclusively federal in nature. Therefore all courts are federal. Moreover, the judiciary is subdivided into ordinary courts and public law courts. The Regional Courts (Landesgerichte), the Higher Regional Courts (Obere Landesgerichte) and the District Courts (Bezirksgerichte) are local federal institutions and the Supreme Court (Oberster Gerichtshof) serves as the court of last resort.



3.3. *Economy*

Austria is one of the richest countries in the world in terms of GDP per capita amounting to approx. EUR 40,000 in 2016, has a well-developed social market economy, and a very high standard of living. The inflation rate accounted for 0.9% and was lower than the European average. The unemployment rate was 9,1% in 2016 which was low in comparison to the rest of Western Europe. According to preliminary results by Statistics Austria, total imports amounted to EUR 135,7 billion and total exports amounted to EUR 131,1 billion in the period January to December 2016. Austrian imports increased by 1,6% and Austrian exports decreased by 0,3% compared to the same period in 2015. The global foreign trade balance showed a deficit of EUR 4,5 billion.

In the recent years privatisation has taken place. As a consequence, large industrial enterprises which had been nationalised before 1980s were privatised which brought down the level of state holdings to that of other European economies. The service sector, especially the corporate and financial services, dominates the economy following by the highly developed industry sector.

Germany has historically been the main trading partner of Austria, making it vulnerable to rapid changes in the German economy. However, since Austria became a member state of the European Union in 1995 and joined the Economic and Monetary Unions, it has gained closer ties to other European Union economies, reducing its economic dependence on Germany. Apart from that, the country's membership in the EU has drawn an influx of foreign investors attracted by Austrian access to the single European market and proximity to the aspiring economies of the European Union.

Moreover, Austria is a member of other international organisations such as the WTO (World Trade Organisation) and the OECD (Organisation for Economic Cooperation and Development).

3.4. *Local Customs*

Family is the base of the Austrian social culture. Weekends are usually spent with the family and eating dinner together is also very common. To Austrians their home is very important and it is a place only friends and close relatives are invited to. Moreover, Austrians are rather conservative and very comfortable. They attach importance to clothing and demeanour saying: "The first impression does not have a second chance".

The common greeting is a firm handshake. However, some Austrian men might kiss the hand of a female.

It is remarkable that Austrians attach great importance to (academic) titles and therefore it is advisable to use them before the surname until invited to use the first name, when addressing a person.

Furthermore, punctuality and accuracy are taken extremely seriously and are considered a sign of respect. In case of running late one should immediately call and provide an explanatory excuse. What is more, cancelling an appointment at short notice is regarded as rude and could ruin a business relationship. Interestingly, Austrians use written communication to a great extent to back up decisions and to maintain a record of discussions and results.

There are some rules which are expected to be obeyed during negotiations with Austrian business partners:

- One should not sit down without being invited to do so and told where.
- Meetings are formal and should follow strict agendas.
- Austrians set a high value on long-term relationships. In addition to that, they are pretty detail-oriented and scrutinise everything before making a decision. Thus, patience is required as business is conducted rather slowly.

- Austrians do not put up with pressure and confrontation. Thus, such tactics should be avoided.

4. Company Law

4.1. Commercial Register (*Firmenbuch*)

All legal entities in Austria are required to be registered in the Austrian commercial register. The commercial register is a central, public online register of those sole proprietors who are recorded there as well as corporations (GmbH, AG), partnerships (OG, KG), and associations which are located in Austria. Moreover, branch offices of foreign entities are required to register in the commercial register. The electronic version of the commercial register exists since 1991 and is publicly accessible. An excerpt from the commercial register (*Firmenbuchauszug*) can be obtained from a court, a notary public, a lawyer, or by other registered users such as us. Information given on an electronic excerpt from the commercial register is absolutely identical to the print-out ones and contains valid and current information. On the excerpt from the commercial register the following information is provided:

- Commercial register number
- Name of the company
- Legal form
- Registered office address
- Branch offices
- Date of signing the articles of association (and dates of later amendments)
- Names and dates of birth of the managing directors and other authorised officers, partners or shareholders
- Nominal capital
- Mergers, splitting
- Bankruptcy
- Liquidation

It is advisable for a due diligent businessman to check the commercial register to scrutinise the business partner in order to avoid an unauthorised person signing documents or agreements.

Furthermore, one should consider that in case of failure to register, if mandatory, one can be forced to do so. In addition to that, one should take into account possible fines of up to EUR 3,600.00 which may be increased by another EUR 3,600.00 if not paid two months from imposition. Moreover, penalties may also be imposed if financial reports are not filed with the commercial register within nine months from the balance sheet date.

4.2. Types of Business Entities (*Legal Forms*)

A company comes into existence upon registration in the commercial register. There are several types of business entities that might be formed in Austria. According to Austrian Law the following legal forms may be used:

- Private Limited Company (*Gesellschaft mit beschränkter Haftung – GmbH*)
- Public Limited Company (*Aktiengesellschaft – AG*)
- Open Partnership (*offene Gesellschaft – OG*)
- Limited Partnership (*Kommanditgesellschaft – KG*)
- Cooperative (*Genossenschaft*)
- Civil Law Association (*Gesellschaft bürgerlichen Rechts – GesbR*)

- Sole Proprietorship (Einzelunternehmen)
- Association (Verein)
- Silent Partnership (stille Gesellschaft)
- European Company (Societas Europaea – SE)
- Private Trust (Privatstiftung)

The Company with Limited Liability (GmbH) is the most popular legal entrepreneurial form after the sole proprietorship in Austria. Therefore, it is suitable especially for associations of partners who work together and yet wish to reduce the capital investment risks due to the limited liability it offers to its owners and will therefore be described in greater detail below. The other legal forms of business entities will briefly be explained subsequently.

4.2.1. Companies with Limited Liability (Kapitalgesellschaften)

Private Limited Company (GmbH)

A private limited company is a legal entity, which means that it has a legal existence separate from that of its individual members. As such, it is the owner of all business assets and liable for all its debts and obligations. As its partners are not personally liable for its debts, it is the prevalent legal form for Austrian subsidiaries of foreign parent companies. In practice, however, banks often require shareholders of a limited-liability company to personally accept guarantees in order to be granted a loan.

After formation, a private limited company comes into legal existence upon being entered into the commercial register. The application for the registration must be signed by all shareholders. The formation requires only one founding partner. The founding act and the articles of association must be witnessed and attested by a notary public. The law defines the minimum content of the articles of association; however, a wide range of additional clauses in the articles may be stipulated.

In case a limited liability company wishes to run a trade business, it must have a trade licence which has to be issued in its name. Since the company does not have any legal status until it has been entered into the commercial register, the application for a trade licence may only be filed with the trade authority after the firm is registered so that an excerpt of commercial register can be submitted along with the application.

The minimum share capital (Stammkapital) of a limited liability company amounts between EUR 10,000 and EUR 35,000.00; at least half of it i.e. EUR 5,000 or 17,500.00 must be paid in cash. Exceptions are made for contributions in kind (Sacheinlagen) and continuation of a business. Every individual shareholder must invest a minimum initial capital contribution of at least EUR 70.00.


The following minimum costs are approximately incurred when establishing and running a limited-liability company:

Formation costs:

- Stamp Duty, Publication Costs, Articles of Association EUR 600.00
- Minimum contribution in cash EUR 5,000
- Notary public and legal advice (in varying amount)

Minimum annual operation costs:

- Minimum Corporate Income Tax 5 % of the minimum share capital (carry-forward in case of losses)

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- Minimum Corporate Income tax benefits in the first ten years for GmbHs established after 30 June 2013:
 - Year 1 to 5: EUR 125 for each full quarter (EUR 500 per year)
 - Year 6 to 10: EUR 250 for each full quarter (EUR 1,000 per year)
 - Costs for compilation and filing of financial statements

The share capital is the sum of contributions (Einlagen) of the single shareholders. The share of a shareholder is determined by the amount of the initial contribution (Stammeinlage). While every shareholder can only hold one share, shares can have different par values.

As abovementioned, a company with limited liability is a legal entity, however, it is not authorised to act legally on its own. For this reason, it is publicly represented by one or more managing directors (Geschäftsführer) who run the day-to-day business and are appointed by the shareholders' assembly.

In addition to that, the shareholders' assembly is responsible, amongst others, for the approval of financial statements, profit distribution, appointment of the supervisory board (Aufsichtsrat), appointment of the statutory auditor, if necessary, (considering the supervisory board's advice), and changes to the articles of association. Moreover, the shareholders' assembly is authorised to issue instructions to the managing directors. Its resolutions usually require a simple majority of the shareholders present to pass unless the articles of association or the law stipulate otherwise.

Generally, a company with limited liability is not required to have a supervisory board. However, it is entitled to establish a supervisory board, should it decide so. Under certain circumstances a supervisory board must be set up. For instance, if the number of the company's employees exceeds 300. Should a supervisory board exist, one third of its members should be formed by members of the work council (Betriebsrat).

Additionally, companies with limited liability sometimes set up an advisory board (Beirat) which advises the managing directors.

According to commercial and tax codes, an Austrian company with limited liability is obligated to maintain accounts.

Companies with limited liability are required to disclose their annual financial statements. They are obligated to electronically file them with the commercial register within nine months after the end of the financial year. The amount of information subject to disclosure depends on the size of the company. Small and medium-sized companies are entitled to avail themselves of simplifications such as abridging of the annual accounts by combining items into one. This requirement provides stakeholders with more transparent information on the respective company along with confidence about the future.

In terms of social insurance, a simple shareholder of a company with a limited liability in Austria is not obligated to compulsory social insurance. If, however, a shareholder is the managing director at the same time, he must be socially insured.

PROS	CONS
<ul style="list-style-type: none"> • Amount of equity capital is the upper liability bound • Deposited share capital can immediately work in the company • High domestic and international acceptance of this legal form • No statutory audit required for small-sized companies 	<ul style="list-style-type: none"> • High establishment costs • Double entry accounting and disclosure of financial statements is mandatory • Managing director may be personally liable • Shareholders might be personally liable to credit granting institutes

Public Limited Company (AG)

The public limited company (AG) is one of the two main forms of corporations in Austria alongside the private limited company (GmbH) and is therefore a legal entity. Its most specific feature is the easiness to transfer shares which gives this type of business organisations the possibility to raise funds on capital markets.

A public liability company comes into legal existence upon being entered into the commercial register. Its articles of association have to be established in the form of a notarial deed. Since 2004 a public limited company is permitted to be formed by only one founding partner. In such a case the name and the date of birth of the sole founder must be entered into the commercial register. This also applies if all the existing shares are purchased by one person. If there are two or more founding partners, they do not have to be listed by name in the commercial register.

Like in the private limited company, the shareholders are not personally liable for the debts of the company. The corporate liability of a public limited company is limited to its share capital. The minimum share capital (Grundkapital) of a public limited company amounts to EUR 70,000.00 whereof at least 25% must be paid in prior to the registration in the commercial register. The share capital is split into shares of which there are two types: par-value shares (Nennbetragsaktien) and shares without a par value (Stückaktien). Par-value shares must have a par value of at least EUR 1.00 or a multiple of it. The percentage of the share capital is assigned according to the proportion of the par value to the share capital. Each share without a par value represents the same percentage of the share capital. The share in the company depends on the number of the shares issued.

Unlike a private limited company, a public limited company in Austria is obligated to appoint a supervisory board which is independent of the board of directors. It has a two-tiered board system where control and management are strictly separated from each other. The board is split up into the board of directors composed of one or more members (Vorstand) and the supervisory board (Aufsichtsrat). However, supervisory board's consent is required referring certain issues. Representation, management, supervision, and day-to-day control over the company are vested in its board of directors which is elected by the supervisory board and may be appointed for a maximum period of five years. The supervisory board in turn is elected by the shareholders at the shareholders' meeting which must be held annually within eight months after the end of each reporting period. As opposed to a private limited company, the board of directors in a public limited company is not bound by instructions neither to the supervisory board nor to the shareholders' assembly. Furthermore, its task is to prepare the financial statements and it may call the shareholders' assembly. Once the financial statements are prepared they must be audited and approved by the supervisory board and then presented to the shareholders' assembly. The shareholders' assembly resolves amongst others upon capital changes, changes of corporate form, and liquidation of the company. In addition

to that, it gives formal approval of the actions of both boards, decides on the appointment of auditors and the distribution of dividends. Certain quintessential decisions require a qualified majority of 75%. Moreover, a notary public has to certify all the decisions made by the shareholders' assembly.

The law draws a distinction between two different types of public limited companies: the listed and the unlisted ones. In Austria only approximately 10% of public limited companies are listed.

PROS	CONS
<ul style="list-style-type: none"> • Continuous existence regardless of its shareholders or directors • Shares are freely transferable, and thus can easily be sold without affecting its capital or existence • Liability of shareholders is limited to the issue price of the shares held • Huge amounts of capital are possible to raise 	<ul style="list-style-type: none"> • Disclosure requirements exacerbate concealment of business affairs • High establishment costs • High operating costs • Possible principal – agent problems • Statutory audit required

4.2.2. Other Legal Forms

Open Partnership (OG)

An open partnership is an association of two or more individuals or corporations whose activity can either be entrepreneurial or non-entrepreneurial, including independent professions as well as agricultural and silvicultural businesses.

An open partnership is formed by means of formless or even oral articles of association between the partners. Notaries public need not be involved. However, it must be entered into the commercial register. All partners are fully liable for corporate debts and therefore their personal assets are at risk. The open partnership is represented by its partners.

Double entry accounting and preparation of financial statements according to the Austrian Commercial code are mandatory for an open partnership if its revenue exceeds the amount of EUR 700,000.00 in two subsequent years or if it is higher than EUR 1,000,000.00 in a single year.

Furthermore, if a company desires to run a trading business it must apply for a trading licence in the company's name. Additionally, a managing director must be appointed for this purpose.

PROS	CONS
<ul style="list-style-type: none"> • Easy and quick establishment – no formal contractual regulations • All partners are entitled to control • Distribution of tasks possible 	<ul style="list-style-type: none"> • Personal, unlimited liability • Joint guarantee • Partners are closely tied to the company • No statutory audit required

Limited Partnership (KG)

A limited partnership in Austria is an association of two or more individuals with any permitted purpose including independent professions and agricultural and silvicultural businesses. Articles of association do not require any legal form and do not have to be in writing although it is strongly advisable. Notaries public or attorneys need not be involved either. A limited partnership comes into legal existence upon being entered into the commercial register.

It must consist at least of one general partner (Komplementär) who is unrestrictedly liable and one limited partner (Kommanditist) whose liability is limited. A general partner is directly, personally, and unrestrictedly liable towards creditors, whereas the liability of a limited partner is restricted to the sum entered as a liability deposit (Hafteinlage) in the company register. According to law, each general partner has the right to manage and represent the company.

Double entry accounting is mandatory as of attaining annual revenues of EUR 700,000.00.

Moreover, if a company desires to run a trading business it must apply for a trading licence in the company's name. In order to obtain such authorisation a person responsible for the trade licence must be appointed.

Finally, it is possible to found a limited partnership where the general partner is a limited liability company (GmbH & Co KG). This is frequently done for tax reasons and management purposes.

PROS	CONS
<ul style="list-style-type: none"> • Easy and quick establishment – no formal contractual regulations • Limited partners have limited liability • On one hand, equity position of general partners is increased due to deposits of limited partners; on the other hand no need to give them management or representation rights • High creditworthiness due unlimited liability of general partners 	<ul style="list-style-type: none"> • Personal, unrestricted liability for general partners • Limited partners have none or limited control • No statutory audit required (except for certain GmbH & Co KGs)

Sole Proprietorship (Einzelunternehmen)

Sole proprietorship is on hand if a business is operated by an individual person. A sole proprietor is unrestrictedly liable for the businesses debts i.e. all his personal assets are at risk. It commences upon registering the trade and/or receiving authorisation, if necessary. It must be entered into the commercial register once it has reached the level of accountability which generally lies at EUR 700,000.00 in revenues. As long as this threshold is not reached, the registration is voluntary without accounting obligation.

Furthermore, it is required by law for a sole proprietorship to have a trading licence if trade is practised. The sole proprietor must meet certain requirements in order to obtain one. In case these requirements are not met, a responsible person has to be appointed who must be employed by the company.

PROS	CONS
<ul style="list-style-type: none">• Easy and quick establishment• Ascertainment of profits by means of a statement of revenues and expenditures until attaining the level of EUR 700,000.00 in revenues (cash accounting)	<ul style="list-style-type: none">• Unlimited, personal liability• Obligation to hire a managing director if personal qualifications under trade law are not met• No statutory audit required

Civil Law Association (GesbR)

A Civil Law Association consists of two or more united individuals or companies with a purpose of joint benefit. As opposed to other partnerships and corporations, it is not a legal person and its members are subject to joint and unrestricted liability for its debts.

Articles of association do not require any legal form; however, it is advisable to set up a written contract. As a Civil Law Association is not permitted to be the bearer of a trading licence, every single partner must obtain the required licences.

Due to that fact that the united individuals or corporations in a Civil Law Association are not permitted to appear under a common name it neither may be entered into the commercial register nor into the land register. Moreover, it cannot take legal action or be sued.

Once the revenue level reaches the threshold of EUR 700,000.00 in two subsequent years it must be entered into the commercial register as an open or limited partnership with accounting obligation in the second following year. If sales exceed the amount of EUR 1,000,000.00 in a single year, the above obligation arises in the following year.

PROS	CONS
<ul style="list-style-type: none"> • Easy and quick establishment – no formal contractual regulations • No entry in the commercial register • Simple form for joint ventures and working partnerships 	<ul style="list-style-type: none"> • No legal personality, thus each partner requires own trading licences • Joint, unrestricted liability • No official and registered company name • No statutory audit required

Cooperative (Genossenschaft)

A cooperative is a legal entity with a special purpose. The number of its members is not limited. The aim of a cooperative is to promote its members' acquisitions or business activities. Liability depends on the form of the cooperative along with its articles of association. It has no preassigned capital and is governed by the Cooperative Societies Act (Genossenschaftsgesetz).

Association (Verein)

An association is a legal entity which is used as a vehicle for running a non-profit organisation. This legal form is not appropriate for operating a business as it has to pursue the realisation of an ideal.

Silent Partnership (stille Gesellschaft)

In a silent partnership a silent partner provides an existing business with capital. It is not a legal entity and the management and representation of a silent partnership are handled by the owner only. The silent partner is not liable for company's debts. However, he has a stake in the profits and losses of the business. It can be agreed that the latter are excluded and he only participates in the company's profits.

European Company (SE)

Since 2004 the European Company Statute permits businesses active in several EC member states to establish a public limited company called Societas Europaea (Latin for European company) and to operate in the European Union under uniform principles. It is a legal entity whose capital is split into shares. The required minimum capital amounts to EUR 120,000.00. There is a choice between the one-tier and the two-tier management systems. Its registered office must be located in one of the EU member states and it must be entered into the commercial register.

There are four ways of forming an SE, namely:

- (1) by merger of national companies from different member states
- (2) by creation of a joint venture between companies in different member states
- (3) by creation of a SE subsidiary of a national company, or
- (4) by conversion of a national company into an SE.

Private Trust (Privatstiftung)

The private trust in Austria is a legal entity. In contrast to others, its structure is characterised by having no proprietor or shareholders as it belongs to itself. It can be established by legal persons or individuals and comes into existence upon being registered into the commercial register.

The purpose of a private trust is laid down by the founder in the declaration of establishment and must not be illegal or unethical. The minimum capital requirement amounts to EUR 70,000.00.

This investment form is especially attractive due to certain favourable taxation as well as stable asset protection provided by it. For further information please see the chapter "Private Trusts and Holding Companies".

5. Taxation

Taxes are regarded as the main source of general revenue from which most government expenditure is financed. The Austrian tax system is based on two pillars. The first one is the taxation of profits of corporations and income of individuals which is referred to as direct taxation. The second pillar is made up of general transaction taxes, the most relevant in Austria being the value added tax (VAT, Umsatzsteuer USt) which is regarded as indirect because the taxpayer and the tax debtor are not identical.

5.1. Corporate Income Tax CIT (Körperschaftsteuer)


The Corporate Income Tax (CIT) is a tax on earnings of corporations which is personal and direct. The main taxable corporations in Austria are in particular Private Limited Companies (GmbHs) and Public Limited Companies (AGs) as well as e.g. private trusts, cooperatives and incorporated associations, whereas special tax regimes and rules fractionally apply for the latter three. Furthermore, branches and permanent establishments of foreign corporations are liable to corporate income tax as well.

A corporation is subject to CIT on its worldwide income in Austria if it is resident in Austria i.e. its official place of business or its official place of management is located in Austria. In case a corporation neither has its place of business nor the place of effective management inland, it is not subject to unlimited tax liability in Austria. However, it might be subject to limited tax liability i.e. specific parts of its income are taxable in Austria.

The taxable income of corporations is taxed at a flat rate of 25% regardless of profits being distributed or retained. Once profits are distributed, they are taxed at the rate of 27,5% (withholding tax). Thus, if the profits of a corporation are fully distributed, the tax burden amounts to 45.625% ($25\% + 75\% \times 27,5\% = 45.625\%$). The tax on the distribution of profits is deducted by the company (→ withholding tax). However, a minimum income tax rate of 5% per annum of the minimum amount of the share capital, which is between EUR 500.00 and EUR 1,750.00 for the private limited companies and EUR 3,500.00 for public limited companies, is charged quarterly (EUR 125 to 437.50 and EUR 875.00 respectively). Furthermore, for both types of companies the first five years of a company's existence the minimum corporate income tax is reduced to EUR 125.00 per each full quarter and for the following five years this tax amounts EUR 250 per each full quarter. In succession, the minimum corporate income taxes are credited to the future corporate income tax once the respective company starts being profitable (again).

Taxable Income

Corporate income tax is generally imposed on the income earned by the corporation during its financial year. "Income" is defined as net income (= the companies profit), after deductible business expenses, tax allowances and tax losses brought forward and consists of business and trading income, capital gains and



certain passive income. Moreover, there are certain exemptions for dividend income and capital gains deriving from foreign subsidiaries (see below).

Residents/Non-residents

The taxable income of residents is subject to unlimited liability and generally comprises the worldwide income equalling the sum of all profits and gains. Non-residents, i.e. those having neither their place of business nor their place of effective management in Austria, might be subject to limited tax liability on certain sources of income in Austria. Austrian branches of foreign corporations are taxed similarly to Austrian subsidiaries at a rate of 25% corporate income tax.

Deductible/Non-deductible Expenses

Deductible business expenses are broadly defined as expenditure arising from business operations as well as expenses incurred in acquiring, securing or maintaining taxable income, including for example cost of materials, employees' remunerations, directors' fees, interest, royalties, service and management fees according to the arm's length principle, research and development as well as other costs of administration.

Non deductible expenses are for instance dividend distributions to shareholders, hidden profit distributions, 50 % of entertainment and representation expenses as well as 50% of expenses paid to the supervisory board, certain donations, gifts and contributions to political parties. Interest of debts obtained for the acquisition of a participation is not deductible if the participation is acquired within a group of companies. In addition to that, interest expenses and royalty payments to foreign affiliates that are effectively taxed below 10% or tax-exempted are non-deductible as well.

Reserves/Provisions

Reserves and provisions are allowed to be set aside for future expenses and liabilities and impending losses provided for at the balance sheet date. Long-term provisions are defined as provisions that are expected to exist for more than one year after the balance sheet day. This kind of provisions need to be discount – as a basic rule – by a rate of 3.5 percent over the expected remaining time. Exceptions to this rule relate to provisions for personnel benefits like severance payments, pensions, vacations and anniversary awards. Lump-sum accruals and accruals for repairs and maintenance are not deductible for tax purposes.

Set-off of Losses

Losses can be carried forward indefinitely. They can be credited against a maximum of 75% of the annual taxable income in later periods which implies that a minimum of 25% of the annual taxable income remains subject to CIT. Unused tax losses are carried forward.

Furthermore, it is not possible to carry-back losses in Austria.

Tax Incentives

Tax incentives usually refer to qualifying assets or expenditure and not to an operation as such. Tax incentives possible under the Austrian tax law include:

- Premium for R & D expenditure amounting to 12% (2018: 14%) of expenses but in the maximum expense amount of EUR 120,000.00 (2018: EUR 140,000.00) per year



Groups of Companies

Group Relief

Two or more Austrian resident companies may form a tax group with the purpose of pooling profits and losses for a collective taxation at the level of the group parent.

Furthermore, tax losses of foreign subsidiaries which are held directly by one of the other Austrian group members can be set off against taxable group income or are carried forward for future periods. In case the foreign subsidiary earns taxable profits and uses its own loss carry-forward in its own country of residence, foreign tax losses used by the group will be taxed according to a claw-back rule. Thus, the advantage resulting from the use of foreign tax losses within the Austrian group taxation is only temporary.

In order to establish an Austrian tax group the following basic requirements must be met:

- Financial participation of more than 50% including the majority of voting rights
- Duration of at least three years
- Application at the tax office in charge

Participation Exemptions

Domestic Participation Exemption

Dividends and similar income received by an Austrian corporation from investments in domestic corporations are exempt from corporate income tax regardless of the level of investment or the duration of ownership. Withholding tax is levied on holdings of less than 10%, however, it is creditable against corporate income tax. Gains from the disposal of such domestic investments are fully taxable. Losses are generally deductible, but have to be allocated over a period of seven years.

Foreign Participation Exemption

Capital gains and losses from disposals or other forms of termination of ownership in foreign investments are tax neutral for CIT purposes.

Dividends received by Austrian (holding) companies deriving from foreign companies/investments may be subject to the Austrian participation exemption and are consequently tax free under the following conditions:

- The Austrian parent company has held at least 10% of the capital of the third country subsidiary (not necessary for EU companies) for a minimum holding period of one year.
- The company is comparable to a domestic corporation.
- No suspicion of tax avoidance or abuse is raised (Abuse will usually be assumed if either both of the following criteria are met or if one of them applies predominantly and the second nearly applies: (1) A prevalent part of the income of the foreign subsidiary is passive e.g. rental and lease income for moveable assets, capital gains from disposals of shareholdings, interest income. (2) The corporate tax rate of the foreign subsidiary is not comparable to the Austrian one i.e. it is lower than 15%.)



Anti-Avoidance Rules

The Austrian anti-avoidance rules are addressed against specific cases. The most known are transfer pricing (Verrechnungspreise), thin capitalisation (Eigenkapitalausstattung) and controlled foreign companies (ausländisch beherrschte Gesellschaften) rules.

The official Austrian transfer pricing guidelines were released in November 2010 for the first time. They are based on the OECD transfer pricing guidelines and on a set of official announcements released by the Austrian Ministry of Finance in the past years. Generally, transactions between related parties have to be at arm's length. As a consequence, although payments to foreign affiliates may be deducted, tax authorities will scrutinise them.

The Transfer Pricing Documentation Act (TPDA) has been official published in Austria in 2016. The act is based on the BEPS Action 13 of the OECD. As proposed by the OECD, a three-tired documentation, including Master File, Local File and a Country-by-Country (CbC) Reporting, has to be prepared by Austrian entities. For the preparation, the Austrian entities need to be bear in mind two thresholds:

- If the total consolidated group revenue equals at least EUR 750 Mio, the Austrian entity is subject to the CbC reporting requirement, and
- if a total turnover of an Austrian group entity exceeds EUR 50 Mio, a Master File and a Local File has to be prepared.

Austrian based parents of multinational enterprises (MNE) or Austrian business units which has taken over the reporting obligation have to provide the transfer pricing documentation (Master and Local File) to the competent tax authority within 30 days, when the tax returns for a given year are filed. The CbC reports need to be filed electronically via FinanzOnline with the tax office of the Ultimate Parent Entity within 12 months of the end of the fiscal year.

In addition, each Austrian based business unit of a multinational group has various reporting obligations (i.e. VPDG-1 form).


Although there are no specific rules regarding thin capitalisation, certain instructions were set up by the Administrative Court which are used to define whether the debt-to-equity ratio is adequate. In case it is determined to be inadequate, a certain portion of the loans granted by shareholders might be considered as equity. Hence, interest paid on such loans would be regarded as hidden profit distribution and would not be allowed to be deducted from the taxable earnings.

According to Austrian legislation, profits accumulated in companies located in low-tax jurisdictions are not subject to taxation. However, the Austrian tax authorities are empowered to prevent abuse. This means that they can make adjustments if abuse of legal forms is detected or unusual methods – with no reason except for tax avoidance – are implemented and used (see foreign participation exemption above).

5.2. Personal Income Tax (Einkommensteuer)

Individuals are subject to personal income tax in Austria. As the name suggests it is personal and as in this case the taxpayer and the tax debtor are identical it is referred to as direct taxation.

The Austrian tax law distinguishes between unlimited and limited tax liability. Those individuals whose place of residence or place of abode is in Austria are subject to unlimited tax liability with their world income. Those to whom this does not apply are subject to limited tax liability which means that only the income earned inland



is taxed in Austria. Unlimited tax liability commences with birth or with the establishment of a residence or a place of abode within the country and ends with death or with abandonment of a residence or a place of abode within the country. Persons who reside in more than one country or reside in one country and possess a place of abode in another are subject to unlimited tax liability in each of these countries. This would result in double taxation which is commonly prevented by double taxation treaties.

The amount of taxable income is calculated by adding up all categories of income and subtracting special and extraordinary expenses. The personal income tax is due to be paid quarterly in advance. Self-employed people have to estimate their assessment base for the initial year. In case it turns out to be lower it is possible to request for reduction of advance payments at the tax office by September 30 of the respective year. As these payments are based on estimates, actual tax declarations must be filed with the revenue office by April 30 of the year following the current fiscal year. In case tax declarations are filed electronically the above deadline is extended to June 30 and might be extended even further if the respective taxpayer is represented by a tax counsellor.

If the advance payments turn out to be too high, the balance is credited to the account of the tax payer whereas in the event of too low advance payments the difference must be settled. Additionally, interests on tax underpayments (Anspruchszinsen) are charged by the tax authorities in case the amount due is not paid by September 30.

The tax rate ranges between 0% and 55%. Income up to EUR 11,000.00 is exempt from income taxation. Thereafter the tax rate increases progressively which is shown in the table below.

Annual Taxable Income in EUR	Income Tax Payable in EUR	Marginal Tax Rate in %
≤ EUR 11,000	0	0
over 11,000 to 18,000	$\frac{(\text{Income} - 11,000) \times 1,750}{7,000}$	25
over 18,000 to 31,000	$\frac{(\text{Income} - 18,000) \times 4,550}{13,000} + 1,750$	35
over 31,000 to 60,000	$\frac{(\text{Income} - 31,000) \times 12,180}{29,000} + 6,300$	42
over 60,000 to 90,000	$\frac{(\text{Income} - 60,000) \times 14,400}{30,000} + 18,480$	48
over 90,000 to 1,000,000	$\frac{(\text{Income} - 90,000) \times 455,000}{910,000} + 32,880$	50
over 1,000,000	$(\text{Income} - 1,000,000) \times 0,55 + 487,880$	55%

There are seven categories of taxable income in Austria:

1. Income from agriculture and forestry (§ 21 EStG)
2. Income from self-employed and professional services (§ 22 EStG)
3. Income from trade or business activities (§ 23 EStG)
4. Income from employment (§ 25 EStG)
5. Income from capital investments (§ 27 EStG)
6. Income from rents, leases, royalties (§ 28 EStG)

7. Certain other specified income (§29 EStG)

The individual personal income tax can be easily computed at the Federal Ministry of Finance website. Follow the link for more information:

http://www.bmf.gv.at/Steuern/Berechnungsprogramme/_start.htmA special case is the collection of income tax from employment which is withheld by the employer in the form of payroll tax (Lohnsteuer). There are several deductible amounts which are automatically accounted for within payroll accounting namely the deduction for travel expenses (EUR 400.00) and the pensioner deductible amount (EUR 400.00). In addition to that, there are some deductible amounts which are not automatically considered and have to be filed for.

Tax Deductions for Families

- Child allowance amounting to EUR 440.00 per year and child
- Costs for childcare are deductible up to the maximum amount of EUR 2,300.00 per child and year for children up to the age of ten.

Tax Allowance for Reinvested Profits by Self-Employed Individuals

- 13% of profits remain tax exempt up to a tax base of EUR 30,000.00 which results in a maximum tax allowance of EUR 3,900.00 per year also referred to as basic allowance.
- For profits exceeding the threshold of EUR 30,000.00 an additional tax allowance of
 - 13% up to EUR 175,000;
 - 7% over EUR 175,000 to 300,000 and

4,5% over EUR 300,000 to 580,000 is granted if investments in certain securities or fixed assets are made.

- The sum of both tax allowances is limited to EUR 45,350 per year and individual or partnership.

In addition to that, it should be taken into account that there is no collective taxation of spouses in Austria.

5.3. Value Added Tax (Umsatzsteuer)

The VAT law was developed and amended in accordance with the directives of the European Union. The VAT is the most important source of state finance in Austria and amounted to roughly EUR 27 billion out of approximately EUR 130 billion total state revenue in 2016. It is an impersonal consumption tax which must be paid on all deliveries and other services provided by an entrepreneur within a country against payment in line with his business. In addition to that, it applies to private consumption and imported goods.

The standard VAT rate in Austria amounts to 20% of the net amount. The reduced rate is 10% and 13% and applies for instance to food, accommodation and agriculture. On exported goods no VAT is imposed.

The VAT paid by entrepreneurs for goods or services purchased in need of business operations can be recovered by asserting the deduction of input tax (Vorsteuer). Once the entrepreneurial chain is interrupted, i.e. goods or services are sold to a consumer, VAT comes into effect because end-consumers cannot recover VAT on purchases.

The balance of VAT is paid to or reclaimed from the tax authorities on a monthly or quarterly base. The sequence of VAT payments and VAT returns depends on the revenue of the previous fiscal year

5.4. *Withholding Tax (Kapitalertragsteuer KESt)*

Dividend income and capital yields are taxed at the rate of 27,5% and are withheld at source.

5.5. *Gift and Inheritance Taxes (Schenkungs- und Erbschaftssteuer)*

The gift and the inheritance taxes were abolished in July 2008. The place of the gift tax was taken by the duty of disclosure for gifts. Gifts with a value up to EUR 50,000.00 among close relatives within one year and EUR 15,000.00 among others within five years are excluded from the obligation to disclose. Both, the person making the gift and the one accepting it, are subject to the duty of disclosure. Moreover, the lawyer and the notary public who set up the contractual document are obligated to disclose as well. The disclosure must be made within three months from receipt of the gift. In case of non-compliance with this regulation the transaction is subject to a fine up to 10% of the total not disclosed value.

5.6. *Real Estate Transfer Tax (Grunderwerbsteuer)*

The real estate transfer tax is imposed on acquisitions and transfers of real estate located in Austria. Its rate amounts to 3.5%. The real estate transfer tax is computed based on the consideration or, in case of gifts or inheritance, the fair market value of the property. In addition to the real estate transfer tax, land register registration fees, generally 1.1% of the consideration, need to be payed.

The real estate transfer tax is due as soon as the transfer of title for the property has taken place.

5.7. *Municipal Tax (Kommunalsteuer)*

The municipal tax is levied on companies with a branch located in a certain municipality and is local tax. It is paid on the general payroll during one month and amounts to 3% of the gross wage.

5.8. *Fees and Duties*

According to the Fees and Duties Act (Gebührengesetz) certain documentation and legal acts as well certain written certified legal transactions performed in Austria e.g. bills of exchange, lease contracts are subject to fees or duties. Their rates vary between 0.8% and 2%. Some of them, however, are imposed as a fixed amount. Therefore, fees can sometimes be avoided by setting up documents abroad, or by avoiding written agreements at all.

5.9. *Other Taxes*

There are some other taxes apart from those discussed above, for instance insurance tax, tourism levy, motor vehicle tax (Kraftfahrzeugsteuer), etc.

Currently: there is no wealth tax in Austria.

5.10. Overview

The below table depicts the rates of the main tax types along with their payment deadlines:

Tax Type	Rate	Payment Deadline
VAT	0%, 10%, 13% or 20% of net amount	15 th day of second following month
Personal Income Tax	From 0% to 55% of income, progressive	15 th day of February, May, August, and November – advance payments
Corporation Income Tax	25% of profits	15 th day of February, May, August, and November – advance payments
Payroll Tax	From 0% to 55% of wage/salary less social insurance and allowances, progressive	15 th day of following month – paid by employer
Municipal Tax	3% of gross wage	15 th day of following month – paid by employer
Employer's Contribution (Lohnnebenkosten)	4.5% plus 0.36% – 0.44% of gross wage	15 th day of following month – paid by employer

6. Labour Law and Social Security

In Austria various regulations exist that govern all aspects of labour and employment law such as the white collar workers Act (Angestelltengesetz), the working hours act (Arbeitszeitgesetz), the Act on paid vacation (Urlaubsgesetz), etc. Apart from these regulations, employment contracts are additionally governed by collective agreements (Kollektivverträge) which are concluded between trade unions and associations of employers on industry level and regulate issues such as remuneration and working conditions. An employee does not have to be a member of a trade union to come under a collective agreement.

As in other jurisdictions the Austrian law distinguishes between blue and white collar workers. Employees are obligated to belong to their chamber of employees (as a representation set by law) which provides them with free legal advice. Furthermore, labour issues, claims and disputes between employee and employer are handled by special courts.

A works council (Betriebsrat) can be set up in companies where five or more employees are regularly employed and representing the employees' interests. Furthermore, it has significant statutory powers and has certain rights such as supervision, intervention, consultation, etc. The works council must be timely informed of reorganisations which have negative consequences for the employees. Moreover, it has the right to negotiate with the employer, to monitor compliance with the employment protection act, to obtain information, etc.



6.1. *Types of Employment*

The most common type of employment is the customary contract of employment in a permanent employment relationship including all its rights such as lay-off protection, social insurance, holiday entitlement, etc. However, working part-time is very common in trade; seasonal work is widespread in tourism and in the construction industry fixed-term employment contracts are prevalent. Interestingly, freelance and contract works are getting more and more frequent in all fields of employment.

In Austria it is allowed to work from the age of 15 as school attendance is mandatory until this age. Moreover, young people up to the age of 18 are legally covered by the protection of child-welfare.

6.2. *Contracts of Employment*

An employment contract does not require any legal form and thus does not necessarily have to be in writing. An employment contract is characterised by personal dependency i.e. the employer has the decisional power; the employee is economically dependent, has a continuous obligation to work for a certain time and usually uses the employer's equipment. There are various forms of employment contracts. They may be for temporary, fixed or unspecified term of duration. Moreover, a distinction is drawn between lifetime and permanent employment and employment under a trainee or apprenticeship relationship.

If the employment contract is not made in written form, the employee must receive a written statement (Dienstzettel) which sets out the major rights and obligations. Such a written statement must include information such as name and address of the employer, name and address of the employee, date of commencement of the employment relationship, in case of a fixed term contract: the expected termination date, employment termination notice period and date of termination, normal place of work, any sub-categories in a general system, intended assignment, basic salary or wages along with any additional remuneration e.g. bonuses and date payable, annual leave entitlement (holiday), contractual daily and weekly working hours, indication of the applicable collective agreement or work agreement.

6.3. *Similar Types of Contracts*

A contract for work and services (Werkvertrag) is a contract where a service provider commits himself to the provision of certain work (supply of service) against agreed payment. In this case the contractor is responsible for getting the job done successfully or achieving a defined result. Such a contract is characterised by being result-oriented, guaranteed outcome, no personal obligation to work (meaning, the entrepreneur can use stall or agents to provide the service), use of own equipment, neither personal nor economic dependency nor integration in the organisation of the ordering party.

Freelance contracts are those where neither the characteristics of a contract of employment nor the characteristics of a contract for work and services prevail. Freelancers, also known as independent contractors, are individuals who work on their own account without any long-term contractual commitment to any employer. Such contracts are characterised by use of own tools, no integration into the organisation of ordering parties, no (or limited) personal dependency, etc. The employers, or clients, of freelancers have the right to control only the final result of the work.

6.4. Working Time, Worker Protection

An eight-hour working day and a 40-hour working week are standard in Austria. However, shorter working time applies under several collective agreements (38-hour week). Although working can be allocated arbitrarily to the working days, it generally may not exceed ten hours a day or 50 hours a week. Moreover, employees are entitled to a break of 36 hours in a row at least once a week. Overtime will earn time and a half for over 40 hours worked or the employee must be given compensation time. Several regulations such as obligatory health care and safety regulations for companies of a certain size govern worker protection. The Labour Inspection Authority (Arbeitsinspektorat) monitors the compliance with the abovementioned regulations.

6.5. Part-time Employment (*Teilzeitbeschäftigung*)

A part-time employee works less than 40 hours or less than any other shorter working time stipulated in a collective agreement. The extent of working time must be agreed between the employer and the employee. Moreover, part-time employees must not be treated worse due to their shorter working time.

6.6. Minor Employment (*geringfügige Beschäftigung*)

Minor Employment is on hand if the monthly gross salary does not exceed EUR 438.05 (2018). In terms of Labour Law this kind of employment is considered as part-time employment. Therefore, a minor employed person has the same claims as a full time employee.

Moreover, in case of minor employment, the employee must be registered (not insured) with the statutory health insurance fund. They are only covered by accident insurance. One should bear in mind that minor employed people are never covered by unemployment insurance either. Therefore, they are not entitled to any unemployment compensation.

6.7. Maternity Leave

Maternity leave lasts eight weeks prior and eight weeks after giving birth. Directly thereafter women have the possibility to stay at home up to the period of two years and are legally entitled to the same or equivalent position after the end of the maternal leave. In the 16-week period of the maternal leave women receive the same salary from the employer. Should they decide to stay at home longer they will not receive any pay from the employer anymore but are entitled to receive financial support from the state for up to 36 months. Generally, the shorter the parental leave the higher this compensation per month.

Furthermore, it is possible for parents to share the maternity leave in due consideration of the 16-week period before and after the birth.

6.8. Educational Leave

A non-paid educational leave can be arranged between the employer and the employee from the seventh month of employment for a period of at least two months up to the maximum of one year. Once an educational leave has been utilised it is only possible to get one again four years after the beginning of the first part of the last one.

According to the Unemployment Insurance Law (*Arbeitslosenversicherungsgesetz*) the employee is entitled to a fictitious unemployment pay as long as the respective employee fulfils the requirements and takes part in professional training programmes of at least 20 hours a week.

As of 1st of January 2012 a minimum duration of employment of one year (instead of six months) will be required. Furthermore, the minimum period of a study leave will be increased to three months.



6.9. Holiday Entitlement

Employees are entitled to five weeks of paid annual leave. After the 26th year of employment, holiday entitlement increases to six weeks per year.

The employee must agree with the employer on the actual dates taking into account both business requirements and the employee's personal wishes.

If an employee falls sick during holiday leave for more than three days and would not be able to work, these days will not be counted as holiday leave.

6.10. Illness/Sick Pay

In case of illness, employees must inform the employer immediately of their inability to work and at request supply a doctor's note stating the date of commencement and its likely duration. Employees are eligible to continued pay, if the illness results in inability to work and if the illness was not caused by gross negligence or deliberate intention of the employee.

6.11. Termination of Employment

Employment contracts may be terminated by mutual agreement, termination with notice at the initiative of the employee/employer, resignation of the employee for serious reasons without notice, by dismissal without notice, on request during a probation time, and on the expiry of a fixed-term contract.

While a dismissal with immediate effect by the employer and a resignation without notice by the employee must be for cause, an ordinary termination does not require any reason. However, the employer must comply with cancellation periods (Kündigungsfristen) and dates of notice (Kündigungstermine) stipulated by law, collective agreements, or the individual employment contract. Furthermore, prior notification of the work council (in case a work council exists) is mandatory.

Basically, the longer an employee has been employed the longer the notice period for a termination by the employer becomes. According to law, the cancellation period for blue-collar workers is 14 days or less if stipulated by a collective agreement being a controversial issue calling for reform.


Unless otherwise expressly agreed and nothing else is required by the collective agreement, the employer may only terminate the employment relationship with a white-collar worker at the end of each quarter of the calendar year. A white-collar worker, however, is entitled to terminate his employment contract on the last day of each month by giving one month's notice.

In addition to that, statutory provisions protect employee representatives, pregnant employees, the handicapped, employees taking care of their children or sick family members, members of the works council, apprentices and recruits.

In case a large number of employees is going to be laid off, the termination may be declared null and void unless the job centre (Arbeitsmarktservice) has been informed beforehand.

6.12. Severance Pay (Abfertigung)

According to the old severance payment law (i.e. employment contracts that already existed before 1.1.2003, employees are eligible for severance pay after three years of employment without interruption at the same company in case of an ordinary termination by the employer, termination by mutual agreement or resignation of the employee for cause. The amount of severance pay is based on the length of service and ranges between twice the monthly salary after three years and twelve times the monthly salary after 25 years.



Employees whose contracts of employment began after December 31, 2002 are subject to the provisions of the new Austrian severance payments scheme. The difference is that employees are already entitled to severance pay from the second month of their employment and this entitlement can be transferred to another company. Moreover, apprentices are also eligible for severance payments for the first time. Another major change is that the entitlement to severance payment is not lost in the event of ordinary termination by the employee. The amount of this payment depends on employers payments to the state pension fund (1,53% of the monthly salary) and resulting investment profits thereof.

6.13. Employment of Foreigners

For citizens of the European Economic Area (EEA), i.e. EU countries except from Croatia, the rules of free movement of labour (Freizügigkeit der Arbeitskräfte) apply which means that they are not required a special work permit (Arbeitserlaubnis) and therefore work on the same conditions as Austrian citizens.

The employment of non-EEA citizens requires a valid certificate of residence, like a settlement permit (Niederlassungsbewilligung) or a residence permit (Aufenthaltsbewilligung). Furthermore, an employment permit (Beschäftigungsbewilligung) has to be obtained by the prospective employer prior to the start of the employment. Employment permits entitle their holders to take employment at a clearly defined workplace in Austria. As a result, employees who have worked for one year may then apply for a work permit. Work permits are non-transferable permits which are issued for a specific province allowing their holders to choose their employers and the type of employment.

Furthermore, an employee might qualify for a certificate of exemption (Befreiungsschein). It entitles the holder to be employed anywhere in Austria. It is issued upon application and must comply with the following requirements.

- A minimum of five years employment during the past eight years if the employment was subject to the Alien Employment Act.
- Completion of a full final year of schooling in Austria provided the person has a residence permit and at least one of the parents lived and worked in Austria for three years during the previous five years.
- Foreigners who have been married to an Austrian for a minimum of five years.
- Children of an Austrian or an EEA-citizen who have never been subject to the Alien Employment Act.
- Family members of the foreigner who is entitled to a certificate of exemption (spouses and minor children) who are legally resident in Austria for at least one year.

The certificate of exemption is a non-transferable permit which is valid for five years for the whole of Austria. Holders may choose their employers, the type of employment and location anywhere in Austria. Employers need not apply for employment permits.

Moreover, it is possible to obtain an exemption for key employees (Schlüsselarbeitskräfte). These are highly qualified people and the exemption would be granted in case there is labour shortage of personnel with such qualifications in Austria.

6.14. Social Security

In Austria social security is mandatory. It mainly covers health, accident, pension and unemployment insurance. Sole proprietors, shareholders in an open partnership (OG), partners in a limited partnership (KG), managing shareholders in a GmbH and other (self-) employed persons and their dependents are subject to social insurance contributions according to the General Social Insurance Act (ASVG).

Health insurance includes benefits such as medical aid, dental treatment, hospital treatment, medications, and cures. The accident insurance protects against accidents at the workplace, vocational deceases along with their consequences, and an accident pension in the event of invalidity of 20% or more. The main benefits of the pension insurance are old-age pensions for men from 65 years of age and women from 60 years of age. These require, however, a minimum of 15 years of contributions. The unemployment insurance secures the unemployment benefits, the long-term care insurances, etc.

New employees must be reported to the social insurance commission as of the day they start work. This can be done in two ways: either firstly by a short notification prior to the start of work and then submitting the data still missing to the competent social insurance carrier within one week of the start of work or simply by submitting all the necessary information electronically.

Consequently, every employee receives an e-card which states the social security number and the date of birth of the respective person and contains information on his/her insurance status.

Social insurance contributions are divided into employer and employee portions based on the gross remuneration of the employee. The maximum contribution base in 2017 amounts to EUR 4,980.00.

Basically, expatriates are subject to mandatory social security as well. Hence, Austria has concluded several social security treaties with other countries in order to give expatriates the possibility to remain under their countries' scheme for an agreed time frame.

The following country data shown in the table below provides a first impression of the employment situation in Austria at a glance:

Population	~ EUR 8,7 Million (2016)
Unemployment Rate	~ 5.6% (Aug 2017)
GDP	~ 353 Billion (2016)
GDP per capita	~ EUR 40.400 (2016)
Life Expectancy	~ 82 years (2015)

7. Accounting and Auditing

7.1. Accounting Law Requirements to Issue Financial Statements

Austrian accounting principles are set up by law which was aligned with the Fourth and Seventh EU Directives by the Accounting Act (Rechnungslegungsgesetz) 1990. They are based on the Accounting and Reporting Act as well as on the Generally Accepted Accounting principles which in turn are amended by several statutory provisions, court judgements, interpretations and recommendations by the Chamber of Public Accountants (Kammer der Wirtschaftstrehänder).

All entities registered at the commercial register, such as companies with limited liability (GmbHs and AGs) and open and limited partnerships (OGs and KGs) are subject to the Accounting Act. Furthermore, Austrian law requires financial statements in Austria to be prepared according to the Austrian Generally Accepted Accounting Principles (Austrian GAAP). Some industries are regulated by special laws such as the banking and insurance sector as well as investment funds.

7.2. Financial Reporting

Financial statements must be prepared annually. The financial year may not exceed twelve months and the majority of Austrian companies operate on a calendar year. Financial statements (Jahresabschluss) must be provided within nine months after the end of the respective financial year at the latest and must provide a "true and fair" view of a company's net assets, financial position and results of operations. The financial statements must be in German and comprise a balance sheet and an income statement quoted in Euro. Books and records must be kept for a period of at least seven years.

Corporations must prepare their financial statements within five months after the end of the previous financial year and additionally include notes, a management report and where necessary also a corporate governance report which have to be presented to the board of directors. The financial statements, the management and the corporate governance reports must be signed by all legal representatives. Additionally, the approval of the shareholders' assembly (GmbH) or that of the supervisory board (AG) is required.

The Austrian GAAP put special emphasis on creditor protection requiring a prudent valuation of assets and liabilities. It is indispensable to take into account all foreseeable risks and imminent losses at the balance sheet date while profits may only be accounted for upon realisation. Further, essential valuation conventions are for instance the retention of valuation methods of the preceding years, the going concern principle, the separate valuation of assets and liabilities, the prudence principle (as described above), the principle of accrual-based accounting i.e. expenses and income of the financial year are taken into account upon their realisation – regardless of their date of payment or collection and the historic accounting principle. Furthermore, each entity is required to set out the value of its inventories which is usually determined on the basis of physical inventory stocktaking as at the balance sheet date.

7.3. Auditing


Certain companies require a statutory audit. These are:

- banks, insurance companies and investment funds
- public limited companies (AGs)
- large and medium-sized private limited companies (GmbHs), GmbH & Co KGs and "small" GmbHs with a mandatory supervisory board

The classification in very small, small, medium-sized and large entities is based on the amount of total assets, net turnover and average number of employees per year. Not all of these conditions must be met simultaneously. However, at least two of the three following criteria have to be met in two consecutive years in order to be classified as "medium-sized" or "large".

Criteria	Medium-sized Company	Large Company
Total Assets	>EUR 5.00million	>EUR 20.00 million
Net Turnover	>EUR 10.00 million	>EUR 40.00 million
Employees	> 50	>250

Companies listed on a stock exchange of a member state of the EU or the OECD trading shares or other securities issued by them are always classified as "large".



Auditors are appointed by the shareholders. Auditors of a group of companies are appointed by the shareholder of the parent company. If a supervisory board exists, it has to prepare a proposal for the auditor of the following year.

Further, the following business entities are required to publish the financial statements in the daily "Wiener Zeitung":

- Companies of public interest i.e. listed companies, banks, insurances
- Large public limited companies (classified by means of the same criteria as GmbHs above)

7.4. Publication Requirements

The majority of the companies which are obligated to prepare financial statements are not required to publish them. They only have to electronically file them with the commercial register which results in a notice being published in the "Wiener Zeitung" announcing that the financial statements have been filed. Nevertheless these financial statements can be retrieved online, or in person at the commercial register.

Partnerships, i.e. OGs and KGs (excluding GmbH & Co KGs where a private limited company (GmbH) is the partner liable without limitation), are not even required to file their financial statements with the commercial register.

In contrary, groups of companies are obligated to prepare consolidated financial statements (Konzernabschluss) once certain thresholds of total assets, turnover and staff are exceeded. Another requirement to be met is the audit of the respective financial statements before submitting them to the supervisory board of the parent company. These statements have to be filed with the commercial register and if one of the group companies is of public interest or considered a large public limited company (AG) publication in the "Wiener Zeitung" is required.

Moreover, parent companies which fall into the scope of application of the Fourth EU Directive, which deals with application of International Financial Reporting Standards, are required (especially listed companies) to prepare their consolidated annual accounts according to IFRS. In addition to that, they are obligated to indicate that their financial statements are prepared using International Accounting Standards.


Branches of foreign corporations have certain disclosure requirements as well: They have to file their parent company's financial statements in German language at the commercial register within nine months after balance sheet date, in case a comparable obligation exists in their parents' home country.

8. Private Trusts and Holding Companies

8.1. Private Trusts (Privatstiftungen)

The Austrian Law for Private Trusts (Privatstiftungsgesetz) has been in force since 1993.

As abovementioned, a private trust (Privatstiftung) is a legal entity, the internal organisation and purpose of which are mainly resolved by the grantor (Stifter). It comes into existence upon being registered at the commercial register and its structure is characterised by having no shareholders or proprietors but beneficiaries instead. The grantor may be the beneficiary himself. The trust must not carry on a trade or business. Moreover, it must not be a personally liable partner in a partnership. However, it is allowed to operate as a holding company.



A trust must be managed by the board of directors (Stiftungsvorstand) which must consist of at least three members. Neither a beneficiary nor a person whose family members are beneficiaries may be a member of the board, even if he is the grantor. An advisory board is optional. Furthermore, the purpose of the trust is laid down by the grantor in the declaration of establishment and must not be illegal or unethical. The grantor endows the private trust with assets necessary to achieve the desired aims.

A private trust may have one or more grantors and must be endowed with assets amounting to at least EUR 70,000 in the form of cash or kind. In case the capital is raised in kind, it is subject to statutory audit.

The main advantages of a private trust are:

- Asset protection
- Tax benefits
- Avoidance of disputes over inheritance
- High degree of adaptation to meet the individual requirements and needs

Taxation of Private Trusts

The taxation of private trusts is implemented at three levels:

(1) Taxation of Contributions to the Private Trust (Eingangsbesteuerung)

Gratuitous contributions to a private trust are usually taxed at the fixed tax rate of 2.5% of the contributed asset's value. This tax rate is increased to 25% if:

- the trust is either not comparable to a private trust according to the Law for Private Trusts, or
- all the documents required i.e. the deed of foundation (Stiftungsurkunde) and the appendix (Stiftungszusatzurkunde) are not submitted to the local tax office on the due date (which is the 15th of the second following month to the month in which the tax liability occurred) at the latest, or
- there are no comprehensive procedures for mutual assistance with regard to administrative matters and enforcement with the country of residence of the private trust (applicable to foreign trusts only).

In case of contribution of land to private trusts the additional real estate transfer tax equivalent of 3.5% of the fair market value is imposed.


(2) Current Taxation of the Private Trust (laufende Besteuerung)

The current taxation of a private trust is divided into three areas with the following tax rates:

- Profit distributions of limited liability companies and dividends are exempt from corporation tax (see also domestic and foreign participation exemption).
- Interests on bank deposits, bonds, debentures, treasury bills, realised increase in value of capital income and income from other derivatives are subject to interim tax (Zwischensteuer) at the rate of 25%.

The interim tax is credited back in case of contributions to the beneficiary which are subject to withholding tax at the rate of 25%. From the economic viewpoint the interim tax is hence a pre-taxation of the subsequent taxation of the contribution.

- Income from trade or business, from self-employed and professional services, from agriculture and forestry, from rents, leases and royalties as well as certain other specified income (e.g. speculative gains) are subject to corporate tax at the rate of 25%.



Until 2011 gains from the sale of real estate were tax-exempt after the end of the ten years speculative period. As of 1.1.2011, in case the grantor is a legal entity, land is always taxed at the corporate tax rate of 25%. The same is true for land that already had existed before 31.12.2010 if the speculative period of ten years had not expired yet.

(3) Taxation of Distributions to Beneficiaries (Ausgangsbesteuerung)

All contributions of private trusts to beneficiaries are generally classified as investment income and are subject to withholding tax at the rate of 27,5% and are therefore taxed at source. This means that the withholding tax is withheld by the private trust and paid to the tax office. It used to be a tax disadvantage of private trusts that contributions from total assets to beneficiaries were taxed at the same withholding tax rate of 27.5% as contributions from income generated by the trust's assets ("Mausefalleneffekt"). In the course of abolition of the gift and inheritance taxes it became possible to distribute trust's assets (Substanzauszahlung) free of tax in order to achieve system consistency. As of 1.8.2008 distributions of trust's assets are tax-exempt if the following requirements are met:

- The assets were contributed after 31.7.2008.
- An evidence account is kept which comprises all cash-in and cash-out-payments of the trust's assets.
- The distribution of trust's assets exceeds the applicable value (i.e. balance sheet profit + retained profits + hidden reserves in the contributed assets) and is covered by the evidence account.

Special rules apply to sub-trusts (Substiftung) which are established by another trust. Distributions of trust's assets are free of tax if it is covered by the evidence account. The sub-trust must receive an asset contribution in the same amount and the applicable value must be deducted. Furthermore, a free of tax distribution of assets to the sub-trust contributed before the 1.8.2008 is possible. These assets, however, are not included in the evidence account of the sub-trust and can therefore not be distributed to the beneficiaries free of tax at a later date.

8.2. Holdings

A holding company in Austria can be any Austrian corporation regardless of its other business activities i.e. either a private (GmbH) or a public (AG) limited company. Foreign investors may obtain numerous tax benefits by setting up a holding company in Austria.

Dividends received from a foreign company are usually free of corporation tax under the international participation privilege (see chapter 4). The international participation privilege applies if an Austrian company has held at least 10% of a foreign company's capital for a minimum holding period of one year. Under similar conditions capital gains from disposal of a foreign subsidiary are also free of tax, unless the Austrian holding company opts for their taxability. Such option must be exercised in the year the participation is acquired. This would result in the possibility to reduce the holding's taxable income by deducting the participation's losses or writing off its book values. However, such capital losses and write offs must be spread over a period of seven years.

Moreover, investment income from participations in foreign corporations with a participation of less than 10% ('portfolio dividends') are also exempt from corporate income tax since 2010 for EU-participations and 2011 for participations in other countries in case the foreign corporation is comparable to an Austria corporation and mutual assistance in tax matters is in place with the respective country. Furthermore, stricter anti-abuse rules exist for this kind of participation exemption (in particular dividends from countries with an effective income tax rate of 15% or less are not exempt. However, the foreign corporate income tax actually paid on the dividend can be credited to the Austrian CIT).



Summing up, benefits of establishing an Austrian holding company are:

- Dividends received from Austrian subsidiaries are free of CIT (Corporate Income Tax) under the domestic participation privilege (see chapter 4) which neither requires a minimum stake nor a minimum holding period.
- Interests on leveraged acquisitions of participations are basically tax-deductible.
- Austria has concluded numerous double taxation agreements which either eliminate the withholding tax or reduce it for investments from or to foreign countries.
- Austrian tax law does not provide for special tax rules with respect to thin capitalisation or debt-to-equity ratios. However, tax authorities may re-characterise shareholder loans as equity under the substance-over-form approach.
- Generally, the Austrian Reorganisation Act (Umgründungsgesetz) facilitates tax-free reorganisation of corporations and partnerships and applies to both national and cross-border transactions. Additionally, the EU Merger Directive was implemented by it.
- Although only a few anti-avoidance rules exist, the Austrian tax authorities are empowered to take measures in order to prevent abuse. Such anti-avoidance rules are:
 - The international participation privilege is not applicable for repatriation of passive income from low tax jurisdictions.
 - The Parent-Subsidiary Directive is not applicable if the holding does not possess sufficient substance.



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