



Doing Business Guide  
Austria

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## 1. Facts and Figures Austria

Austria, with its surface of 83,849 square kilometres (32,274 square miles) and its approximately 8.3 million inhabitants, is one of the smaller Member States of the European Union which the country joined on January 1<sup>st</sup> 1995.

In 2013 Austria's gross domestic product amounted to approx. € 313 billion, with a real growth rate of 0.3 %. Austria's per capita GDP of approximately € 31,930.

Austria's major foreign trade partners are the other Member States of the European Union. Austria's imports from the EU Members in 2013 amount € 93,2 billion – compared with decline of 0.6% compared with 2012. In comparison with the previous year, the exports increase by 1.5% (€ 86,7 billion).

The foreign trade with non-member countries are reduced by 1.8% (€ 37,5 billion), concerning the imports and 2.4% (€ 39,1 billion), concerning the exports.

The unemployment rate in 2013 was by 7.6%, because of the higher labour supply.

## Company Law (Gesellschaftsrecht)

On 1<sup>st</sup> January 2007 the new Austrian Company Law (UGB) became effective and displaced the Austrian Commercial Law (HGB). With the Austrian Company Law the Austrian Commercial Law is basically renewed and updated. Under Austrian Company Law a clear distinction between partnerships and corporations is made. The main distinguishing feature between partnerships and corporations is the fact that - in case of partnerships- the partners represent the central point in a legal sense, whereas – in case of corporations - the assets of the company do so. With the introduction of the new law by 1<sup>st</sup> January 2007 the following types of companies exist:

- general partnership
- limited partnership
- silent partnership
- civil law association
- limited liability corporation
- stock corporation
- cooperative society
- association (Verein)
- European Economic Interest Grouping (EEIG)
- European company (SE)
- Private foundation

Since 1993 the private foundation law exists, which is of particular interest for the administration of larger fortunes.

### 1.1. Partnerships (Personengesellschaften)

A partnership is the association of two or more (physical or legal) persons with the purpose of a joint operation of a company. With the new Company Law the general partnership and limited partnership do have a juridical personality on their own, therefore they can become subject of rights or duties. Main criteria is emphasis on the persons of the partnership. The establishment of a partnership requires a partnership agreement, which has to be concluded between the future partners. In general this agreement is done in written form, but basically the agreement is not bound to a special form. The members of the partnership are the owners of the company run by the partnership. A change of partners requires the previous consent of all the members of the partnership. The partners themselves are called and authorised for the management and representation of the company and they are also directly liable for the liabilities incurred by the partnership. Nevertheless a clear distinction has to be made between the partnership assets and the personal, private assets of the individual partners. The term partnerships comprises civil-law partnerships (Gesellschaft nach bürgerlichem Recht, GesbR), general partnerships (Offene Gesellschaft, OG), limited partnerships (Kommanditgesellschaft, KG) as well as silent partnerships (Stille Gesellschaft, StGes). According to the introduction of the new company law, the law of registered small partnerships is annulled. Consequently, since the 1<sup>st</sup> January 2007 they are general or limited partnerships. All entrepreneurs have to adapt their company terms of already existing companies until 1<sup>st</sup> January 2010.

### 1.1.1. General Partnership (OG)

A general partnership has a legal entity and can, different from the general partnership in the Commercial law, according to the new Company law be set up for every purpose, including free-lance and agricultural activity. This means that a general partnership can acquire rights and enter into commitments under the name of the company. Besides the general partnership can be sued and take legal action on its own. The following characteristics refer to the relevant provisions under the company law - it is however possible to deviate from these provisions and to agree to different regulations in the partnership agreement.

The most important characteristics of a general partnership (OG) are:

- The partnership is, according to the Company law, set up by the entry in the commercial register.
- Jointly solidarity of the partners.
- The operation of a special type of trade under a standardised name (corporate name)
- The partnership has to be registered in the commercial register (public register in which certain characteristics of the company are listed and which can be inspected by everyone)
- No nominal capital has to be raised
- All partners have unlimited personal liability with their whole private and company assets for the liabilities incurred by the general partnership (OG)
- Every partner is entitled and obliged to the management of the company
- Every partner is entitled to represent the company individually

### 1.1.2. Limited Partnership (Kommanditgesellschaft, KG)

The main difference between the limited partnership (Kommanditgesellschaft, KG) and the general partnership (Offene Gesellschaft, OG) is that only one (at least one) of the partners in a limited partnership is fully liable (the general partner – Komplementär). The remaining partners (at least one) are liable only up to the amount of their capital contribution (limited partner – Kommanditist). The limited partners are excluded from the business management of the partnership as well as from the representation of the company. The limited partnership is mainly used for certain participation models in which a limitation of liability is necessary.

### 1.1.3. Silent Partnership (Stille Gesellschaft, stGes)

The silent partnership (Stille Gesellschaft) is a mere internal partnership and therefore it is not represented to the outside world with a name on its own and it is not registered in the commercial register. The main objective of a silent partnership is the investment and/or raising of capital, as the silent partner is participating in the trade of the other partner. The silent partner may participate in the profits as well as in the losses of the partnership. It is however possible to set forth in the partnership agreement that the silent partner shall be excluded from a participation in the losses. In the latter case there are certain similarities between the silent partnership and determined types of loans. The silent partner basically has no right to manage or represent the company.

#### 1.1.4. Civil Law Partnership (Gesellschaft bürgerlichen Rechts, GesBr)

This legal form of a company is the oldest form of partnerships constituted under Austrian law and is based on the provisions of the Austrian Civil Law. Civil law partnerships mainly serve the same purpose as small general partnerships, with one essential difference which is a civil law partnership does not have a legal personality on its own. Therefore it cannot acquire rights on its own, it cannot enter into commitments, it cannot be sued nor sue somebody. A civil law partnership is usually established as a joint venture or working group for individual major projects, generally in the fields of construction projects and plant engineering and construction. The civil code partnerships under Austrian Law can be set up individually, the partners' liability is personal and unlimited, and the partnership is not entered into the Commercial Register. If the annual turnover of the company is more than € 700,000.- in two consecutive years or more than € 1.000.000,00 in one year, according to the new Company law the civil law partnership however has to be registered in the commercial register as general or limited partnership.

### 1.2. Corporations (Kapitalgesellschaften)

Corporations are legal entities, which means that there exists an own legal personality apart from the shareholders. As a legal entity, a corporation is acting through the bodies of the company. There are always at least two bodies of a company: the shareholders' meeting and the management board. Members of the board need not to be shareholders at the same time. In corporations the main focus is on the paid-up capital, whereas the natural persons take a back seat. The shareholder participates in the company with a certain amount of capital. In contrast to partnerships the partners of a corporation are in principle not personally liable for the debts incurred by the corporation. Only the assets of the corporation are liable for the liabilities. So there exist a clear distinction between the assets of the shareholders and the one of the corporation.

#### 1.2.1. Stock Corporation (Aktiengesellschaft, AG)

A stock corporation is a legal entity with its own legal personality and is characterised by the following criteria:

- The nominal capital is cut into shares – the capital must amount at least to € 70,000.--
- There is no liability of the shareholders for the debts of the company
- The stock corporation is incorporated by the registration in the commercial register

The shareholders of a stock corporation can be both - natural and juridical persons. Evidence of a participation in a stock corporation is the share owned by the shareholder. Shares are securities which are proof of the holder's share in the nominal capital and consequently the bearer's equity interest in the company. Since 01.08.2011 all shares of newly established unlisted corporations have to be issued as registered shares. Existing company have a deadline until 31.12.2013 to transposing already issued bearer shares into registered shares. Listed corporations and IPO's have a voting right between registered and bearer shares anymore.

The provisions for the foundation as well as the articles of incorporation of a stock corporation are laid down in detail in the Austrian Stock Corporation Law. Certain prerequisites have to be fulfilled for a stock corporation's share to be traded on the stock exchange.

As the stock corporation is not able to act on its own, certain bodies of corporation have to be appointed for the management and representation of the company. The body responsible for the management and representation is the management board, which is appointed by the supervisory board for a maximum period of five years. A re-appointment is possible.

The management board is not bound by instructions. However, certain transactions are subject to approval by the supervisory board. The supervisory board is elected by the shareholders' meeting and the workers' council and acts as a controlling body for the management board. Its main functions are, apart of the supervision of the management board, the call of the shareholders' meeting, the examination of the financial statement and the proposal appropriation of the profits as well as the examination of the annual report of the management board. The shareholders' meeting has to be called at least once a year in order to adopt the annual financial statement and to elect the auditor. If necessary, there is the possibility to call extraordinary meetings.

The stock corporation is, apart from being the most complicated form of company under Austrian Company Law, also the most expensive one, due to numerous legal provisions. Therefore the foundation of a stock corporation is only in rare cases (e.g. the company intends to raise money on the stock market, broad structure of shareholders) really an advantage in Austria.

### **1.2.2. Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH)**

A limited liability company is also a juridical person and can therefore acquire rights, enter into commitments, sue somebody and it can be sued by somebody. Its stated capital shall be cut into interests and the capital invested. The individual shareholders are only liable for the debts of the company up to the amount of their capital invested.

Under Austrian law, it is much easier to establish a limited liability company than to form a stock corporation. In contrast to a stock corporation, however, any transferral of shares in a limited liability company has to be done as a notarial deed; thus the transferability of shares is restricted in comparison to the stock corporation. Therefore the limited liability company is not really well suited for a company with a wide spread share ownership and with a frequently changing number of shareholders. The minimum capital requirements for the formation of a limited liability company amounts to € 35,000.-- - in principle minimum € 17,500.-- has to be paid cash. Since 01.03.2014 the following foundation privilege is possible : The sum of the capital invested has to be €10,000.-- ( minimum € 5,000.-- in cash – no assets in kind possible). After ten years at the latest the minimum capital has to amount € 35,000.-- and the minimum capital invested € 17,500.--.

A limited liability company comes into legal existence when it is entered into the commercial register.

The supreme body of the company is the general meeting of the shareholders. This meeting has the right to issue instructions to the management as well as the supervisory board. In general, the management and representation is done by the management board, which consists of at least one or more managing directors. The appointment of the managing directors is done by the shareholders' resolution. Basically the representation has to be done by all managing directors jointly, but sole representation however is also possible. The general meeting of all shareholders, already mentioned above, have the right to adopt the annual financial statement and to discharge the managing directors. As it has the right to issue instructions directly to the management, a limited liability company's general meeting has the opportunity to exercise a much stronger influence on the day-to-day management than a stock corporation's shareholders' meeting. A limited liability company must establish a supervisory board only under certain conditions (e.g. more than 300 employees). Therefore most of the limited liability companies do not have a supervisory board. If a supervisory board does exist, its main function is the supervision of the management.

For certain business purposes a mixture between a partnership and a corporation can be of interest, in such cases a limited liability company is frequently combined with a limited partnership to found a GmbH & Co KG. This form is sometimes chosen to combine the advantages of a limited partnership (KG) with those of the limited liability of a corporation. In such cases the limited liability company is typically the sole general partner, having full liability.

A limited liability company can be found for nearly every reason and is the most common type of corporation in Austria.

### **1.3. Private Foundation (Privatstiftung)**

In 1993 the legal form of private foundation was introduced in Austria in order to create an opportunity to avoid the splitting up of family-owned enterprises and assets as a consequence of inheritance and order of succession. Another objective was to take the burden of inheritance and gift tax, which has to be paid whenever the family business and/or assets are passed on from one generation to the other, off the heirs' shoulders by passing the assets or business on to an independent legal entity. Therefore the setting up of private foundations in Austria is of utmost interest in cases of larger assets. A private foundation arises by the drawing up of a contract, but it need to be registered in the commercial register in order to establish the private foundation. The foundation charter needs to be expressed in form of a notarial deed. This statement must comprise the amount of the dedication of the assets (minimum amount € 70,000.-), the purpose of the foundation as well as the definition of the beneficiaries. Besides there has to be called a management board of the foundation (at least 3 persons) and an auditor of the foundation.

### **1.4. Cooperative society**

Cooperative societies are associations with no limitation of membership. The ultimate object of a cooperative society is the promotion of acquisition and economy of the cooperative society members. There are lots of different types of cooperatives such as credit unions, consumer cooperative societies, cooperative building societies or housing

cooperation. The cooperative society is a legal entity with its own legal personality, which has to be entered into the commercial register. The following types of cooperative societies exist: cooperative society with unlimited liability, cooperative society with limited liability and cooperative society with liability corresponding to the share in the company. Obligatory bodies of the company are the management board as well as the general meeting, a supervisory board only has to be founded in certain circumstances. Management and representation is done by the management board. The ultimate body of a cooperative society is the general meeting, which can issue instructions also to the management board.

### **1.5. European Economic Interest Grouping (EEIG)**

Supplementary to the national types of company, a company which operates in the European area can also choose this European type of company- the EEIG. The sole purpose of an EEIG is a facilitation and systematisation of the economic activities of its members. The grouping must compulsorily be linked to the economic business of its members. Thus the grouping neither is allowed to take the place of its members nor to take over their business completely. The EEIG cannot be a trading company. Besides, it is no object of the EEIG to realise profits for itself. All operating income benefits the members of the grouping. An EEIG can operate its business in different places - within but also outside the European Union. The only prerequisite is that the domicile of the EEIG needs to be within the EU.

Following purposes for EEIGs are possible: buying groupings, cooperation on the field of research and product development, tendering for public works contract etc. There exist limitations regarding the top management of the group and holdings.

### **1.6. European Company (Societas Europaea – SE)**

Since 8th of October, 2004, the SE can be founded in Austria. This type of company is only available for a limited area of activity. Structure and mode of operation is Europe-wide regulated, standardised and from the moment of registration in the commercial registration the SE has its own legal personality.

The nominal capital of a SE has to amount at least to € 120,000.--. The registration has to be done at the local responsible commercial register. The following ways of foundation are possible: a SE by consolidation, a holding-SE, a subsidiary-SE as well as a conversion-SE.

As to the structure of the body there can be chosen two possible options: a management board and a supervisory board is called or an administrative board and managing directors are called. In latter case, the administrative board manages the company and it is constituted by at least 3, but not exceeding 10, natural persons. The members of the administrative board are elected by the shareholders' meeting for a period of 5 years (re-election is possible). The managing directors handle the day-to-day business, prepare the annual financial statement as well as the management report etc. The call of managing directors is done by the administrative board for a maximum period of 5 years. Members of the administrative board cannot be a managing director at the same time, unless the company is a listed European company. The administrative board can issue instructions to

the managing directors. Basically a SE is represented by both the managing directors and the administrative board, provided that articles of incorporation do not determine something else.

This new type of European company creates the possibility for a cross-border transfer of domicile of a company within the European Economic Area without making necessary a dissolution and the succeeding new foundation of the company.

## 2. Accounting, Auditing

### 2.1. Accounting

The Austrian accounting and reporting rules were adapted to the 4<sup>th</sup> and 7<sup>th</sup> EC directive by the Accounting Act of 1990. The financial accounting rules are written from 1<sup>st</sup> January 2007 on in the third book of the Austrian Company law (UGB). §§ 189 - 216 of the company law deal with the rules applying to all full-traders. §§ 221 – 243 contain supplementary regulations that need to be applied by corporations (limited liability company and stock corporation). §§ 244 – 267 regulate consolidated financial statements and group management reports and finally the last part (§§ 268 – 283) regulates the examination, disclosure, publication and fines. Besides there exist regulations concerning the record keeping requirements and obligations in the Austrian federal fiscal code – BAO - (§§ 124 – 132).

At the end of each financial year, which does not have to coincide with the calendar year, financial statements, which comprise the balance sheet and the profit and loss account, as well as an inventory has to be prepared. The balance sheet is the comparison of all assets and capital value referred to a particular point in time.

The profit and loss account represents a report of all income and expenses, accrued within a financial year and referred to a period of time. At the beginning of each financial year an opening balance sheet need to be drawn up. The financial statement as well as the opening balance sheet must comply with the generally accepted accounting principles, thus the financial statement should reproduce a true and fair view of the financial and profit situation of the company. The following principles should be taken into account: principle of fair presentation, principle of balance sheet caution as well as the principle of true presentation. The financial statement has to be drawn up within 9 months after the financial year unless other regulations require earlier dates.

The accounting of corporations additionally requires: legal representatives of corporations have to draw up the financial statement, the management report and notes within 5 months after the financial year. According to the Company law there is a distinction between small, medium and large sized corporations. Small corporations do not exceed 2 of the following 3 characteristics: € 4.84 million of balance sheet total, € 9.68 million of turnover and 50 employees in an annual average. If the company exceed 2 of the latter 3 characteristics, but does not exceed at least 2 of the following 3 characteristics (€ 19.25 million of balance sheet total, € 38.5 million of turnover and 250 employees) the company is a medium sized corporation. Finally, if the company exceeds 2 of the 3 latter characteristics, it is about a large sized corporation. The company is always treated as a large sized company in the case that shares or other securities are dealt on a stock exchange. Small sized companies do not have to provide a management report. Large sized stock corporations must gazette the financial statement along with the notes in the

daily newspaper „Wiener Zeitung“ and submit the financial statement along with the management report to the register court. Small and medium sized stock corporations as well as large, medium and small sized limited liability companies do not have to conform to these requirements. In latter case the announcement of the filing satisfies the regulations.

According to the Company law corporations and entrepreneurial acting partnerships, if there is no general partner a natural person, are always obliged to accounting. All other companies, particularly sole trader and partnerships, if there is at least one general partner a natural person, are principal obliged to accounting if their annual turnover is more than € 700,000.-- in two consecutive years or more than € 1.000.000,00 in one year.

Consolidated financial statements have to be prepared for a group of companies (stock corporations and limited liability companies) if certain limits of total assets, sales and number of staff are exceeded. In §§ 244 – 267 company law consolidation rules are stipulated. Consolidated financial statements can also be prepared under the terms of international accounting standards.

## **2.2. Auditing**

Stock corporations as well as large and medium sized limited liability companies are bound to an audit of the financial statement. (§ 268 subsection 1 company law). The audit includes the examination of the financial statement and of the management report. The regulations concerning the management report are stipulated in the §§ from 243 company law on beginning. Thus the management report shall demonstrate the business development and the situation of the company; development of special importance for the company, probable development of the company, the section research and development as well as existing branches should be taken into account.

Not until the audit has been carried out, the adoption of the financial statement can take place. Matter of the audit is also the bookkeeping, apart from all components of the financial statement. It has to be examined whether the legal regulations and the provisions of the articles of incorporation have been met. The management report has to be consistent with the financial report and must not give a wrong view of the situation of the company. The legal representative of a corporation is obliged to a presentation to the auditors. Besides the legal representatives must provide evidence and bring forward proofs in order to facilitate an audit in a careful manner. The result of the audit is presented by a report.

## **3. Tax Law**

### **3.1. Taxes on Income (Ertragssteuern)**

With respect to the tax treatment of earnings, Austrian Tax Law differentiates between natural and juridical persons. The income of natural persons is subject to income tax (Einkommenssteuer), the income and earnings of juridical persons are subject to corporate income tax (Körperschaftssteuer). Further differentiation is made with respect to the scope of the liability to pay taxes. Persons who have not set up residence or permanent

establishment in Austria only have limited tax liability and are only taxable with their special income from sources in Austria. Domestic income realised from non-residents are enumerated exhaustively in § 98 of Income Tax Act. Resident persons have unlimited tax liability and are consequently subject to Austrian income tax and/or corporate income tax based on their whole world-wide income.

### 3.1.1. Taxes on Individual Income (Einkommensteuer)

Only natural persons are subject to the income tax. Partnerships are not directly covered by income taxation purposes but rather the individual partners are subject to taxation in line with their share in the partnership's profit.

A prerequisite for an income tax liability is that the person must generate revenues in one of the following 7 determined categories of income:

- Income from agriculture and forestry
- Income from self-employment
- Income from trade or business
- Income from employment
- Income from capital investments
- Rental and royalty income
- Other income (such as speculative profit, sale of certain participations etc.)

If the income is not derived from one of the above categories of income the respective income is not subject to taxation. Apart from taxable income, there are certain clearly defined types of income which are exempted from tax under Austrian law.

For tax assessment purposes, a person's income is in a first step determined per category of income, then all income derived from the various types of income is added up. In a second step a balancing of negative and positive income is done, which means that under certain conditions losses are deducted from the taxable base. The total amount of income is reduced by special personal deductions (§ 18 Income Tax Act), extraordinary personal expenses (§ 33 and 34 Income Tax Act) and tax allowance (§ 104 and 105 Income Tax Act).

The resulting amount thus achieved is the person's taxable income, and serves as the basis for income tax assessment. The income tax itself is a progressive tax and the following tax rates are currently applied in Austria:

Income	Tax	Marginal Tax rate
€ 11,000 or less	€ 0	0 %
€ 25,000	€ 5,110	36.50 %
€ 60,000	€ 20,235	43.2143 %
€ 60,001 or more		50 %

The income tax is calculated by the local tax office on the basis of the income tax return submitted by the tax payer (tax assessment). This income tax return has to be handed in by March 31<sup>st</sup> of the following year and has to contain all the income generated by this person within the respective calendar year. It is however possible to concede an extension of time for the filing of the returns, particularly when the tax payer is represented by a tax consultant. Finally the calculated amount of income tax has to be reduced by deductible amounts according to § 33 subsection 4 to 6 Income Tax Act.

Apart from this type of income taxation, there is a special type of taxation for income generated from employment, for special types of income from capital income and for special types of income generated by non-residents with only limited tax liability. Income from employment is taxed via deduction from the employee's wage (= wage tax; § 47 Income Tax Act). This tax has to be paid over by the employer to the local tax office. Consequently the individual employee's major tax affairs are settled by his employer and he only has to take care for income-related expenditure, special allowances or extraordinary personal expenses he wishes to deduct, or for income derived from other sources.

For the most general types of capital investments (such as dividends, profit shares derived from limited liability companies, and savings deposits) normally the debtor of the capital income is obligated to withhold a capital-yield tax of 25%. Capital yield tax has to be paid by a person obligated to withhold to the fiscal authorities. A natural person thus satisfies the capital-yield tax and therefore, the respective capital income derived need not be assessed again for tax computation purposes.

Certain income generated by persons with limited tax liability (such as for activities pursued in Austria by authors, artists, consultants, etc.) is subject to a special withholding tax of 20% (§ 99 Income Tax Act). This tax shall be withheld by the person who owes the fee to the person with limited tax liability and has to be paid to the tax office directly from the debtor of the fees. As to the amount of the withholding taxes there are certain restrictions laid down in the individual double tax convention (see below).

### **3.1.2. Corporate Income Tax (Körperschaftsteuer)**

The corporate income tax is the income tax to be paid by corporate entities, mainly corporations. The regulations of the Income Tax Act also apply to the determination of the taxable income of juridical persons. The tax rate for capital income is however not graduated in a progressive way but commensurates to 25%.

In order to levy the income corporate tax, the tax declaration has to be filed with the tax office. Losses can be set off against future profits (limited of set-off up to 75% of positive income).

Dividend payments derived from a participation of a corporation in another Austrian corporation or commercial co-operative society are tax-free in the receiving company. This provision is applicable to participations in Austrian corporations independent from a minimum holding requirement. In case of an international cross-shareholding participation the minimum holding requirement amounts to 10% for at least 1 year. However, the capital gains derived from the sale of an Austrian participation are not tax privileged, whereas capital gains derived from international participations are non-taxable (international Holding privilege).

### 3.1.3. International Tax Law (Internationales Steuerrecht)

Non-resident taxpayers are only taxable with their income, which need to have a certain reference to Austria; taxable income is enumerated exhaustively in § 98 Income Tax Act. Resident taxpayers are subject to taxation on their world-wide income. In order to avoid double taxation, a relatively tight network of double tax treaties has been set up. The majority of these treaties comply more or less with the OECD- model treaty. Besides, there are a number of older treaties and some agreements, especially with Anglo-Saxon states, which are not geared to the model treaty. The major part of these treaties is almost exclusively limited to income taxes, only a few countries conclude double taxation agreements with regard to inheritance taxes.

For states with which no double taxation agreements have been concluded or in case of an imminent double taxation in spite of existing agreements, there exists the opportunity to apply § 48 Federal Fiscal Code, which created a unilateral method to avoid double taxation. If the qualifications (resident taxpayer as well as an averaged foreign tax burden of at least 15%) of § 48 are fulfilled, the federal finance minister is allowed to prevent the imminent double taxation by the means of an application, which need to be filed by the resident taxpayer.

Within the scope of the double tax treaties occurs a breakdown of the different types of income and capital assets in national and foreign parts. A double taxation is avoided by the use of the tax credit method or by the use of the exemption method.

## 3.2. Value Added Tax (Umsatzsteuer)

Since Austria's accession to the European Union, the country's value added tax law has been adapted to the respective EU directives. The system of the VAT law is arranged in such a way that deliveries and supplies within the chain of enterprises are not burdened with VAT. Only the ultimate consumer has to bear this tax burden. Therefore the VAT represents a transitory item with respect to enterprises. This result is thereby achieved that an entrepreneur has to tax income derived from deliveries and supplies with VAT and afterwards the entrepreneur has to pay this VAT to the tax office. On the other hand, the entrepreneur retrieves the VAT, which he had to pay for deliveries and supplies received from other enterprises, in the form of input VAT. The ultimate consumer does not have this possibility of input VAT and thus has to bear the VAT with which he is burdened with.

Subject of the VAT are basically all deliveries and supplies (§ 1 subsection 1 nr 1 VAT law), self-supply (§ 1 subsection 1 nr 2 VAT law – use of subjects and supplies for purposes outside the company, which belong to the enterprise) imports from third countries (§ 1 subsection 1 nr 3 VAT law). This regulation corresponds to the territoriality principle. For VAT tax purposes, it does not matter if the entrepreneur is a resident or a foreign person. For cross-border movements of goods to third countries the destination principle applies. The goods are taxed where they are used ultimately. Within the EU market that destination principle should be replaced by the origin principle, but the realisation of this intention will for sure need some more time.

It is necessary to determine where the delivery or supply has been carried out in order to determine if the delivery or supply is subject to Austrian VAT. The determination of the place of supply is effected accordingly to EU-directives. The regular tax rate amounts to 20%, the privileged tax rate for certain goods (especially food, books and rentals) amounts to 10%. There exists the possibility to be really exempted from the VAT or to be exempted in a bogus way. The bogus exemption means that the entrepreneur does not have to pay VAT, but on the other hand he is not allowed to retrieve the input VAT. This is the case with small businesses with a turnover less than € 30,000.-- (since 1<sup>st</sup> January 2007). Export deliveries on the other hand enjoy a real exemption.

Taxpayer is the performing enterprise. The EU regulations provide that intra-EU supplies are exempted from taxes and intra-EU acquisition have to be taxed in the import country.

### 3.3. Other Taxes

Besides of the above mentioned taxes there exists a lot of other type of taxes. Only a few should be mentioned now:

#### **Real Estate Transfer Tax (Grunderwerbssteuer)**

If the title of real properties located in Austria is transferred (purchase or exchange), a tax on real estate transfer has to be paid (amounting to 3.5% of the purchase price). An exemption of this taxation occurs, when a de threshold of € 1,100.- is not exceeded.

#### **Capital Duty (Gesellschaftssteuer)**

A capital duty is imposed on certain capital contributions of domestic corporations, contribution to capital, voluntarily supplies as well as obligatory supplies according to the articles of incorporations (the duty amounts to 1%). The capital duty is abolished by 01.01.2016.

#### **Dues (Gebühren)**

A number of legal transactions if supported by deeds or contracts (such as lease agreements or guarantee/surety agreements) are subject to dues. There is a large variety of dues payable to the Austrian fiscal authorities which may represent a considerable tax burden.

#### **Insurance tax (Versicherungssteuer)**

This tax is imposed on payments on the basis of insurance contracts. Depending on the type of insurance taken out, the tax varies between 1% and 11%.

#### **Standard Consumption levy (Normverbrauchsabgabe)**

Any initial acquisition and/or initial registration of motor vehicles for the transport of persons and motor cycles is subject to this tax. This kind of tax should support the purchase of low-fuel-consumption vehicles. The amount of tax levied depends on the average fuel consumption and may amount up to 16% of the net purchasing price paid for the motor vehicle. E.g. the amount of the standard consumption levy for vehicles with a gasoline motor is 2% multiplied with the real fuel consumption of that vehicle, reduced by 3 litres.

Since 01.03.2014 the basis for the calculation is the CO<sub>2</sub> emission.

## 4. Labour and Social Security Law (Arbeits- und Sozialversicherungs Recht)

Austrian labour legislation is deemed to regulate the relationship between employers and employees. The single labour legislation regulates the position, rights and obligations of the individual employee within his operating unit. As the employee normally is not working as a separated unit from the company, but is working within the staff, the labour legislation also needs to control the relationship between him and the other employees, his supervisors and his subordinates. That is called the collective labour law.

Subject of the labour law is: any employee, who is contractually bound to work under personal dependence for a longer period than very short. In Austria there is made a distinction between blue-collar and white-collar workers. The rights of both are approaching each other, but there exist slight differences when it comes to the period of notice (shorter for blue-collar worker), to the effective date of termination and to the reasons for accelerated termination.

An important protective function of the labour law show collective contracts. The collective contracts comprise minimum working conditions as well as limitations on job requirements, thus these contracts assure for both, worker and employees, an important social protection, which cannot be undermined by deviant working contracts. Consequently the collective contracts contribute much to an unification of the working conditions, as they provide a standardised system within their scope. The contracting party on behalf of the employees almost always is the Austrian Federation of Trade Unions.

The law of working hours provides – along with the collective contractual regulations – a roughly outlined period of time, in which work can/ must be done. In general the ordinary working hours of 40 hours a week as well as the daily ordinary working hours of 8 hours a day must not be exceeded.

This regulation only provides a framework and does not represent a fixed one, so that it is possible to exceed the working hours. If an exceeding of the weekly working hours really takes place, these additional hours are called overtime and have to be remunerated in an appropriate way or they have to be compensated within a defined period of time. Most of the collective contracts fix 38.5 hours as the weekly hours of work.

If the employee does not come up to his labour requirements, one sanction could be the cancellation of the employment contract. The breach of duty could represent a cause of dismissal or a termination reason. A mere termination does not require any reasons. The employer only has to comply with the period of notice as well as the effective date of termination, which should support the employee in finding a new job. A termination on the part of both – employer and employee – gives the employer the right to his wage/ salary until the end of the employment contract, the right to paid compensation for unused vacation and the right to proportionate supplementary grants according to the collective contract.

A dismissal is the immediate termination of the employment contract on the part of the employer upon certain good cause shown. The causes of dismissal are different according to the different category of employee, but all the causes have in common a default of the employee (e.g. assault toward the employer, infidelity during work, omission of a service). There exist special causes of dismissal for protected persons (such as e.g. expectant women or persons carrying out alternate civilian service). Besides, the employer immediately needs to obtain the agreement of the labour and social court once the cause of dismissal has been recognised. In the case of dismissal, the employee is entitled to his salary/ wage until the end of the employment contract as well as to be paid compensation for unused vacation.

In case of termination of the employment relationship the employee has the right to severance payments toward the staff member pension bank. Basically the employee does not have to deal with severance payments. The actual payment of the severance demands the fulfilment of all requirements. The staff member pension liability to contribution arises basically at the beginning of the second month of employment relationship. The amount of the severance results from the entitlement to the severance at the end of that month, when the beneficiary has claimed his severance in written form.

Any person who operates on the labour market in Austria receives protection for certain types of risks by means of the social insurance. In Austria fundamentally all working persons, regardless if self-employed or employed, are subject to a compulsory social insurance.

Most of the employees are compulsorily insured with the general social insurance law (ASVG). The employees are thus insured against unemployment, accident and they obtain an old age insurance and health insurance. The compulsory insurance begins with the first day of activities liable to insurance deductions. For this point of time the real start of employment is decisive and not the stipulated point of time. There exist some exceptions to the compulsory insurance: the minor employment (maximum gross monthly wage of € 341.16). Detailed statement and withholding of social insurance is done by the employer, who is also responsible for the payment to the social insurance agency in time. The current rate of contribution for people insured according to general social insurance law amounts to 39.9 % on the basis of contribution for employees.

The social insurance system also comprises self-employed people. The insurance protection is not granted in a standardised way, but separated into different systems according to the different branches. Self-employed people within the business underlie the commercial social insurance law (GSVG), countrymen underlie the social insurance law for countrymen (BSVG) and some of the professional persons underlie the social insurance law for professionals (FSVG).

Tradesmen are insured with the commercial social insurance law. The rate of contribution amounts to 24.6 % on the basis of contribution. In reference to the health insurance there exists a difference between beneficiaries for benefits in kind (insured person with less income than € 53,759.99 or founders of enterprises within the first 3 years) and beneficiaries for benefits in cash (insured person with an income of more than € 53,759.99). Persons who are insured with the commercial system are not insured against unemployment and they only receive contributions of the unemployment insurance when they have been insured against unemployment before going into business on their own. The insurance against accident has a fixed assessment basis of € 16,307.35 (with the

possibility to a higher voluntarily insurance). The accident insurance of the general social insurance is geared to the income of the last year.

There is also the possibility to be insured as “newly self-employed” with the commercial social insurance law. This is the case for people who do not get a trade license for their work. Newly self-employed are compulsorily insured when their income exceeds certain limits on insurance. For persons who have one or more insurances beside the income as a self-employed the limit is €4,093.92 per annum. For people who have just income as a self-employed the limit is €6.453,36 per annum.

Self-employed physicians are insured with the social insurance law for professionals (FSCG) according to the social insurance law. The medical association disposes of a health and old age insurance for the physicians.

## 5. Other Important Regulations

### 5.1. Trade and Industry Law (Gewerberecht)

Almost every activity that is independent in nature and is performed regularly with the intention of realising a profit or any other economic advantage is considered to be of a business nature and is subject to the term and conditions of the Austrian Trade Regulation Act. The Trade, Commerce and Industry Regulation Act 1994 (GewO), amended in 2002 and 2005, especially tries to guide all commercial activities in a proper way. The quality of products as well as the skills of professionals shall be assured by the means of regulations concerning the accession, exercise and termination of commercial activities.

The commercial exercise of an activity, which is part of the GewO, is dependent of a trade license. Part of the GewO are e.g. master builder, removers or investment consultants. But there exist activities that are not covered by this law: most of the independent professions, banking, mining, agriculture and forestry and agriculture.

The requirement for the fulfilment of certain certificates of competence is the criteria for the classification of commercial activities (since the amendment of the Trade, Commerce and Industry Regulation Act in 2002) in: licensed industry, partial industry and free industry. Basically all industries need to be registered in order to be allowed to start business. A certificate of competence could be: finished studies, attended examination for the degree of master, attended final apprenticeship examination etc. Which of these requirements have to be met is set up by the ministry of economy and labour.

#### **Licensed Industry:**

Apart from fulfilling the general requirements the respective certificate of competence have to be filed.

**Partial industry:**

This industry covers activities of the licensed industry. However, the examination of this industry can be done by persons, who can prove the respective certificate of competence in an easier way. Examples: tailoring specialised on changes etc.

**Free industry:**

No special qualification certificate or proof of qualification is necessary to carry on a free trade in Austria. These activities can start right after the fulfilment of the general requirements and the registration of the industry. General requirements are: Member of the EU/ EEA or the permission of residence, at least 19 years of age, no existence of reason for exclusion etc). Examples: graphic artists, advertising agency etc.

Registration to an industry need to be done at the regional administrative agency of the place of the industry.

## 5.2. Antitrust Law (Kartellrecht)

Every company operating within Austria is bound to the regulations of the antitrust law, which comprises on one hand the European competition law and on the other hand the Austrian antitrust and competition law.

The competition law prohibits the following matter of facts, as far as not approved nor exempted: horizontal consolidations (between competitors), vertical consolidations (between sales agents) and anticompetitive abuse of market power.

On the 1<sup>st</sup> of January 2006 the new Austrian antitrust law became effective, which should support the interests of the economy and the consumers by the means of a harmonisation of European and Austrian regulations.

The forming or the acquisition of corporations, as well as mergers and conversions of companies may be subject to antitrust provisions. The control of mergers stipulates a registration of a merger at the responsible competitive authority, once certain thresholds of turnover are exceeded.

Under Austrian Antitrust Law mergers have to be announced at the Cartel Court if turnover in the last period is higher than:

- € 300 million worldwide and
- € 30 million in Austria and
- at least 2 of the concerned companies over € 5 million worldwide

There exist other limits for the turnover in case of mergers of banks, insurance companies and media. The requirements of a media merger is fulfilled, if at least 2 companies have a close relationship to the media and if the annual turnover of one company is at least € 1.5 million and of at least € 25,000 of the other company.

**Editorial: BF Consulting Wirtschaftsprüfungs-  
GmbH**

**Mariahilfer Straße 32, 1070 Vienna  
AUSTRIA**

Tel: +43 1 522 47 91  
Fax: +43 1 522 47 911  
e-mail: [office@bf-consulting.at](mailto:office@bf-consulting.at)  
webmail: [www.bf-consulting.at](http://www.bf-consulting.at)

**Contact person: Mr. Franz Schweiger**

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