

# Doing Business in Austria

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Austria.



## Background

### Country overview

Austria is around 84.000 square km and consists of nine federal states. Vienna is simultaneously a federal state and the capital of Austria. Austria is a parliamentary democracy. The Austrian Constitution is based on the rule of law and republican, democratic and federal principles. Austria is a neutral country. The electoral system is based on proportional representation, therefore absolute majorities are difficult to achieve. The population is approximately 8 million people, most of them Roman Catholics. The language is German.

### Economic overview

Austria is a member of the European Union (EU), which comprises 28-member states. Austria has joined the "Eurozone" in which a common currency, the Euro (€) is used. Austria has a high proportion of small and medium sized enterprises. These numerous and flexible enterprises are an important element of the Austrian economy. Austria is also a leading location for businesses wishing to expand into Eastern and South-eastern Europe. More than 1,000 multinational companies coordinate their operations in this region from an Austrian base.

Some more key figures (2012):

- Workforce of about 4.1 million people,
- Level of unemployment 4.3 %,
- Gross Domestic Product per capita € 36,640,
- Consumer Price Index plus 2,4%.

### Transport infrastructure

Austria has a good motorway and rail network. The Vienna International Airport is the leading transportation hub for flights to the Central and East European markets. Besides this there are several national airports, in Linz, Salzburg, Graz, Innsbruck and Klagenfurt.

## Choice of Legal Form



### Limited liability company

This is the most common and very flexible form of a corporation in Austria. In Austria, it is called Gesellschaft mit beschränkter Haftung (GmbH). The minimum statutorily required capital is € 35,000 of which 50%, or at least € 17,500, must be paid in (if share capital is being contributed in cash). The cost of establishing a simple GmbH with a stated capital of € 35,000 is about € 5,000. The formation of a GmbH requires only one shareholder. A shareholder can be an individual, a partnership or a legal entity. The managing directors are either appointed by a shareholder's resolution or are appointed in the articles of associations. A supervisory board must be appointed by the shareholders if the stated capital exceeds € 70,000 and the company has more than 50 shareholders or the average number of employees exceeds 300.

With the Corporate Law Amendment Act 2013, the statutory minimum share capital for limited liability companies was reduced from € 35,000 to € 10,000. However, as of 1 March 2014 the minimum share capital again increased to € 35,000.

In view of the fact that the limited liability company is a legal entity separate from its shareholders, assets are held in the corporation's name. The company may sue and may be sued under its own name. Shareholders are not liable for obligations of the company.

### General partnership

The name of this partnership in Austria is Offene Gesellschaft (OG).

The general partnership is a partnership, the object of which is to conduct a commercial business under a common

firm name, where the liability of none of the partners towards the creditors is limited. The partners can be either natural persons, legal entities, or other partnerships. The partnership agreement is not subject to any formal requirements. Whether – and to what extent – the partners are to make contributions is determined by the partnership agreement. Unless agreed differently every partner has the right and the obligation to manage the business. The partners are jointly and severally liable for the obligations of the partnership and any agreement to the contrary is ineffective as towards third parties. Such liability of the partners for the debts of the partnership is unrestricted.

### Limited liability partnership

The name of this partnership in Austria is Kommanditgesellschaft (KG).

A limited partnership is a partnership, the purpose of which is to conduct a commercial business under a common name, where the liability of one or several partners is, in respect of the partnership's creditors, limited to a specific amount of contribution (limited partners) whereas the remaining partners have unlimited liability (general partners). The limited partners are excluded from management of the partnership unless there is an agreement which allows limited partners to participate in management.

### Civil law partnership

The civil law partnership is defined as an agreement between two or more partners which combine their efforts or funds (or both) for a common purpose. There are no formal requirements for the partnership agreement. It may be formed by written or oral agreement. Unlike the previously mentioned partnerships, the civil law partnership is not registered with the Commercial Register. The partners' contribution to the civil law partnership may be money, a working commitment or assets. The partners are directly liable to creditors.

### Branch

The procedure to establish branches in Austria is rather tedious (especially depending upon the location of the foreign company), therefore foreign companies prefer to do business in Austria by means of subsidiaries rather than branches. To be registered in Austria as a branch of a limited liability company, the foreign company must be similar to an Austrian limited liability company (for example German and Swiss GmbHs, French société à responsabilité limitée etc.; US-companies are generally considered to be similar to stock corporations).

## Subsidiary

Many commercial partnerships in Austria take the form of limited partnerships. Another option is the establishment of a public limited company (Aktiengesellschaft). By far the most common and flexible legal form for subsidiaries of foreign countries operating in Austria is the "limited liability company" Gesellschaft mit beschränkter Haftung or GmbH. The obvious advantage of a GmbH over a branch is that the liability of the parent is limited to the amount of the share capital of the GmbH.

## Sole trader

A sole trader conducts their business without any partners or shareholders. They contribute the original capital all by themselves and are subject to unlimited liability. They may have employees.

## Public limited company

The name of this company in Austria is Aktiengesellschaft (AG). The public limited company (stock corporation) is designed as the corporation business form for larger business enterprises. At present, there are only a few hundred public limited companies in Austria. In comparison, there are around 100 thousand GmbH in Austria. The minimum capital is € 70,000. € 17,500 must be paid in cash upon formation. The shareholders may be individuals or corporations. Because public limited companies are designed for the general public, various provisions assure the protection of such general public. Therefore, formation of a public limited

company is more stringently regulated than the formation of the limited liability company (GmbH).

Shareholders are not liable for obligations of the company.

## Foundation

The foundation is called Privatstiftung (Stiftung) in Austria.

The Stiftung is a legal entity, the internal organisation and purpose of which is largely determined by the founder (grantor), who provides the assets necessary to achieve the aim of the Stiftung. The Stiftung is bound to execute the intentions of the grantor as documented in the declaration of establishment.

The Privatstiftung is an interesting instrument to avoid the splitting up family business and property as well as inheritance and gift tax levied on such property when it is passed on to the next generation. The legal basis is the Privatstiftungsgesetz which came into force in 1993. The main objective of the Austrian Parliament was to avoid the outflow of capital to other countries and at the same time to encourage foreign investors to set up a Privatstiftung for their family property in Austria.

## Setting up and organisation

A Privatstiftung is set up by a declaration of establishment and comes formally into existence upon entry in the register of firms. The declaration must include

(among other things) the contribution of assets, the purpose, beneficiaries, duration, and may specify that the founder can under certain circumstances dissolve or revoke the Privatstiftung at any time.

The founder (grantor) must endow the Privatstiftung with assets of at least € 70,000. The founder appoints the first board of trustees. If there are no rules in the declaration, the court will appoint

Trustees as necessary. The founder can also be a Trustee. The board must have at least three members, two of whom must be resident in Austria.

A supervisory board is mandatory, but only if the number of employees of a Privatstiftung exceeds 300.

The Privatstiftung has to prepare financial statements which should be audited by a certified public accountant.

## Audit Requirements

All Public Limited Companies (AG) and Foundations (Privatstiftungen) are required to have a statutory audit. All Limited Liability Companies (GmbH) must have an

## Taxation

The contribution of assets made by the founder to a Privatstiftung is subject to 2.5 % gift tax + 3.5 % additional fee when real estate is donated. This is calculated based on the Einheitswert (unit value), which is currently significantly lower than the market value.

A Privatstiftung is a legal entity and therefore subject to 25% corporation tax. Income from investments and capital gains are subject to 25% intermediary taxation. This tax can be credited against the withholding tax of 25% that may be due to the beneficiary for payments from the Stiftung.

Austrian beneficiaries do not have to pay gift tax on income distributed by a Privatstiftung but they must pay a withholding tax of 25% on payment as final taxation. Beneficiaries do not have to file tax returns or pay income tax on such gifts. If they are non-resident, the rate of withholding tax will be lower if double taxation agreements are in place.

audit if they reach two of the following key figures: turnover more than €10m, balance sheet total more than €5m and staff more than 50.

## Taxation



### Corporation tax

Corporations which have their registered office or management in Austria are subject to unlimited tax liability (resident corporations). The following are deemed to be corporations:

- Legal entities incorporated under private law (AG, GmbH).
- Public corporations (i.e. corporations incorporated under public law) operating on a commercial basis.
- Unincorporated associations, foundations, trusts and other estates.

The tax rate is 25%.

Corporations subject to unlimited tax liability must pay a minimum corporate income tax of € 1,750 annually. Should this minimum tax in one fiscal year exceed

the actual amount of corporate income tax payable, then this excess is treated as a tax prepayment and can be carried forward against future corporate income tax liabilities, if these future tax payments exceed € 1,750.

The loss carried forward is limited to 75% of the tax profit. The rest of the loss can be carried forward in later years without a time limitation.

### Group taxation in Austria

The group taxation for groups of corporations came into effect in 2005 and substituted the so called Organschaft. The group taxation is optional. The members of a group have to file an application for group-taxation with the tax authorities. The consequence of group membership is that profit or loss of a group member as computed for purposes of corporation tax

shall be attributed to the group member which directly or indirectly controls the group member. Group members can be also abroad. Foreign losses, as determined by Austrian rules, which cannot be offset against income in the foreign tax assessment, will be offset against the income of the taxpayer in Austria. If in a later tax period the loss is offset against income in the foreign country, this loss will have to be recovered and will increase taxable income in Austria.

### Dividend payments

Distributed profits are subject to a withholding tax, generally in the amount of 27,5%, payable at the latest, at the time the distributions are made. This withholding tax is often credited against corporation taxes payable by the parent company in the country in which it is domiciled. Further, under most double tax treaties concluded with Austria, the withholding tax is reduced to 5-10% if the parent is a corporation and retains a substantial holding of the shares of the subsidiary. There is no withholding on dividends paid to an EU parent corporation according to the EC Parent/Subsidiary Directive of 1990.

### Affiliation privilege

There is an exemption from corporation tax for profit resulting from shares and investments in domestic corporations and co-operatives, and for profit from shares and investments in foreign corporations as well as gains from the sale of such investments (international affiliation privilege). The prerequisites for the application of the i.a.p. are that the

corporation in Austria has to hold a share in a foreign corporation of at least 10% and for at least 1 year, direct or indirect.

### Interest

A 25% withholding tax is imposed on interest income from bank deposits and securities. For individuals and partnerships, it is a final taxation. However, it is possible to apply for regular taxation. In this case, the withholding tax is credited against income tax. Other interest paid to foreign individuals is subject to 27,5% withholding tax.

Interest paid to non-resident companies and individuals resident in another state with automatic exchange of information are exempted from withholding tax if the recipient provides a residence certificate issued by the relevant tax office of the country of residence.

### Branch profit tax

The profits are subject to 25% corporation tax.

### Personal income tax (Einkommensteuer)

Taxable income can be derived from the following seven sources:

1. Agriculture and forestry
2. Independent (professional) services (including scientific, artistic, literary, educational, or other professional services)

- 3. Trade or business
- 4. Employment
- 5. Invested capital (dividends and interest)
- 6. Rents and royalties
- 7. Annuities and other income of a recurring nature, speculative gains, and income from special services.

Total amount of income  
(loss compensation)

subtract - Special expenses  
           - extraordinary expenses  
           - relief, allowances and deductions (depending on status and personal conditions)  
 = Total taxable income

The income tax is computed as follows:

Income in €	Tax rate in %
up to 11,000.00	0
more than 11,000.00 to 18,000.00	25
more than 18,000.00 to 31,000.00	35
more than 31,000.00 to 60,000.00	42
more than 60,000.00 to 90,000.00	48
more than 90,000.00	50

Income in €	Tax rate in %
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more than 1,000,000.00  
(only for fiscal years between 2016 and 2020)      55

The tax payable is reduced by certain tax credits depending on status and personal conditions. For non-residents, special regulations and rates apply.

### Capital gain tax

#### Income tax

Capital gains according to § 24 Income Tax Act are subject to personal income tax if they exceed € 7,300 (tax-free allowance). Capital gains are:

- disposal of the entire business or a segment thereof,
- the share of a partner viewed as an entrepreneur in the business or
- discontinuation of a business or a segment thereof.

Capital gains shall be taxed at half of the average tax rate applicable to the entire taxable income (but without a tax-free allowance of € 7,300) if:

- seven years have passed since the establishment of the business
- upon the taxpayer's
  - death or
  - disablement or

- retirement after age 60.

Capital gains are also income from the disposal of participations. This gain shall be taxed with 25% withholding tax.

### Corporation tax

Capital gains (participation gains) or losses from international holding companies are exempt from corporation tax unless the entity opts in.

### Income tax on gains from sales of financial assets and private real estate

These taxes were introduced in 2012. The tax rates are 27,5% for gains on sales of financial assets and 30% for gains on sales of private real estate. It is a final taxation unless you apply for a regular taxation.

### Land tax (Grundsteuer)

The taxable object is real estate owned in Austria (agricultural land and woodland, real property, business property). The assessment basis is the assessed value, but the levy rates for taxation vary according to district (approx. 0.8 %).

### Value added tax (Umsatzsteuer); Nova

The following transactions are subject to VAT:

- Taxable supplies of goods and services, which an entrepreneur has delivered within the scope of activity of his/her enterprise in Austria for a consideration.

- The entrepreneur's own consumption in Austria, particularly the consumption of goods used personally by the taxpayer for purposes other than for his/her enterprise, and expenses which are not income tax deductible.
- The importation of goods into the customs territory (import VAT).

The VAT is payable within one month and 15 days of the end of each calendar month (or calendar quarter if the turnover for the preceding year was not in excess of € 30,000). The current standard rate of VAT is 20%; although reduced rates of 10% and 13% are applied to certain goods and services and some goods and services carry no VAT (such as exports outside the EU).

Deadlines for quarterly VAT returns and prepayments:

1st quarter: 15th May

2nd quarter: 15th August

3rd quarter: 15th November

4th quarter: 15th February

Deliveries as well as the rental of cars which have not yet been registered in Austria, and the first-time registration of cars in Austria, are subject to NOVA (Normverbrauchsabgabe). Deliveries to other car dealers, cars purchased by leasing companies, taxis, rental cars and cars used by driving schools are exempt.

Used cars (unless imported) are not subject to NOVA. The NOVA is calculated based on the standard fuel consumption according to the MVEG-Zyklus (regulated by an EU-directive) and reaches approx.

6 - 16% of the acquisition costs. The NOVA is part of the VAT-assessment base.

### Tax treaties / avoidance of double taxation

There exist around 90 tax agreements, see appendix 1 for list of countries.

Austria's double tax treaties follow the OECD Model Tax Convention, i.e. in most DTTs concluded between Austria and other countries, the exemption with progression method is used, but there are also some DTTs with a tax credit method.

Under the exemption with progression method, income taxable by the source country in accordance with the relevant DTT will be exempted from taxation in the state of residence. This usually entails a progression clause, i.e. that such income is used to calculate the tax rate applicable to the taxation of income in the state of residence. However, in most DTTs this exemption scheme is not applied to income derived from dividend and interest payments.

However, if there is no DTT between Austria and the relevant country, double taxation can be avoided by applying the exemption with progression method according to national law if the following conditions are met:

- the income tax of the taxable income in the source country is more than 15%
- relevant taxable income for which the exemption with progression method can be applied:

- income from immovable property situated abroad
- business income and income from independent personal services derived from a foreign permanent establishment
- income derived from a construction or assembly carried out abroad
- income from a lecture or teaching activity abroad
- income from a participation in an entertainment performance abroad
- income from employment carried out abroad

If the above-mentioned conditions are not met, double taxation can only be avoided by applying the tax credit method. If this method is applied, the deductible tax may not exceed the amount by which the foreign income is taxed in Austria. Therefore, the credit method can still lead to real double taxation if the foreign income is taxed at a higher rate in the source country than in Austria.

## Allowances



### Depreciation

In Austria, the straight-line method of depreciation is allowed by tax regulations.

Depreciation depends on 'useful life' and is based on either the cost of acquisition or the cost of production.

#### Special forms of depreciation without proof of 'useful life'

Buildings to be rented to others for residential purposes	1.5%
Buildings, at least 80 % of which are used for agriculture or forestry or for conducting business or trade	3%
Banks and insurance companies	25%
Banks and insurance companies, if at least 80 % of the premises are used to serve customers	3%
For other business premises	2.5%
Investments in the interests of preserving monuments	10%
The acquisition costs of goodwill: the useful age of an agricultural or forestry enterprise or a trade or business is 15 years	
Passenger cars, other than driving school vehicles and motor vehicles serving at least 80% of commercial passenger transport	12.5%
Machinery, office equipment	10-20%

### The arm's length principle

Intercompany charges such as management fees, rentals and royalties charged by a foreign parent to its Austrian subsidiary will be recognised as deductible

expenses to the extent that they satisfy the arm's length principles. Intercompany charges which do not meet the arm's length criteria are treated as hidden profit distributions and are subject to corporation and withholding taxation.

## Employment

### Social security

The Austrian social security system provides that a portion of the employee's gross salary must be withheld for: pension insurance, unemployment insurance, health insurance, accident insurance etc. Although payments are paid by the employer and the employee, it is the employer who is ultimately liable for making the social security withdrawal on a monthly basis. The maximum assessment basis in 2014 is € 4,530,00.

The rates are as follows:

Employer: 23.4%

Employee: 18.1%

### Additional charges for the employer

Employers contribute to a child benefit fund (Dienstgeberbeitrag, DB) 4.5% of gross monthly salary.

Surcharge on employer's contribution (Zuschlag zu Dienstgeberbeitrag, DZ) 0.40% (for Vienna) of the assessment basis for contribution of DB (although this varies between the Austrian countries).

Municipal tax (Kommunalsteuer) is charged on total sum of wages and salaries paid (3%).

### Employment of foreign staff

Staff may be assigned between the subsidiary and the parent to work within Austria. Non-EU employees must obtain valid visas and working permits. Most double tax treaties concluded by Austria provide that income from employment earned working abroad is taxable in the state of residence if the employee is present in the other state for not more than 183 days during the tax year (i.e. an employee of a foreign company located in a treaty state who is in Austria for more than 183 days during the calendar year is subject to Austrian taxation).

### Medical

Health insurance for employees is obligatory in Austria with some exceptions. The health services of the doctors and hospitals are free of charge except special services by dentists. Self-employed persons have a similar system but they have a kind of self-retention depending on their income.

### Payroll taxes

Employees in Austria are subject to the Income Tax taken from their twelve-monthly payments. In Austria the employees get, in addition to the monthly payments, two further payments which are subject only to a fixed rate of 6%.

Further charges for the employer are described under the social security section.



## Withholding Taxes

### Interest

The withholding tax rate on investment income resulting from securities representing money claims, and on investment income from bank deposits and other claims against banks, is 25% and is a final taxation, although one may opt for normal taxation.

### Royalties

For non-residents the tax rate is 20%.

### Dividends

The tax rate is 27.5%. It is a final taxation.

## Miscellaneous

### Distance selling of goods

Distance selling means that a supplier from another EU member state sells goods to private individuals (with no valid VAT number) in Austria. The supplier takes care of the transport of the goods to the customers. A typical example is mail order companies.

Austrian VAT is applied if sales in Austria exceed € 35,000 a year. Even if the threshold is not exceeded, traders can still opt to identify for VAT and charge the VAT rate applicable in Austria.

### VAT registration

To register for VAT the following documents are required:

- Contractual Agency and Power of Attorney (PoA)
- A Registration form (signed by the managing director or CEO of the company)
- Original confirmation of company/ business existence (issued by the local tax office)
- Specimen Signature ("Unterschriftsprobenblatt" or "Verf26"): A specimen signature can be used by the tax authorities to verify if a signature is genuine.
- Excerpt from the commercial register/ trade register
- Copy of the CEO's or managing director's passport

### Invoicing retention

From a VAT perspective, invoice documents represent a major element of taxation. Taxable supplies and services are regularly billed on invoices. If in possession of a correct invoice document, the recipient of these billed goods/services will receive an input VAT refund from the fiscal authorities.

The European VAT Directive (2006/112/EC) lays down the minimum standard requirements for invoices. However, many EU member states do ask for more details on invoice documents.



## Appendix I, Double Taxation Treaties

Albania	Georgia	Mexico	Switzerland
Armenia	Germany	Moldavia	Syria
Australia	Greece	Mongolia	Tadzhikistan
Azerbaijan	Herzegovina	Morocco	Thailand
Algeria	Hongkong	Nepal	Turkmenistan
Bahrain	Hungary	New Zealand	Tunisia
Barbados	India	Netherlands	Turkey
Belgium	Indonesia	Norway	Ukraine
Belize	Iran	Pakistan	USA
Belarus	Ireland	Philippines	Uzbekistan
Bosnia	Israel	Poland	United Arab Emirates
Brazil	Italy	Portugal	United Kingdom
Bulgaria	Japan	Qatar	Venezuela
Canada	Kazakhstan	Romania	Vietnam
China	Kirgizstan	Russia	
Croatia	Kuwait	San Marino	
Cuba	Korea (South)	Saudi Arabia	
Cyprus	Latvia	Serbia	
Chile	Liechtenstein	Singapore	
Czech Republic	Lithuania	Soviet Union	
Denmark	Luxemburg	Slovakia	
Egypt	Libya	Slovenia	
Estonia	Malaysia	South Africa	
Finland	Macedonia	Spain	
France	Malta	Sweden	

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If you are setting up a business in Austria, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in Austria please see overleaf.



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### Freistadt

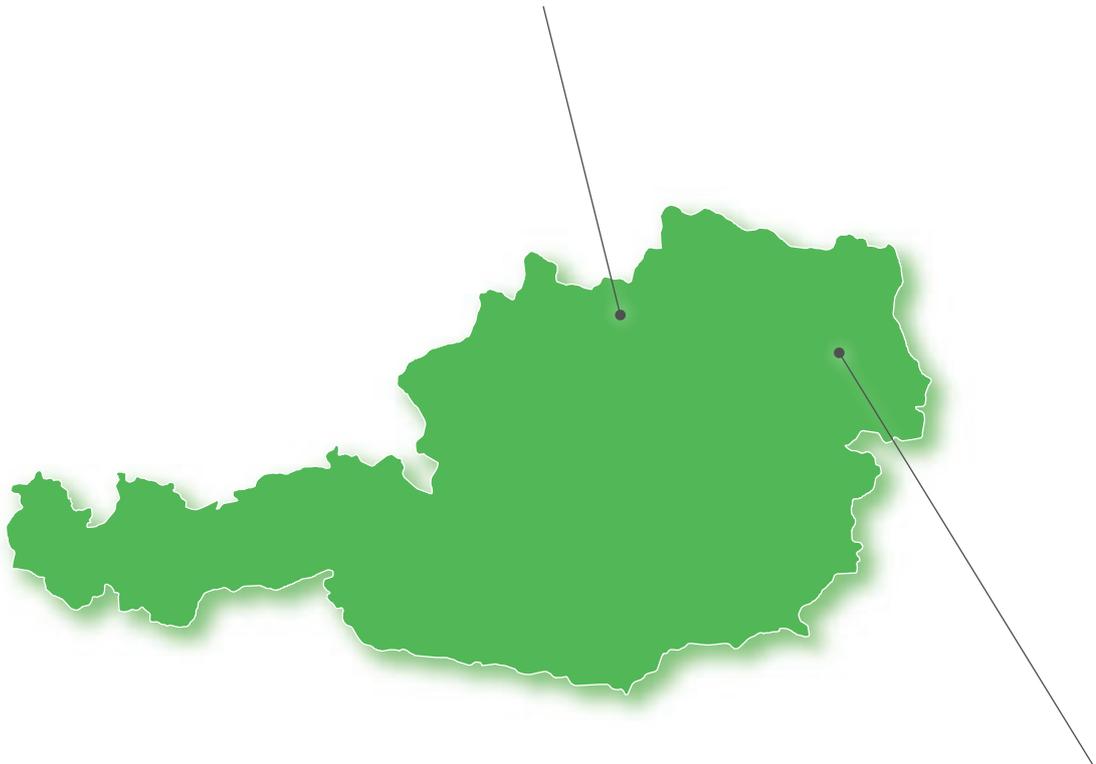
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