PKF

Accountants &
business advisers

Doing business in Austria

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preface

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Introduction

Geography

The federal republic of Austria is located in Central Europe. It is a predominantly mountainous country with an area of 83.855 km2 and a population of approximately 8.5 million. Eight countries connect with Austria along its border, namely Italy, Switzerland, the Principality of Liechtenstein, Germany, the Czech Republic, Slovakia, Hungary and Slovenia. Austria joined the European Union (EU) in 1995, which comprises 27 European member states as of 2008.

Advantages of Investing in Austria

Austria's main advantages are its economic, political and labour stability, its highly skilled workforce, a high standard of living, internal security and its well-established business ties to Central and Eastern Europe as well as far-reaching integration in the world economy. As a member of the EU, Austria is also a member of the Euro zone. Austria is a member of the United Nations, a party to the WTO, member of the OECD, the World Bank, the International Finance Corporation and the International Development Association.

Austria ranks as one of the safest countries in the world. The low crime rate, together with the relative stability within politics, the business climate and legal system, provide a solid framework companies can rely on. With a rich history, beautiful scenery and dynamic and innovative economy, Austria has become highly valued as a cultural nation, holiday destination and business partner alike. The diverse leisure possibilities in a secure environment provide international managers with an attractive environment in which to settle here.

Austria is also an attractive location from a tax perspective. It provides a competitive corporate income tax rate of 25% with an effective rate that is competitive due to several tax reliefs in comparison to other countries with lower nominal rates. Additional benefits are found in several tax incentives, notably for R&D expenditure and groups of companies, and the absence of wealth, inheritance and trade taxes. In addition to international companies, smaller foreign firms with subsidiaries can reap enormous advantages from the group taxation provisions in relocating operations to Austria, especially in establishing headquarters for the Eastern European region.

Constitution

Austria is a democratic republic established as a federal state. The parliament consists of two chambers: the National Council, which is elected directly by the people, and the Federal Council, which represents Austria's nine federal provinces.

Communications

Internal and external communications are excellent and transportation systems are well established. The telephonic direct dialling system allows instantaneous international communication from both fixed and mobile units. Internet access is readily available from almost anywhere in the country, both on a cabled and/or wireless basis.

Language and Currency

The main language spoken in Austria is German. The common currency is the Euro (€) with 1 Euro consisting of 100 Cents.

Legal System

The legal system is structured according to a so-called tier system of laws, which decrees that laws and regulations must comply with the standards set by the higher tiers (eg. the constitution, constitutional laws). At the top tier are the Austrian Federal Constitution and individual constitutional laws, as well as the EU Acts of Accession. General federal laws and laws of the federal provinces are in the lower tiers.

There is no Case Law system in Austria. This means that the judges are free to reach their own decisions or rulings, although previous rulings may be adduced in hearings. Austria adopted the EU legal framework as of January 1, 1995 on entry to the EU.

Major Exports and Imports

Most export earnings are derived from machinery and equipment, metal goods, chemicals, mineral fuels and oils, vehicles, electric and electronic equipment, paper products, textiles, food and agricultural raw materials.

Major imports are machinery and equipment, motor vehicles, chemicals, metal goods, oil and oil products and food.

Government Policy on Foreign Investment in Austria

The Government recognises that foreign investment makes a substantial contribution to the development of Austria's industries and resources, and its policy is to welcome and encourage long-term direct foreign investment that has beneficial economic effects.

Austria's law follows the regulations and the directives of the EU. The basic notion of the EU guidelines is that people, capital investments and goods originating from a member country can circulate freely within the EU.

Austria offers a comprehensive system of both national and local funding programs, all of them based on EU and national regulations. The purpose of these regulations is to ensure "fair competition" between companies and regions within the European Union. The funding instruments are subsidies, loans at concessionary interest rates and guarantees. Besides, several Austrian regions are eligible for support under various EU structural fund programs, to promote and facilitate economic development. Incentives under these programs are equally available to domestic and foreign investors and range from subsidies to preferential loans, to guarantees and tax incentives.

Import Controls

Since Austria's accession to the EU, the EU's foreign trade regime has been applicable. However, under the Foreign Trade Act *(*Außenhandelsgesetz 2005*)* imports and exports, except those of EU member states, may be restricted. The competent minister has issued a regulation stipulating what imports or exports require a license (e.g. weapons, high-tech goods). A block exemption regime exists. The breach of the restrictions may result in criminal prosecution.

Austria levies customs duties on some goods entering Austria from Non-EU countries. Customs clearance must be obtained to import any goods originating from outside the EU.

Exchange Controls

There is no limitation on converting or transferring funds related to foreign investment. In Austria, all cross-border capital transactions for non-residents (from both EU and non-EU member states) and residents, including the acquisition of Austrian securities, debt service, and the repatriation of profits, interest payments, dividends, and proceeds from the sale of investment are fully liberalized.

Source of Finance

Austria is a relatively small but stable international financial centre with a deregulated environment attracting the cream of the world's financial institutions, offering a full range of competitive financial services. Austria is a member of the World Bank and the International Monetary Fund.

Major sources of finance include local and foreign trading and savings banks, finance companies, building societies, credit unions and the stock exchange.

Business Structures

Types of Business Structures

The main business structures used in Austria are:

- Limited liability companies
- Partnerships
- Foreign branches

Companies

The most popular legal form of business enterprise is the company with limited liability, named ‘GmbH’ (Gesellschaft mit beschränkter Haftung), which may be established for almost all business purposes.

The liability of each shareholder is limited to the full amount of the share investment. These Limited liability companies can be set up by one or more shareholders; the shares cannot be traded on a stock exchange but must be transferred by means of a notarial deed.

Austrian stock-held companies are named AG (Aktiengesellschaft). This indicates a corporation, whose shares are traded on a stock exchange. As distinct from the GmbH, the AG is more flexible in the transferral of shares, thereby enabling it to raise funds on capital markets. However, as opposed to the GmbH, a supervisory board is compulsory for the AG and shareholders’ assemblies are subject to stricter formal requirements. The financial statements of an AG are subject to compulsory audit by a certified public auditor, whereas a GmbH audit is only obligatory for medium-size and large entities.

Governing Documents

The Company Laws contain basic and replaceable rules for the constitution and the internal management of a company. Limited liability companies have to be established on the basis of written articles of association covering basics such as the name, the registered office, the corporate purpose, the fiscal year, etc.

Directors

The managing directors, who are appointed based on shareholders voting, represent and manage the GmbH, whereas AGs must have a board of directors and a supervisory board (so-called two-tier-system). For GmbHs, a supervisory board is only mandatory for large entities meeting various criteria.

The AG's board of directors is appointed by the supervisory board for a maximum term of five years, however reappointments are permitted. The supervisory board members are appointed by the stockholders' assembly. Staff representation on the supervisory board is mandatory. The board of directors consists of one or more members and runs the AG's day-to-day business. In contrast to the GmbH, members of the board of directors cannot be given instructions in the course of the day-to-day business, neither by the supervisory board nor by the stockholders' assembly. Financial statements must be prepared by the board of directors, and, regardless of the AG's size, be audited and approved by the supervisory board and then presented to the stockholders' assembly.

Forming a company

The GmbH is set up by one or more shareholders and comes into legal existence upon its registration on the commercial register. The shareholders may be individuals or legal entities, residents or non-residents, Austrian or foreign citizens. The minimum share capital is

€ 35.000. At least half of this amount has to be contributed in cash before registration. Austrian commercial law also provides for contributions in kind, if several conditions are met. The GmbH can also be set up with a share capital of €10,000 within the first ten years after its foundation. At least half of this amount must be contributed in cash. Applying this "foundation privilege" has to be disclosed in the commercial register of companies.

The AG can also be established by one or more founders and comes into legal existence upon its registration on the commercial register. For this purpose the articles of association as well as evidence that the capital was paid in must be filed. The minimum stock capital is €70,000 and at least 25% of the capital subscribed has to be paid in before registration on the commercial register.

Registration requirements and filing procedures for public securities

The disclosure requirements, i.e. filings and publications, vary according to the size of the company. Size is determined by three criteria: turnover, total assets and number of employees (for details see section on audit requirements).

The following regulations relate to both GmbHs and AGs:

- Large companies must file a balance sheet, income statement, notes and management report with the court of the companies register. In addition, large AGs, companies listed on the stock exchange as well as banks, insurance companies and investment funds are required to publish these documents in the official gazette, while large GmbHs only have to publish the date of the filing.
- Medium-sized companies are only required to file these documents at the court of the Companies Register and must

publish the date of the filing. For the filing process several simplifications are available.
- Small companies are not required to prepare a management report and the notes within the financial statements are greatly simplified. Only the balance sheet (in an abbreviated format) and the notes have to be filed at the court.

Audit requirements and practices

The management must submit the financial statements together with the notes to the supervisory board within a period of five months following the close of a company's financial year.

A statutory audit is required for:

- AG (stock company regardless of listed or not)
- Banks, insurance companies and investment funds
- Large and medium-sized GmbH (companies with limited liability)

Small and very small companies only have to file limited financial information with the public register.

A company is deemed very small if at least two of the following criteria are met:

- Total assets do not exceed €350,000;
- Turnover does not exceed €700,000;
- Average number of employees per year does not exceed 10.

A company is a small company if at least two of the following criteria are met:

- Total assets do not exceed €5 million;

- Turnover does not exceed €10 million;
- Average number of employees per year does not exceed 50.

A company is medium-sized if

- Total assets between €5 million and 20 million;
- Turnover between €10 million and 40 million;
- Average number of employees per year between 50 and 250.

A company is a large company if at least two of the following criteria are met:

- Total assets in excess of €20 million;
- Turnover in excess of €40 million;
- Number of employees (average per year) above 250.

Shareholdings by non-residents

There are no restrictions in place with regard to the shareholding of Austrian companies by non-residents.

Foreign companies

If a foreign company wishes to conduct business in Austria it must register for a trade license (if necessary for the type of business) and, if the Austrian business unit is self-dependent to some extent, register the permanent establishment on the register of companies.

In the case that it wishes to issue or sign negotiable instruments, it must register as a foreign company with the Austrian Financial Market Authority (FMA).

Partnerships

Partnerships may take the legal form of a general partnership, called Offene Gesellschaft (OG), or a limited partnership, called Kommanditgesellschaft (KG). In the OG, all partners are fully liable for the partnership's debts, whereas in the KG there are general partners with unlimited liability and limited partners whose liability is restricted to their fixed contributions to the partnership. To limit liability, but also owing to tax and management considerations, the general partner of a KG is often a GmbH, which makes it a GmbH & Co KG.

Joint Ventures

Joint ventures, either incorporated or unincorporated, are common business vehicles on infrastructure projects and in property development. The joint venture agreement defines each participant's proportionate share in venture assets, liabilities and results.

A common form for joint ventures is the civil law association (Gesellschaft nach bürgerlichem Recht, GesbR). A GesbR is not a legal entity and its members are subject to joint and unlimited liability for its debts. Temporary joint ventures (especially in the construction business) are often formed as GesbRs and referred to as collaborative partnerships (Arbeitsgemeinschaft, ARGE).

Foundations

Foundations may be public (such as for a specific purpose or charity) or private (called Privatstiftung) for the benefit of private individuals. Private foundations play a key role in the ownership of larger Austrian companies as this vehicle is often used to govern succession in family-owned businesses. Furthermore, private foundations provide for some tax incentives in comparison to holding companies.

Taxation

Introduction

The tax status of a business entity depends on whether it is incorporated or not. Corporations (mainly GmbH and AG) are taxed on their net profits at the corporate level and are subject to national corporate income tax, which is presently levied at a flat tax rate of 25%. There are no other taxes levied on the income of corporations.

Individuals who are resident in Austria are liable to Austrian income tax at graduated marginal rates ranging from 0% to 55%.

Income Taxation Law and Administration

Austria’s income tax regime imposes a large number of statutes, the centrepieces being the Income Tax Act 1988 and the Corporate Income Tax Act 1988. Both have been revised and amended frequently since their introduction. Whilst small amendments take place every calendar year, more comprehensive and/or systematic changes occur every 5-10 years. The federal taxation system is administered by the Minister of Finance through local tax offices.

Fiscal Year

The standard Austrian financial year is the calendar year. However, with the consent of the tax authorities, companies may choose financial years other than the calendar as long as they comprise of 12 months.

Taxpayers

Individuals, corporations and trusts that derive assessable income are taxpayers, and as such are liable to income tax or corporate income tax respectively. Foreign entities are subject to income tax in regard to a local permanent establishment.

Partnerships do not pay income tax. Whilst they are required to file income tax returns which disclose their taxable income, any taxable income they derive is generally taxed in the hands of the partners. Unincorporated joint ventures are not treated as separate taxpayers as any taxable income they derive is generally taxed in the hands of the partners.

Taxable Income

The annual financial statements prepared in accordance with the commercial law are the starting point for determining taxable income. Valuation methods used for commercial law purposes are also applicable for tax purposes unless the tax law states otherwise. The profit or loss shown within the financial statement is adjusted to take account of any differences between the requirements of tax and commercial law. Major differences occur in depreciation (rates), such as the deductibility of losses and capital gains.

Tax losses (resulting from business income) may be carried forward indefinitely and may be offset against both trading income and capital gains. However, only 75% of current income may be offset against tax losses brought forward, thus 25% of current income is invariably subject to tax. Excess tax losses can still be carried forward. Loss carry-backs are not permitted.

The gross income is the total of income derived (regardless from which source) balanced against losses incurred. Generally, all expenses necessary to generate income are deductible. A number of major items that are relevant to determining taxable gross income (according to the Austrian tax regime) are set forth below:

- Capital contributions:
  Open and constructive capital is generally treated as non-taxable income. However, write-offs of receivables against subsidiaries are tax effective in the amount of the non-valuable part (at the level of the subsidiary this part is considered taxable income).
- Costs incurred by formation of a company:
  These are deductible for corporate income tax purposes unless they exceed the maximum amount fixed by the articles of association. The excess amount constitutes a constructive dividend and is therefore not tax deductible.
- Dividends:
  Dividends (whether declared or hidden profit distributions) to shareholders constitute non-taxable income appropriation and are not tax deductible for the distributing company.
- Interest:
  In general, interest expenses are tax deductible. However, interest payments to related parties may be qualified as constructive dividend to the extent that the consideration is not at arm's length or the underlying debt is qualified as hidden equity.
  Interest is not deductible if the recipient is an affiliated company (domestic or foreign), tax exempt, or liable to taxation of less than 10% tax rate. The same restriction applies to license payments.
- Royalties:
  As a rule, royalties are deductible. Corresponding to the rules on interest expenses, excessive royalty payments to the shareholders or their affiliates are treated as hidden profit distributions insofar as they do not meet the arm's length criteria.

- Management salaries over €500,000 are not deductible.
- Payments over €500 in cash that refer to construction work.
- Write-down of participations:
  In principle, participations may be written down to a lower going-concern value, if necessary. The write-down, or a capital loss in case of the sale of an international participation, is generally not tax deductible. For a domestic participation the write-down is disallowed for deduction if induced by a previous profit distribution of the company and if the dividends received from the participation are tax-exempt for the receiving company. To the extent that the write-down of a participation or capital loss is basically tax effective, the amount must be apportioned over a seven-year period. With regard to participations included in a tax group, an impairment of the participation at the level of the group parent is not tax effective during the existence of the group.
- In case of a shareholder's contribution down a chain of companies (grandparents contributions) to cover the losses of the second-tier subsidiary resulting in an increase in the book value of the participation at each level, a depreciation or a loss from the sale of the participation is only tax-deductible at the top-level (provided there is a decrease in value of the participation), whereas a depreciation at the level of the intermediary corporations in principle is not tax-effective.
- Losses suffered by a foreign permanent establishment of an Austrian company reduce the Austrian tax base of the company, even if the tax treaty between Austria and the permanent establishment-country provides for the exemption method. To avoid a double utilization of the permanent establishment-losses in Austria and the permanent establishment-country, the use of the tax losses of the permanent establishment will lead to a claw-back at the time the foreign permanent establishment earns profits against which the foreign loss carry-forwards can be offset.

- Goodwill:
  A goodwill acquired for a consideration must be amortized over 15 years.
- Intangible fixed assets:
  These have to be capitalized only if they are acquired for a consideration, and are to be amortized over their useful lives.
- Depreciation:
  For tax purposes, only the straight-line method of depreciation is permitted. Excess write down to the lower going concern value in case of technical or economic obsolescence is possible. For the first financial year of use, depreciation for 12 months is allowed provided the asset has been in use for more than 6 months throughout the respective financial year. Otherwise, half the annual rate is deductible. With the exception of buildings (1,5 % or 2,5 %), a goodwill (15 years) and passenger cars (8 years), depreciation rates are not fixed by Austrian tax law.
- Other deductible expenses:
  - Depreciable movable assets with a price not exceeding €400 can be fully expensed in the year of acquisition or production.
  - Repair and maintenance payments are tax deductible in the period incurred. Repairs that lead, in effect, to a new asset must be capitalized as such.

Lodgement of Returns

Taxpayers are required to lodge returns annually. The due date for the filing of tax returns is March 31st of the subsequent calendar year irrespective of the financial year-end. Taxpayers represented by a tax adviser may file their tax returns with the tax office by April 30 (at the latest) of the second subsequent calendar year.

Payment of Tax

Prepayments of corporate or income tax have to be made in four equal instalments each year in accordance with the assessment notice issued by the tax authorities. The prepayment is generally based on the prior year's tax payments, whereas a reduction of the prepayments may be granted upon application. The prepayments fixed for the assessment period and any amounts collected by withholding are credited against the final corporate or income tax liability.

Assessed tax is normally payable within 1 month after the date of issue of the assessment notice; postponements may be granted.

Residence and source

Austrian residents are generally subject to (corporate) income tax on all income, irrespective of its source (i.e. on worldwide income). In contrast, non-residents are only subject to income tax on Austrian-sourced income. The determination of an entity's tax residency and/or liability to Austrian income or corporate tax may be affected by the relevant double taxation treaty.

- Residence of individuals: A person whose domicile or customary place of abode is located within Austria is deemed to be resident.
- Residence of Companies: A company is resident within Austria if its legal seat or its place of effective management (strategic management, not the day-to-day management) is located within Austria.

Taxation of Partnerships

Profits of a partnership are taxed at partner rather than at partnership level. The partnership is a unit for the computation of income, which is then allocated to the partners and taxed in their hands. If the partner is an individual, his/her share in the partnership's profits is subject to income tax. If the partnership incurs losses and the partner is an individual, his/her share in the partnership's losses will only be offset against his/her other income if the amount of losses is covered by the amount of contributions paid to the partnership (under the condition that the individual is not playing an active role in the partnership).

If the partner is a corporation, its share is liable to corporate income tax. A non-resident partner's income from the partnership is subject to Austrian income or corporate income tax.

Taxation of Companies

Taxation of Profits

The taxable income for companies is determined on the basis of the rules stated in the section "Taxable Income". Austrian corporations' profits are subject to corporate income tax at the company level at a flat rate of 25%. Even if no income is generated, a GmbH triggers a minimum corporate income tax of €1,750 whereas an AG owes at least €3,500.

Taxation of groups of companies

In 2005 a new system of group taxation (Gruppenbesteuerung) was introduced. Under this system of group relief the profit or loss of a group member as computed for purposes of corporate income tax is attributed to the controlling company. For losses, the group relief operates across borders and is also applicable to non-resident first-tier subsidiaries. Losses from non-resident subsidiaries can thus be offset against group income under the condition that they be recovered if offset abroad in a later tax year. The only condition for group membership is a direct or indirect majority investment in a corporation. The group members must also file for group taxation with the tax authorities. The group must exist for at least three years. If a member leaves the group for whatever reason before expiration of this period, tax will be assessed as if it had never been a group member. A form of goodwill amortization is available for domestic share deals under certain conditions.

Dividend Withholding Tax

Dividends paid to an individual are generally subject to a 27.5% withholding tax (Kapitalertragsteuer). This tax rate is regularly reduced under Austria's double taxation treaties. However, most treaties require the company to withhold the full rate and the recipient of the dividend to apply to the tax authorities for a refund. A resident individual's dividend income from Austrian sources is not subject to further income tax if 27.5% has been withheld at source. Thus the withholding tax is the comprehensive tax (Endbesteuerung) for the individual shareholder.

A resident company's dividend income from Austrian sources is exempt from corporate income tax under the domestic participation exemption (Schachtelprivileg). Any withholding tax suffered is refunded or credited against corporate income tax on income from other sources. A dividend is exempt from withholding tax if a domestic corporate shareholder holds at least 10% of the company. However, capital gains from the disposal of a share do not fall under the scope of the domestic participation exemption.

Austria has implemented the EU Parent-Subsidiary Directive that exempts dividends to an EU parent company from withholding tax if the following conditions are satisfied:

- The shareholder is a corporation resident in another EU member state and;
- The shareholder has held a minimum 10% interest for one year.

Any withholding tax collected during the first year will be refunded as soon as the minimum holding period has elapsed.

Taxation of Branches

The existence of a permanent establishment in Austria results in the liability of the foreign investor to pay taxes in Austria at the ordinary corporate tax rate. The tax-base for the permanent establishment must be calculated according to Austrian tax law taking into consideration provisions in Double Tax Treaties, if applicable.

Interest deductions

Austrian tax law does not contain specific thin-capitalization rules. In practice, a shareholder's loan will constitute hidden equity only if it is granted as a substitute for shareholder's equity and the overall picture of the case leaves no doubt about that. It must be proved, however, that a supply of equity would clearly have been necessary at the time the loan was granted and that the loan is a substitute for required equity. Hidden equity is not assumed if the company's equity ratio is in accordance with commercial practice. As a rule of thumb, an equity ratio of 20% (in some industries even lower) should be sufficient in any case. If a shareholder's loan to his/her company is not granted at arm's length conditions, it will also trigger its treatment as hidden equity. The result of re-qualifying a shareholder's borrowings as hidden equity is that the interest payments are regarded as income appropriation and are therefore not tax-deductible.

Repatriation of Profits and Transfer Pricing

Specific transfer pricing rules were introduced in 2010. However, the general arm's length principle prevails and Austria has adopted the OECD Transfer Price Report and the OECD guidelines are essentially reflected in the Austrian Transfer Pricing rules. Related parties' transactions that do not comply with the arm's length principle may be re-characterized as hidden profit distribution or hidden equity contribution. A hidden dividend distribution is not deductible for the purposes of corporation tax and is subject to withholding tax in the same way as an actual dividend.

Taxation of Capital Gains

Capital gains from the sale of business assets are generally included in taxable income and are taxed at the standard rate. Chargeable gains are calculated by deducting the cost of the asset, together with any enhancement expenditure or incidental costs of disposal, from the gross proceeds of sale.

If the requirements for the international participation exemption (EC Parent-Subsidiary Directive, see section on "Dividend Withholding Tax" above) are met, both the capital gains/losses realized on the sale of an international participation and write-downs of the participation are tax-neutral. Therefore, capital gains remain tax-free. To obtain this exemption, any previous tax-effective write-down must be recaptured and taxed over a seven-year period. Losses realized on the liquidation of a foreign subsidiary are tax deductible to the extent that they exceed the previous five years' tax-free dividends.

As an alternative to the tax-exempt status of international participations, an option-model has been introduced allowing a taxpayer to opt for the tax deductibility of capital losses and write-downs. However, in this case, capital gains are fully taxable at the standard rate. Dividends are not covered by this option and remain tax free. Thus, under this option, there is no recapture of the previous write-down.

Capital gains on the sale of participations in Austrian companies incurred by a resident company are fully taxable at the standard rate.

Capital gains from the disposal of a partnership interest are subject to Austrian income or corporation tax. Corporation tax is invariably levied at the full rate of 25%. Income tax is reduced to half the normal rate if the partnership interest has been held for a minimum of seven years and the disposal is made upon retirement. Capital gains are in most cases subject to a reduced (27.5%) income tax rate.

The following capital gains from the disposal of privately held assets are also subject to taxation:

Capital gains from the disposal of:

- Shares, options (including futures, swaps etc.), bonds, debentures, promissory notes, etc;
- Other movable assets (if sold within 12 months after their acquisition);
- Real estate (30% tax rate);
- A partnership interest.

Interaction with International Tax Regime

Austria has concluded a considerable number of double taxation treaties providing for relief from double taxation, whereas many Austrian treaties follow the OECD Model Tax Convention. In the absence of a tax treaty, according to the domestic Austrian provisions relief from double taxation can be obtained if the respective foreign income is subject to taxation comparable to Austrian income tax of at least 15% on average.

In certain instances, the relevant double taxation treaty may also impact the determination of where an item of income is sourced. For example, business income, income from property, dividend, interest and royalty income can be affected by terms of the double tax treaty.

The existence of a permanent establishment in Austria results in the liability of the foreign investor to pay (corporate) income tax in Austria.

Taxation of Individuals

Residents

Individuals resident in Austria are subject to income tax on their worldwide income. An individual is considered a resident if he/she has either a permanent domicile in Austria or has his/her habitual abode there. The domicile of a person is the place where he/she occupies a residence under circumstances that indicate that he/she will retain and use it not merely temporarily (e.g. if he maintains a house or a apartment). The customary place of abode is assumed in case of physical presence over an extended period. Individuals are considered to have a customary place of abode in Austria if they remain there for 183 days (or more) during any tax year. Neither citizenship nor nationality is relevant criteria in this context. If an individual has a secondary residence in Austria, its use for less than 70 days per calendar year does not trigger unlimited Austrian tax liability, unless the individual opts for it.

Non-Residents

A non-resident individual is subject to income tax only on his income from Austrian sources.

Depending on the type of income, Austrian income tax is payable either by way of annual assessment upon filing of an income tax return or through withholding at source. When the tax is assessed by filing an income tax return, a fictitious amount of €9,000 is added to the actual income due to the country of residence normally granting a relief on the minimum living wage). Income tax is withheld at a flat rate of 25% on dividends received from an Austrian company, at 20% gross withholding tax (alternatively: 35% net withholding tax taking expenses into consideration) on income from commercial or technical consulting services, directors' fees, royalty income and income from personal independent activities carried out in Austria, such as artists, athletes, supervisory board members, and so on.

Individual income tax rates

From 2016 on onwards, taxable income is taxed at graduated marginal rates ranging from 0% to 55% as follows:

Income	Overall Rate	Marginal Rate
0 - 11.000	0,0%	0,0%
11.001 - 18.000	25,0%	9,72%
18.001 - 31.000	35,0%	20,32%
31.001 - 60.000	42,0%	30,80%
60.001 - 90.000	48,0%	36,53%
90.001 - 1.000.000	50,0%	48,79%
Over 1.000.000	55,0%	49,35%

A range of rebates are available to Austrian resident individual taxpayers.

A special regime for income tax on salaries reduces the effective tax burden by up to 14% resulting in lower income tax rates than represented above.

Social Security System

Austrian social security contributions are compulsory and comprise inter alia of health insurance and pension insurance. Social security contributions are determined as percentages of total monthly earnings (but only up to specified maximum amounts) and are paid partly by the employee and partly by the employer. Self-employed individuals have to pay social security at a rate of 28% of their business income (again capped).

The social security contributions for 2016 applying a maximum monthly assessment base of €4,860 (14x) are:

	Contributions by		
	Employee	Employer	Total
Pension Insurance	10,25%	12,55%	22,80%
Accident Insurance	-	1,30%	1,30%
Health Insurance	3,87%	3,78%	7,65%
Unemployment Insurance	3,00%	3,00%	6,00%

Other Taxes

Value Added Tax (VAT)

The Value Added Tax Code (Umsatzsteuergesetz 1994) was introduced in 1994 and is based on the Sixth EC Directive on the harmonization of VAT and supplementary Directives issued thereto. VAT (Umsatzsteuer) applies to any entrepreneur who independently supplies goods or services within the domestic territory of Austria for consideration within the scope of his/her enterprise regardless of nationality or residence.

The standard rate on the delivery of goods and the provision of services is 20%. A reduced rate of 13% is valid for a range of services, including cultural and athletic events, museums and cinemas, rental of residential property and transportation of passengers (the most common examples). A reduced rate of 10% is valid for food, medication and agricultural products. Among other things, exports and certain services related to exports and imports are zero-rated (entitlement to input VAT deduction), whereas the banking and insurance sector are exempt from VAT (no entitlement to input VAT deduction). Also exempt from VAT is the supply of land and buildings and the leasing of immovable property (for other than housing purposes), though these can optionally be treated as Health services provided by doctors and hospitals and the supply of services and delivery of goods of an entrepreneur resident in Austria whose turnover does not exceed an amount of €30,000 per year are also exempt from VAT.

Foreign entrepreneurs who have neither their registered office, nor their place of abode, nor a permanent establishment in Austria are, like any other entrepreneur, in principle liable for VAT if they effect a taxable supply of goods or services in Austria. Such foreign entrepreneurs have to be registered for VAT purposes in Austria. No registration is necessary if the foreign entrepreneur renders only services in Austria subject to the reverse-charge procedure. If foreign entrepreneurs, who are not established in Austria, provide services to an entrepreneur resident in Austria, tax liability is generally shifted to the Austrian party.

Generally VAT returns have to be prepared on a monthly basis. If total sales of the previous year did not exceed €100,000, the taxable person can file returns on a quarterly basis instead of monthly. Additionally, filing an annual VAT return is obligatory. All returns have to be filed with the tax authorities by the 15th of the second consecutive month of the month/quarter the return has been prepared for (e.g. the return for March has to be filed by May 15). For the annual VAT return special rules are applicable when the taxable person is represented by a tax adviser.

VAT payments are due on the filing dead-lines. Late payment causes surcharges of at least 2%.

Specific rules apply to the delivery of goods and rendering of services within the EU. Intra-EU deliveries to enterprises having a VAT identification number (UID) are zero-rated. In contrast, the receipt of intra-EU deliveries is subject to VAT. However, for most purchases by consumers the country-of-destination principle has been replaced by the country-of-origin principle, i.e. VAT accrues in the country in which the goods are bought and not in the country to which the goods are delivered. Information on intra-EU deliveries must be provided to the Austrian tax authorities on a quarterly/monthly basis, by so-called European Sales Listings.

For imports of goods from non-EU countries import VAT is levied and is either collected by customs or may alternatively be paid to the tax authorities if an Austrian undertaking is liable for the tax. Import VAT is levied at the normal VAT rate (see above).

The long-distance selling threshold for intra-EU sales is EU-based €35,000. Above this annual limit, sellers of goods in B-to-C transactions have to register for VAT in Austria and charge Austrian VAT.

Stamp duties

Stamp duties are levied on numerous legal acts if they are manifested by a written document. Stamp duties are payable after being assessed by the tax authorities and in certain cases after a self-assessment. The following written agreements, among others, incur stamp duty:

- Lease and rental agreements;
- Assignments of rights, e.g. receivables (0,8%);
- Suretyships (1%).

Inheritance and Gift Tax

Austria has abolished inheritance and gift tax with effect from August 1st, 2008.

Individuals and families have to declare inheritance or donations of a large number of items (with the exception of real estate) from family members to the tax authorities if the amount exceeds €50,000 in one year. In the case of bequests from non-family members, the same rule will apply to total donations of €15,000 within a five year period.

On donations to private foundations a donation tax of 2,5% is levied.

Real estate transfer tax

Real estate transfer tax is levied on all real estate transactions, also if the transfer is free of charge. This includes all donations of real estate as well as the transfer of real estate by way of a share deal. Real estate transfer tax also accrues if 95% of the shares of a company owning real estate are united or taken over by a single shareholder.

The tax amounts to 3.5% of the purchase price or when transferring real estate free of charge:

Property Income Tax

If real estate is sold in Austria, Austria levies a property income tax of 30% on the profits generated by the sale. No property income tax occurs:

a) if the seller used the property as his/her principal residence for two years immediately prior to the sale, or for a 5-year duration within the previous 10-year period;

b) if the property was self-constructed and was not rented out at anytime within the past ten years;

c) if the sale is forced to take place due to an intervention by the authorities.

Pay-roll taxes

Austria levies pay-roll taxes on the gross salaries and wages paid by an employer. The rates are approximately 8% but may vary slightly among the nine federal provinces. The tax is also to be levied on certain fringe benefits provided to employees.

Miscellaneous taxes

Austria levies a number of other taxes. The most notable ones are briefly described below:

- Austria levies taxes on natural gas, electricity, coal and petroleum.
- The first registration of a car in Austria attracts a duty based on the purchase price and depending on the standard fuel consumption of the car and can be as high as 16%.
- Insurance premiums are subject to insurance tax at rates between 1% and 11%.
- Advertising tax amounts to 5% and is levied on advertisements periodically taken out in all different types of media.

Customs duties

EU customs law has been in force since Austria's accession to the European Union on January 1st, 1995. As a member of the EU, Austria implemented the bilateral and multilateral agreements (e.g. free trade agreements) concluded by the EU with third party countries.

According to the principle of the free movement of goods, no customs duties are levied on the trade of goods between EU member states. In general, goods entering the EU are subject to European customs duties as stipulated in the Common Customs Tariff, which is patterned after the Harmonized Tariff System. European customs law also provides for customs exemptions and preferences in various forms and for different purposes (e.g. aid to developing countries).

Grants and Incentives

General Introduction

Austria offers a comprehensive system of both national and local incentive programs depending on the geographic location, potential for creating employment, technology used, size of enterprise, as well as other factors.

Furthermore, there exist a number of tax incentives that relate to qualifying assets or expenditure. Since income and corporation tax are governed by federal laws, tax incentives are uniform throughout Austria.

Government Investment Incentives

Federal, regional and EU funding instruments

The purpose of Austria's national and local funding programs, which are all based on EU and national regulations, is to ensure fair competition between companies and regions within The European Union.

- Investment in plants and equipment is typically encouraged by investment grants in the context of regional subsidy programs: investment expenses can be reduced by up to 50%, such as for manufacturing equipment or information technology.
- R&D: Typical research and development projects can be subsidized by up to 50% depending on the research focus, the region, etc. The costs of fundamental research activities may be subsidized by up to 100%.

- Recruitment and personnel development: human resource subsidies of up to 45% are normally granted in connection with personnel development and training. Furthermore, job creation grants are often available, as well as subsidies to meet initial salary costs or reduce social security costs of employees.
- Investments that lead to an improvement of environmental conditions may result in entitlement to environmental subsidies of (a maximum) 30% of the investment expenditure.
- Commodity exports are supported by numerous export promotion programs. There are a variety of guarantee schemes available for project investments, to the extent of up to 80% of the loan amount.
- EU investment grants: several Austrian regions are eligible for support under various EU structural fund programs, to promote and facilitate economic development. Incentives under these programs are equally available to domestic and foreign investors and range from subsidies to preferential loans, to guarantees and tax incentives.
- Three block exemption regulations concerning state aid to small and medium-sized enterprises, as well as de minimis aid (€200,000 within three years) facilitate state support. They became effective on January 1st, 2007.

There is no legal obligation to grants and funding, therefore it is the company's duty to submit a formally correct and innovative project application. Applications for funding must always be submitted before investments are made.

Tax Incentives

Tax incentives available under the Austrian tax law include:

- R&D premium:
  An invention premium of 12% of the expenses for certain research and experimental activities can be asserted. The

invention premium is a tax refund which is credited to the taxpayer’s tax account, i.e. a cash subsidy.

- Apprentice premium:
  As an incentive for enhanced apprenticeship training a premium of €1000 (€2000 for certain shortage occupation) per year can be asserted for each apprentice during the whole period of training (usually 3 to 5 years).
- Tax allowance for invested earnings:
  Individuals can claim a tax allowance amounting to 13% of the earnings and capped with €100,000 per year for individuals. The tax allowance is generally granted for a taxable income up to €30,000 p.a., for a higher taxable income (up to €769,230) the acquisition or production of tangible depreciate assets and certain securities must be proven by the tax payer. Those assets are subject to a minimum holding period and the useful life of 4 years. The following assets do not qualify for the tax allowance: buildings, cars, airplanes, low value assets, used assets, assets already subject to R&D allowance and assets acquired from a parent company.
  Scientists and researchers who move to Austria can receive a tax allowance of 30% of their income from science and research over a period of 5 years.

Export Finance and Insurance

Oesterreichische Kontrollbank Aktiengesellschaft (OeKB) is Austria`s main provider of financial and information services to the export industry and capital market. OeKB offers a wide range of specialised services to companies in all sectors, including financial institutions and Austrian governmental agencies. OeKB acts as a central hub in the markets, operating impartially and in accordance with its sustainability policy. Its shareholders are Austrian commercial banks.

Protection of Intellectual and Industrial Property

Copyright

Copyright is protected in Austria by the Copyright Act and the copyright owner maintains the exclusive right to license others in regards to copying, performing in public, broadcasting, publicising and/or adapting the work. Copyright material created outside of Austria is also protected under the Austrian Copyright Act as a result of Austria's obligations under various international treaties.

Trade Marks

The Trade Marks Act gives the exclusive use of a registered trademark to its registered proprietor. Owners of trademarks in other countries must register them in Austria to benefit from the protection.

Trade Names

Trade names registered in the Austrian register of companies cannot be used by others in business if likelihood of confusion occurs. When registering a company the court determines any possible conflicts with existing trade names within the same industry and the same location (city, area).

Patents

The Patents Act gives a patent holder the exclusive right to exploit the invention or allow others to do so. Protection is only provided where an Austrian patent has been granted. The maximum period of protection is 20 years.

Immigration

Migration to Austria

Migration to Austria is very complex therefore it is recommended that specific advice be sought prior to making business plans involving the transfer of principals or employees to Austria.

Permanent Residence

EU/EEA citizens making use of their right to free movement and their family members have to register their permanent residence with the authorities within three months if they intend to reside in Austria for more than three months.

Requirements:
EU/EEA citizens may permanently settle in Austria if they are employed or self-employed in Austria, or attend an Austrian school or recognised education facility and/or earn a secure living and provided they? they and their family members have sufficient health insurance coverage.

Austrian Labour Law – Framework:
The primary objective of labour law is to offset the social imbalance between employees and employers. Austrian Employment Legislation has traditionally drawn a distinction between waged (“Arbeiter” or blue-collar-worker) and salaried (“Angestellte” or white-collar-worker) employees, which has consequences on the applicable social insurance system and membership of trade unions. Austrian Labour Law can be divided into the following areas: the Employment Contract Law or Employment Relationship Law (individual labour law) contains legal provisions stipulating the individual legal relationship between employee and employer. The Labour Relations Law (collective labour

law) provides for industry-wide standards and is negotiated between trade unions and representatives of the employers within an industry. In larger entities company agreements provide for specific rules in regard to the legal employment environment.

Temporary Residence

EU/EEA citizens do not require any special permit to enter and reside in Austria for up to three months.

In the case of a non-EU-citizenship, temporary residence may be granted to the following persons:

- Rotational worker (necessary document issued by AMS (Austrian job center): confirmation of guaranteed work or employment permit as rotational worker);
- Persons dispatched by an enterprise (necessary document issued by AMS: confirmation of guaranteed work or employment permit as rotational worker with employment for more than 6 months);
- Self-employed persons (if foreigner is contractually committed to one particular activity and if such commitment will last for more than 6 months; AMS might deal with such cases);
- Artists: self-employed or employed; activity is predominantly determined by artistic activities; liability declaration not accepted; in case of employment one of the following documents issued by AMS (Austrian Labour Market Service) is necessary: confirmation of guaranteed work or employment permit as artist;
- Special cases of employment activity (if activity is exempted by the law on employment of foreigners: proof of circumstances for exemption necessary) researchers (against presentation of an admission agreement issued by a certified research institution).

Visitors

Nationals of EEA member states and Switzerland do not require a visa or similar entry permission. Visitors to Austria from other countries usually require a visa and may stay for up to 3 months. For nationals of some countries no visa is required.

Work Permits

The employment of a non-EEA national requires a work permit to be obtained prior to the start of employment. A certificate of exemption can be issued to employees who have, as a general rule, spent at least five of the last eight years in employment in Austria, or to employees who have been married to an Austrian citizen for the last five years and have their residence in Austria. Since January 1st, 2003 it is possible to obtain an exemption for highly qualified workers if there is a shortage of such personnel in Austria.

A residence permit may also be required. A residence certificate, which is a residence permit of unlimited duration, entitles the holder to work in Austria without a work permit.

For nationals of EEA member states and Switzerland, the rules of free movement of workers apply in the same way as for nationals of EU member states. No work permit is required.

The law differs between brief visits (such as visiting purposes or for short-term work) and longer (such as for longer work) stays in Austria.

Visa - for short stay

For a short stay in Austria a visa is usually required (such as for holidays or visiting relatives). Citizens of some countries may spend up to three months in Austria without a visa.

Note: In principle, the visa does not include a work permit. Only with a D+C visa is an individual entitled to work in Austria. The D+C visa is called the residence and travel visa. It is intended for a short work period (for example, work as a temporary professional worker, or on a "seasonal" basis) and can be issued for up to 6 months.

Residence permit

For a stay in Austria of more than six months a residence permit (permanent residence permit, residence permit or a so-called "permit family members") is required. A residence permit can only be granted for a specific purpose given. Under certain conditions an amendment of purpose is accepted.

For nationals of EEA member states and Switzerland, the rules of free movement of workers apply in the same way as for nationals of EU member states. No work permit is required. In such cases, a registration certificate needs to be obtained within three months of entry to the country, which will be issued by the authorities once proof is provided that the individual’s living costs are covered and he/she has health insurance. Citizens from new EU member states have to observe special restrictions on access to the Austrian labour market.

Conditions for a residence permit

The application for the initial permit must be filed personally before entering Austria at the Austrian Embassy abroad. For citizens of a country whose nationals do not require a visa to enter Austria the application can be filed during their legal residence in Austria.

A residence permit may be issued only if sufficient means are available. This is the case if the funds reach at least the same amount as the so-called "Ausgleichszulagenrichtsatz”.

The health insurance must cover "all risks". The choice of health insurance is up to the applicant. Moreover the applicant has to provide evidence that they are entitled to an adequate accommodation. In practice, a tenant or sub-lease contract serves as proof. If the planned stay in Austria exceeds one year, applicants need to undertake a language course.