

**DOING
BUSINESS
IN**

AUSTRIA



HLB Intercontrol GmbH

*doing business
in Austria*

foreword

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general information

Geography & Climate

Austria is situated in the very centre of Europe. Neighbouring countries are Germany, the Czech Republic, Slovakia, Hungary, Slovenia, Italy, Switzerland and Liechtenstein. Covering an area of only about 80,000 square kilometres it has nevertheless always been an intermediary between different cultures and social systems. For this reason many international organisations, like UNIDO, IAEA and OPEC, have established their headquarters in the capital Vienna.

The country itself is very mountainous, especially in the southern and western parts, which leads to a relatively low population density. The population of Austria is about 8.6 million people. Vienna, where nearly 1.8 million people live, is located in the east of the country.

The climate is temperate. The average temperature in summer is +18° C and in winter +2.5° C. There is no special rainy season. The best time for travelling is spring and autumn.

Language & Currency

Throughout Austria, German is the official language, but in the south and the east there are Croatian and Slovenian minorities. In most Austrian schools English is taught as a foreign language. People engaged in business normally speak English.

On 1 January 1999 the Euro became the official currency of Austria, with a fixed conversion rate into the national currency.

Constitution & Legal System

Austria is a democratic Republic and established as a federal state.

The nine states are: Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg. Every state also has a State Parliament and a Constitution of its own.

The president (Bundespräsident) is the head of state, but he basically has just representative functions and restricted influence on day-to-day politics. Most decisions are made by the government and its leader, the Chancellor (Bundeskanzler). All members of the government are responsible to the National Assembly, which is elected by all Austrians (who have reached the age of sixteen) at least every four years in secret, personal, direct and equal elections.

The provinces are responsible for all aspects of legislation and the execution thereof, which the constitution does not expressly assign to the Federation. Beside this the provinces also handle the execution of laws set up by the Federation. To make sure that the interests of the provinces are protected in the sphere of federal legislation, a second assembly came into existence: the Federal Council. The number of members to be allocated to a province depends on the total population of that province.

The legal system is based on written laws. It is a civil law system with Roman law origin and a judicial review of legislation by the Constitutional Court.

International Relations

Austria as a neutral country from 1955 was in between the East and the West. As the easternmost country of the West and bordered to a great degree by the former "Iron curtain" it developed this situation to maintain economic relations with both sides. During the last few years, mainly due to the political and economic changes in the former Eastern Countries, Austria is again in the very centre of Europe and therefore supports the enlargement of the European Union. In 1994 the people of Austria decided by a large majority to apply for membership of the European Union. On the 1st January 1995 Austria became a full member of the EU.

Austria is a member of most international organisations like the United Nations, the WTO and the OECD.

Foreign trade is highly concentrated on the EU, where about 70 % (year 2014) of all exports are sold. Germany is the most important trade partner for Austria.

A very important economic resource of the country and one of the main pillars of the Austrian economy is Tourism. Besides many historic cities (e.g. Vienna, Salzburg), Austria as a mountainous country is one of the natural countryside reserves of Central Europe.

investing in Austria

A large and flexible support programme meets the needs of investors in Austria on a national level as well as on the local level.

During the past few years Austria has considerably enhanced its attraction as a business location.

The state-owned business development company Austrian Business Agency (ABA – www.aba.gv.at), is of great support to foreign investors.

According to an analysis made for the different sectors, the main emphasis lies on telecommunications and consulting, electronics and hardware, as well as software and metals.

Government Policy & Incentives

The incentives to be used by an investor depend mainly on the type of project, the geographic location, the technology or the number of jobs created.

A main focus of the incentives available are small and medium sized enterprises (SME).

These incentives may be classified as follows:

- incentives at federal level
- incentives at province level
- incentives by the communities

At federal level foreign trade incentives, fiscal incentives, research and development incentives as well as credit incentives may be distinguished.

A lot of export promotions for example are granted by the state-owned "OeKB – Oesterreichische Kontrollbank" (i.e. bills of exchange secured by the Republic, export guarantees and credits for the installation of offices in developing countries).

To encourage the establishment of enterprises and firms in Austria, investment credits on very soft terms are granted at federal level and at province level. The guidelines for the distribution of these credits, however, are very strict.

R&D incentives may be various fiscal benefits as well as access to a pool of highly trained employees.

For special projects in diverse fields substantial financial assistance can be expected from the European Union. In some Austrian regions special EU structural fund programmes are applicable.

Real Estate

The acquisition of real estate in Austria by foreigners normally requires permission from local authorities (Grundverkehrskommission). There are, in fact, great differences between the nine states. The Grundverkehrskommission decides whether permission is given or not. Citizens of the EU in general have the same rights as Austrians.

The Banking System

In Austria most of the banks are all-purpose-banks, which provide a full range of banking activities. Besides the Austrian National Bank the most important categories are joint stock banks, savings banks (Sparkassen) and co-operatives for trade (Volksbanken) and for agriculture (Raiffeisenkassen). All banks are under Federal supervision and are regulated by a special law (Bankwesengesetz).

The Austrian National Bank is an integral part of the European System of Central Banks (ESCB). The Austrian National Bank participates in the fulfilment of the ESCB's tasks with the primary objective of maintaining the stability of the Euro, and it ensures the orderly execution of domestic and foreign payments.

Joint stock banks mostly finance industry and trade but have also built up an important private customer business.

All major banks have subsidiary companies engaged in the leasing business. In particular fixed assets such as plant, equipment and motor vehicles can be financed by leasing.

Banks play the central role in the Austrian financial system, especially in corporate finance.

Foreign Exchange Controls

The Austrian Exchange Control Law, set up in 1946, has been completely liberalised. There are no monetary restrictions any more. Money can be transferred in and out of the country without any limit but certain transfers have to be announced to the Austrian National bank.

Furthermore within the EU, cash transfers in and out of the country have to be notified to the customs authority if the value in cash (or cheques) is EUR 10,000 or above.

labour & social security regulations

Employment Regulations

In Austria the interests of employees are represented by the ÖGB (Austrian Trade Union Federation), the Chamber of Employees and the Chamber of Agriculture.

The employment of foreigners, not from EU-countries, is regulated in the Employment of Foreigners Act. It is the employing enterprise which has to apply for the work permit. This permit may be granted only if the requirements stated in the Act are met. The employment permit in general is valid only for one year and must be granted if the situation of the labour market and the general economic situation of the country permits the employment of foreigners.

Salaries and wages have to be paid by law 14 times a year. Normally the 13th salary is paid at the end of June and the 14th at the end of November. For the employees the 13th and the 14th salary are taxed at a very low rate (6% with certain restrictions).

Collective agreements between representatives of the employers and the employees regulate the minimum conditions of all working contracts including a minimum wage. This minimum wage depends on the standard of the work, on the age of the employees and on the particular business sector. Normally salaries and wages are substantially higher than these minimum amounts. Often they also agree on general increases not only for the minimum wages but for the actual wages. The result of these negotiations is binding on all employers.

The dismissal of an employee is usually possible (except for handicapped persons). Depending on the years of service, the period of notice for salaried employees varies from 6 weeks to 5 months. For

wage-earners the period of notice is 2 weeks.

From 2003 the employer has to pay a contribution of 1.53 % of the monthly salary for each employee to a special fund ("Betriebliche Vorsorgekasse") for severance payments. Any kind of termination payments are paid directly via these funds, which are organised as special credit institutions, to the employees.

Social Partnership

The Social Partnership is a special institution of the Austrian political scene. The Social Partners (employers, employees and the trade unions) try to reach agreement through negotiation, so that strikes become unnecessary and consequently are unlikely. The forum includes leading figures from the Austrian Chamber of Labour, the Federal Chamber of Industry and Commerce, the Presidential Conference of the Chamber of Agriculture and the Austrian Trade Union Federation.

It is due to the Social Partnership that social conflicts in Austria are mainly not settled on the streets, but at the conference table.

Social Security

In Austria both the employer and the employee are required to pay social security contributions. The total social security contributions in 2016 amount to 39.70% whereof 21.58% is paid by the employer and 18.12% by the employee. The employees' contributions are withheld by the employer and then paid together with its own contribution. The basis of assessment is the employee's monthly gross salary. The contributions cover insurance for health, unemployment, old age and disability.

types of business organisations

Principal forms of Business

The main business structures are:

Corporations

- Limited liability company (GmbH)
- Public stock corporation (AG)

Partnerships

- Open (General) partnership (OG)
- Limited partnership (KG)
- Silent partnership (Stille Gesellschaft)
- Civil law partnership (GesbnR)

Others

- Private Foundation (Stiftung)
- Sole proprietorship (Einzelunternehmer)
- Commercial cooperatives (Genossenschaften)
- Associations (Vereine)
- European Economic Interest Grouping (EEIG)
- Societas Europaea (SE) - European joint stock company - the rules according to the European Union directive have been implemented in Austria

In addition, foreign companies may conduct business in Austria through a registered branch.

Limited Liability Company (GmbH)

The Gesellschaft mit beschränkter Haftung (GmbH) is the most common form of business for foreigners carrying on business in Austria. The shareholders are not personally liable for the liabilities of the company. Any legal activities, including non-profit activities, may be undertaken by a company with limited liability.

The minimum stated capital of a private limited company is EUR 35,000, of which

EUR 17,500 must be paid upon incorporation. Starting March 2014 a foundation privilege was introduced for newly established GmbH (Gründungsprivilegierung). It enables the foundation of a GmbH with a "privileged" amount of cash contributions of only EUR 10,000, whereby an amount of EUR 5,000 must be paid in. Contributions in kind are not possible. The foundation privilege shall end at the latest 10 years after registration of the GmbH in the commercial register. Until such date, the full amount of EUR 17,500 must be paid in cash.

The overall cost of formation will be approximately EUR 3,500 up to EUR 5,000 and include costs of notarization and consultation, capital transfer tax, fees for registration of the company and publication fee.

The company needs only one shareholder. The Articles of Association must be drawn up in a proper form by a notary public. They can take into account the special needs and requirements of the company. Generally they have to contain at least

- the company's name and its registered domicile
- the purpose of its business
- the total amount of the stated capital
- the amount of capital contributed by each member

The name of the company can be chosen freely with some minor regulations (competition law etc.).

The company is formed when it has been registered on the commercial register. The appointment of one or more persons to manage the company can be provided for,

either in the Articles or by agreement between the shareholders. The shareholders' meeting can consider basic company policy, presentation of the annual financial statements, distribution of earnings, appointment and removal of management, etc.

Public Stock Corporation (AG)

The public stock corporation (Aktiengesellschaft) is primarily designed as the corporate business form for larger business enterprises.

The minimum capital of an Aktiengesellschaft is EUR 70,000. The cost of formation are similar to those of a limited liability company whereas costs of foundation, examination and the subscription procedure have to be additionally included. The AG is the only form of business organisation which may offer its shares to the public, or in some cases, issues debentures. The shareholders themselves are not liable for the company's debts. The AG has to have a supervisory board which is elected by the shareholders and appoints and supervises the board of directors. The board of directors has a duty to report to the supervisory board.

In contrast to the Anglo-American system, a two-tier board is compulsory for an Aktiengesellschaft. Therefore there is no "board of directors" combining executive and supervisory functions at the same time.

Branch Office

A branch office of a foreign enterprise must be registered and is defined as a permanent local business unit which in terms of organisation and representation is separate from its corporate headquarters.

Any new branch of a non-resident foreign legal entity must be entered in the Commercial Register to complete its formal incorporation.

The firm name must be the same as that of the parent legal entity although an addition to the firm name is permitted.

The branch office is obliged to maintain complete accounting records on all transactions carried out.

Other forms of business organisations

The general partnership (Offene Gesellschaft – OG), is an association of two or more general partners established for the purpose of carrying on a business activity under a common firm name and with the characteristic feature that each Partner is personally liable for the partnership's debts. Further each partner has the right and a duty to be involved in the management.

With Limited Partnerships (Kommanditgesellschaft - KG) at least one partner (General Partner) is personally liable for all liabilities of the company. He has the right and a duty to be involved in the management. The responsibility of the other partners is limited to the amount of their risk capital which is shown in the commercial register. The General Partner can also be a GmbH. In this case no natural person is liable for the debts of the company (GmbH & Co KG).

The other forms of business listed above are normally of less interest for foreign investors.

Private foundation (Stiftung)

Due to tax considerations and anticipated succession reasons, private foundations have become quite common in the last few years.

A Private Foundation (Privatstiftung) is a separate legal entity, which uses, administers or realises assets, which have been assigned by the founder. It has to be registered in the Firmenbuch (Trade Register). A Private Foundation is arranged for a long-term duration.

A Private Foundation can be established for nearly all purposes apart from criminal activities (including private purposes). It is not allowed to pursue trade or commercial activities itself but it may operate as a holding company. Often it is set up solely for purposes of the founder's family. The founder has the right to revoke the Foundation. It's also possible to set up a Foundation to take effect upon the death of the founder.

The minimum amount for a private foundation is EUR 70,000 or assets of the same value, but from a practical point of view and in respect of the costs of a private foundation it is recommended that the assets should amount EUR 700,000 at least.

The tax treatment of a Private Foundation is favourable, especially for the accumulation of earnings of capital income. Basically the worldwide income of a Private Foundation is subject to the corporate tax of 25%.

In general Benefits granted by a private foundation to beneficiaries are subject to a 25 % withholding tax, which represents a final income tax for an individual beneficiary.

accounting

Accounting Principles

Austria has adjusted its commercial law according to the rules of the European Union.

In Austria all business enterprises, except for very small ones, are obliged to produce financial statements every year. These statements must consist of a balance sheet and a profit and loss statement. Depending on their size corporations also have to prepare notes and a managing director's report.

The general accepted accounting principles are laid down primarily in the Commercial Code (HGB from 2007 on UGB). They may be summarised as follows:

- Financial statements have to be clear, understandable and complete.
- All anticipated risks and losses arising up to the balance date have to be taken into account, but profits may only be considered if they are already realised at the balance date.
- The valuation principles, once chosen, must not be changed.
- The going concern principle has to be followed.
- In contrast to International Accounting Standards (IFRS), which are mainly addressed to (potential) investors, financial statements according to Austrian Accounting Standards (HGB/UGB) have an important function in respect of informing employees and protecting the rights of creditors. Further they are the basis for the calculation of taxes as well as for the distribution of dividends.

The accounting year normally corresponds with the calendar year. Companies registered in the trade register can choose a different accounting year in the articles of association. An accounting year may never have more than 12 months.

Reporting Requirements

The financial reports have to give a true and fair view of the financial affairs of the company.

The financial statements must be prepared in German and have to be signed by those who have personal responsibility.

All Limited Liability Companies (GmbH) and all Public Stock Corporations (AG) have to publish their financial statements and the managing director's report. The type of publication depends on the size of the company.

Both financial statements and report have to be audited by an Austrian Chartered Accountant (Wirtschaftsprüfer).

Only the financial statements of a small limited liability company (GmbH) have not to be audited. A company is defined as small if two out of the three following criteria are met:

Balance sheet total	up to	5 EUR million
Turnover	up to	10 EUR million
Number of employees	up to	50

Austrian parent companies of a group of companies must prepare consolidated financial statements of all group members if the group exceeds a certain size.

An Austrian parent company may prepare consolidated financial statements in accordance with Austrian Generally Accepted Accounting Principles as well as in accordance with International Financial Reporting Standards (IFRS) under certain conditions. Certain companies (e.g. those listed at the stock exchange) have to prepare their consolidated statements in accordance with IFRS.

taxation

General Structure

In Austria taxes are levied by the federal, state and local governments.

Austria's most important federal taxes are

- Income Taxes (Individual and Corporate)
- Value Added Tax
- Property Transfer Taxes (e.g. capital or land transfer taxes)
- minor important imposts such as stamp and registration duties.

Throughout Austria there are the same taxes (except from very few and unimportant exemptions). Therefore the choice of the place where a business is started does not mainly depend on tax considerations.

Income Taxes

All individuals and companies resident in Austria are liable to Austrian taxation on their worldwide income. Non residents are liable only to tax on their income in Austria. Income tax is always collected on the income of a calendar year.

If companies use an accounting year different from the calendar year, the profit is taxed in the year when the accounting year ends. Losses are automatically offset against profits arising from other sources in the same year. Losses from trade or business can be brought forward in future years without time limit (no carrying back to preceding years). Since 2001 losses may be carried forward indefinitely, but due to budgetary constraints there is a limit to claim losses as a deduction of 75 % of the income per year (the remaining losses carried-forward may be deducted in future years).

There is a wide range of Double Tax Treaties with other countries world-wide. The regulations of these Treaties overrule the local tax law. Double Tax Treaties exist with all European countries including the countries of the former USSR, Argentina, Australia, Brazil, Canada, China (People's Rep.), Cyprus, Egypt, India, Indonesia, Israel, Japan, South Korea, Malaysia, South Africa, Pakistan, Philippines, Thailand, Tunisia, Turkey, USA and others.

a. Corporate Income Tax (*Körperschaftsteuer*)

Limited Liability Companies and Public Limited Companies are liable to Corporate Income Tax. The profit of the operating business is subject to 25 % Tax. The percentage is fixed and not progressive.

A non-resident enterprise is subject to limited tax liability in Austria. Therefore an Austrian branch of a foreign company is taxed only on profits which are attributable to the permanent establishment situated in Austria.

Under the national affiliation privilege ("Schachtelprivileg") investment income (not including gains on disposals) from an investment received by a resident company from another resident company is exempt from corporate income tax. For a holding of less than 10% investment income tax is withheld, but credited against corporate income tax (starting 2004).

According to the international affiliation privilege ("Internationales Schachtelprivileg") profit share and gains on disposals from investments in foreign companies are not subject to Austrian corporate income tax, if the following requirements are fulfilled:

- at least 10 % of the capital stock is held
- duration of one year
- the legal form of the foreign company is comparable to a domestic corporation
- no abuse is suspected

This means, that if an Austrian company invests in a foreign corporation and if this investment is at least 10 % of the share capital of the foreign corporation and has been held for a period of at least 12 months, the earnings flowing to the Austrian company from this investment are exempt from Corporation Tax. Earnings mean current dividends as well as capital gains.

Because of the international affiliation privilege (internationales Schachtelprivileg) Austria is of special interest as location for holding companies and joins the classical holding countries like Liechtenstein, Luxembourg, or the Netherlands.

In particular the geographical neighbourhood to the former East-block countries on the one hand and the double taxation agreements with these countries on the other hand, make Austria an interesting place for international companies.

Furthermore in Austria companies can form, in compliance with certain requirements, a group of companies (Unternehmensgruppe) with the purpose of assigning the annual taxable results (profits and losses) of the group members to the holding company. The holding company then has to pay the corporate tax on the total group's result.

The most important requirements to form a group are the following:

- The companies must be financially associated which means a share in capital of at least 50%.
- The group has to exist for at least 3 years.

- The companies have to conclude a group agreement which has to be approved by the tax authority.

Additionally special regulations define which companies can become group members or holding companies. Under certain conditions also foreign companies can be group members as well.

b. Personal Income Tax (Einkommensteuer)

The individual income tax rates are progressive from 0% to 50%. Personal income tax is reduced by tax credits and allowances, such as a general tax allowance for employees, a special deduction for pensioners, an allowance for single persons with a child or the sole income earner allowance. Income up to EUR 11,000 is tax-exempt whereas the 50 % rate applies to taxable income over EUR 90,000. Income exceeding EUR 1 million is taxed at 55%.

Also from 2016, capital gains realized upon disposal of Austrian real estate are generally taxed by a rate of 30% (so far 25%). The tax is designed as a withholding tax ("Immobilienvertragssteuer"). There are various exemptions from this tax (e.g. principal residence exemption) as well as benefits when selling real estate owned for a long time.

c. Wage Tax (Lohnsteuer)

The income tax of employees is called "Lohnsteuer" (Wage Tax) and is withheld from the wages or salaries. The employer is obliged to remit the tax to the tax authorities. In Austria it is obligatory to pay salaries 14 times a year (one extra payment in June and one in November). These additional salary payments are only taxed at 6% (with certain restrictions).

d. Capital Yield Tax (Kapitalertragsteuer)

This form of income tax is withheld from interest on bank deposits, interest from bonds, dividends and income of derivatives. Starting 1st of April 2012 capital yield tax is also withheld from any capital gains from these assets. The tax is 25% for interest on bank deposits and was raised as of 2016 to 27.5% for other capital gains. It might be credited against other forms of income tax. If it is of advantage for the taxpayer (for natural persons and not for companies) the capital yield tax is a final tax for this income and is not added to the other income of the year. This sort of income is to an unlimited extent taxed only at a flat rate of 25% or 27.5%.

Most of the double tax treaties reduce this Capital Yield Tax for foreigners. Distributions of profits to holding companies within the European Union are normally tax-exempt.

Value added tax (Umsatzsteuer)

Value added tax is payable on the delivery of goods and the rendering of services. An Austrian seller adds 20% value added tax to the net sales price of his products, so that the buyer assumes the supplier's tax burden. Unless the buyer is the ultimate retail consumer, he may deduct the tax amounts invoiced to him from his own value added tax liability.

The normal tax rate on sales and services is 20%. A reduced rate of 10% or 13% is applied to certain products or services (e.g. basic foods, printed material, transportation of passengers, theatre, cinema, rent of flats for private use, etc.).

Inheritance & Gift Tax (Erbschafts u. Schenkungssteuer)

Since August 2008 the inheritance and gift tax has no longer been levied.

However for certain donations there is duty of disclosure.

Property Transfer Taxes

The transfer of land and buildings is taxed at a rate of usually 3.5 % of the price (Grunderwerbsteuer).

The registration fee for a change in ownership in the land register amounts to 1.1 % of the property value.

The transfer of shares, the payment of additional capital and some other transfers of property are no longer subject to taxes starting 2016 (until 2015 up to 1%).

Property Taxes

1994 the Austrian Property Tax Law was repealed. Neither individuals nor companies have to pay any property tax.

HLB in Austria

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