Invest in Austria: Tax Aspects

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Inhalt

1. Introduction

In recent years numerous attempts have been made in Austria to make Austria's tax and funding landscape more attractive and to simplify complicated procedural regulations. This brochure offers a comprehensive overview of Austria's tax system by providing relevant information in a Q&A style and brief insights into legal changes and potential tax advantages which foreign investors have to take into account when making business location decisions.

This brochure is designed to give readers a broad outline of Austria's tax system, summarise legal changes and show possible tax benefits that foreign investors should consider when deciding where to locate their business operations. However, due to the complexity of tax laws, emphasis will be only placed on the main features. For this reason, no claim to completeness is made for the information provided.

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2. Overview

Based on the Eco-Social Tax Reform Act passed in 2022, lawmakers have initiated numerous changes to Austrian tax regulations, some of which will first have an impact in subsequent years. Furthermore, other tax measures are planned or being implemented, as summarized below:

In order to cushion massive price increases, the Austrian Federal Government has approved three comprehensive sets of measures aimed at providing short-term relief for the population, including elimination of the "cold progression" (bracket creep). Starting in 2024, specified values in the Income Tax Act will automatically be adjusted by two-thirds of the positive inflation rate. In particular, this applies to income limits for tax brackets up to € 1 million, single-earner, single-parent and maintenance tax credits, traffic tax credits and the related surcharge, pensioner tax credits as well as social insurance refunds and bonus payments.

In addition, due to the prevailing inflation, the possibility exists to implement tax-exempt profit-sharing payments to employees for the years 2022 and 2023, encompassing a cost-of-living bonus of € 2,000 p.a. and an additional € 1,000 which is tax-free. An employee is only entitled to the latter payment if a corresponding provision in a wage agreement exists.

In the summer of 2023, the Federal Ministry of Justice presented a draft law stipulating the introduction of a new type of company, namely the "flexible corporation" ("Flexible Kapitalgesellschaft"), particularly responding to the needs of the start-up scene and other innovative firms. The core element is the possibility for an uncomplicated participation of employees in the company's success based on the issuing of enterprise value shares ("Unternehmenswert-Anteile"), for which formalities have been simplified due to the elimination of the required notarial act. At the same time, the reduction of the minimum required capital contribution to € 1 makes lower investments easier and, on balance, expands the options for corporate structuring. Moreover, the minimum share capital for a limited liability company ("GmbH") is to be decreased to € 10,000 from the current level of € 35,000, thus reducing the economic risk for the members of the GmbH. The new rules also stipulate a minimum share capital of € 10,000 for the flexible corporation. The draft law received predominantly positive reactions in specialist literature and in from experts. However, the future of the draft law remains to be seen.

3. How can foreign companies operate on the Austrian market?

Foreign companies can operate in the Austrian market, for example, in the following ways:

- Establishing of a corporation (see Section 4)
- Founding of a branch office (see Section 5)
- Direct hiring of staff (see Section 6)
- Employee secondment (see Section 7)
- Hiring out of workers (see Section 8)
- Partnerships (see Section 9)
- Sole proprietorships (see Section 10)

4. Corporation

4.0.1. How is a corporation established?

Corporations ("Kapitalgesellschaften") are set up by preparing articles of association ("Gesellschaftsvertrag") or company statutes ("Satzung") in the form of a notarial deed and thus within the context of the internal relationships among the shareholders. It is necessary for the corporation to be entered into the Commercial Register ("Firmenbuch") for the purpose of creating a corporation in accordance with company law articles in its external relationships to third parties.

4.0.2. What kinds of corporations exist?

Corporations include the AG (Aktiengesellschaft – public limited company), SE (Societas Europea) and GmbH (Gesellschaft mit beschränkter Haftung – limited liability company).

4.0.3. What must be kept in mind when founding a corporation in Austria?

In establishing a limited liability company, the following steps in particular should be kept in mind:

- **Drawing up of the articles of association:** To be able to establish a limited liability company (GmbH), the articles of association must be prepared in the form of a notarial deed. The notarized articles of association must contain at least the following: company name, registered office, purpose of the company, amount of share capital and the amount of share capital assumed by each shareholder. A limited liability company with only one shareholder, who simultaneously serves as the sole managing director, can also be founded in a simplified manner. In the case of a simplified founding ("vereinfachte Gründung"), a standardised declaration of establishment ("Errichtungserklärung") can be used, and the limited liability company can be registered without a notary public (and thus no necessity to implement a notarial deed or to certify the application for entry into the Commercial Register) by means of a citizen card ("Bürgerkarte") or by mobile phone signature. The prerequisite is the physical identification by a bank with the context of the payment of the cash contribution.
- There is also the possibility of a so-called digital founding of a limited liability company, which not only applies to sole proprietorships ("Ein-Personen Gesellschaften") but for all foundings of limited liability companies. The obligation to implement a notarial deed remains in effect in these cases. However, the shareholders no longer have to personally go and see a notary public at the same time but can sign the articles of association by using electronic means of communication, for example via video conference, and by making use of special electronic data rooms.
- **Appointment of the management:** At least one managing director (and supervisory board members, if required) must be appointed by means of a shareholder resolution if this has not already been done in the articles of association.
- **Payment of the share capital** ("Stammkapital"): The shareholders must pay in their statutory or agreed capital contributions, and bank confirmation of these payments must be obtained. As a rule, the statutory minimum share capital is € 35,000, of which half must be contributed in cash. The second half can be contributed in kind. For the initial phase of business activity, founding privileges ("Gründungsprivilegien") exist (applicable for a maximum of ten years), which allow limited liability companies to be formed with share capital of only € 10,000, of which only € 5,000 has to be contributed in cash. In this way, the economic risk for the shareholders is limited to € 10,000 for the first ten years. This also applies in the case of insolvency. The founding privilege ends ex lege after ten years, or earlier in the case of an amendment to the articles of association to this effect. Until then the statutory minimum contribution of € 17,500 must be provided.
- **Application for entry into the Commercial Register:** The application for entry in the Commercial Register must be certified and must include the following attachments: (1) Articles of association in the form of a notarial deed;

(2) Certified shareholder resolution for the appointment of the managing director (if the managing director is not already appointed in the articles of association); (3) List of shareholders, stating their names, dates of birth and normal place of residence, signed by the managing directors; (4) List of managing directors, stating their names, dates of birth and normal place of residence; (5) Bank confirmation and (6) Certified specimen signatures of the managing directors.

- **Business registration** ("Gewerbeanmeldung"): The following attachments are required for business registration: (1) Extract from the Commercial Register; (2) Certificate of good conduct from the country of origin for the managing director(s) under trade law and for all shareholders with significant influence over the management who are not resident in Austria or have been resident in Austria for less than five years, and (3) Declaration that there are no grounds for ineligibility to operate a business applying to all individuals with significant influence (managing directors or shareholders with management authority or similar).
- The following is also required for managing directors under trade law: Passport, social security confirmation of registration as an employee, unless the individual is simultaneously a managing director under commercial law, proof of qualifications (e.g., master craftsman examination certificate), declaration by the managing director under trade law of his activity within the company (form).
- **Public health insurance fund (ÖGK):** Employees must be registered with the appropriate public health insurance fund promptly before the start of employment. If a managing director under trade law is employed, the regional health insurance fund must be informed of this fact the business is registered.
- **Commercial social insurance:** Registration of the managing shareholders with the Social Insurance Institution of the Self-Employed (SVS) during the first month if they are not already insured in this capacity under the Austrian General Social Security Act (ASVG).
- **Tax authority** ("Finanzamt") Notification of commercial operations to the tax authorities during the first month and application to be granted a tax identification number.
- **Municipality:** The municipality or city must be notified of the employment of employees for municipal tax purposes.

The following aspects must be kept in mind when establishing a public limited company ("AG"):

- **Articles of association:** In order to establish a public limited company, the articles of association must be drawn up in the form of a notarial deed and must contain at least the following: company name, registered office, purpose of the company, amount of share capital, in the case of listed companies an indication of whether bearer or registered shares were issued, an indication of whether the share capital is divided into par value shares or no-par value shares (nominal value of the individual shares, number of no-par value shares, class of shares), the composition of the management board and the form in which company publications are made.
- **Appointment of a supervisory board:** The appointment of a supervisory board is required in the case of a public limited company. The appointment of the first supervisory board is undertaken by the founders and is subject to notarial certification.
- **Appointment of a management board:** The supervisory board is responsible for appointing the management board.
- **Formation review** ("Gründungsprüfung"): The members of the management board and supervisory board must review and report on the circumstances leading to the formation of the company. In certain cases, the formation of the company must also be examined by a court-appointed formation auditor.
- **Payment of the share capital:** The share capital of a public limited company must equal at least € 70,000. This amount can be raised on the basis of par value or no-par value shares. Par value shares must have a par value of at least € 1. No-par value shares do not have a nominal value, with each share participating in the share capital of the company to the same extent.

4.0.4. Founding of a European Company:

- The SE (Societas Europea or European Company) represents a special form of a joint stock corporation. Creating an SE does not necessarily require the formation of a new company. Mergers of several public limited companies from different EU member states and changes in legal form are also possible. When forming an SE, either the two-tier system (as in Austria, with a supervisory body and a management body) or the single-tier system (as in Anglo-American countries, with one administrative body that combines both functions) can be used.
- The statutory share capital for this form of company is € 120,000. This legal form has many advantages, in particular great flexibility in terms of location. It is relatively easy to move the registered office of the company to another country in the EU, and uniform procedures are available for mergers, the formation of holding companies and

restructuring. These uniform procedures result in lower administrative and legal costs and a uniform legal structure, management and reporting system.

4.0.5. Are the expenditures incurred before entry into the Commercial Register deductible?

Corporations are first formally established when they are entered into the Commercial Register. Nevertheless, the obligation to pay the corporate income tax already begins at the point in time in which the articles of association are certified and the company first appears externally (e.g., by opening a bank account). All activities of the so-called pre-company which exists between the certification of the articles of association and the entry into the Commercial Register, are assigned to the corporation which is created. (The articles of association or statutes can define the maximum amount of founding costs which are to be borne by the company.) In this way, the expenditures incurred before the company is entered into the Commercial Register can be deducted as operating expenses. In connection with these operating expenses, the value added tax invoiced to the pre-company can also be already claimed as the input tax (VAT).

4.1. Taxation of corporations

4.1.1. When is a company in Austria considered to be a tax resident?

Companies (including domestic corporations) which have their management or registered office in Austria are subject to an unlimited tax liability (with all their domestic and foreign income).

4.1.2. How high is the corporate income tax?

The corporate income tax currently equals 24% and is imposed on a company level. It will be further reduced to 23% in 2024.

If profits of the corporation are distributed to shareholders as natural persons, a capital gains tax of 27.5% must be withheld from the dividend distribution.

4.1.3. How is the tax actually levied?

In principle, the way in which taxes are levied is based on the tax assessment ("Veranlagung"), in which the amount of taxes to be paid is determined via an office notice. The assessed corporate tax must be paid in advance on a quarterly basis. This also applies to the minimum corporate tax. The stipulated tax prepayments for the assessment period are offset against the corporate tax liability.

4.1.4. Is there a minimum corporate income tax?

The minimum annual corporate tax equals € 3,500 for public limited companies (AGs) is € 3,500, compared to € 1,750 for limited liability companies and € 6,000 for a European Company. The annual minimum corporate tax for financial institutions is € 5,452 per year. The prepayments of taxes take place on a quarterly basis.

In the first five years following the founding of a company and thus the start of the unlimited tax liability, the minimum corporate tax is only € 125 for every full quarterly period (€ 500 p.a.), whereas a minimum of € 250 for each full quarterly period is due in the subsequent five-year period (€ 1,000 p.a.).

The minimum corporate tax is offset - similar to a tax prepayment - for an indefinite period of time against the actual assessed corporate tax in subsequent years.

4.1.5. Are there any other taxes besides the corporate income tax?

Except for the corporate income tax, no other taxes are levied on corporate profits.

4.1.6. What must be kept in mind in determining the taxable income?

Taxable income is derived by taking corporate profits in which tax additions and tax reductions are implemented within the context of the tax reconciliation of the book income with that reported on tax returns. Tax additions result from the existence of fully or partially non-deductible expenses or additional taxable income. In turn, tax reductions arise from additional deductible business expenses or non-deductible income are offset against the tax burden.

For example, the following types of income can be treated as tax-free, in which case they are deducted from the income calculated for tax purposes:

- Dividends and capital gains (from the disposal of securities) of international cross shareholdings ("Schachtelbeteiligungen")
- Dividends from domestic corporations
- 14% research tax credit for research and development costs

4.1.7. What special features exist with respect to operating expenses?

Depreciation and amortisation: Depreciation and amortization are intended to account for the loss in value of an asset over the course of time due to wear and tear. Under tax law, depreciation and amortization are usually carried out on a straight-line basis i.e., evenly distributed over the period of use

The Economic Strengthening Act 2020 ("Konjunkturstärkungsgesetz") introduced the possibility of a tax-deductible degressive depreciation ("degressive AfA) for purchases after 30 June 2022 as an alternative to straight-line depreciation ("lineare AfA"). In principle, it is open to all forms of determining taxable income as well as outside of normal business operations.

NOTE: The expiration of the temporary possibility to take advantage of degressive depreciation without taking account of the authoritative principle in accordance with corporate law means that it is no longer possible to apply degressive depreciation for purchases made after 1 January 2023 pursuant to Section 5 Income Tax Act. Power generation companies are excluded from this rule and can thus continuing applying the degressive AfA until the end of 2025.

In this regard, a fixed, freely selectable percentage depreciation rate of up to 30% of the respective residual book value can be used. The half-year depreciation rule is to be applied so that only half the depreciable amount is allowed for use during a period of up to six months. When exercising the right of selection, an obligation exists for the following years, though the transition to a subsequent straight-line depreciation in the following years is also optionally possible (but not the other way around).

A statutory useful life or depreciation/amortization rate is specified for certain assets. In the case of buildings, the depreciation rate for residential buildings is 1.5% and a standard rate of 2.5% applies to all other buildings. Any goodwill that exists for agricultural and forestry operations and businesses is amortised over a period of 15 years. The useful life for passenger cars and estate cars is a minimum of eight years.

Accelerated depreciation has been introduced for buildings acquired or constructed after 30 June 2020. In the first year the maximum depreciation is three times the previous legally stipulated percentage, thus up to 7.5% or 4.5%, in the following year a maximum of two times the usual rate (thus up to 5% and 3% respectively). Normal rates for measuring depreciation for wear and tear apply starting in the third year. The date of completion is relevant with respect to constructed buildings. The half-year depreciation rule is not applicable here, so that depreciation at the full annual rate is carried out in the case of purchase or construction in the second half of the year.

Low-value assets i.e., assets for which the acquisition costs amounted to € 1,000 or less may be completely depreciated in the year of acquisition.

It should also be noted that only half of the annual depreciable amount can be written off if the asset is first put into operation in the second half of the year. In contrast, if the asset is acquired in the first half of the year, the entire annual depreciable amount can be written off. The same principle applies in the case of the disposal of an asset.

Entertainment/hospitality expenses: generally speaking, expenses incurred for the purpose of

- initiating or maintaining business contacts
- being introduced to business associates in order to be considered as a potential stakeholder

are treated as non-deductible entertainment expenses. Hospitality expenses for the catering of business associates are also not deductible. If the taxable entity can prove that the catering is for the purpose of advertising and that such meals are predominantly for business or professional reasons, then 50% of these expenses can be deducted.

Borrowing costs: Borrowing (debt financing) costs for the acquisition of shareholdings (if these are actually held as business assets) are deductible, provided these do not relate to the acquisition of shareholdings within a group of companies. The term interest should be interpreted so that only the interest that is a direct consideration paid for the transfer of the external capital is deductible. The costs of procuring funds and the ancillary expenses incurred in connection with raising the external capital are not deductible.

The interest for the debt-financed distribution of profits is deductible as operating expenses regardless of whether there is a direct connection between the borrowing and the distribution. If the distribution is actually a repayment of capital contributions, it is not permitted to deduct the debt financing interest.

The interest limitation rule stipulates that the interest surplus is only deductible to the extent of 30% of the tax EBITDA. In order to calculate EBITDA, the entire amount of taxable income is offset by depreciation and amortisation as well as tax appreciation and the interest surplus before applying Section 12a of the Austrian Corporate Income Tax Act ("Körperschaftsteuergesetz"). An interest surplus exists inasmuch as there is an excess of tax-deductible interest expenses in a given financial year compared to the taxable interest income of the same financial year.

The previously existing prohibition on deducting interest (for the debt-financed acquisition of shareholdings within a corporate group and interest payments to group companies in low tax countries continues to apply and must be checked from the outset with respect to the interest limitation rule.

Provisions: Provisions are formed for expenses that are not incurred until later periods but are attributable economically to the current financial year. Tax law only allows the formation of provisions indicated in the law. In principle, unlike corporate law, neither flat rate provisions nor provisions for internal expenses are allowed. It has now also been possible to allocate provisions for liabilities on a flat rate basis since 2021. The allocation of flat rate provisions is linked to their permissibility under company law. Accordingly, the recognition of flat rate provisions must be based on a prudent assessment (estimate). If statistically measurable empirical values exist from similar circumstances, these must be taken into account. Provisions may only be formed in the year in which the economic basis for the liability occurs. Provisions that are expected to exist for more than twelve months after the balance sheet date are referred to as non-current provisions. As a basic rule, non-current provisions for liabilities or impending losses are discounted using a discount rate of 3.5% over the actual remaining term. This does not apply to provisions for severance pay, pensions and employee anniversary bonuses.

Taxes: Operating taxes (e.g., property tax, motor vehicle tax) are considered to be operating expenses and can therefore be deducted. Corporate tax and other personal taxes are not deductible.

Interest and royalty payments: The deduction of royalty payments (license fees) undertaken within a group is limited in the same way as in the case of interest payments. Royalty payments made to entities forming part of the group are only tax deductible in such cases in which the royalties accruing to the beneficial owner are subject to an actual taxation of at least 10%.

Manager salaries: Expenses or outlays paid as remuneration for work or services are no longer considered to be tax-deductible operating expenses if they exceed the amount of € 500,000 per person and financial year.

Passenger cars and estate cars: if they are not included in the following list of tax-deductible vans, delivery vans, flatbed trucks and small (https://www.bmf.gv.at/themen/steuern/kraftfahrzeuge/vorsteuerabzugsberechtigte-fahrzeuge.html), the deductible acquisition costs of these vehicles are principally capped at € 40,000. In the case of more expensive vehicles, depreciation for wear and tear may only be calculated based on the principle of an adequate amount, in which case it should be noted that passenger cars and station wagons are depreciated over a period of eight years. For this reason, annual depreciation is capped at a maximum of € 5,000 p.a. (with the exception of electric-powered vehicles, for which degressive depreciation can even be made use of). Other value-dependent costs (e.g., comprehensive insurance or financing costs) are to be reduced to an appropriate extent. The reduction of such costs takes place by taking the actual acquisition costs (up to the maximum amount as recognised in the relevant law - the "PKW-Angemessenheitsverordnung") in relation to the tax-deductible costs of acquisition.

Moreover, a deduction on the input tax (VAT) cannot be claimed in the acquisition of passenger cars and estate cars as well as related expenses. In contrast, there is an entitlement to deduct the input tax for electric-powered vehicles and electric bicycles. In case of a purchase of an e-vehicle with costs of acquisition under € 40,000, the entire input tax can be deducted. There are limitations on the amount of the deduction for acquisition costs in excess of € 40,000.

In cases of the private use of company-owned passenger vehicles by employees, the taxable non-cash remuneration (benefits in kind) equal 2% of the acquisition costs of the company car per month, but a maximum of € 960. In the case of vehicles with a maximum of 130 grammes of CO_2 emissions per kilometre, 1.5% of the acquisition costs are recognised as taxable benefits in kind, but only up to a maximum of € 720 per month. If the vehicle features no CO_2 emissions, as in the case of purely electric powered vehicles, no benefits in kind are subject to taxation.

4.1.7. How is investment income taxed?

In order to avoid multiple taxation, particularly in a group of companies, investment income (income from participations) is exempt from the corporate tax under certain conditions.

Investment income from national companies (every type of sharing profits) are exempt from taxation, regardless of the size of the shareholding and the duration of the participation.

Investment income from foreign participations is also exempt. This exemption for investment income also applies to investment income from third countries, inasmuch as a comprehensive agreement on mutual administrative assistance has been concluded with the third country in question.

4.1.8. What is meant by an international cross shareholding?

An international cross shareholding refers to a factual tax exemption within the context of the corporate income tax for any type of profit sharing, capital gains, losses from disposals and other changes in the value of certain participations in foreign companies.

The international intercorporate privilege (i.e., preferential treatment for profits earned by foreign affiliated companies) requires a parent company (corporation) in accordance with Section 7 Para. 3 Austrian Corporate Income Tax Act, which owns an interest in a foreign subsidiary which is comparable to an Austrian corporation or an EU company in line with Annex 2 to the Austrian Income Tax Act ("Einkommensteuergesetz") and that it holds an interest in the subsidiary of at least 10% for an uninterrupted period of at least one year.

However, the taxpayer can choose to make the investment subject to taxation (taxation option). This choice must be indicated on the corporate income tax return for the year of acquisition. This option makes gains and losses on the disposal of assets and write-downs to the going concern value (spread over seven years if deductible) subject to taxation. Nevertheless, current profit shares from the investment remain tax-exempt.

There is also an anti-abuse regulation relating to international cross shareholdings that results in a change of method from the tax exemption method to the imputation method on the distribution of profits (e.g., dividend payments).

4.1.9. What is meant by the controlled foreign corporate rule (CFC rule)?

The CFC regime requires that the passive income of low-taxed foreign subsidiaries and permanent establishments be included in the tax base of the "controlling" Austrian parent company and thus considered to be a profit.

The CFC rules apply in the case of a low-taxed foreign subsidiary (tax burden abroad of less than 12.5%), passive income is generated (interest, royalties etc.), the Austrian company holds a controlling interest (more than 50% of the voting rights) and there is no substance escape clause (i.e., no substantial business activities of the foreign company).

If the above-mentioned conditions are met, only passive income is added for taxation purposes in Austria. The extent of the addition to taxable income is calculated by taking the amount of the direct and indirect stake (pro rata share) of the nominal capital of the foreign corporation in which the Austrian company has a controlling interest.

The CFC rules, which apply for tax periods beginning after 31 December 2018, implement articles 7 and 8 of the Anti-Tax Avoidance Directive (ATAD). They require that the passive income of low-taxed subsidiaries and permanent establishments (PEs) be included in the tax base of a "controlling" Austrian parent company regardless of whether the income is distributed. Such income will be taxed at the current Austrian corporate income tax rate of 25% (with a credit granted for any foreign taxes already paid).

In the case of low-taxed foreign companies with a focus on passive income (passive income comprises more than 50% of total income), a **change in method** (switch-over rule) takes place from the exemption method to the imputation method applying to the distribution of profits (e.g., dividend payments) in case the participation in the foreign corporation is at least 5%. There is no method change if passive income has already been demonstrably included in the Austrian tax base under the CFC rules.

4.1.10. How is the distribution of profits taxed?

As a rule, if a taxable distribution of profits takes place by an Austrian corporation to a natural person, these profits are subject to a capital gains tax of 27.5% which must be withheld by the domestic corporation.

In the case of profits distributed to corporations, only 25% of the profits must be withheld within the context of the capital gains tax. However, the capital gains tax paid by the company making the distribution is to be credited to the receiving corporation's corporate income tax. A deduction of the capital gains tax at the source can be waived if the receiving corporation holds at least a 10% stake directly or indirectly of the share capital of the distributing company.

4.1.11. Are there exemptions from the capital gains tax?

In the case of profits distributed to companies located outside of the EU, the capital gains tax of 25% must always be withheld. Within the context of double taxation agreements, the amount of tax withheld by the distributing company can be reduced and credited to the receiving foreign company by means of the imputation (tax credit) method.

The DTT Relief Regulation ("DBA-Entlastungsverordnung") regulates the conditions under which direct relief may be provided at the source and under which circumstances relief is possible within the context of a tax refund procedure by the tax authority.

4.2. Group taxation

4.2.1. What is meant by group taxation?

The concept of group taxation makes it possible to offset the profits and losses of financially affiliated companies, including recognition of cross-border losses. The ongoing offsetting of the losses generated by group members is particularly advantageous, leading to a quicker realisation of losses. The first step is to calculate the taxable profit or loss for each individual member of the group. These profits and losses are then allocated to the company at the next higher level in the group and ultimately to the parent company of the group. The profit or loss of the individual companies calculated in accordance with commercial law remains unchanged. No special integration of the individual companies into the parent company is required to form a group. A profit and loss transfer agreement is also not necessary. The concept of Group taxation does not exist in all EU member states. Several countries only allow a limited transfer of foreign losses. For example, Hungary, Slovakia and Czech Republic do not offer the group taxation scheme.

4.2.2. What are the prerequisites for forming a corporate tax group?

The prerequisites for applying the group taxation scheme are:

- A direct or indirect financial connection (via a business partnership or other (foreign) group members) of more than 50% of the share capital, nominal capital or cooperative capital and more than 50% of the voting rights held by the group parent in the group members during the entire financial year.
- Submission of a written group application to the responsible tax authority within one month after the signing by the group parent and all Austrian entities included in the group.
- Signing of a group taxation agreement within the group for the purpose of tax equalisation.
- Membership in the group for a period of at least three years.

Parent companies may be corporations with unlimited tax liability, trade and industrial cooperatives, financial institutions and mutual insurance companies, but also EU companies with limited tax liability, and companies comparable to corporations that have their management and registered office in the European Economic Area. Foreign companies are required to have an Austrian branch office registered in the Commercial Register. Moreover, the interests held in the group companies must be attributable to this branch office.

Group members may be corporations with unlimited tax liability, trade and industrial cooperatives, and comparable foreign corporations that have their registered office in a member state of the European Union or a country that offers comprehensive administrative assistance. Foreign group members may only be subordinate group members (investees), i.e., only one "foreign level" may exist. Corporations can only be a member of a single group of companies.

4.2.3. What must be considered in determining the group's business results?

The first step in determining the consolidated profit or loss of the group is to calculate the income of each group member. This income is then allocated to the entity at the next higher level, offset against its income, and the resulting profit or loss is, in turn, allocated to the group member at the next higher level. Ultimately the parent company is assessed using the full income of the group. For Austrian group members the taxable profit or loss is allocated in full. Separate regulations apply to losses incurred before the corporate group was formed (pre-group losses).

In the case of foreign group members, only tax losses proportional to the interest held can be allocated (no allocation of foreign profits). Foreign losses can only be claimed up to a maximum of 75% of the total own income of all group members with unlimited tax liability and of the group parent in the year the losses are allocated. Any additional losses are added to the tax loss carryforwards of the group parent. If the foreign losses are offset against foreign profits, the utilised foreign losses are recovered (subject to supplementary taxation) in Austria in order to avoid the double utilisation of losses.

Similarly, the losses are also recaptured in Austria if a foreign group member leaves the group of companies.

If a group member leaves the group of companies, the group continues to exist (inasmuch as there are other group members). A group member leaving within the three-year period has retroactive effects, and the profits and losses calculated in previous years must be adjusted in order to create the situation that would have existed if the group member had not been part of the group. If the parent company declares that it is leaving the group, the group of companies must be dissolved and be retroactively returned to the previous state of taxation within the three-year period.

4.3. Transfer prices

4.3.1. What is meant by the term "transfer prices"?

The examination of intercompany transfer prices ("Verrechnungspreise") is aimed at determining whether goods and services charged to and recharged by an Austrian company to associated Austrian entities (e.g., legally independent entities, branch offices, permanent establishments, production sites) are priced too highly or are understated and are therefore unreasonable. This is intended to ensure that intercompany transfer prices satisfy the arm's length principle ("Fremdvergleichsgrundsatz") and that profits are not artificially transferred between different countries.

4.3.2. Which legal regulations must be complied with in this regard?

The arm's length principle is stated in Art. 9 of the OECD Model Tax Convention for permanent establishments, which in turn serves as the basis for double taxation conventions. The Austrian Transfer Pricing Guidelines 2021 published by the Federal Ministry of Finance as well as the currently valid OECD Transfer Pricing Guidelines provide interpretation guidance for the arm's length principle. For the most part, the Austrian Transfer Pricing Guidelines are consistent with the OECD Transfer Pricing Guidelines.

4.3.3. Which documentation requirements must be taken into account?

Intercompany transfer prices must be documented appropriately in order to ensure that values can be verified.

Regulations on intercompany transfer prices in Austria are based on the Transfer Pricing Documentation Act ("Verrechnungspreisdokumentationsgesetz", in short VPDG). Accordingly, Austrian business units of an international group whose sales revenues exceeded € 50 million in the previous two financial years are required to prepare both a master file and a local file. These files must be transmitted to the tax authority at the latter's request within 30 days of filing their annual corporate income tax return. If the sales revenues shown in the consolidated annual financial statements of the international group exceed € 750 million, there is a new obligation imposed upon the Austrian parent company effective 1 January 2016 to also prepare a country-by-country report if no other foreign company that forms part of the group assumes this obligation and the CbC report is accessible to the tax office. The report must be transmitted to the tax office within twelve months of the end of the financial year. In the event of the deliberate omission or transmission errors, a fine of up to € 50,000 per offender can be imposed. If a CbC report is to be prepared by a multinational corporate group, each Austrian business unit of this multinational corporate group must also disclose by the last day of the reportable financial year - within the context of the so-called CbC Notification (VPDG1 form) whether it is the ultimate parent company or a representative parent company within this multinational corporate group.

For business units which do not surpass the threshold of sales revenues in excess of € 50 million, there is no obligation to adhere to the VPDG guidelines in preparing transfer pricing documentation. However, in accordance with general disclosure and reporting requirements, taxable entities are required to provide evidence of the appropriateness of pricing policies in business relationships with associated companies. Specified minimum requirements in line with the Austrian Transfer Pricing Guidelines 2021 apply to this so-called arm's length documentation.

4.3.4. What consequences arise if the transfer pricing does not satisfy the arm's length principle?

If intercompany transfer prices do not pass the arm's length test, an adjustment must be made to the profits of the companies concerned.

Transfer pricing is a highly complex subject. For this reason, the Austrian legal system includes special provisions in Section 118 of the Federal Tax Code. These provisions give taxpayers the opportunity to obtain a binding advance ruling on their transfer pricing from the tax authorities. It is important to note that an advance ruling application can only concern one specific issue, although more than one question can be raised on points of law. This legal information guarantees taxpayers the legal entitlement to a future tax evaluation in accordance with the ruling if the matter in question essentially take place largely unchanged. Future deviations from the ruling can only take place to the benefit of the taxpayer. In return for the legal certainty provided by this ruling, the taxpayer must pay an administrative fee of between € 1,500 and € 20,000, depending on revenue.

5. Branch office/permanent establishment

5.0.1. What is meant by the term "branch office"?

A branch office ("Zweigniederlassung") is in a physically separate location from the head office, for the most part an organisationally independent part of an entire company. There is no legal definition specifying at which extent of business activities a branch office is considered to exist.[1]

As a rule, a branch office is independently managed in its interactions with the outside world, with the manager frequently having independent power of representation in this area. It generally makes no difference if the manager is bound to follow instructions given by the top management. Established case law does not require separate assets, but according to European Court of Justice decisions, the existence of a fixed establishment can only be assumed if there is a minimum level of permanent personnel and technical resources. The branch office must conclude and process major transactions for the enterprise as a whole (i.e., not just ancillary transactions). A company that only concludes transactions, but does not process them, therefore cannot be a branch office. Although separate accounting is an indicator, it is not a requirement for the existence of a branch office.

A branch office does not acquire its own legal capacity through being registered, which means that the contracting party is always the foreign entity. Therefore, as a rule, the executive bodies of the foreign company also represent the branch office.

Taxation of a branch office depends on whether it is considered a permanent establishment for tax purposes (refer to the next question with respect to the definition of a permanent establishment). In accordance with national laws, branch offices generally satisfy the criteria for a permanent establishment, as the meaning of a permanent establishment is broader than that of a branch office. However, in an international context, it is necessary to take account of double taxation arrangements.

1 Straube/Ratka/Rauter, Wiener Kommentar zum Unternehmensgesetzbuch, (Viennese commentary on the Austrian Commercial Code), 2021, Section 12, Rz 44.

5.0.2. What is meant by a permanent establishment?

The term "permanent establishment" ("Betriebsstätte") is regulated both in accordance with national law and in an international context. However, in a supranational context, recourse to national law is excluded.

Pursuant to Section 29 Federal Tax Code, every fixed location or facility serving the purpose of conducting a business or carrying out business operations (Section 31 Federal Tax Code) satisfies the definition of a permanent establishment. For example, pursuant to Section 29 Para. 2, sites in which the management is located, branch offices, production plants, etc. are considered to be permanent establishments. On an international level, a permanent establishment is similarly (though not identically) defined by the OECD Model Tax Convention. In contrast, warehouses, shopping facilities or premises designed to procure information are not encompassed within the context of permanent establishments. Multiple, spatially separated places of business must be evaluated separately for categorization as a permanent establishment.

The following prerequisites must be fulfilled in order to qualify as a permanent establishment:

- **Static element:** an owned or rented place of business at the disposal of the company.
- **Functional element:** business activities must be carried out at this place of business.
- **Time element:** not just of a temporary nature; no permanent establishment exists if use is only on a temporary basis.

Case law views the term "fixed place of business" in terms of the business and requires that the location or facility be used to directly carry out the business. The more the actual business activities take place outside the fixed place of business, the less the requirements for the extent of the business activities required to form the basis of a permanent establishment become.

5.0.3. Which tax and accounting obligations arise after a permanent establishment is set up?

If a permanent establishment is located in Austria, this foreign company has limited tax liability in Austria for the profits attributable to the permanent establishment and must register with the Austrian tax authorities. The permanent establishment is considered to be a taxable entity with respect to the corporate income tax on profits and the value added tax. For this reason, it is required to apply to the tax authorities for a tax identification number and a VAT identification number and submit separate tax returns in the country.

A branch office is not required to prepare annual financial statements. However, there is an obligation to determine the profits of the branch office in accordance with local regulations and to keep corresponding accounting records or to treat it as a separate accounting entity. In addition, representatives of a branch office for a foreign corporation are also required to ensure that a certified translation into German of the annual financial statements of the head office is made and to have this disclosed at the Commercial Register Court ("Firmenbuchgericht").

5.0.4. How can the taxable results of a permanent establishment be determined?

The tax liability exists for all the income of the domestic permanent establishment. In principle, the profits the permanent establishment would have earned if it had carried out similar activities under the same or similar conditions as an independent enterprise are attributed to it. In practice, two methods have developed for this purpose (from the commentary to Section 7 of the OCED Model Tax Convention):

- **Direct attribution of profits:** A permanent establishment is treated as an independent business, and the business relationships it has with third parties are attributed to it. General management expenses are attributed to it as well as general operating expenses. However, a profit margin is not. In practice, the earnings of the permanent establishment are attributed on the basis of the accounting or else the earnings are estimated if this is unavailable.
- **Indirect attribution of profits:** The total earnings of the enterprise are first determined and then divided between the head office and permanent establishment using appropriate allocation formulae.

Income is to be determined on the basis of local regulations on determining taxable income and represent income from commercial operations. Operating expenses can only be taken into account in the tax assessment if they are economically associated with the limited income tax liability.

Similarly, special expenses are only deductible to the extent that they relate to domestic business operations.

Any deductions of losses in subsequent years can only be included to a limited extent. The losses must have been generated in the permanent establishment in Austria and must exceed the remaining (global) income of the enterprise (with the exception of entities with limited tax liability based in an EU or EEA member state). The domestic loss must therefore be offset primarily against positive domestic income. Foreign income must be determined and disclosed in accordance with Austrian tax law.

It should also be noted at this point that the arm's length principle pursuant to Section 9 OECD Model Tax Convention (refer to the chapter on transfer prices) also applies to the relationship between the head office and the permanent establishment. As a result, profit and loss allocation in the sense of Section 7 of the OECD Model Tax Convention is to take place in accordance with the arm's length principle (so-called "Authorized OECD Approach," in short "AOA").

5.0.5. Are there permanent establishments without a fixed place of business?

In general, only a fixed place of business is considered to serve as the basis for a permanent establishment. However, under certain conditions the employment of a legal representative pursuant to Section 5 Para. 5 of the OECD Model Tax Convention in the version before the 2017 update can already serve to justify the existence of a permanent establishment. In comparison, the existence of a permanent establishment can be justified by employing a permanent representative in line with Section 29 Para. 2b of the Austrian Federal Fiscal Code. This can be a physical or a legal person who does not only temporarily work for a company and is subject to the business instructions of the representative entrepreneur (employed or self-employed) and works for this person or on his behalf i.e., for the representative entrepreneur.

5.0.6. When is a construction site considered to be a permanent establishment?

Pursuant to Section 5 of the OECD Model Tax Convention (OECD-MA), construction work and assembly operations comprise a permanent establishment if they last for a period exceeding twelve months. Accordingly, the profits attributable to the permanent establishment must be taxed in the country in which the construction site is located. In the double taxation agreements concluded by Austria, the minimum duration for construction and assembly sites is not always stipulated to be twelve months. For this reason, it is necessary in individual cases to examine the provisions of the relevant double taxation agreement. In contrast, national regulations stipulate that construction lasting for more than six months already comprises a permanent establishment.

5.0.7. Is the home office of an employee a permanent establishment?

The existence of a permanent establishment in cases when an employee renders services on behalf of a foreign employer from his Austrian home office mainly depends on two factors, namely permanence and the power of disposal.

A home office can only be considered a permanent establishment when it is used on a permanent basis to carry out business activities on behalf of the employer. The sporadic or occasional use of a home office by the employee does not justify it being classified as a permanent establishment. More specifically, in a case handled by the Express Response Service of the Austrian Ministry of Finance, the ministry took the view that a home office used for more than 50% of the work can no longer simply be assumed to comprise occasional use.

With respect to the power of disposal, the Austrian tax authorities generally assume that the carrying out of business activities in a home office can generally justify the de facto power of disposal of the employer. However, this principle is limited to certain specific situations. For example, this applies to the case in which the employer requests that the employee makes his apartment available for the business activities of the employing enterprise because the employer cannot provide a workplace for the employee to work although the employee's work requires a workplace.

In addition to these evaluation criteria, the declaration of expenses and expenditures in connection with the use of the Austrian place of residence by the employee and the type of work performed by the employee in his home office are also important for determining the existence of a permanent establishment. If the work carried out in home office is only of secondary importance in comparison to the main activities of the employing enterprise, the risk of establishing a permanent establishment is relatively low. However, if the work carried out in the home office comprises the primary activity of the whole company, it is not considered to be of secondary importance so that there is a high risk of the home office being classified as a permanent establishment.

At least in (traditional) cases in which the employee works out of his home office for purely private reasons, and this is tolerated by the employer but not actively supported or requested, the location for this type of work only regularly comprises a low risk of being classified as a permanent establishment. However, if the home office is used to a significant extent in terms of the time involved, or if the home office is even used for meetings with business partners or customers, there is, as a rule, a high risk of it being considered as a permanent establishment.

If an employee in Austria (also) carries out his work from a domestic place of residence (home office) on behalf of a company based in Germany, this can lead to a limited tax liability for the German company. In accordance with Section 98 Para. 1 (3) of the Austrian Income Tax Act 1988, the company is subject to a taxation in Austria if the home office is considered to be a permanent establishment in line with Section 29 Para. 1 of the Federal Tax Code. [2]

5.0.8. What obligations to the Commercial Register Court exist in connection with a branch office?

If a legal entity based abroad establishes a branch office in Austria, this must be entered into the Commercial Register. Failure to do so could lead to a penalty of a fine.

According to prevailing practices relating to the Commercial Register, it is expected that the following documents be presented within the context of registering for entry into the Commercial Register:

- Resolution by the foreign parent company on establishing a branch office
- Shareholders' agreement or articles of association of the foreign company in the form of a certified copy and certified translation
- Evidence of the foreign company's valid legal existence in its home country (certified extract from the Commercial Register)
- Evidence of regular business activities in the country of origin
- Proof of actual establishment of the branch office
- Specimen signature statement(s) by all the managing directors of the foreign parent company and by the permanent representative in Austria, if any (the appointment of a permanent representative whose habitual place of residence is in Austria is (are) not required in the case of foreign companies whose statutory seat, headquarters or central office is located in an EU or EEA member state).

Furthermore, the branch office also has to disclose a company in the application. The company of the branch office has to essentially incorporate that of the foreign legal entity, in which case an addition pointing to its capacity as a branch office may also be included.

6. Direct hiring of staff

6.0.1. What must be done or taken into account when hiring staff in Austria?

The following obligations on the part of the employer arise when hiring staff:

- Issuing of a notice of employment ("Dienstzettel"= Declaration of Knowledge by the employer) or conclusion of an employment contract (= joint declaration of intent on the part of the employer and employee)
- Setting up of a payroll account for the new employee
- Notification to the social insurance institution that the new employee has been hired before the employee commences work
- Payment of the payroll tax ("Lohnssteuer") as well as ancillary wage costs ("Lohnnebenkosten") for the new employee

6.0.2. How high are the staff costs for the company?

In hiring employees, the company also has to consider non-wage labour costs of about 30% in addition to the agreed upon gross salary which is normally paid in Austria 14 times annually. These non-wage labour costs are comprised of the following:

- Employer's social insurance contribution ("Sozialversicherungsbeitrag") of 21.03% (maximum assessment base of a gross salary of € 5,850 per month (Status: 2023)
- Employer contribution of 3.9% to the Family Equalisation Fund ("Familienlastenausgleichsfonds")

2 Express Response Service of the Federal Ministry of Finance dated 27 June 2019, BMF-010221/0323-IV/8/2018

- Surcharge to the employer's contribution of 0.34% to 0.42% depending on the federal province
- Municipal tax of 3%
- Contribution of 1.53% to the employee severance payment fund (new severance payment scheme - "Abfertigung Neu")
- Employer tax (subway tax = "U-Bahn-Steuer") of € 2 per employee and commenced working week, applies only to the Federal Province of Vienna

6.0.3. How is non-cash remuneration taxed?

There are special regulations applying to non-cash remuneration. Some types of benefits in kind, for example food vouchers (up to € 8 per day), company outings (up to € 365 p.a.) as well as presents received within the context of an in-house company event (up to € 186 p.a.) are exempt from the payroll tax. With respect to the private use of a company car, 1.5% to 2.5% of the acquisition costs taking account of the specified ceiling of € 960 are recognised as taxable, depending on the distance and the CO_2 emissions of the vehicle. No non-cash remuneration is recognised for the private use of the company's own electric-powered automobiles or motorcycles.

6.0.4. How are natural persons in Austria taxed?

Natural persons with their place of residence or usual abode in Austria have unlimited tax liability in Austria. This tax liability applies to all domestic and foreign income (global income). If natural persons have neither their place of residence nor their usual abode in Austria, their tax liability is limited to their Austrian income.

The Austrian Income Tax Act differentiates between seven different types of income. These seven income types represent an exhaustive list. Income that does not fall under one of these income types is not subject to income tax in Austria. Income includes earnings from agriculture and forestry, self-employed work, commercial operations as well as income from salaried work, capital assets, rents and leases and other income

The first step in determining total income is to add together all the income in each income type.

The next step is to offset the different income types against one another (where possible) or add them together. The result is the taxpayer's total income for income tax purposes. Deductions may also be claimed for certain special expenses ("Sonderausgaben"), extraordinary expenses ("außergewöhnliche Belastungen") and allowances. The progressive income tax is then applied to the income determined in this way.

Within the context of the Eco-Social Tax Reform, the second tax bracket was reduced from 35% to 30% effective 1 July 2022, and the third tax bracket from 42% to 40% as of 1 July 2023. The change is implemented via a mixed tax rate equaling 32.5% for 2023 and 41% for 2023 respectively. The tax rate reductions will thus first be completely applied in the years 2023 and 2024. Furthermore, the amounts applying to all tax brackets were increased starting with the tax assessment for 2023. The automatic inflation-related adjustment will take effect in 2024 (elimination of the "cold progression").

For the first € 12,465	0%
For € 12,465 to € 20,397	20%
For € 20,397 to € 34,192	30%
For € 34,192 to € 66,178	40%
For € 66,178 to € 99,266	48%
For over € 99,266	50%
For over € 1 million	55%

6.0.5. What must be kept in mind with respect to the salaries paid to shareholder directors?

Shareholder directors who do not hold a material interest (stake of up to 25%) earn income from salaried work, and therefore fall into the category of employees subject to the payroll tax. This means that the company must deduct payroll tax during payroll accounting. The classification as a shareholder director with a non-material interest means that the shareholder director is entitled to all of the tax benefits available to employees (e.g., preferential taxation of special payments and severance pay)

Shareholder directors holding a stake exceeding 25% earn income from self-employed work that must be reported for assessment, even if they are bound by instructions under the stipulations contained in the articles of association. Due to the fact that they do not qualify as employees from an income tax perspective, they are not entitled to any employee tax benefits (e.g., preferential tax treatment of other income taxed at a rate of 6%). Nevertheless, they are, as a rule, qualified as employees with respect to non-wage costs, in which case they are subject to fulfil the obligation to pay non-wage costs (i.e., employer contributions to the Family Equalisation Fund, surcharge to the employer's contribution, municipal tax).

6.0.6. How is other remuneration taxed?

Other remuneration – e.g., for instance the vacation allowance ("Urlaubsbeihilfe") as the 13th monthly salary, the Christmas allowance ("Weihnachtsremuneration") as the 14th monthly salary, bonuses – is given preferential tax treatment.

Other income is exempt from taxation if one-sixth of the employee's salary (i.e., two average monthly salaries) do not exceed the tax exemption limit of € 2,100. For other income within the limit of one-sixth of the employee's salary, there are reduced tax rates, bonuses for dirty working conditions ("Schmutzzulage"), difficult working conditions ("Erschwerniszulage") and dangerous working conditions ("Gefahrenzulage"). Bonuses for weekend, holiday and night work are tax-exempt up to € 360 per month. The overtime premium for the first ten hours of overtime per month up to a maximum of 50% of the basic salary is not taxed. In this case the limit is € 86 per month.

6.0.7. What must be kept in mind when laying off an employee?

In principle, the employer can terminate the employment relationship with an employee by observing statutory notice periods on the basis of either an immediate termination of employment in the event of important reasons or by issuing a notice of termination without stating the reasons for dismissal. If a works council exists, it must be notified before the employment relationship with the given employees is terminated.

When laying off an employee, the decisive point is that every justification for dismissal must be based on a particularly serious case of misconduct on the part of the employee. If the existence of sufficient grounds for dismissal cannot be proven by the employer, the laid-off employee is entitled to severance pay or compensation for reduced income, which he would normally be entitled to up until the termination of employment when given due notice.

If an employee is laid off by observing the specified notice periods, the employer can terminate the employment relationship with the worker or salaried employee at the end of the quarterly period. (The employment contract, company agreement or collective agreement can also specify the 15th or last day of the calendar month).

Furthermore, reporting obligations to the Austrian Public Employment Service ("Arbeitsmarktservice", in short AMS) must be fulfilled in the case of the dissolution of employment contracts if the number of employees being laid off exceeds the legally stipulated threshold of five who are already over the age of 50 at the time the notice of termination is given.

6.0.8. What are employees entitled to if their employment contracts are terminated?

In case an employment relationship is terminated, further claims against employers may exist in addition to the outstanding remuneration.

A new severance pay system has been in effect since 1 January 2003. The employer is required to contribute 1.53% of the employee's gross monthly salary to an employee severance payment fund. Accordingly, the employee is entitled to severance pay from the employee severance payment fund if he is laid off by the employer.

In principle, in the case of entitlements to special payments, the stipulations contained in collective agreements or provisions in the particular employment contract must be observed. If they are eligible to receive special payments, salaried employees are always entitled to a pro rata share of the special payments, in contrast to workers, who are usually not eligible to receive special payments, usually in the case of dismissal without notice or the resignation of the employee without notice. With respect to holiday entitlements, paid vacation must be taken on a pro rata basis at the time notice of dismissal is given and used up before the employment relationship is officially terminated. If the employee's entitlement to paid annual leave is not fulfilled, he has the right to a so-called annual leave payment ("Urlaubsersatzleistung"), unless in the case of an unjustified early termination of employment by the employee. In the case of too much paid holiday leave at the time of the employee's dismissal without notice and unjustified early termination of employment by the employee, there is the possibility to offset the pro rata share of excessive leave taken against any entitlements.

7. Secondment of employees

7.0.1. What is meant by employee secondment?

The secondment of employees ("Personalentsendung") takes place in the case of a temporary posting of an employee (cross-border employment). An employee is posted for a temporary period of time

- on behalf of the employer and at the employer's expense (and also with its operating equipment) and
- outside of the employee's usual place of work.

The work rendered by employees abroad is for a specified period of time or for a temporary purpose.

However, the following short-term work assignments are not considered to constitute employee secondment:

- Participation in business meetings and seminars without providing additional services
- Working at trade fairs
- Participation in or visits to congresses
- Cultural events taking place within the context of a cross-border tour
- Participation in and organisation of international competitions
- Secondment to Austria for training purposes, even for longer periods of time (in effect as of 1 September 2021)

7.0.2. What obligations do foreign employers have when posting employees to work in Austria?

The legal prerequisites for posting third-country nationals to Austria are much more complex and must be coordinated with Austrian lawyers in the light of residence regulations and required work permits from labour market authorities. However, the requirements relating to residence permits and access to the labour market are less stringent with respect to the posting of EU/EEA nationals and Swiss citizens.

In addition to the second report ("Entsendemeldung"), the foreign employer must also have the following documents ready or make them accessible: documents concerning the registration of the posted employee for social security insurance in his home country (at best), the official approval or a copy of it inasmuch as a permit is required, as well as various wage record (employment contract or notice of employment, payment slips, proof of wage payments, wage or salary records, record of hours worked, and documents relating to the assigned pay level) at the place of work (in any case within Austria) in a suitable form for review in case an inspection takes place by public authorities.

With respect to the remuneration paid to employees posted to Austria, the stipulations contained in the Anti-Wage and Social Dumping Act on wage dumping must be complied with. There is an obligation to pay the minimum salary as specified in the Austrian collective agreements ("Kollektivverträge") for seconded employees. If too little is paid, the foreign employer may be liable to pay an administrative penalty and will be subject to the obligation to subsequently make up for the insufficient social insurance contributions resulting from the failure to meet minimum salary requirements. The employee has the right to file a claim to the Labour Court ("Arbeitsgericht") for payment of the earnings gap.

7.0.3. How is the income in Austria of seconded employees taxed?

If seconded employees have no place of residence or usual abode in Austria, their tax liability is limited to their Austrian income for work that is performed or used in Austria.

In contrast, individuals that have a place of residence or usual abode in Austria, i.e., they spend more than six months of the year in Austria, have unlimited tax liability in Austria. To avoid double taxation of income that is taxable in Austria, double taxation conventions with other countries regulate which country is entitled to the right of taxation. These conventions are based on the OECD Model Tax Convention, which stipulates that the right to tax self-employment income remains with the country of residence if:

- The recipient of the remuneration spends no more than 183 days in the other contracting country within one calendar year and
- The remuneration is paid by or for an employer that is not resident in the other country and
- The remuneration is not paid by a permanent establishment of the employer in the other country

In its decree dated 12 June 2014, the Austrian Ministry of Finance made it clear that the term employer should be interpreted in an economic sense in this connection, and that the employer is given employer status in accordance with the convention. This means that employees are also liable to taxation in the country of employment even if their stay there is less than 183 days. However, there are exceptions to this, but in individual cases, the provisions of the double taxation convention between the countries concerned must be clarified.

7.0.4. Which tax privileges are expatriates allowed to claim?

In line with the Austrian Wage Tax Guidelines ("Lohnsteuerrichtlinien") 2002, individuals who have not had a place of residence in Austria during the last ten years, who are temporarily posted in Austria by a foreign employer to work for an Austrian employer within the context of an employment relationship (group company or domestic permanent establishment in line with Section 81 Austrian Income Tax Act 1988) and who are liable for taxation for the income generated in Austria are considered to be expatriates. The employment in Austria is not permitted to last longer than five years and the employee's permanent residence must remain abroad against the backdrop of his only being temporarily posted to work in Austria.

In order to simplify payroll accounting for foreign employees seconded to Austria ("expatriates"), the Austrian Ministry of Finance issued a decree granting certain deductions to the seconded employees. The deductions can already be implemented by the employer, in which case they do not need to be claimed in later assessments.

Deductions can be claimed for actual moving expenses (maximum 1/15 of the annual gross salary), expenses for maintaining two households (e.g., rent, operating costs, maximum € 2,200 per month), expenses for the vocational training of one child outside the place of residence (flat rate of € 110 per month) and expenses for family trips home (maximum of € 306 per month).

Income-related expenses and extraordinary expenses other than those indicated in the decree must not be included in this simplified procedure but can be claimed on the annual tax return.

The tax authorities must be notified in writing that the simplified procedure will be used at the beginning of the period of employment and at the beginning of each subsequent calendar year.

Other income-related expenses can be deducted from taxes in the form of a lump sum amounting to 20% of the calculation basis (gross remuneration less tax-free remuneration and other remuneration), but to a maximum of € 10,000 a year. The actual expenses no longer have to be verified. The claim for the lump sum allowance can be immediately filed by the employer so that expatriates do not have to apply for the employee tax assessment.

7.0.5. What does the seconded employee have to keep in mind regarding social welfare?

Employed persons In Austria are generally subject to social insurance contributions. If the insured person is sent abroad on behalf of the employer for a short period of time, the insurance coverage in Austria is not interrupted. However, there are cases of double or multiple social insurance payment obligations. For this purpose, bilateral agreements have been concluded or there are EU directives regulating in which country the employee is subject to social insurance contributions.

8. Hiring out of employees

8.0.1. What are the features of the hiring out of employees?

The hiring out of employees or personnel leasing ("Arbeitskräfteüberlassung") is considered to exist when an employer ("lessor") makes his employee available to a third party ("employer") within the context of a labour supply agreement ("Überlassungsvertrag"). For the duration of his work, the employee is integrated into the business operations of the temporary employer and is subject to his supervision instructions. Accordingly, the hiring out of employees is based on a three-person relationship.

9. Partnerships

Partnerships ("Personengesellschaften") are contractual agreements by two or more persons to exercise economic activities under a joint company name that appears as a single legal entity in legal relations but does not have its own legal personality. Partnerships include the general partnership ("offene Gesellschaft", in short OG) and the limited partnership ("Kommanditgesellschaft", in short KG), with at least one of the partners having unlimited liability with respect to the company's creditors. Partnerships are formed by means of the articles of association without any formal requirements. The general and limited partnerships cannot enter into relationships with third parties until entered into the Commercial Register.

Partnerships are not taxable entities and are therefore not subject to income tax themselves. The profit or loss of a partnership is determined by a uniform and separate assessment and attributed directly to the partners. A loss for the partner can be offset against other income or carried forward if applicable in accordance with the general provisions. Taxation at the partner level takes place using progressive tax rates as those applying to natural persons. However, for capital partnerships (such as atypical silent partners) that are natural persons, the offsetting or compensation of losses are subject to restrictions.

Like natural persons, partnerships can earn business or non-business income (mainly rental and lease income). The information provided with respect to natural persons also applies in this case.

10. Sole proprietorships

10.0.1. How is a sole proprietorship founded?

Establishing a sole proprietorship ("Einzelunternehmen") requires business registration ("Gewerbeanmeldung"). Registration is done with the responsible business authority (the district administrative authority of the business location in which the sole proprietorship is located). It is also important to consider whether or not a trade license is required, and if so, which type. A distinction is made between free ("freien") and regulated ("reglementierten") trades. In addition to the general prerequisites, the sole proprietor must show evidence of his special qualifications and competence if he aims to pursue a regulated trade. If the sole proprietor is unable to present proof of professional competence or qualification ("Befähigungsnachweis"), he must appoint a managing director under trade law who has a trade license and who is employed for at least half of the normal weekly working hours.

There is no minimum equity capital requirement involved in setting up a sole proprietorship. For this reason, the sole proprietor has unlimited personal liability to creditors including his private assets for debts incurred by the company.

During the first month following its founding, the sole proprietorship must register with the Social Insurance Institution for the Self-Employed ("Sozialversicherung der Gewerblichen Wirtschaft"). Furthermore, the sole proprietorship is also required to notify the responsible tax authority of the opening of the company and its location within one month after beginning the business activity, and to apply for a tax identification number and, as a rule, also for a VAT identification number.

There is a legal obligation for sole proprietorships to maintain accounting records (depending on annual revenue) as well as the requirement for the company to be entered into the Commercial Register. Otherwise, there is also the possibility to have the sole proprietorship voluntarily entered into the Commercial Register.

10.0.2. How is my operating income taxed?

As a sole proprietorship, operating income is generated, which includes income from agriculture and forestry, self-employed work and income from commercial operations.

There are four different methods to determine the profits of a sole proprietorship:

- **Calculating taxable income pursuant to Section 4 Para. 1 Austrian Income Tax Act:** this approach is based on taxing the difference between the business assets of the taxable entity at the end of the financial year and the business assets at the end of the previous financial year for farmers and foresters required to keep accounting records (revenue > € 700,000), for taxpayers who voluntarily keep accounting records or for self-employed persons who are not considered to be free-lancers in line with the Austrian Commercial Code.
- **Calculating taxable income pursuant to Section 5 Para. 1 Austrian Income Tax Act:** taxation of the difference between the business assets of the taxable entity at the end of the financial year and the business assets at the end of the previous financial year for sole proprietors who are required to and generate income from business activities.
- **Income-expenditure accounting pursuant to Section 4 Para. 3 Austrian Income Tax Act:** taxation of the excess of operating income compared to operating expenses in accordance with the inflow-outflow principle for all sole proprietorships for which there is no requirement to keep

accounting records and no records are kept (not even voluntarily).
- **Flat rate for operating expenses in line with Section 17 Austrian Income Tax Act:** taxation of the excess of operating income compared to operating expenses; however, in this case, operating expenses can be partially or completely deducted based on a flat-rate allowance. This applies to sole proprietorships whose revenue does not surpass € 220,000 and for which there is no requirement to keep accounting records and no records are kept (not even voluntarily).

The sole proprietor is required to submit tax returns by the end of April of the following year by using official forms or electronically by the end of June of the following year. In principle, the sole proprietorship has to make income tax prepayments. The amounts to be paid on a quarterly basis are determined by the tax authority via official notification (taking the assessment by the tax authority based on the last tax declaration plus a 9% increase or on the basis of the estimated profits at the time of tax registration).

10.0.3. How can the basic allowance and profit allowance be claimed?

Natural persons with income from business activities have the possibility to claim a profit allowance ("Gewinnfreibetrag"). However, investment income taxed at the special tax rate of 27.5% and profits on the disposal of businesses, business units or partnership shares are excluded from the tax base for the profit allowance. The profit allowance is divided into a basic allowance and an investment-based profit allowance. The basic allowance can be claimed for 15% of profits (maximum of € 4,500).

In addition, an investment-related tax-free profit allowance equaling 13%, 7% and 4.5% respectively can be claimed for investments in those depreciable physical assets enjoying tax benefits (staggered rates for profits between € 30,000 and € 175,000, or € 175,001 to € 350,000 and € 350,001 to € 580,000). The maximum tax-free profit allowance equals € 45,950 in a given fiscal year.

Eligible depreciable assets are comprised of the following:

- Depreciable fixed assets with a normal useful life of at least four years that are used in a domestic company or permanent establishment.
- Securities assigned to the fixed assets of a domestic business or domestic permanent establishment for at least four years

The investment-based profit allowance is limited by the size of the investments made in the financial year in question.

No investment-related tax-free profit allowance can be claimed, for example, for: passenger cars (apart from driving school vehicles, vehicles designed for commercial passenger transportation), low-value assets, used assets etc.

In the case of partnerships, the entire profit allowance is available to the partners on a pro rata basis (based on their profit participation shares). Taxpayers that use flat-rate estimates for all or part of their profits can only claim the basic allowance, not the investment-based allowance.

If eligible assets are held as fixed assets for less than four years, the investment-based profit allowance claimed must strictly be recognized as an addition to profits in the year of disposal.

10.0.4. How high are the social insurance contributions?

As members of the Austrian Federal Economic Chamber, sole proprietorships are required to pay social insurance contributions of the Social Insurance Institution of the Self-Employed (SVS) as regulated by the Social Insurance Act for Commerce and Trade (GSVG). These GSVG contributions are measured in accordance with income from business activities on the basis of the annual income tax assessment and is comprised of the following (status: 1 January 2023):

- Health insurance: 6.80%
- Pension insurance: 18.50%
- Provisions for the self-employed: 1.53%
- Accident insurance: fixed amount of € 10.97 per month

It should be noted that the social insurance contributions must also be paid if the income from business activities is negative. The annual minimum contributions total € 1,744.32, whereas the annual maximum amount is capped at € 22,105.56 (status: 1 January 2023).

If the sole proprietorship generates income from the owner being an employed person in addition to the income from the company's business activities, the multiple insurance leads to an automatic differential assessment or reimbursement of contributions up until the maximum assessment base so that the social insurance contributions are neither too high nor too low.

Furthermore, fixed minimum social insurance contributions are paid by young companies in the first two years as a means of taking account of their financial situation after startup. Regardless of the company's actual income, health insurance contributions amount to € 34.06 per month.

11. Tax benefits for companies

11.0.1 Which tax benefits exist for R&D expenses?

In Austria, a research tax credit ("Forschungsprämie") of 14% of the qualifying expenses can be claimed for in-house and contract research expenses, with the definitions of the terms "research and development" being based on the OECD Frascati Manual.

The research tax credit for in-house research can be claimed if the research is performed in an Austrian firm or Austrian permanent establishment, and in cases in which the assessment basis is not subject to a limitation on amount.

The research tax credit of 14% of expenses can also be claimed by the commissioning party for contract research, but only to a maximum of € 1 million in expenses (thus a maximum research tax credit of € 140,000 from contract research). The contract research must also satisfy the following conditions:

- The research must be contracted by an Austrian firm or Austrian permanent establishment.
- The contracted company must have its registered office in the European Union or European Economic Area.
- The contracted company must not be under the control of the outsourcing company or a member of the same consolidated tax group.
- The commissioning party must inform the contracted company that it is making use of this option before the expiration of the relevant financial year.

The application for the research tax credit takes place within the context of the respective tax returns of the company (income tax, corporate income tax, tax declaration) via a two-step procedure. The application for the research tax credit via the tax returns must be submitted to the responsible tax office no later than the legal coming into effect of the respective income tax assessment. Austria's Income Tax Act requires that an assessment be obtained from the Austrian Research Promotion Agency ("Österreichische Forschungsförderungsgesellschaft", in short FFG) in order to claim the research tax credit for in-house research and development. As part of the requirements, the FFG must be provided with detailed descriptions of the research projects (maximum length of 3,000 characters). The descriptions must include the following: project name, objective and content, methodology, innovation, proportion of the entire base of calculation stemming from the respective project, and the planned term of the project.

The tax authorities have full discretion in evaluating the reports as evidence. Objections to the FFG assessment can be raised during the issuance procedure.

In order to enhance legal certainty, a research certification ("Forschungsbestätigung") or ruling can be applied for in advance. The application for a research certification can be filed with the tax authority for each research project to certify that the requirements for the content of the project under material law that apply when claiming the research tax credits are satisfied – as long as the research project has not yet been completed. The fee is € 1,000 for each project application, or € 200 if the application is rejected. The ruling certifies the amount of the assessment base for the research credit in one financial year, and also requires certification by an auditor. Both the research certification and ruling can be requested simultaneously or separately.

11.0.2. What is meant by the investment allowance?

The investment allowance to the amount of 10% of acquisition and manufacturing costs can be claimed as an operating expense for depreciable fixed assets acquired or produced since 1 January 2023. This amount increases by 5% to 15% for depreciable fixed assets which can be classified as ecological investments and must be claimed in the year of acquisition. Depreciation of the related assets is not affected by taking advantage of the investment allowance and can be carried out by itself.

The investment allowance can only be claimed for fixed assets which:

- have an average useful life of four years and

- are assigned to a domestic business or domestic permanent establishment and the generated income is classified as operating income.

11.0.3. Which tax benefits can be claimed by startups?

As a rule, new companies (startups) can take advantage of the following tax benefits which are regulated in the New Business Support Act ("Neugründungs-Förderungsgesetz"):

Exemption from fees and charges related to the founding of companies and the transfer of ownership of small and medium-sized enterprises as stipulated in the New Business Support Act; for example, under certain conditions, the exemption applies to various stamp duties and court fees for entering the new company into the Commercial Register and Land Register. If property is brought into the new company, shares in the company are granted in return, then no property transfer tax is levied. Furthermore, there are reductions in specified wage-based charges (employer contributions, employer contribution surcharge, contribution to residential building subsidies and accident insurance) totalling close to 6% of the gross wages.

In addition, there are a large number of additional tax advantages.

12. Value added tax

12.0.1. Which revenue is subject to the value added tax?

The following transactions are subject to the value added tax, in short VAT ("Umsatzsteuer"):

- Goods and services provided by an entrepreneur in Austria in return for payment as part of the entrepreneur's business activities
- Own use in Austria
- Imports into Austria from third countries (import VAT)
- Intra-community acquisitions

12.0.2. Which tax rates apply in Austria?

The following value added tax rates apply in Austria:

- The normal tax rate of 20%
- The reduced tax rate of 10% applies to, e.g.:
  - Food and specified drinks (i.e., milk, milkshakes, water) within the context of other services provided (hospitality revenue)
  - Letting and leasing of properties for residential use
  - Accommodation provided in furnished living rooms and bedrooms and regularly supplied additional services (including heating)
  - The rental (transfer of use) of properties for camping purposes
  - Passenger transport with all types of transportation (with the exception of 13% for domestic flights)
  - The delivery of books (incl. e-books and audio books), newspapers and magazines
- The reduced tax rate of 13% applies to, e.g.:
  - The import of works of art, stamps and antiquities which are more than 100 years old
  - Sales from artistic work
  - Admission to sporting events and cultural services (e.g., theatres, cinemas, museums and circuses)
- The tax rate of 19% applies to:
  - Sales by entrepreneurs who have a place of residence, head office or permanent establishment in a customs enclave (municipalities of Mittelberg and Jungholz) for the purpose of convergence with the German VAT rate

12.0.3. What is meant by the supply of goods and other services?

The term **supply of goods** ("Lieferung2) means the transfer of the right to disposal of goods i.e., the economic ownership of the goods (i.e., the right of the customer to control the assets in his own name or on behalf of a third party). Likewise, delivery of goods for consideration also refers to the withdrawal or use of goods from the company by the businessperson, in which case this involves goods for which the input tax (VAT) deduction was claimed for:

- Non-business use for purposes outside of the company's operations
- For the use of company staff

and every other free gift with the exception of gifts of low value and commercial samples for business purposes.

The supply of other services ("sonstige Leistungen") refers to services which do not comprise the supply of goods. For example, other services refer to the failure or omission of a certain activity (e.g., refraining from exercising rights), tolerating of an activity or a situation, use of goods assigned to the company for which the input tax deduction was partially or fully claimed:

- Non-business use for purposes outside of the company's operations
- For the use of company staff as long as these do not involve small gifts

12.0.4. How is the place for deliveries and other services defined?

Only the delivery of goods and the rendering of services carried out in Austria are subject to the Austrian value added tax. For this purpose, it is important to define the location where the delivery or other services take place.

The place of performance for supply goods ("Ort der Lieferung") depends on where the goods are at the point in time in which the right of disposal or control over the assets are transferred. Exceptions exist for the shipment of goods, the import of goods from a third country, intra-community acquisition, exports or intra-community supply of goods.

The place of performance for supplying other services ("Leistungsort von sonstigen Leistungen") mainly depends on whether the services are rendered to entrepreneurs or non-entrepreneurs (consumers).

Accordingly, the place for supplying other services is defined as follows:

- **Entrepreneurs** (B2B General Rule): the location where the recipient operates his company (recipient location principle); if the other service is supplied at the permanent establishment of a company, the location of the permanent establishment is decisive.
- **Exceptions from the B2B General Rule** include property services, restaurant and catering services and passenger transport services.
- **Non-entrepreneurs** (B2C General Rule): the location where the entrepreneur providing the services operates his company (recipient location principle); if the other service is supplied at the permanent establishment of a company, the location of the permanent establishment is decisive.
- **Exceptions from the B2C General Rule** include the transport of persons and goods, cultural, artistic and scientific services and events, so-called catalogue services (e.g., services provided by lawyers and tax consultants, economic consulting) to non-entrepreneurs in the fields of telecommunications, radio and television.

12.0.5. When is the tax liability transferred within the context of the reverse charge rules?

With respect to other services and the supply of work and materials, the tax liability for the value added tax is transferred to the recipient of the services (reverse charge principle) when the entrepreneur performing the services neither operates a company in Austria nor has a permanent establishment in Austria which is not involved in the supply of the services, and the recipient of the services is an entrepreneur in Austria.

There is also a transfer of tax liability in line with the reverse charge principle with respect to construction services if the recipient is contracted to carry out these construction services or the recipient usually carries out construction services itself.

For example, the reverse charge system is applied with respect to deliveries of gas, electricity, heating or cooling, the supply of specified materials, the supply of retained goods (under retention of title) etc.

12.0.6. Which tax exemptions exist?

In general, a distinction is made between the following types of tax exemptions:

- **Genuine exemptions** in which the revenues are exempt from the value added tax, although the input tax (VAT) deduction can be claimed, for example:
  - Exports to third countries and the commercial processing of exported goods
  - The transport of goods in cross-border transport operations
- **Non-genuine exemptions,** in which no value added tax is levied and there is no right to claim an input tax deduction, for example:
  - Property sales
  - Letting and leasing of properties, especially:
    - » The letting of business premises
    - » Undeveloped properties and buildings used for non-residential purposes
  - Revenues from work as a doctor or dental technician

- Revenue from small-scale entrepreneurs whose revenues do not exceed € 35,000 (exception: when waiving the right to the tax exemption)

12.0.7. How can the paid VAT be deducted?

In Austria, the entire tax liability is borne by the consumer. The entrepreneur can deduct the value added tax which he is charged as an input tax, in which case it does not represent a cost factor as a rule. At first the entrepreneur calculates the entire value added tax based on his supply of good and services to his customers provided within a certain period of time (one calendar month as a rule). Subsequently the VAT incurred during this period of time is deducted from the total VAT paid, in which case the result is either a value added tax liability or a tax credit in the case of an input tax surplus.

The pre-requisites for the **input VAT tax deduction** ("Vorsteuerabzug")

- The supply of goods or other services was carried out for the business i.e., for the purposes of the business and at least 10% is for business purposes.
- A correct invoice exists pursuant to Section 11 Austrian Value Added Tax Act ("Umsatzsteuergesetz").

The Austrian tax authority is responsible for entrepreneurs who neither have their head office nor a permanent establishment in Austria. Here these entrepreneurs can also have their input tax credits refunded if they do not generate any revenues in Austria or generate only tax-free or reverse charge revenues in Austria. Entrepreneurs from non-EU member states must submit an application for the input tax refund by 30 June of the following financial year. EU entrepreneurs must submit the application electronically in their particular countries of residence by 30 September of the following financial year.

12.0.8. When must the VAT tax return be filed?

Generally, every entrepreneur has to submit a tax return for the previous calendar year. At the end of the calendar year, the entrepreneur has to submit a VAT tax return presenting the entire value added tax incurred, the input tax and import VAT. In principle, the declaration has to be submitted by 30 June of the following year or by 30 March of the second following year if the entrepreneur is represented by a tax consultant.

Small-scale entrepreneurs are exempt from the requirement to submit a VAT tax return if their annual revenues are € 35,000 or less or do not exceed € 42,250 once within a five-year period, and no value added tax was invoiced in the assessment period.

12.0.9. When does the VAT tax liability arise?

A distinction is made as follows at the time the VAT tax liability arises:

- In the case of **actual taxation** ("Istbesteuerung), the tax liability takes effect at the end of the calendar month in which the money was received (i.e., at the end of the month in which payment was actually received). For example, this applies to entrepreneurs who are not obliged to keep accounting records or free-lancers.
- In the case of **imputed taxation** ("Sollbesteuerung), which is the general rule, the tax liability takes effect at the end of the calendar month in which deliveries or services are provided. However, the point in time in which payment is received is irrelevant here. (exception: advance payments which must always be taxed at the time of the cash inflow and thus before the specific deliveries or services are provided). If invoiced at a later date, the date on which the tax liability arises is delayed by a maximum of one month (exception: tax liability due to a reverse charge).

12.0.10. When must the VAT be paid (due date)?

In addition to the annual VAT tax return, the company is also required to file monthly VAT advance returns, which count as a tax return, by the 15th day of the second following month. Any advance payment owed as a result of the advance return must also be paid to the tax authorities by the 15th day of the second following month (due date). If there is any tax surplus, an application for reimbursement can be submitted via Finanzonline. If company revenues were less than € 100,000 in the previous year, the VAT advance returns only have to submitted on a quarterly basis.

12.0.11. When can an application be submitted for a VAT identification number?

Companies that deliver goods or provide other services in Austria which entitle them to deduct the input tax as well as companies that carry out intra-community purchases in Austria, will automatically be assigned an Austrian VAT identification number ("Umsatzsteueridentifikationsnummer") by the tax authorities within the context of their issuing a tax identification number.

Entrepreneurs who only export tax-free goods i.e., non-genuine exemptions (e.g., small-scale entrepreneurs) as well as farmers and foresters subject to flat-rate taxation can apply for a VAT identification number by using Form U15 if this is necessary in order for them to pursue business relationships with companies in other EU member states.

Companies without a head office or permanent establishment in Austria can also apply for a VAT identification number using Form U15 if they are required to register or if they voluntarily apply for a tax assessment.

13. Real estate taxation

13.0.1. Which taxes must be paid when purchasing real estate?

Acquisitions of real estate in Austria (i.e., land and buildings) are subject to the real estate transfer tax ("Grunderwerbssteuer"). Such purchases not only include the transfer of title based on a purchase agreement, but also acquisition by foreclosure, adverse possession, or the consolidation of at least 95% of the shares in a corporation, or the transfer of at least 95% of the shares in a partnership within five years if its assets include real estate in Austria. The acquisition of real estate by means of a gift or by reason of death is also subject to the real estate transfer tax.

A stepped or graduated tariff system applies to acquisitions that are gratuitous or partially gratuitous (consideration not greater than 70% of the value of the real estate). This tax equals 0.5% up to € 250,000, 2% between € 250,000 and € 400,000, and above this, 3.5%. In the case of acquisitions by reason of death and acquisitions within the family, the graduated tariff can always be applied irrespective of any consideration. Acquisitions between the same persons are added together for the application of the tariff within five years.

The general rate is 3.5% and there are further special provisions as well. Accordingly, for business transfers as well as changes to the shareholders in partnerships and reorganisations, the real estate transfer tax is capped at 0.5% of the total value of the real estate.

As a rule, the real estate transfer tax is calculated using the value of the consideration provided, plus the other liabilities assumed. If no consideration is provided, the calculation is based on the value of the real estate. This also applies if the consideration is less than the value of the real estate. There are two exceptions to this basic rule:

In certain cases, the value of the real estate always forms the tax base. This includes transfers between close family members, acquisition by reason of death, reorganisations pursuant to the law on restructuring tax, share consolidations/transfers by real estate companies and changes to the shareholders in partnerships.

In addition to the real estate transfer tax for registration of the property in the land register, there is a **registration fee** ("Eintragungsgebühr") equalling 1.1% of the sale price or three times the assessed value in the case of bequests within the family.

Property owners also have to subsequently pay the **property tax** ("Grundsteuer") which is calculated by municipalities on the basis of the assessed value of the land and then charged to the owners.

13.0.2. What taxes must be paid when properties are disposed of?

Property sales are taxable, regardless of the time of acquisition and the retention period. Income (capital gains from the property sale) are subject to a "special tax rate" ("Sondersteuersatz") of 30% (property income tax) in which corporations are exempt.

The special tax rate of 30% also applies to a company's business operations with respect to real estate held as non-current assets. However, the income must be detailed in the tax return and is taxed at a rate of 30% within the context of the tax assessment. This special tax rate does not apply when:

- A focal point of the business activities is the transfer and sale of properties
- A partial write-down of the property was carried out
- Hidden reserves revealed before 1 April 2012 were transferred to the property

The capital gains are based on the difference between the proceeds from the disposal of the real estate and the costs of acquisition (adjusted by construction expenses and maintenance costs as well as depreciation on wear and tear of the property). Advertising costs related to the disposal are not deductible, with the exception of costs arising from the notification or the self-calculation of the property tax by the sales representative.

For old properties i.e., real estate which was no longer liable for tax on 31 March 2012, or which were acquired before 31 March 2002, special blanket approaches are used to determine the capital gains on real estate sales.

It is important to note that the disposal of property could lead to an input tax adjustment.

13.0.3. Which exemptions can be claimed for property sales?

One exemption from taxation involves owner-occupied homes and commonhold properties which consistently constituted the primary residence for at least two years since it was acquired or constructed (completed) until the time of disposal. Self-constructed buildings are also tax-exempt if they did not serve to generate income over the last ten years and the seller is also the "producer" of the real-estate. The exemption for properties disposed of as a result of official interventions (expropriations) remains in effect.

14. Annual financial statements/Auditing obligation

14.0.1. When must financial statements be prepared and disclosed?

Individual financial statements, consisting of a balance sheet and a profit and loss account, must be prepared by both sole proprietorships as well as partnerships within the first nine months of the following financial year.

In the case of corporations (public limited companies, Societas Europea and limited liability companies, as well as "hidden corporations" ("verdeckten Kapitalgesellschaften", in short GmbH & Co KG - a corporation in which there is no natural person with unlimited liability) and private foundations, the legal representatives are required to prepare annual financial statements for the previous financial year, including the notes, a management report and, if necessary, a corporate governance report (e.g., large public limited companies) and a report on payments to government bodies (e.g., large companies (e.g., large companies operating in the extractive industries or logging in primary forests) in the first five months of the next financial year. The disclosure of the annual financial statements including the notes, management report and corporate governance report, if necessary, and the report on payments to government authorities together with the declaration of the legal representatives must take place no later than nine months after the balance sheet date and is to be filed with the Commercial Register Court, generally in electronic form (exception: companies with annual revenue of up to € 700,000). Large public limited companies are also required to publish the annual financial statements together with the audit report in the Official Gazette ("Amtsblatt") of the newspaper "Wiener Zeitung."

In addition to their own annual financial statements, corporations, hidden corporations and private foundations headquartered in Austria which have one (or more) subsidiaries under a unified management, must prepare consolidated financial statements, including a group management report and, if necessary, a consolidated corporate governance report and a consolidated report on payments to government authorities and to submit this all to the Commercial Register Court, if two or three of the following size criteria are fulfilled on two consecutive balance sheet dates:

- More than 250 employees in the parent company and subsidiaries
- Combined revenue of more than € 48 million (or consolidated revenue of € 40 million)
- Combined balance sheet total (total assets) exceeding € 24 million (consolidated balance sheet total of € 20 million)

14.0.2. In which cases must the annual financial statements be audited?

The following companies are legally required to subject their annual financial statements to an audit:

- Public limited companies
- Medium-sized to large companies with limited liability (small companies only if they are legally required to have a supervisory board due to prevailing regulations)
- Partnerships in which the shareholder with unlimited liability is a corporation (when the limited liability company is a public limited company, or the partnership is

classified as a medium-size or large company on the basis of the size criteria of the Austrian Commercial Code)
- Large associations and private foundations

With respect to size categories, the following classification of corporations should be taken into account, in which case exceeding two of the following features will lead to a classification in the next size class:

	Micro-corporation Sect.221 (1a) Austrian Commercial Code (UGB)[3]	Small corporation Sect. 221 (1) UGB	Medium-sized corporation Sect. 221(2) UGB	Large corporation[4] Sect. 221(3) UGB
Balance sheet total	≤ € 350,000	≤ € 5 million	≤ € 20 million	> € 20 million
Revenues	≤ € 700,000	≤ € 10 million	≤ € 40 million	> € 40 million
Average number of employees	≤ 10	≤ 50	≤ 250	> 250

Companies subject to the obligation to prepare consolidated annual financial statements must have them audited by an auditor together with the group management report.

14.0.3. Which companies are obliged to prepare annual financial statements pursuant to IFRS?

Pursuant to Section 245a Austrian Commercial Code, IFRS rules are binding for the consolidated financial statements of capital market-oriented companies. This means those whose transferable securities (shares or bonds) are traded on a regulated market of an EU or EEA member state. The voluntary application of IFRS for consolidated financial statement, but not annual financial statements, is possible and frees the company from the obligation to prepare consolidated financial statements in accordance with the Austrian Commercial Code.

14.0.4. Are there any size-dependent simplifications in preparing annual financial statements?

There are various size-dependent simplifications allowed when preparing annual financial statements. For example, micro-corporations are exempt from the necessity to prepare notes to the financial statements if they report legally required disclosures (e.g., contingent liabilities, advances and loans to managing directors) on the balance sheet.

3 With the exception of investment and private equity companies

4 Public interest entities are always classified as large.

14.0.5. What must be kept in mind in the case of negative equity?

If the share capital is reduced or used up as a result of losses, so that a negative equity arises, the following must be observed:

- If half of the share capital is used up by losses, the managing director of a limited liability company must convene an extraordinary general meeting. However, there is no direct obligation to increase capital. In any case, the managing director must comment on the situation in the notes to the annual financial statements in order to justify the continuation of company operations.
- In case of the recognised negative equity, an assessment must be made as to whether over-indebtedness pursuant to insolvency law exists. The managing director is required, without undue delay, to file for insolvency no later than 60 days after the occurrence of the insolvency situation (inability to pay debts or genuine over-indebtedness). The failure to do so means the managing director will be held personally accountable due to the culpable delay in filing for insolvency. Even if the review conducted pursuant to insolvency law proves to be negative, the managing director must justify in the notes why no over-indebtedness exists pursuant to insolvency law.

15. Miscellaneous

15.0.1. International taxation: With which countries has Austria concluded double taxation agreements?

Austria has concluded bilateral agreements - so-called double taxation treaties ("Doppelbesteuerungsabkommen") - with the following countries in order to avoid double taxation both in Austria and abroad:

Albania, Algeria, Argentina, Armenia, Australia, Azerbaijan, Barbados, Bahrain, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil. Bulgaria, Canada, Chile, China, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Georgia, Great Britain, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Korea, Kosovo, Kuwait, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi-Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tadzhikistan, Taiwan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, USA, Uzbekistan, Venezuela and Vietnam.

Accordingly, Austria has now concluded bilateral agreements with a total of 92 different countries. In comparison, Germany has concluded 96 double taxation agreements.

15.0.2. International taxation: What happens when there is no double taxation agreement with a particular country?

If there is no double taxation agreement for one and the same person in two (or more) countries featuring the same tax-related circumstances abroad for the same period of time and who are liable for taxation in both Austria and abroad, the unilateral relief measure pursuant to Section 48 Austrian Fiscal Code (directive of the Minister of Finance to avoid double taxation), stipulates that this foreign income be exempt from taxation in Austria, taking account of the progression clause in the case of average foreign taxation of more than 15% and that the fees and charges incurred in Austria be offset against the Austrian income and corporate income tax.

15.0.3. How has the EU DAC 6 guideline (on Adminstrative Cooperation) been implemented?

Only marketable and customised, cross-border tax models involving a risk of potential tax evasion, a bypassing of the automatic information exchange or prevention of the identification of the economic owner are subject to the reporting requirement. In this regard, a distinction is made between unconditional and conditional reportable cross-border arrangements. The conditional reportable arrangement also requires a relevance test, known as the main benefit test, which assesses whether the main purpose of a model is to achieve a tax advantage. Unconditional reportable arrangements include, amongst other features (regardless of whether or not the main purpose is the achievement of a tax advantage), models which foresee the depreciation of the same assets in one or more tax jurisdictions or deductible cross-border payments between associated companies if recipients of the payment are not located in a sovereign territory or in a non-cooperating third country, as well as certain transfer pricing arrangements.

Whether an arrangement fulfils the criteria and thus a reporting obligation exists in accordance with the EU Mandatory Disclosure Act can only be assessed and reviewed on a case-by-case basis.

15.0.4. What is exit taxation?

Exit taxation ("Wegzugsbesteuerung") refers to the taxation of hidden reserves when transferring assets, parts or entire businesses outside of Austria, thus restricting Austrian taxation rights in relation to other countries.

Exit taxation results in the deemed disposal of operating assets and capital assets which are held as private assets, in which case the taxable profit from the deemed disposal (hidden reserves) is considered to be the difference between the original costs of acquisition and the current value of the assets at the time of their exit from Austria. In general, there is an immediate taxation of hidden reserves at the time of departure when Austrian taxation rights are restricted.

However, when it comes to business operations, the departure to another EU or EEA member state opens up the possibility, upon request, to pay the tax liability in five annual instalments (for non-current assets) or in two annual instalments (for current assets). Not specifying the tax liability or the deferral of tax payments can only be implemented for situations outside of the company for income from capital assets derived from the departure of a natural person to another EU/EEA member state or the free transfer (gift or inheritance) to another natural person in an EU/EEA member state.

15.0.5. Natural persons: when is the tax assessment obligatory?

A tax assessment, also known as tax equalisation or employee assessment, is only carried out for income from employed work. If income subject to the payroll tax is generated, an obligatory tax assessment pursuant to Section 41 Austrian Income Tax Act is carried out, for example, if other income is derived exceeding the level of € 730 or when income is derived from two or more taxable sources of income.

If none of these factors triggering a compulsory tax assessment exist, a tax assessment is only carried out upon request. Such an assessment can be advantageous in certain situations, for example in the case of extraordinary expenses or special expenses.

15.0.6. Natural persons: when does an application-free tax assessment take place?

A so-called "employee tax assessment without application" ("antragslose Arbeitnehmerveranlagung") is implemented automatically for natural persons by the tax authority if:

- no tax declaration was submitted up until 30 June of the following year,
- the tax assessment leads to a tax credit for the taxable person,
- it can be assumed, based on the information at hand, that only taxable income was generated and no income-related expenses, special expenses, extraordinary expenses, application-related tax allowances or tax deductions (e.g., maintenance credit, sole earner or single parent credit) can be claimed and the
- taxpayer was only employed by one employer in the current year.

15.0.7. For which activities can flat-rate deductions be claimed?

The statutory basic flat-rate deduction (also known as basic "blanket" accounting) for income tax purposes ("ertragsteuerliche Basispauschalierung") can be claimed by all taxpayers with self-employed income or income from business activities whose revenues in the past financial year did not exceed € 220,000, who were not subject to the obligation to maintain accounting records and who did not voluntarily carry out double bookkeeping. The basic flat-rate deduction means that operating expenditures are determined on the basis of a lump sum rate (average rate), whereas operating income is recognised with the actual amount. The average rate equals 6% (up to a maximum of € 13,200) for income from commercial and technical consulting, from activities as a writer, lecturer and scientific activities and for shareholder/managing directors. In all other cases, the average rate is 12% (up to a maximum of € 26,400). In addition, deductions can be claimed for the actual expenses incurred for merchandise, raw materials and consumables, wages (include ancillary wage costs) as well as contract and third-party wage costs and compulsory insurance costs. Furthermore, deductions also exist for use of private housing as the workplace ("Arbeitsplatzpauschale"), travel and transport costs provided they are offset by a reimbursement of costs in the same amount.

There are special rates applying to certain sectors. These are also only possible if certain revenue thresholds are not exceeded and there is no obligation to maintain accounting records and accounting records were not voluntarily kept. These flat-rate deductions applying to certain sectors include restaurants and tourist accommodations, food retailers and businesses trading in various goods, druggists, sales representatives, artists, writers and athletes. Furthermore, there is a regulation on flat rate deductions for income from agriculture and forestry and commercial enterprises that do not maintain accounting records.

15.0.8. Which special features apply to small-scale entrepreneurs?

Starting with the employee tax assessment for the 2020 financial year, there is an additional lump-sum possibility available for small-scale entrepreneurs with income from self-employment or income from business activities, whose net revenue does not exceed € 35,000. If the taxpayer takes advantage of this blanket accounting, there is no obligation to maintain a register of goods received or an asset ledger. In addition, a lump sum deduction for operating expenses equalling 45% of operating income (excl. the value added tax) can be claimed up to a maximum amount of € 18,900. This deduction changes to 20% of operating income or a maximum of € 8,400 for service companies. Moreover, social insurance contributions and the basic tax-free profit allowance as well as travel and transport costs, provided they are offset by a reimbursement of costs in the same amount, can also be deducted.

If the prerequisites to apply the basic flat-rate or blanket accounting are fulfilled, the company can also take advantage of the flat-rate deduction pursuant to the Austrian Value Added Tax Act. There is the possibility to specify the input tax at a flat rate of 1.8% of net revenue or a maximum of € 3,960 p.a. (excl. taxable or non-taxable turnover as well as revenue from auxiliary transactions e.g., sales of non-current assets such as equipment).

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