

# Business Location Austria: Tax Aspects

## Overview of different forms of taxation

In many areas, Austrian tax regulations are tied to the legal form of the taxable entity. The operating income of **corporations** (page 2) such as the GmbH (limited liability company) and the Aktiengesellschaft (joint stock company) are subject to corporate income taxes, whereas in the case of **natural persons** (page 16), the Austrian Income Tax Act distinguishes between earnings from business operations and other forms of income, in which case income is determined independently of each other. The total income is then subject to the income tax.

Within the context of setting up a company, the question often arises as to precisely when business people are required to register with tax authorities and the scope of activity which will subsequently entail a tax obligation. The chapter **“Branch Offices - Permanent Establishments”** (page 13) deals with this aspect and related issues of deferred taxes.

In addition to personal taxes, so-called **“non-personal”** exist which depend on the respective circumstances. These include the value added tax, real estate transfer tax, stamp duties and fees for legal transactions. The chapter on corporations provides more details about non-personal taxes. However, for the most part they are independent of the particular legal structure, and thus can also apply to natural persons and production sites.

Many fields of activity are supported via tax benefits, namely **tax allowances** or **tax credits**. In particular, this includes the 14 percent **research tax credit** in the field of R&D, which can be claimed for in-house research and contract research. With respect to operating income, there is the possibility of tax loss carryforwards for losses which cannot be realized in the current assessment year. Since 2005, it has been possible for corporate groups to offset taxable earnings against each other with the group parent. In addition, natural persons can claim a tax-free profit allowance.

This document offers a basic overview of the Austrian tax system, and only contains general information which cannot replace individual consulting. It shows possible tax benefits which foreign investors should take into account when deciding where to locate their business operations. However, due to the complexity of the tax law, only the main points can be covered. This document makes no claim of completeness.

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for **ABA**  
INVEST IN AUSTRIA

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## **I. Corporations**

### **1. Founding of a company**

The forms of corporations include the limited liability company (Gesellschaft mit beschränkter Haftung – GmbH), the joint stock company (Aktiengesellschaft – AG) and the Societas Europea (SE). Corporations are formed under company law when registered in the company register (Firmenbuch). Corporations are categorized according to their sizes, which are ultra-small, small, medium-sized and large corporations (based on the three criteria of total assets, revenues and number of employees). Assignment to these categories has a number of consequences under commercial law. One of these is the extent of the obligation to disclose its annual accounts.

#### **1.1. Limited liability company (GmbH)**

The statutory minimum amount of share capital is 35,000 Euro, of which half must be contributed in cash. Founding privileges are accorded to the start-up phase of business activity (for a maximum of 10 years). The related stipulations have to form part of the original articles of association. The privilege allows GmbHs to be formed with share capital of only 10,000 Euro, of which only 5,000 Euro must be contributed in cash. 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. At that time, the statutory minimum contribution of 17,500 Euro must be provided.

#### **1.2. Joint stock corporation (AG)**

The primary difference between the AG and GmbH is that the AG is subject to a greater degree of statutory supervision. For example, a supervisory board must be appointed for an AG and the annual financial statements and management report must be audited by an independent auditor. An AG must have at least EUR 70,000 in share capital, which can be raised using par value or no-par value shares. Par value shares must have a par value of at least one euro. No-par value shares do not have a par value. Each share has the same notional interest in the share capital of the company. One important advantage of the AG versus the GmbH is that a notarial instrument is required for transferring GmbH shares, but not for AG shares.

#### **1.3. Societas Europea (SE)**

The SE (Societas Europea) is a special form of joint stock corporation. Creating an SE does not necessarily require formation of a new company. Mergers of joint stock corporations and changes in legal form are also possible. The minimum statutory share capital for this form of company is EUR 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, holding company formation and restructuring.

## 2. Taxation of corporations

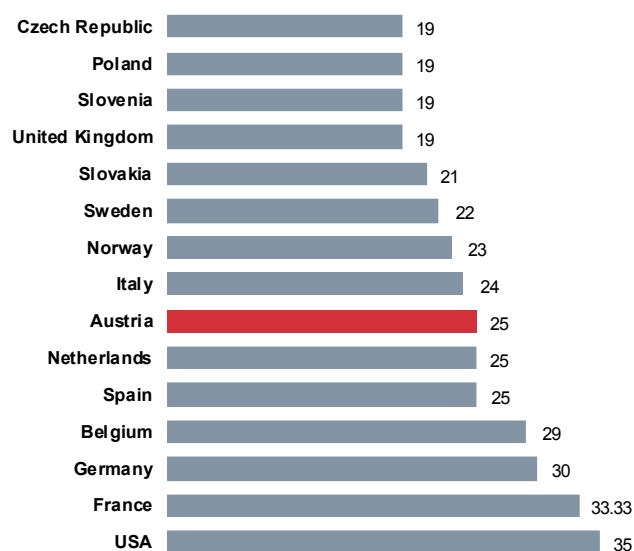
Corporations, in particular AGs and GmbHs, are subject to corporation tax. All (domestic and foreign) income of corporations that have their management or registered offices in Austria is taxable. As a rule, the income is taxable both at the company and shareholder levels.

The corporation tax rate is **25 percent** and is levied at the company level. A minimum corporation tax equal to five percent of one quarter of the statutory minimum amount of share capital must be paid quarterly (EUR 437.50 for GmbHs, EUR 875 for AGs, and EUR 1,500 for SEs). Tax relief is provided for a period of ten years for GmbHs established after June 30, 2013. A minimum corporation tax of only 125 Euro is due for each full quarter (500 Euro per year) during the first five years after formation of a GmbH and the start of unlimited tax liability, and 250 Euro per full quarter (1,000 Euro per year) for the next five years.

As a rule, if corporate profits are distributed to shareholders, investment income tax (Kapitalertragsteuer) of 27.5 percent is withheld from the dividend distribution.

In an international comparison, Austria ranks in the middle of the distribution of corporation tax rates:

**Corporation tax rates 2018 \*)**



Source: Deloitte Resources, Corporate Tax Rates 2018

\*) incl. surcharges and local/state taxes

According to the BAK Taxation Index 2017 (published by BAK Economics<sup>1)</sup> together with the ZEW<sup>2)</sup>, the **effective tax burden as a percentage of the earnings of a profitable investment** in Austria is **22.5%**. The average of the BAK Taxation Index 2017 is 29.0%<sup>3)</sup>.

<sup>1)</sup> Swiss economic research institute

<sup>2)</sup> Centre for European Economic Research Mannheim (Zentrum für Europäische Wirtschaftsforschung Mannheim)

<sup>3)</sup> The calculation was performed using a profitable investment that provided a pre-tax return of 20%.

A manufacturing corporation was assumed. Investments were made in a specified combination of assets, using a variety of funding means. Taxes at the national, regional and local levels were included.

## 2.1. Group taxation

The concept of group taxation makes it possible to net the profits and losses of financially affiliated companies, including recognition of cross-border losses. The first step is to calculate the tax profit or loss for each individual member of the group. These profits and losses are then allocated to the companies at the next higher level in the group and, in the end, 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, as was the case for consolidated tax groups. Profit transfer agreements are also not required.

**Parent companies** may be corporations with unlimited tax liability, trade and industrial cooperatives, financial institutions and mutual insurance companies, EU companies with limited tax liability, and companies comparable to corporations that have their management and registered office in the European Economic Area. They must have an Austrian branch office (a largely independent business unit that is at a different location than the main office and operates under its own management) that is registered in the company register and the interests 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 offices 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. Except in the case of a consortium company, companies may only be members of a single corporate group.

Formation of a corporate group requires a financial affiliation of more than 50 percent of the share capital or cooperative capital and voting rights. In addition to direct interests, indirect interests are also possible (via a partnership or other group members). Foreign group members can also be used to create an indirect financial affiliation.

A corporate group must exist for at least three years, and the financial affiliation among individual group members must exist during the entire financial year. In addition, a written group application must be signed by the parent company and all Austrian entities to be included in the group.

## 2.2. Income from participations

In order to avoid multiple taxation, particularly in the case of corporate groups, income from participations is exempt from corporation tax under certain conditions.

Income from participations includes, among other things, profit shares of all kinds based on investments in Austrian corporations and cooperatives held in the form of corporate shares and cooperative shares, and profit shares of profit participation rights for Austrian corporations. The exemption is granted regardless of the size of the participation or how long it has been held.

An exemption is also provided for income from foreign participations. Transposition of the **Parent-Subsidiary Directive** makes comparable profit shares from corporations in the EU listed in Annex 2 of the Austrian Income Tax Act exempt from corporation tax for the parent company receiving the dividend.

Austria's Charges Alteration Act (AbgÄG) of 2011 expanded the exemption accorded to earnings from participations to encompass income stemming from third countries, in cases in which this country has concluded a comprehensive mutual assistance agreement with Austria. To be noted is that certain conditions can occasion an alteration of method - "switch over" - from an exemption-based to an offsetting one.

Similar to the exemption for income from participations, profit shares of all kinds from international controlling interests are also exempt. The preferential treatment of profits earned by foreign affiliated companies requires:

- a parent company (corporation) that falls under § 7(3) of the Austrian Corporation Tax Act
- an interest in a foreign subsidiary that is comparable to an Austrian corporation, or is an EU company as per Annex 2 of the Austrian Income Tax Act
- an interest of at least 10 percent held for an uninterrupted period of one year

The fulfillment of certain preconditions on individual and cumulative bases (the company achieves passive earnings, the level of taxation paid in the country that is not Austria is less than or equal to 15 percent) also necessitates a change of method.

A further point to be observed is that nested international inter-corporate privilege does not apply in cases in which the shares of profits accruing from the non-Austrian corporation are deductible.

**Taxation option:** The taxpayer can elect to make the investment subject to taxation. The election must be made in the corporate income tax return made for the year of acquisition, and can only subsequently be made or revoked within one month of the submission of the corporate income tax return, and makes gains and losses on disposal and write-downs to going concern value (must be spread over seven years if deductible) subject to taxation. Current profits from the investment remain, however, tax-exempt.

### **2.3. Loss carryforward**

Operating losses that cannot be offset against positive income in the year they are incurred may be deducted as special expenses in following years. This requires proper accounting in the year the loss was incurred. Losses of up to 75 percent of total income may be deducted each year. If any losses remain, they can be carried forward to following years. This carryforward limit does not apply to certain types of income specified by law (e.g. restructuring gains, gains on the disposal and discontinuation of businesses, business units and partnership interests).

### **2.4. Reorganization**

The Austrian Reorganization Tax Act (Umgründungssteuergesetz) is aimed at permitting reorganization by transfer to occur with **no additional tax burden**. It requires that basis carryover be performed such that the pending nature of the tax obligation associated with hidden reserves passes over to the legal successor. The act defines six different types of reorganization: merger, transformation, demerger, asset transfer, combination and asset partition.

The EU Merger Directive covers cross-border EU reorganization, but only mergers, demergers and asset transfers (as well as share exchanges) when companies from two or more member states are involved. Basis carryover and non-taxation of hidden reserves also apply in this case.

## 2.5. Private foundations

A foundation is a legal entity formed under civil law that has no owners or members. The foundation uses assets donated by the founder for achieving its object. Any natural person and legal entity can establish a foundation as long as they provide it with EUR 70,000 in capital.

**Taxation of foundations** takes place at three levels:

- Taxation of donations (foundation entrance tax)
- Regular taxation of the foundation
- Exit tax

Donations to a foundation are subject to the **foundation entrance tax** (Stiftungseingangssteuer). The tax liability applies to the donor (place of residence or normal residence in Austria) and the foundation (registered office or management in Austria) and is normally 2.5 percent.

**Interim taxation** (Zwischenbesteuerung) is a special feature of the regular taxation of foundations. It is advance taxation for future distributions to beneficiaries and is credited when future distributions are made, provided that such is subject to capital earnings taxes. Interim taxation applies to the following forms of investment income if they are received by the foundation:

- Domestic and foreign investment income from deposits and securities held by financial institutions
- Income from realized increases in the value of investments
- Income from derivatives
- Income from the disposal of (private) property

Foundations receive a special tax concession for the disposal of equity investments. Hidden reserves that are revealed upon disposal of an investment may be transferred within twelve months to the acquisition cost of a new investment if the new investment represents an equity interest of more than ten percent (neither the private foundation nor the founder nor a beneficiary are permitted – with this referring to their acting solely or collectively and directly or indirectly – to possess a stake as of the time of procurement greater than 20 percent of this corporation's equity). A tax-exempt amount can be formed for hidden reserves that are not transferred in this way during the calendar year.

**Distributions** by private-interest foundations to beneficiaries that are natural persons are generally subject to investment income tax (exit tax). Distributions to entities with unlimited tax liability are not covered by the exemption for income from participations and are therefore also subject to investment income tax. On the other hand, distributions of foundation capital to beneficiaries are tax exempt, since elimination of the inheritance and gift tax means the donor could also give his assets as a gift without taxes being incurred.

### 3. Special international aspects

#### 3.1. Double taxation conventions and deduction at source

In order to avoid the same income from being taxed in two or more countries, Austria has concluded **double taxation conventions** with many countries modelled on the OECD Model Convention. These conventions determine which contracting country has the right to tax certain income. If one of these distributive rules (Art. 6 to 22) does not give either country the sole right of taxation, but instead allows the possibility of taxation in both contracting countries, the contracting countries mutually stipulate that the applicable country of residence must avoid the taxpayer's being subject to double taxation. In such cases, the contracting countries mutually agree on which **tax relief method** shall be applied, namely the credit method or exemption method.

When the **credit method** is used, the income from the source country is included in the tax base in the country of residence, and the foreign taxes paid are credited against the domestic tax burden. The credit method is mainly used for dividends and interest payments when the source country has the right to deduction at source.

When the **exemption method** is used, on the other hand, the foreign income is exempt from taxation in the country of residence in order to avoid double taxation. This method is often used together with "exemption with progression", i.e. foreign income is only used to calculate the tax rate, but not the tax base.

Since transposition of the EU Parent-Subsidiary Directive, dividend distributions between corporations have been exempt from deduction at source when an interest of ten percent or more is held. In addition, payments of interest and royalties between affiliated companies in the EU have been exempt from deduction at source since 1 January 2004 if a direct interest of 25 percent or more is held.

#### 3.2. Transfer prices

**Intercompany payments for goods and services** is an important aspect of tax planning for international groups. For this reason, regulations for internal group transfer prices are becoming increasingly important for the tax administration. Both national and international guidelines are used when examining and evaluating transfer prices.

Examination of intercompany transfer prices is aimed at determining whether goods and services charged to and recharged by an Austrian company are priced too high and are therefore unreasonable. This goal is to ensure that intercompany transfer prices 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. This arm's length principle is in Art. 9 of the OECD Model Convention for double taxation conventions. The OECD Transfer Pricing Guidelines also provide interpretation guidance that is mandatory for the tax authorities since standardization of the Austrian Transfer Pricing Guidelines. The Austrian Transfer Pricing Guidelines create a uniform legal interpretation that ensures greater legal certainty. Another option is to apply for a binding advanced ruling from the tax authorities.

## 4. Tax concessions

### 4.1. Research tax credit

In Austria a credit for research of **14 percent 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 base of measurement is not subject to a limitation on amount.

A tax credit equal to **14 percent** of expenses can also be claimed by the commissioning party for **contract research**, but only to a maximum of EUR 1,000,000 in expenses (that is, a maximum research tax credit of EUR 120,000 for contract research). The contract research must satisfy the following conditions:

- The research must be outsourced by an Austrian firm or Austrian permanent establishment.
- The company contracted must have its registered office in the European Union or European Economic Area.
- The company contracted may not be under the control of the outsourcing company or a member of the same consolidated tax group.
- The contracting company has to demonstrably notify the company contracted during the former's financial year of the extent to which the former will avail itself of the research tax credit awarded to contract research. This extent is calculated using the expenditures made.

Austria’s Income Tax Act requires the securing of an assessment from the Austrian Research Promotion Agency (Forschungsförderungsgesellschaft – FFG) in order to claim the research tax credit for in-house research and development. As part of the request, the FFG must be provided with detailed descriptions of the research projects that are subject to strict formal requirements. The descriptions must include the following: project name, objective, contents, methodology, innovation, share stemming from the respective project of the entire base of calculation, and planned term of 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.

### 4.2. Apprenticeship subsidy

A **basic subsidy** (Basisförderung) can be applied for apprenticeships. This support can be applied for retrospectively after completion of each year of apprenticeship, is graduated according to apprenticeship year, and is equal to between one and three times the gross collectively-agreed apprenticeship remuneration (Bruttolehrlingsentschädigung) per year of apprenticeship. The basic subsidy is calculated on a pro rata basis in the case of half years, time credits and reductions of apprenticeship time. The deadline for application is three months after the end of the apprenticeship year concerned.

There are also **quality-related subsidies** for apprentices with learning difficulties, as well as for training and development and for foreign internships organized by the company. In addition there are subsidies for further training for apprentice trainers, under which 75 percent of the course costs up to a maximum of EUR 2,000 per year can be subsidized.

In addition, subsidies of EUR 200 and EUR 250 are available for good and excellent apprenticeship exam results.



## 5. Value-added tax system

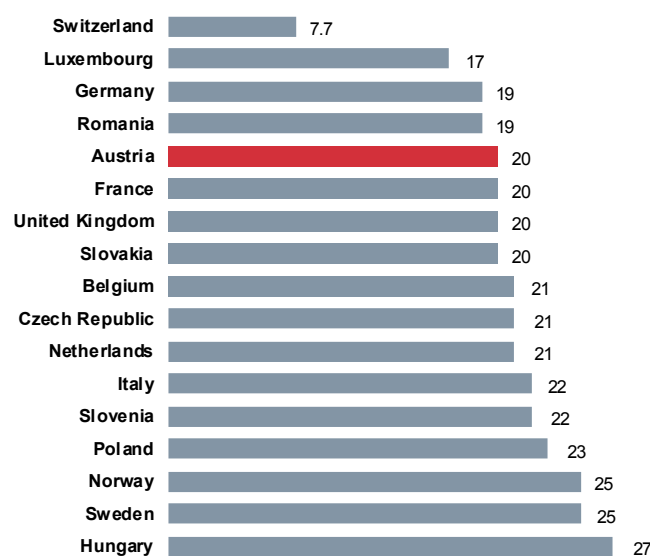
The following transactions are subject to value-added tax (VAT) in Austria:

- 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 (withdrawal or private use of company assets)
- Austrian imports from third countries (import VAT)

The VAT rate is normally **20 percent** of the tax base in Austria. A reduced rate of 10 percent applies, for example, to food, books, medications and property rental for residential use. As of 2016, there has been a second reduced rate of VAT of 13 percent, which applies to certain live animals, animal fodder, stamps, admission to sports events, accommodation and cultural services (e.g. cinemas, museums) etc.

An international comparison of normal tax rates places Austria at the low end of the middle-range:

### Value-added tax rates 2018



Source: Deloitte Resources, Global Indirect Tax Rates (July 2018)

The **tax base** for goods and services is equal to the price paid, not including VAT. In the case of private withdrawals, the applicable value is the purchase price incl. ancillary expenses at the time of withdrawal. The tax base for goods and services furnished to parties outside a company is determined by the costs attributable to provision of the goods and services.

### 5.1. Input tax deduction

In Austria, the entire VAT burden is borne by the end consumer. The VAT charged to an entrepreneur can be deducted as input tax. As a rule, therefore, it does not represent a cost factor. Entrepreneurs are only permitted to deduct input tax, however, if the goods or services are obtained for the business and are used at least 10 percent for the pursuit of business objects. Import VAT on third country imports can also be deducted as input tax. Input tax may not be deducted, however, if the entrepreneur providing goods or services is exempted from VAT (e.g. certain financial services, insurance agent services, renting of business premises [these carry with them – provided that certain preconditions are satisfied – an option encompassing the obligation to pay taxation]). All entrepreneurs providing goods and services in Austria are required to charge VAT, regardless of whether they are resident in Austria.

The Graz City Tax Office has jurisdiction over entrepreneurs with no registered office or permanent establishment in Austria. These entrepreneurs may also obtain input tax refunds from this tax office if they provide no taxable goods or services in Austria. Non-EU entrepreneurs must apply to the Graz City Tax Office for a refund of input tax by 30 June of the following year. EU entrepreneurs have until 30 September of the following year to electronically file an application in their respective countries of residence.

### 5.2. Tax exemptions

The Austrian Value-Added Tax Act provides many other tax exemptions in addition to the exemption for **exports**. These include a number of banking transactions, property sales, insurance services and transport services for cross-border transport of goods. In addition, there is a VAT exemption for small entrepreneurs whose sales do not exceed EUR 30,000 per year. However, since this also leads to loss of the input tax deduction, **small entrepreneurs** have the option to waive the VAT exemption.

### 5.3. Tax returns and procedure followed

As a rule, companies must submit **monthly VAT advance returns**. An advance payment owing in an advance return must be paid to the tax authorities by the 15th day of the second following month. A credit is provided for negative amounts. Companies with less than EUR 100,000 in sales in the previous year only need to submit quarterly advance returns.

After the end of the calendar year, the entrepreneur must file a tax return for the total VAT, input tax and import VAT. As a rule, the return must be submitted electronically by 30 June of the following year.

## 6. Other taxes

### 6.1. Real estate transfer tax

Acquisitions of Austrian real estate are subject to real estate transfer tax in Austria. Such acquisition includes not only transfer of title based on a purchase agreement, but also acquisition by foreclosure, adverse possession, and acquisition of all of the shares of a company whose assets include Austrian real estate – or, as of 2016, the transferring of at least 95 percent of the shares of such a company to a partnership. Acquisition of real estate as a gift or by reason of death is also subject to real estate transfer tax.

Austria's Property Acquisition Tax Act defines **“property”** to be land, buildings and property additions, as stipulated in Austria's General Civil Code. The Act stipulates that the term “property” is to be accorded the same treatment as building rights and buildings on property owned by others. By way of contrast, the following do not form part of “property”: machines and other equipment that are constituent elements of an operating facility (such as cranes and tanks).

To be used as a basic rule as the base of calculation in cases of transfers of ownership of property in Austria is the value of the property. This is calculated by either taking the sum of the (proportionate) value of the property times three and of the (proportionate) value of the building, or the amount derived from the value of a suitable selection of real estate. In cases of furnishing of substantiation, the fair market value may also be recognized as the base of calculation. The stipulations of the procedure to be used in the determination of the value of the property are laid down in a regulation.

The **rate of taxation** generally applied to the acquisition of properties located in Austria amounts to 3.5 percent. This is calculated using the value of the consideration. This is to be at the least, however, that of the property's value. Also applicable are several special conditions. Among them is the 0.5 percent rate of taxation applied to restructurings and to consolidations of shares, and to alterations in the lineup of partners forming part of partnerships. In such cases, the value of the land always forms the basis of calculations. A property acquisition tax – whose maximum amount is 0.5 percent of the total value of the property - is levied upon favored transfers of premises.

Processes of acquisition – either non-compensated or partially defrayed (consideration amounting to a maximum of 70 percent of the property's value) - of Austrian properties are subject to bracketed rates ranging from 0.5 percent - 3.5 percent. This is calculated using the value of property. The bracketed rates of taxation can be applied to processes of acquisition due to death or taking place within the family (spouses, registered partners, spouse equivalents sharing a main place of residence, parents, children). This is regardless of the provision of any consideration.

### 6.2. Capital transaction tax

Tax on capital contributions (Gesellschaftssteuer) was **abolished in Austria** with effect from January 1, 2016.

### **6.3. Other start-up costs**

Depending on the scale of the company and articles of association, notary fees may be incurred for preparation of the articles of association. In addition, a filing fee is required for registration in the company register. The founding of a new company is proclaimed solely in the Austrian government's edict file (Ediktsdatei), thereby eliminating any related publication costs.

### **6.4. Stamp duties and legal transaction fees**

Legal transactions are subject to fees in Austria when executed by means of a legal instrument that is expressly mentioned in the Austrian Fees Act (Gebührengesetz). A distinction must be made between fixed fees (e.g. official copies, excerpts, travel documents, driver licences, marriages) and percentage-based fees (e.g. rental agreements, guarantees, settlements, assignments, bills of exchange). While a fixed amount is levied for fixed fees, in the case of percentage-based fees a percentage of the contract amount must be paid as a fee. In addition, the tax authorities must be notified of percentage-based fees by the 15th day of the second month following the date the liability is incurred and an assessment notice issued. An assessment notice with a surcharge of 50 percent is issued for fixed fees that are not paid in accordance with requirements. An option is the supplemental levying of an increase amounting up to 50 percent of the reduced fee. Except for betting fees, a surcharge up to the amount of the original fee can be levied for all other fees.

The size of the fee depends on the underlying legal transaction and whether the fee is a fixed or percentage-based fee. For example, for rental agreements applies a fee of one percent.

## II. Branch office – Permanent establishment

### 1. Branch office

If a legal entity resident outside of Austria establishes a branch office in Austria, the branch office must be registered in the **company register**. A coercive penalty can be imposed if this is not done. The law does not define at what level of economic activity a branch office exists. Based on the literal meaning of the words, however, it can be assumed that a head office exists outside of Austria.

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 instructions from top management. Established case law does not require separate assets, but according to European Court of Justice decisions one can only assume the existence of a fixed establishment if a **minimum level of permanent human and technical resources**.<sup>4)</sup> 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.<sup>5)</sup>

A branch office does not acquire its own legal capacity upon registration, which means that the contracting party is always the foreign entity. As a rule, therefore, 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. In practice, branch offices generally satisfy the criteria for a permanent establishment, as the meaning of permanent establishment is broader than that of branch office.

### 2. Definition of permanent establishment for tax purposes

As a rule, the country in which a taxpayer's place of residence or registered office is located has the right to tax business profits. However, if an entrepreneur establishes a permanent establishment in another country, all profits attributable to the permanent establishment have limited tax liability in the permanent establishment country. The meaning of "permanent establishment" is therefore very important, as the issue of at what point a permanent establishment exists for tax purposes often arises in practice.

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<sup>4)</sup> Straube, Commentary on the Austrian Commercial Code, Accounting, 2012, §12, marg. number 24 et seqq

<sup>5)</sup> Schuhmacher, Gruber, Legal issues concerning the branch office, 1993, p. 7 et seqq.

Under the OECD Master Convention, a permanent establishment is considered a **fixed place of business** through which the business of an enterprise is wholly or partly carried on. The term includes, for example, a place of management, branch, office, factory and workshop, as well as a building site or construction or installation project if it lasts more than a certain period.<sup>6)</sup>

Case law views the term fixed place of business in terms of the business and requires that the business be wholly or partly carried on there. Assessing whether the scope of business activities satisfies the requirements of a permanent establishment is less difficult the more the actual business activities take place outside the fixed place of business.

In cases of **international offices** whose activities are limited to such other services as ones that are preparatory or facilitating in nature, such offices are not as a rule to be regarded as premises for purposes of calculating income taxes. In some cases, however, this depends on the activities of the enterprise and the provisions of the applicable double taxation convention (DTC). The Austria-Japan DTC, for example, includes the negative constraint that a fixed place of business maintained exclusively for advertising, providing information, performing scientific research or carrying out similar activities that are of a preparatory nature for the enterprise or are ancillary activities does not qualify as a permanent establishment within the sense of the convention.

If a permanent establishment is present in Austria, this non-Austrian company has **limited tax liability** in Austria and must register with the Austrian tax authorities. The tax liability exists for all of the income of the domestic permanent establishment. The profits it would have earned if it had carried out similar activities under the same or similar conditions as an independent enterprise are attributed to the permanent establishment.

Loss deductions in subsequent years can only be included to a limited extent. The losses must have been generated in the domestic permanent establishment and must exceed the other (global) income of the enterprise. The domestic loss must therefore be offset first against positive domestic income. Foreign income must be determined and disclosed based on Austrian tax law. Loss deduction can only be secondarily applied to the country of residence. It is irrelevant whether a loss offset is possible in the country of residence. In cases, however, in which a DTC is in force, and in which this includes a prohibition upon discrimination against business premises (in which business premises are not experiencing a taxation-caused disadvantaging as compared to the situations of companies unlimitedly liable to taxation), a utilization of losses is to be permitted in cases in which the losses cannot be applied in the country of residence.

For information concerning special aspects of operating expenses, special international aspects, tax concessions and other taxes please see Part I on corporations (page 2).

The definition of entrepreneur in the Austrian Value-Added Tax Act, and therefore liability for VAT, does not depend on legal form. For this reason, the elucidations on VAT also apply to permanent establishments (page 9).

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<sup>6)</sup> Bertl/Djanani/Kofler, Handbuch der österr. Steuerlehre (Manual of Austrian Taxation), 1998, S. 570 et seqq

## **2.1. Taxation of foreign permanent establishments**

Since corporations with unlimited tax liability in Austria are liable for tax on their total global income, losses from foreign permanent establishments can also be deducted from income in Austria. This is only the case, however, if these losses have been calculated in accordance with Austrian law, and in addition, the amount of such losses that can be deducted is limited to the amount calculated in accordance with foreign law. Losses that have already been deducted abroad cannot be deducted in Austria.

If foreign income is exempt from domestic taxation (exemption method), the foreign losses reported for domestic tax purposes must be fully or partially recaptured in each calendar year in which they are fully or partially taken into account, or could be taken into account, abroad. In addition, recapture is also mandatory for foreign losses claimed for domestic tax purposes after three years at the latest if the country from which the losses originate does not offer comprehensive administrative assistance.

### III. Taxation of natural persons

#### 1. General information

Natural persons with their **place of residence or normal residence** in Austria have unlimited tax liability there. This tax liability applies to all domestic and foreign income (global income). If natural persons have neither their place of residence or normal residence in Austria, 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.

**Business income** includes:

- Income from agriculture and forestry
- Self-employment income
- Income from business operations

The **non-business income types** include:

- Employment income
- Investment income
- Rental and lease income
- Other income

The first step in determining total income is to add together all income in each income type. The next step is to offset (where possible) or add together the different income types. The result is the total income of the taxpayer for income tax purposes. Deductions may also be claimed for certain special expenses (Sonderausgaben), extraordinary expenses (außer-gewöhnliche Belastungen) and allowances. Progressive income tax is then calculated based on the income determined in this way.

Income below EUR 11,000 is exempt from income tax. Progressive tax rates are applied to income above EUR 11,000. Income above EUR 90,000 is taxed at a rate of 50 percent. Portions of income worth more than EUR 1,000,000 will be taxed at 55 percent – this rate is limited until 2020.

The total tax due is therefore calculated as follows:

Income (IC)	Income tax in EUR
for the first EUR 11,000	0%
for EUR 11,000 to 18,000	25%
for EUR 18,000 to 31,000	35%
for EUR 31,000 to 60,000	42%
for EUR 60,000 to 90,000	48%
for EUR 90,000 to 1,000,000	50%
above EUR 1,000,000	55%



An international comparison of top tax rates shows the following:

Country	Maximum rate	... starting at
Czech Republic	15%	flat rate
Hungary	15%	flat rate
Slovakia	25%	EUR 35,022.31
Poland	32%	PLN 85,528
United States	39.60%	variable
Ireland	40%	EUR 33,800
Italy	43%	EUR 75,000
Japan	45%	JPY 40,000,000
United Kingdom	45%	GBP 150,000
Germany	45%	EUR 256,304
France	45%	EUR 152,260
Austria	50% <sup>*)</sup>	EUR 90,000
Slovenia	50%	EUR 70,907.20
Belgium	50%	EUR 38,830
Netherlands	52%	EUR 67,072

Source: IBFD 2017 <sup>7)</sup>

<sup>\*)</sup> Maximum tax rate of 55 percent for income of more than EUR 1,000,000 – limited in term until 2020

## 2. Employment income

In addition to salary and benefits from existing and former employment (remuneration for active service and company pensions), employment income also includes payments from statutory health and casualty insurance funds, pensions funds and company pension funds. Both cash and non-cash remuneration (remuneration in kind) is included, e.g. employee housing, company car and parking at the place of employment.

Employment income is taxed in the form of **payroll tax** deducted from employee pay. Employers must calculate, deduct and pay this payroll tax to the tax authorities and are liable for correctly deducting and paying the tax.

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<sup>7)</sup> International Bureau of Fiscal Documentation

## 2.1. Social security

The employee share of statutory social security contributions is also deducted and paid at the same time that payroll tax is deducted. Social security contributions are calculated based on gross pay using the following rates for salaried employees (different rates for wage earners):

Type of contribution	Employee contribution	Employer contribution
Health insurance	3.87%	3.78%
Casualty insurance		1.30%
Pension insurance	10.25%	12.55%
Unemployment insurance	3.00%	3.35%
Other	1.00%	0.50%
<b>Total</b>	<b>18.12%</b>	<b>21.48%</b>

Source: Austrian Economic Chambers (Employee Contributions 2018)

A monthly **maximum threshold** of EUR 5,130 (maximum contribution base) applies to regular salary payments. In the case of special payments (Sonderzahlung), there is an annual threshold of EUR 10,260, while the employee contribution in this case is 17.12 percent and the employer contribution is 20.98 percent.

In addition, 1.53 percent of employees' salary must be paid into a corporate pension fund. An (employer) contribution equaling 3.9 percent of gross salary must be made to the Austrian Family Assistance Fund (Familienlastenausgleichsfonds) and 3 percent to local government. The Austrian Economic Chamber contribution (employer surcharge) (Wirtschaftskammerumlage) is approximately 0.4 percent, depending on the province. If family members are co-insured, the employee must pay a contribution equal to 3.4 percent of the contribution base. Total non-wage labor costs for the employer are therefore approximately 30.5 percent.

## 2.2. Other remuneration

Other remuneration (for instance: 13<sup>th</sup> and 14<sup>th</sup> months' remuneration) is given **preferential tax treatment**. These are tax-exempt up to EUR 620, with amounts above this taxed at a rate of 6 to 35.75 percent up to EUR 83,332, but subject to a limit of one-sixth of regular pay. No tax is levied if one-sixth of regular pay does not exceed EUR 2,100.

The following rates apply to other remuneration below the one-sixth of regular pay limit:

first EUR 620 .....	0%
EUR 620 to 25,000 .....	6%
EUR 25,000 to 50,000 € .....	27%
EUR 50,000 to 83,333 € .....	35.75%
above 83,333 € .....	according to tariff

Bonuses for dirty working conditions (Schmutzzulage), difficult working conditions (Erschwerniszulage) and dangerous working conditions (Gefahrenzulage), and bonuses for weekend, holiday and night work are tax-exempt up to EUR 360 per month. The overtime premium for the first ten overtime hours per month, to a maximum of 50 percent of base salary, is not taxed – the limit here is EUR 86 per month.

**Severance pay** due to termination of employment is also considered employee pay, and is therefore included in employment income. In the case of severance amounts equal to a multiple (depending on the length of employment) of regular pay, the payroll tax is calculated as a multiple of the income tax on the regular pay. A preferential tax rate of six percent is applied, however, if this reduces the amount of payroll tax. Voluntary severance pay is also taxed at six percent up to the maximum amount of EUR 44,820, provided the total does not exceed one-quarter of the regular pay for the last twelve months.

### 3. Tax concessions for seconded employees

Individuals that have a place of residence or normal residence in Austria, i.e. spend more than 6 months of the year in Austria, have **unlimited tax liability** in Austria. Individuals who are temporarily posted in Austria by a foreign employer to work for an Austrian employer and did not have a place of residence in Austria in the last ten years are considered "expatriates". The employment in Austria cannot last longer than five years and the employee's permanent residence must remain abroad.

In order to simplify payroll accounting for foreign managers seconded to Austria ("expatriates"), the Austrian Ministry of Finance issued a decree granting certain deductions to the seconded employees. The deductions can be made 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 annual gross pay), expenses for maintaining two households (e.g. rent, operating costs, maximum EUR 2,200 per month), expenses for the vocational training of one child outside the place of residence (flat rate of EUR 110 per month) and expenses for family trips home (maximum EUR 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 that the simplified procedure will be used at the beginning of the period of employment and at the beginning of each subsequent calendar year.

Since the 2016 tax assessment year, other income-related expenses can be deducted from taxes in the form of a lump sum amounting to 20 percent of the calculation basis (gross remuneration minus tax-free remuneration and other remuneration), but to a maximum of EUR 2,500 a year. The claim for the lump sum allowance can be immediately filed by the employer.

If 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 individual cases, however, the provisions of the double taxation convention between the countries concerned must be clarified.

### 3.1. Social security

As a rule, national statutory provisions apply to individuals employed in Austria, who are required to make social security contributions. This is in contrast to the "spillover principle", which holds that domestic social security should not be interrupted if a taxpayer is temporarily seconded to another country. Application of both of these principles can lead to an obligation to make social security contributions in two or more countries. To avoid this, **bilateral treaties and EU regulations** were adopted to specify the country where an obligation to make social security contributions exists and which benefits can be claimed, and mutual recognition of claims and coverage periods. In many cases, these treaties allow employees seconded for a limited period of time to remain in their current social security systems.

### 3.2. Other reporting requirements

An entrepreneur who seconded employees from other EU/EEA states or Switzerland to Austria must report the secondment to the Central Coordination Office (ZKO) of the Austrian Federal Ministry of Finance. This must be done no later than one week before the start of employment.

## 4. Investment income

Dividends, income from the disposal of investments and income from securitized derivatives are subject to the "special tax rate" of 27.5 percent. Income from financial investments and other non-securitized assets at financial institutions – excluding compensation payments and lending fees – are taxed at a special tax rate of 25 percent. If the paying agent or bank holding the custody account is located in Austria, the special tax rate is levied in the form of a capital gains deduction. If such income comes from a foreign source (paying agent or bank holding the custody account is located abroad) it is taxed at the "special tax rate" of 25 percent during assessment.

A credit can be claimed for tax deducted at source, regardless of whether a double taxation convention exists. In the case of foreign investment income in the form of dividends, the credit is limited to 15 percent of the income received.

The withdrawal of capital gains taxes can render the income from capital exempt from any further taxation, with this depending upon whether the capital assets form part of private or corporate holdings:

Income	Dividends	Interest	Realized increases in value	Derivatives
Subject to investment income tax if	paying agent/ debtor is in Austria	paying agent/ debtor is in Austria	Austrian custodian/ paying agent	Austrian custodian/ paying agent
Definitive discharge of taxes (private assets)	yes	yes	yes	yes
Definitive discharge of taxes (business assets)	yes	yes	no	no

## 5. Deductions

### 5.1. Profit allowance for business income

Natural persons can claim a **profit allowance** where business income types are involved. However, investment income taxed at the special tax rate of 27.5 percent 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 13 percent of profits (max. 3,900 Euro), regardless of the investments made. In addition, an **investment-based profit allowance** of 13 percent can be claimed for investments in eligible depreciable assets or domestic and foreign residential construction bonds (*Wohnbauanleihen*).

The profit allowance is:

up to EUR of the tax base .....	13%
for the next 175,000 of the tax base .....	7%
for the next 230,000 of the tax base .....	4.5%

Thus the maximum profit allowance that can be claimed each financial year is EUR 45,350.

The following are eligible assets:

- Depreciable fixed assets with a normal usable life of at least four years that are used in an Austrian permanent establishment or in the territory of the EU/EEA.
- Domestic convertible bonds issued by joint stock companies (AGs) to promote residential construction (*Wohnbauanleihen*) and foreign bonds of this nature that serve to promote residential construction in Austria, originate in the EU or a third country that offers comprehensive administrative assistance, and are held as business assets for at least four years.<sup>8)</sup>

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

### 5.2. Transfer of hidden reserves

Natural persons can transfer **hidden reserves** that are revealed at the time an asset is sold (sale price greater than the carrying amount) to the acquisition cost of newly acquired assets. The following conditions must be satisfied for this to be possible:

- The asset must have belonged to the fixed assets of the company **for at least seven years** at the time of disposal (the period for real estate is 15 years if hidden reserves were previously transferred to it).
- The newly acquired asset to which the hidden reserves are to be transferred must be used in an **Austrian permanent establishment**.

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<sup>8)</sup> This applies to financial years ending after June 30, 2014 and starting prior to December 31, 2016.

A variety of restrictions apply to the transfer of hidden reserves. For example, hidden reserves can only be transferred to the acquisition cost of land if the hidden reserves also come from the disposal of land.

If hidden reserves cannot be transferred to newly acquired assets in the year of disposal, they can be transferred to a **tax-exempt reserve** (transfer reserve). This transfer reserve can be transferred to the acquisition cost of newly acquired assets within a period of 12 months (24 months in the case of force majeure or official intervention) of the date of disposal of the asset. If a transfer is not possible within this period, the transfer reserve must be reversed and recognized as an addition to profit.

### 5.3. Income-related expenses, special expenses and other items of deduction

**Income-related expenses** are expenses or outlays for acquiring, securing or preserving income. These include, for example, expenses for tools, contributions for compulsory insurance, compulsory contributions to statutory special-interest groups and expenses for training and advanced training. Income-related expenses may be deducted from taxable income. An annual lump-sum deduction of EUR 132 can be claimed for self-employment income without supporting documentation. Expenses in excess of this amount can be claimed if supporting documents are available.

**Church contributions** can be claimed as special expenses (Sonderausgaben) up to a maximum amount of EUR 400 per year. Expenses for tax advice are fully deductible.

**Cash donations** to certain eligible organizations pursuing charitable purposes may be claimed up to a maximum of ten percent of income.

Since 2017 church contributions and voluntary donations no longer need to be reported to the tax authorities via tax returns, as they are automatically taken into account when the formal requirements are met.

Taxpayers forced to incur **extraordinary expenses** (außergewöhnliche Belastungen) can deduct them in certain circumstances. The prerequisite for this is that the taxpayer's economic capacity is significantly impaired, with expenses exceeding a minimum threshold of six to twelve percent of income, depending on the amount of income. No minimum threshold applies in the case of catastrophic damages. Childcare expenses may be claimed up to a maximum amount of EUR 2,300 per child until the age of ten. The childcare must be provided by a public childcare institution or individuals with the proper educational qualifications.

A number of **credits** can be deducted from the income tax calculated.

Examples are:

Commuter credit (Verkehrsabsetzbetrag) .....	EUR 400 per year
Sole-earner credit (Alleinverdienerabsetzbetrag) ...	EUR 494 per year for one child EUR 669 per year for two children
Annual single-parent credit .....	EUR 494 per year for one child EUR 669 per year for two children
(Alleinerzieherabsetzbetrag)	

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