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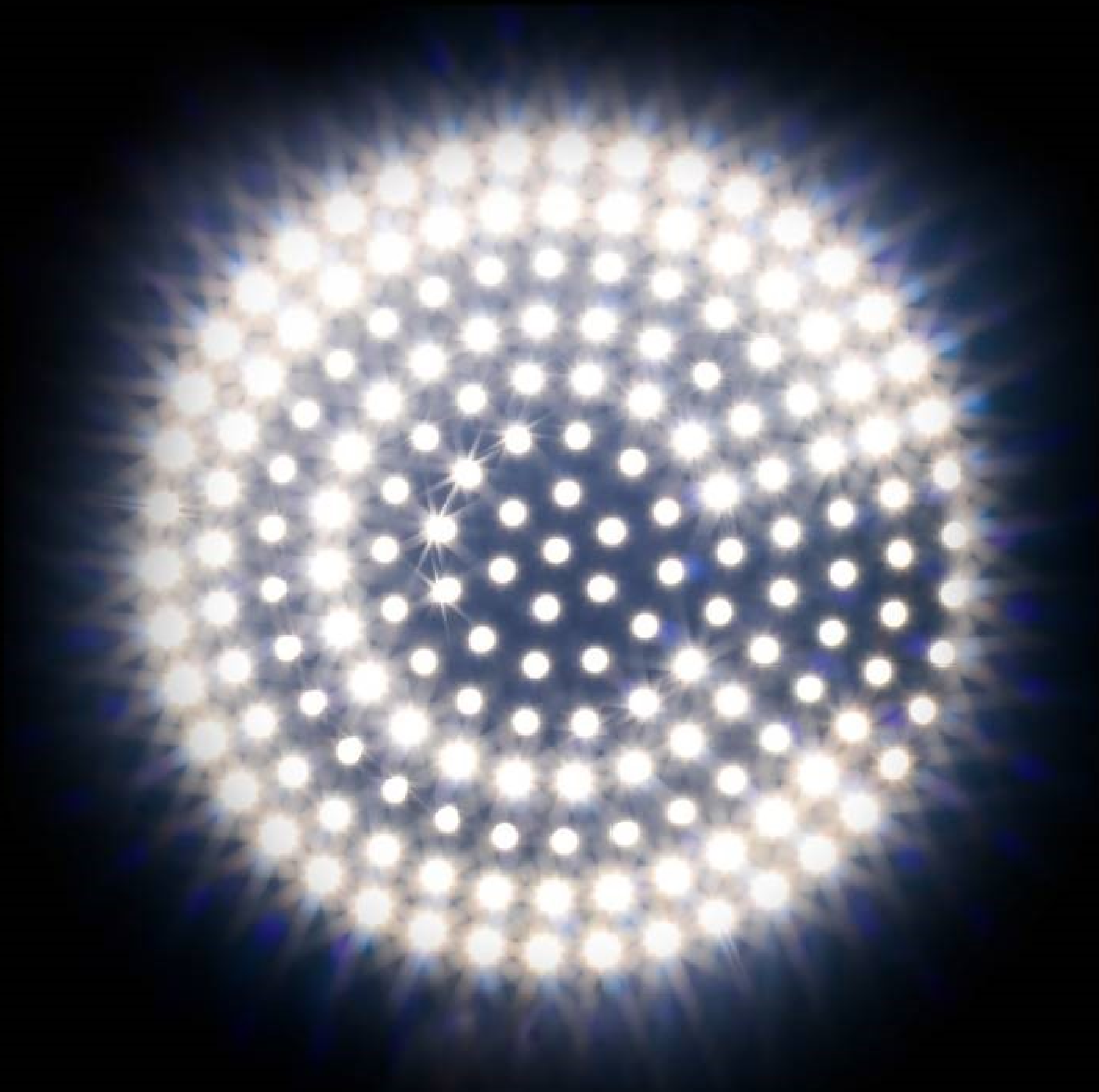

Taxation and Investment in Austria 2017

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1.0 Investment climate

1.1 Business environment

Austria is a federal republic. The head of state and bicameral legislature (parliament) are elected. The Ministry of Finance is the country's highest financial authority. The parliament is responsible for passing laws that are proposed by the government or parliament itself, but a law must be authenticated by the president before it can enter into force.

As in many other developed countries, the Austrian economy has become much more service-oriented. The tourism industry is particularly important. Austria's main assets are a skilled labor force, good industrial relations, political stability and its participation in international organizations. The country welcomes foreign investment.

Austria is a European Union (EU) member state and as such is required to comply with all EU directives and regulations and it is bound by EU trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations. The EU has a single external tariff and a single market within its external borders. Restrictions on imports and exports apply in areas such as dual-use technology, protected species and some sensitive products from emerging economies. Companies operating in Austria have access to a tariff-free market of consumers through the country's membership of the EU and free trade with Iceland, Liechtenstein, Norway and Switzerland through other agreements. Trade also is governed by the rules of the World Trade Organization (WTO).

EU Member States

Austria	Estonia	Italy	Portugal
Belgium	Finland	Latvia	Romania
Bulgaria	France	Lithuania	Slovakia
Croatia	Germany	Luxembourg	Slovenia
Cyprus	Greece	Malta	Spain
Czech Republic	Hungary	Netherlands	Sweden
Denmark	Ireland	Poland	United Kingdom*

EU Candidate Countries

Albania	Macedonia	Montenegro	Serbia
Turkey			

European Economic Area (EEA) Member States

EU member state	Iceland	Liechtenstein	Norway

* In a referendum on 23 June 2016, the UK electorate voted to leave the EU, but the UK will remain an EU member state until a secession agreement is concluded with the EU. The UK prime minister officially notified the EU on 29 March 2017 of the country's intent to withdraw from the EU, thus triggering the procedure under article 50 of the Lisbon Treaty.

Austria also is a member of the Organization for Economic Cooperation and Development (OECD).

OECD member countries

Australia	France	Korea (ROK)	Slovenia
Austria	Germany	Luxembourg	Spain
Belgium	Greece	Mexico	Sweden

Canada	Hungary	Netherlands	Switzerland
Chile	Iceland	New Zealand	Turkey
Czech Republic	Ireland	Norway	United Kingdom
Denmark	Israel	Poland	United States
Estonia	Italy	Portugal	
Finland	Japan	Slovakia	

Enhanced engagement countries

Brazil	China	India	Indonesia
South Africa			

OECD accession candidate countries

Colombia	Costa Rica	Latvia	Lithuania

Price controls

Although Austria historically favored price controls and legislation to control prices is still in place, price controls and caps are rarely introduced. Unfair pricing practices may be challenged via the Competition Authority.

Intellectual property

The following types of intellectual property are legally recognized in Austria: patents, trademarks, copyrights, industrial designs and models, and semiconductor designs. The Patent Law consolidates earlier piecemeal legislation on patents, trademarks and semiconductors.

Austrian intellectual property law is based on internationally established standards. The laws are strict and well enforced. In the case of abuse, a patent or trademark holder can obtain an injunction, although an out-of-court settlement would be the norm. Licensees may sue in their own name against infringement of the licenser’s patent.

Austria is a signatory to the European Patent Convention (EPC) and the Patent Co-operation Treaty (PCT), international treaties designed to streamline the processes for filing patent applications and conduct novelty searches in participating states, thus providing one-stop international patenting. Applications for a European patent may be filed with the Austrian Patent Office or the European Patent Office (EPO) in Munich. Applications under the PCT may be filed with the Austrian Patent Office or with the World Intellectual Property Organization (WIPO) in Geneva. International patent applications may be filed with the Austrian Patent Office in English, French or German. All attachments must be in the same language as the application form.

All EU member states may be designated in a European patent application, but to obtain the patent in Austria, the specification must be translated into German. Austria is not a signatory to the EPO’s London Agreement on simplified translation rules.

Austria provides protection for trademarks, service marks and designs. Trademarks must be registered to be protected, although unregistered marks used by a firm for decades enjoy protection if they have become recognized as the company’s distinguishing marks. A foreign group without a permanent establishment in Austria may invoke the trademark protection provided in its home country, provided that country extends reciprocal privileges to Austrian companies. Design protection may be granted up to five times, each for a five-year period, providing protection for up to 25 years. Trademark protection is granted for a term of 10 years which can always be extended for another period of 10 years, providing indefinite protection. Patents are protected for a maximum of 20 years.

Trademark and design registration also can be obtained from OHIM, the EU’s Office for Harmonization in the Internal Market (Trademarks and Designs), based in Alicante, Spain. EU law protects unregistered designs, but only for three years and only against deliberate copying. This protection applies from the date of disclosure of designs to the public within the EU. That disclosure may occur through designs going on sale or through prior marketing or publicity. A trademark valid in all countries covered by the WIPO Madrid Protocol can be obtained via an OHIM application. Conversely, an application from outside the EU for a trademark under the protocol can designate the whole of the EU as an area for coverage of such a trademark, thus facilitating the process.

Copyrights need not be registered, although a number of associations exist with which copyrights can be registered and through which rights can be exercised. This includes rental and lending rights. Austrian copyright law protects authors of books, plays, operas, films and other forms of art, and extends that protection to television, cable and satellite broadcasts, film, radio, video, musical recordings, photographs, computer programs, databases and information society products, such as internet pages. The standard term of protection is 70 years for the copyright owner and 50 years for a user.

1.2 Currency

Austria is part of the Eurozone and uses the Euro (EUR) as its currency

Countries participating in the Economic and Monetary Union

Austria	France	Latvia	Portugal
Belgium	Germany	Lithuania	Slovakia
Cyprus	Greece	Luxembourg	Slovenia
Estonia	Ireland	Malta	Spain
Finland	Italy	Netherlands	

1.3 Banking and financing

The banking industry, regulated by the Banking Act, is well developed. The basic terms and conditions under which banks and financial institutions can operate are common to all EU countries, including the automatic right for banks registered in one EU member state to set up in another member state under the “single passport” system. Such banks remain subject to home country control. As a result of deregulation and a common EU approach to banking, distinctions between different types of bank (with respect to their shareholding structures rather than the rules under which they operate) have largely disappeared and savings, mutual and cooperative banks operate as commercial banks.

The banking system is supervised by an independent Financial Market Authority (FMA), which is the regulator for all financial institutions, including financial conglomerates. This agency also oversees mergers and takeovers in the financial sector. EU rules apply, thus making it easier for financial institutions recognized in another European Economic Area (EEA) country to operate in Austria, irrespective of their country of origin.

The National bank (central bank) is responsible for the stability of the financial system. It is part of the European System of Central Banks (ESCB), which has at its hub the European Central Bank (ECB) in Frankfurt. The central bank also is part of the Eurosystem, the smaller group of central banks within the ESCB that have adopted the Euro.

The ECB is responsible for monetary policy, exchange rate policy and reserve management for the Euro area, as well as for TARGET, the Trans-European Automated Real-time Gross settlement Express Transfer system for cross-border payments in Euro.

Austria’s capital, Vienna, is the main financial center.

1.4 Foreign investment

Austria is open to foreign investment. Austria’s position as a springboard to central and eastern Europe should be emphasized, as well as its suitability as a location for R&D and the incentives available for research-intensive industries, its qualified and motivated labor force and the country’s good labor relations.

Direct investment in Austria generally does not require government approval. However, there are some restrictions on the acquisition of real estate, which vary by region and apply principally to residential and rural property and to non-EEA citizens. As a general rule, a company setting up in an established business district or industrial area should not encounter problems.

There are no limits on foreign equity investment.

Foreign companies are subject to the same rules as domestic firms in terms of planning permission, licensing of certain activities and environmental permits, including rules on site clean-up and carbon dioxide emissions quotas. Planning permission to build factories or offices is obtained from the local land-use authority. The broad principles applied for operating in regulated industries and for environmental permits are those of the EU as a whole.

1.5 Tax incentives

Foreign direct investment that involves a substantial transfer of important technology and leads to job creation may be eligible for investment incentives and R&D subsidies, although these must conform to EU policies on regional investment and state aid.

Austria largely relies on its low corporate tax rate to attract foreign investors but also offers a tax incentive for R&D. Taxpayers may claim a subsidy in the form of a cash tax premium equal to 12% of qualifying R&D expenses. Social security costs may be reduced or training funds may be available for certain categories of worker who find it difficult to obtain employment or need to improve their skills.

1.6 Exchange controls

Austria has no exchange controls and its ability to introduce controls is constrained by its membership of the EU and the Eurozone. Reporting and client identification requirements apply to significant transactions and for the purposes of anti-money laundering rules. Reporting requirements also apply for balance-of-payment collection purposes. Banks handle reporting of transfers but foreign investments must be reported directly to the central bank. The following main thresholds have applied since 2015: EUR 500,000 for inbound and outbound direct investments; EUR 5 million for portfolio investments held with a foreign custodian; EUR 5 million for certain transactions with foreign partners; EUR 10 million for foreign lending and borrowing (the same applies for trade receivables and liabilities); EUR 1 million for incoming and outgoing payments relating to derivatives and EUR 5 million for derivative holdings; EUR 100,000 for real estate transactions; EUR 500,000 for the export and import of services and EUR 750,000 for the import and export of goods from and to other EU countries.

Financial institutions must provide the central bank with statistical data for balance-of-payment and money-laundering purposes.

2.0 Setting up a business

2.1 Principal forms of business entity

The most common corporate forms of doing business in Austria are the *Aktiengesellschaft* (AG – joint stock company) and the *Gesellschaft mit beschraenkter Haftung* (GmbH – limited liability company). Other forms include the *Offene Gesellschaft* (OG – general partnership) and various forms of the *Kommanditgesellschaft* (KG – limited partnership).

The *Societas Europaea* or SE company form also is available. The SE is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another. Companies from two or more EU member states are permitted to merge to form an SE or create an SE holding company or branch. A company may convert an existing firm to SE status without liquidating. One advantage of an SE is that it is possible to move headquarters to another EU member state with minimal formalities.

Businesses can establish as a European Economic Interest Grouping (EEIG). Companies (even non-EU companies, if the vehicle is a subsidiary in an EU country) that want to start working with an Austrian company but do not want to commit to a formal joint venture, may set up an EEIG. The grouping functions much like a partnership in that the income is taxed in the hands of the member companies. At least two of the companies involved must be from different EU member states.

Formalities for setting up a company

Application procedures for registration of a GmbH and an AG are broadly similar. The company must be registered with the regional court in the area in whose jurisdiction the company is domiciled.

The application must be accompanied by the articles of association, a list of members of the supervisory board if there will be one, proof of the managers' appointments, certified samples of the managing directors' signatures and government licenses if required (e.g. for entities in the banking sector). It also is necessary to provide certification from a bank that the bank is holding the start-up capital on deposit and certification from the tax authorities that no relevant fees or taxes are outstanding. Several of these documents must be drawn up or certified by a notary public. Contributions in-kind are possible, but special requirements apply.

Forms of entity

The main advantages of a GmbH over an AG are that the minimum capital requirements are lower, managers can be replaced more easily, shareholders have more power over managers, voting rights can be freely regulated and publication of annual business reports is not mandatory for smaller firms.

Requirements for AG and GmbH

Capital. *AG*: Minimum, EUR 70,000; minimum face value per share EUR 1; no-par value shares are permitted. A company may be formed immediately (entire capital paid in by founders) or, less commonly, in two stages, when an initial public offering is planned. In such a case, founders subscribe for a limited number of shares and the remainder form part of the IPO. *GmbH*: Minimum EUR 35,000 (although for the first 10 years after incorporation the minimum may amount only to EUR 10,000), with a minimum share value of EUR 70 and one share per shareholder. At least EUR 17,500 (EUR 5,000 where the EUR 10,000 minimum for the first 10 years applies) in cash must be paid in upon incorporation. Each shareholder must pay up at least EUR 70 and at least one-quarter of their holding, whichever is higher. Different rules apply if contributions are in-kind (such contributions must be set forth in the articles of association). Insurance companies may not use the GmbH form and banks need special permission.

Founders, shareholders. *Both*: Minimum of one founding shareholder. There are no nationality or residence requirements for either an AG or a GmbH.

Board of directors. *AG*: An AG must have at least three supervisory board members and a maximum of 20. The board must meet at least four times a year. Supervisory board members may not sit on the management board or be employees of the company. For companies with more than five employees, a works council is compulsory; in companies with a works council, one-third of the board members must be works council representatives. *GmbH*: A supervisory board is mandatory only in special cases, the most important of which are: companies with registered capital in excess of EUR 70,000 and with more than 50 shareholders, or companies that alone or through subsidiaries employ more than 300 persons. Otherwise, the appointment of a supervisory board is optional. There must be at least three individual members. The supervisory board must meet at least four times a year. Appointment rights to works councils are the same as for an AG.

Management. *AG*: There must be a management board consisting of at least one managing director. Managing directors may not be members of the supervisory board. *GmbH*: A GmbH requires a minimum of one managing director. Managing directors may not sit on the supervisory board. No residence or nationality requirements apply in either case.

Taxes and fees. *Both*: Real estate contributed to capital is subject to the standard real estate transfer tax of 3.5%, as well as a 1.1% land registry fee. Exemptions may apply for setting up new companies. Registration fees depend on the number of designated managers, the number of board members and the number of shareholders, but are unlikely to be less than EUR 400. Total formation costs (including taxes, attorney fees and notary fees) range from 10% to 50% of capital.

Types of share. *AG*: Shares can be bearer or registered, but bearer shares are permitted only for listed or to-be-listed AGs. Ordinary and preference shares are permitted but multiple voting shares are not allowed. Up to one-third of shares may be nonvoting preference shares. *GmbH*: Each shareholder holds only one share, which can have a different nominal value from other shareholders. All shares must be registered in the commercial register. They may be transferred only by notarized deed. Voting normally corresponds to the value of the shares, but each shareholder must have at least one vote.

Control. *AG*: Decisions generally are taken by a simple majority of votes cast by shareholders, but significant changes (including amendment to the articles, and therefore, by definition, mergers and capital changes, among others) require 75% support. Shareholders with 5% or more of the capital may call a shareholders' meeting or add topics to the agenda of the meeting. Shareholders with at least 10% may demand a special audit. Other minority rights apply depending on a participation of 5%, 10% or 20%. *GmbH*: Shareholders can issue binding instructions to management by a simple majority vote. Certain resolutions require a qualified vote (e.g. a resolution on a merger or other alterations of corporate identity). Any minority holding of at least 10% of the capital can demand a special audit, request that a general meeting be called or add topics to the shareholders' meeting agenda.

Branch of a foreign corporation

A nonresident company can operate in Austria through a branch rather than a subsidiary. The main advantage of setting up a branch is that the initial start-up costs are lower since no share capital must be paid in. Branches are taxed on Austrian-source income at the normal corporate tax rate. Non-EU firms must appoint a local representative. No capital gains tax is due when a branch is converted into a subsidiary under the Reorganization Tax Act since the branch's assets are transferred at book rather than market value.

2.2 Regulation of business

Mergers and acquisitions

A merger under the Austrian Cartel Act is defined as any alliance between companies where one company gains a direct or indirect dominating influence over another company (e.g. through the acquisition of another company's shares, increasing a stake to more than 25% or 50% or through the acquisition of management control), except where the transaction is within an existing group. Special rules apply to media companies.

The competition authority must be notified of any merger or acquisition that meets these criteria and where the companies concerned together have a worldwide turnover of more than EUR 300 million, or domestic turnover of at least EUR 30 million and at least two of the companies involved each have worldwide turnover of more than EUR 5 million. However, these criteria do not apply if only one of the companies involved had in the preceding year domestic turnover exceeding EUR 5 million and the worldwide turnover of the remaining companies is less than EUR 30 million.

Bank mergers and acquisitions are covered by the cartel law, but also require the approval of the Austrian Financial Market Authority (FMA) (e.g. if any of the following thresholds are exceeded: 10%, 20%, 33% and 50%). Exceptions to cartel law rules apply where a bank is acquiring a company prior to resale or restructuring.

The EU merger control regulations also govern mergers in Austria. The EU has jurisdiction in two cases:

1. Where the combined aggregate worldwide turnover of all of the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state.
2. Where the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states is more than EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each achieves more than two-thirds of its aggregate EU-wide turnover within one and the same state.

If a merger normally would not fall within the European Commission's purview, the affected companies may ask the commission to review it if they would otherwise be obliged to notify three or more member states. The commission proceeds as a "one-stop shop" only if none of the relevant member states objects within 15 days.

Monopolies and restraint of trade

The basic principles of Austrian competition law are those applicable throughout the EU. The competition law establishes the institutional structures and the cartel law sets out permissible and nonpermissible activities. The competition authority has the power to levy fines of up to 10% of turnover and to stage "dawn raids" on companies in search of incriminating evidence of collusion. Implementation of the competition law is the responsibility of the competition authority and a federal cartel prosecutor within the ministry of economics.

Market dominance per se is not illegal in Austria but abuse of market dominance is illegal. The merger of two or more companies can be prohibited if the merger intensifies or creates market dominance. There is a legal presumption of market dominance in the cartel act, i.e. market dominance is presumed if a company has: i) a market share of at least 30%; ii) a market share of more than 5% and there are not more than two competitors; or iii) a market share of more than 5% and the company is one of the four largest companies that have a joint market share of at least 80%. Additionally, market dominance of two or more companies is assumed if the group of companies together has a market share of at least 50% and consists of not more than three companies or if the group of companies has a market share of at least 2/3 and consists of not more than five companies. Selling below cost is likely to be presumed to constitute an abuse of market power.

Concerted practices that restrict competition in the Austrian market are illegal, whether they deal with production, distribution, demand, fixed prices or price recommendations that are enforced.

Austrian law recognizes that certain types of concerted practice are beneficial or benign. This can be the case when concerted practices are in the interests of rationalization, e.g. when companies share services or where such practices will ensure that a consistent set of standards are used across an industry or for a product. There is an automatic exemption for de minimis agreements where either the combined market share of the competing parties does not exceed 10% in a relevant market or where the market share of the noncompeting parties is for each participating company not higher than 15% in the relevant market. In both case, such agreements must not aim at setting selling prices, restricting production or sales, or allocating the markets between the participating companies.

2.3 Accounting, filing and auditing requirements

Within the first five months of the new financial year, managers must draw up an annual financial statement, notes on the accounts and an annual report for the preceding financial year. Austrian accountancy requirements are in line with those of the EU company law directives. The annual general meeting must approve the (audited) financial statements within the first eight months of the new financial year. Company reports must be audited and filed with the commercial register within nine months of the balance sheet date. Fines are imposed for failure to meet this deadline.

GmbHs that are classified as small corporations need not be audited if they do not have a compulsory advisory board and disclosure requirements are less stringent for small corporations. A small corporation is one that does not exceed two of the following three criteria: 50 employees, EUR 5 million in assets and EUR 10 million in turnover in two consecutive years (special rules apply for new foundations and restructurings). Companies that qualify as micro companies are not required to prepare notes on the accounts if certain additional information is provided below the balance sheet (including the total amount of financial obligations, guarantees and contingencies not shown in the balance sheet; real collateral; and the amount of advance payments and loans, together with the interest rate applied, granted to the management and supervisory boards).

A micro company is one that does not exceed two of the following three criteria for two consecutive years: EUR 350,000 in assets, EUR 700,000 in turnover and 10 employees in two consecutive years. Investment and holding companies cannot be classified as micro companies.

Disclosure rules for companies listed on the Vienna stock exchange are more stringent, including the use of International Accounting Standards and the issue of quarterly reports. Issuing prospectus rules are the same as for other EU countries, and use of a prospectus already used in another EU country is possible. Many large companies are adopting the Austrian Corporate Governance Code developed by the Austrian Working Group for Corporate Governance.

3.0 Business taxation

3.1 Overview

The principal taxes applicable to companies in Austria are corporate income tax, municipal tax, real estate tax, value added tax (VAT), social security contributions, and customs and excise duties. There is no branch profits tax or excess profits tax.

Reductions in the corporate tax rate in recent years have made Austria an attractive place to invest and have ensured that the country remains competitive.

Austria has fully implemented the EU parent-subsidiary, interest and royalties, and merger directives into domestic law. The new directive on the mandatory exchange of information also has been implemented in the Common Information Standard Law which obliges Austrian financial institutions to provide the relevant data to the Austrian tax authorities, who in turn forward the information to the foreign jurisdictions. For new accounts of both individuals and legal entities, the first report must be provided for the period 1 October to 31 December 2016. Transitional provisions are in place for existing accounts.

Austria has a broad tax treaty network in effect, with most treaties following the OECD model treaty.

The parliament is responsible for passing laws (that are proposed by the government or parliament itself). However, a law must be authenticated by the president before it can enter into force; the law is then published in the federal law gazette.

Austria Quick Tax Facts for Companies	
Corporate income tax rate	25%
Branch tax rate	25%
Capital gains tax rate	0%/25%
Basis	Worldwide basis
Participation exemption	Yes
Loss relief	
• Carryforward	Indefinite; 75% limitation on utilization for corporations subject to corporate income tax
• Carryback	No
Double taxation relief	Yes
Tax consolidation	Yes
Transfer pricing rules	Transfer pricing documentation law introduced in 2016, also revenue guidelines
Thin capitalization rules	Not codified, but case law
Controlled foreign company rules	No
General anti-avoidance rule	Yes
Tax year	Generally calendar year
Advance payment of tax	Yes
Return due date	30 June
Withholding tax	
• Dividends	0%/27.5%
• Interest	0%/25%/27.5%
• Royalties	20%
• Branch remittance tax	No

Capital tax	No
Payroll tax (including municipal tax, contribution to family fund)	7.1%
Real estate tax	0.2% (multiplied by regional coefficient)
Real estate transfer tax	3.5%
Stamp duty	0.8% to 2%
Bank tax	0.024% to 0.029% (plus extraordinary bank tax payable in 2017)
Social security contributions	21.48%
VAT	20% (standard rate)/13%/10%/0% (reduced rates)

3.2 Residence

A company is considered resident in Austria if its effective management is in Austria or if it is incorporated in Austria. The place of effective management for these purposes is the place where the day-to-day management of the company is actually carried out.

3.3 Taxable income and rates

Resident corporations pay tax on worldwide income but the tax liability may be restricted or reduced by tax treaties. Therefore, foreign income may be exempt or taxes paid on foreign income may be credited against Austrian taxes, as stipulated under an applicable treaty or as approved by the tax authorities. Nonresident companies (branches) are subject to tax only on Austrian-source income.

The corporate tax rate in Austria is 25%, which is payable by resident companies and branches of foreign companies. Even if a company does not earn any income, a minimum corporate income tax of EUR 1,750 is payable by a limited liability company. For newly established companies, the minimum tax is EUR 500 in the first five years after becoming subject to unlimited corporate income tax and EUR 1,000 for the following five years. For joint stock companies, the minimum corporate tax is EUR 3,500. For groups, these minima apply to each taxpaying entity within the group. The minimum tax may be credited against future tax liabilities.

Taxable income defined

Taxable income is broadly defined as the difference between net assets at the beginning and end of the financial year reduced by any losses carried forward. Transactions are accounted for on an accruals basis in most cases.

Under the domestic participation exemption, dividends received by an Austrian company from another Austrian company are exempt from tax regardless of the extent of the participation.

Under the international affiliation privilege, dividends and capital gains received by an Austrian resident company from a nonresident subsidiary (whether resident in an EU/EEA member state or a third country) are exempt from corporate income tax if the following conditions are satisfied:

- The parent company holds at least 10% of the subsidiary;
- The participation is held for a continuous period of at least one year;
- The dividend is not tax deductible for the foreign subsidiary; and
- The subsidiary has one of the legal forms listed in the annex to the EU parent-subsidiary directive (or is legally comparable to an Austrian company).

The exemption does not apply, however, if the subsidiary is located in a low tax country (broadly where the subsidiary enjoys an effective corporate income tax rate of less than 15%) and meets the passive income criteria. Under the anti-avoidance rules, a “switch over’ clause will be triggered and the dividends will be taxed at the Austrian corporate income tax rate, with a credit granted for any foreign tax paid on the income.

The international affiliation privilege also may apply in the case of portfolio dividends (i.e. shareholdings below 10%) received by an Austrian company from a foreign entity provided: (i) the foreign entity has one of the legal forms listed in the annex to the EU parent-subsidiary directive (or is legally comparable to an Austrian company); (ii) the dividends are not tax deductible for the subsidiary; and (iii) the country in which the subsidiary is resident has concluded a broad mutual assistance in tax matters agreement with Austria (which is the case for Norway and approximately 30 non-EEA countries). The exemption for portfolio dividends, however, will be denied if the distributing company is not subject to a foreign tax comparable to the Austrian corporate income tax or the subsidiary's profits are subject to foreign corporate income tax that is more than 10 percentage points lower than the current Austrian corporate income tax rate (i.e. lower than 15% for 2017) or the subsidiary is exempt from foreign taxation. In that case, the switch over clause will be triggered.

Deductions

Normal operating expenses and extraordinary expenses are allowed as deductions against gross income. Operating expenses include all the normal expenses of operating a business, such as raw materials, wages, maintenance costs, travel expenses, chamber of commerce dues (membership is compulsory), statutory social insurance contributions and normal depreciation.

Deductible direct expenses include those for the following purposes: maintaining earnings and obtaining services; materials and equipment required for work; R&D; outlays on business vehicles; expenses connected with the formation of companies and the issue of shares; interest on loans and debts to third parties; royalties; and service fees. Special expenses, such as contributions and premiums for life and health insurance, fees for certified public accountants, housing expenses and some repair costs, also may be deducted. Tax payments are deductible, except for corporate income, bank tax (although the extraordinary banking tax payment is tax deductible, see 3.8 below) and real estate acquisition taxes. Fringe benefits granted to employees are deductible up to certain limits. Only 50% of hospitality expenses and remuneration of the supervisory board are tax deductible.

In addition to deductions for compulsory contributions to social insurance, public relief and severance pay investment funds, companies may reduce their taxable income by setting up occupational pension funds.

There is provision for the immediate deduction of arm's length interest payments from debt used to acquire holdings that generate tax-exempt dividend income. However, a deduction is disallowed if shares are acquired from a related party. Certain funding related arrangement fees in connection with a debt financed share deal (e.g. commissions to third parties, expenses for collateral), also are not tax deductible.

The deduction of interest and royalty expenses paid to intragroup companies is denied if the income derived from interest or royalties is not subject to tax in the hands of the recipient company or is subject to a statutory or effective tax rate below 10%.

Expenses for salaries exceeding EUR 500,000 (cash and in kind) per person per year and golden handshakes not subject to beneficial 6% taxation at the employee level are not deductible.

Depreciation

Machinery and equipment must be depreciated on a straight-line basis over the useful life. No other depreciation methods are permitted.

A company normally may depreciate its capital goods over a period it deems appropriate. Depending on the item in question, a period of four to ten years usually is the norm. Accelerated depreciation for proven exceptional wear-and-tear or obsolescence is permissible. Equipment costing EUR 400 or less may be written off in the year of purchase. An annual fixed rate of 12.5% applies to cars purchased for business purposes.

Goodwill purchased via an asset deal and intellectual property normally is amortized over 15 years.

A fixed annual depreciation rate of 2.5% applies to buildings. The rate is 1.5% if the building is rented for residential use. Depreciation of equity stakes in loss-making firms must be over seven years, if deductible at all. Depreciation is not permissible if the loss in value is the result of a profit distribution. If a capital contribution was granted by the "grandparent," the intermediary company must not depreciate its investment in the subsidiary corresponding to the capital contribution. Equity stakes in foreign corporations subject to the international participation exemption must not be depreciated unless the loss is due to the liquidation or insolvency of the foreign company. It is possible to opt out of the participation exemption in the year the equity stake was acquired. In this case, depreciation of an impairment is permitted and capital losses are tax deductible but capital gains are no longer exempt from corporate income tax.

If an asset is shown to be permanently losing value, it must be devalued to its market value. Until 31 December 2015, it was possible to revalue or to retain the original value of an asset in the balance sheet if the value of the asset subsequently increased. The ceiling was the original acquisition cost reduced by normal depreciation. From 1 January 2016, an asset whose value has increased (except for goodwill) must be revalued. For tax purposes, the taxation in 2016 of the increase in value realized in years starting before 31 December 2015 can be postponed by setting up a reserve in the tax return which is then netted against possible future depreciation/write down of the same asset or released on the disposal of the asset. If this alternative is adopted for tax purposes, it also may be adopted in the financial statements.

Losses

For corporations subject to corporate income tax, loss carryforwards generally may be offset against 75% of the profits of a given year, with the remainder carried forward to be offset against 75% of the profits in future years. For taxpayers subject to income tax, 100% offset is possible. Loss carryforwards may not be used, however, where the identity of the corporation is changed as a result of changes to the ownership or the organizational and commercial structure, unless the changes took place to facilitate a financial reorganization of the corporation aimed at maintaining a substantial number of jobs. Similar provisions apply when a company with loss carryforwards is merged into another company and, within a reasonably short time after the merger, discontinues the business operations of the merged company. Provisions are in place to ensure that such restructuring is genuine and not a device for creating tax-deductible losses.

The carryback of losses is not permitted.

Losses incurred by a foreign permanent establishment may be claimed temporarily against profits to the extent they cannot be offset against foreign income. Such losses are subject to a tax pick-up if they are either available for use or actually used in the foreign jurisdiction in subsequent years. For countries with no broad mutual assistance in tax matters, there is an automatic tax pick up in the third year after recognition of the losses at the latest. Grandfathering rules apply for foreign branch losses incurred up to and including tax assessment year 2014.

The tax group regime allows direct foreign subsidiaries of Austrian tax group members to be included in an Austrian tax group. As a result, tax losses of non-Austrian group members can be used temporarily in Austria but are subject to recapture and taxation in later years if: (i) they are available to be used or actually used in the foreign jurisdiction; (ii) the foreign subsidiary ceases to be a tax group member or to exist at all; or (iii) the foreign subsidiary's business is scaled down significantly.

The total amount of foreign tax losses that can be used in a given year is limited to 75% of the taxable income of Austrian tax group members (including the Austrian head of the group). Foreign losses that cannot be used in a particular year become part of the tax loss carryforwards of the head of the group.

Income generated by the recapture of previously utilized foreign losses can be fully offset against tax losses carried forward.

Since 1 March 2014, foreign tax group members may only be subsidiaries resident in EU countries or countries with broad mutual assistance in tax matters. The membership of existing group members resident in nonqualifying countries was automatically terminated as at 31 December 2014. As a result, any foreign losses of such subsidiaries previously utilized by the Austrian head of the tax group which had not yet been subject to recapture and taxation as at that date were subject to recapture and taxation as at 1 January 2015. To mitigate the impact of this provision, income generated through this tax pick-up is spread over three years and 100% utilization of any tax loss carryforwards is possible.

No special treatment applies to realized foreign exchange gains and losses: they are treated as ordinary business income or losses and are subject to taxation at normal rates. Unrealized exchange gains generally may not be reflected in financial statements, while unrealized losses must be recorded (the same rule applies to all other transactions). For all business years ending after 30 June 2014, long-term accruals (with a duration at the balance sheet date of more than 12 months) have to be discounted over their actual duration, applying an interest rate of 3.5%.

3.4 Capital gains taxation

Corporate capital gains usually are taxed as ordinary corporate income at the standard 25% corporate income tax rate. However, under the international participation exemption, there is no taxation of gains on the sale of shares in a nonresident corporation in which the Austrian parent company holds more than 10% for at least one year, unless the anti-abuse provisions for tax haven companies (see 3.3 Taxable income and rates) are triggered. It is possible to opt out of the international participation exemption, resulting in capital gains becoming taxable and capital losses becoming tax deductible. Tax deductible write-offs and capital losses relating to subsidiaries covered by a participation exemption and qualified as fixed assets must be amortized over seven years for tax purposes.

There is no adjustment for the inflationary component of gains. Capital losses do not enjoy any special tax breaks. Gains resulting from mergers, if any, are taxed as ordinary capital gains (i.e. as corporate income), but merger surpluses normally should be tax free.

Nonresidents are subject to tax at corporation tax rates on gains on equity stakes that have exceeded 1% at any time in the previous five years. The tax is waived under the provisions of most tax treaties.

3.5 Double taxation relief

Unilateral relief

Austria prevents the double taxation of income by unilateral provisions or under the provisions of an applicable tax treaty. Unilateral relief is provided either by an exemption or ordinary foreign tax credit. Foreign tax paid may be credited against Austrian tax but the credit is limited to the amount of Austrian tax payable on the foreign income.

Tax treaties

Austria has a broad tax treaty network, with most treaties following the OECD model treaty. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Austria's treaties generally contain OECD-compliant exchange of information provisions.

A reduced rate of withholding tax under a treaty may be applied directly at the time the payment is made if the income recipient completes specified forms and submits these to the Austrian income payer.

Austria Tax Treaty Network

Albania	Estonia	Luxembourg	Serbia
Algeria	Finland	Macedonia	Singapore
Armenia	France	Malaysia	Slovakia
Australia	Georgia	Malta	Slovenia
Azerbaijan	Germany	Mexico	South Africa
Bahrain	Greece	Moldova	Spain
Barbados	Hong Kong	Mongolia	Sweden
Belarus	Hungary	Montenegro	Switzerland
Belgium	India	Morocco	Taiwan
Belize	Indonesia	Nepal	Tajikistan
Bosnia-Herzegovina	Iran	Netherlands	Thailand
Brazil	Ireland	New Zealand	Tunisia
Bulgaria	Israel	Norway	Turkey
Canada	Italy	Pakistan	Turkmenistan
Chile	Japan	Philippines	Ukraine
China	Kazakhstan	Poland	United Arab Emirates
Croatia	Korea (ROK)	Portugal	United Kingdom
Cuba	Kuwait	Qatar	United States
Cyprus	Kyrgyzstan	Romania	Uzbekistan
Czech Republic	Latvia	Russia	Venezuela

Denmark	Liechtenstein	San Marino	Vietnam
Egypt	Lithuania	Saudi Arabia	

3.6 Anti-avoidance rules

Transfer pricing

Transactions between related parties must be at arm's length. Payments to a foreign affiliate generally are deductible. However, it is common practice for tax authorities to look at such payments carefully, and they will be judged on the basis of the principles in Austria's 2010 transfer pricing guidelines, which largely follow the OECD guidelines. Legally, the Austrian transfer pricing guidelines 2010 are not binding; they represent the Federal Ministry of Finance's interpretation of the arm's length principle and are addressed to the tax authorities.

Austria allows the use of the comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods. The transfer pricing method selected by a taxpayer must be the most appropriate method for a particular case. If more than one method can be applied in an equally reliable manner, the traditional transaction methods are preferable to the transactional profit methods.

In course of the BEPS project Austria has introduced "standardized" transfer pricing documentation. The legislation is based on the OECD's three-tiered standardized approach to documentation (i.e. master file, local file and country-by-country (CbC) report) and generally is applicable for fiscal years starting on or after 1 January 2016. In future, transfer pricing documentation will be a standardized process for the majority of Austrian entities that are members of a multinational group. The preparation of a master file and local file will be mandatory. The documentation can be in English or German. Although they do not have to be filed automatically with the tax return, the master file and local file must be submitted within 30 days after filing the corporate income tax return if requested by the tax authorities.

An Austrian resident ultimate parent company must submit a CbC report to the competent tax authority. In addition, an Austrian entity must assume responsibility for submitting the CbC report in exceptional cases even if it is not the ultimate parent company. If the ultimate parent is situated in Austria, the CbC report has to be filed for fiscal years starting on or after 1 January 2016. Where an Austrian entity assumes the filing obligation for a foreign ultimate parent company, the CbC report may be submitted for fiscal years starting on or after 1 January 2017. In any case, the tax office of the Austrian entity had to be informed by the end of 2016 which entity would file the reports.

The obligation to file CbC reports applies where the consolidated group revenue is at least EUR 750 million. In respect of the standardized documentation requirements (i.e. preparation and submission of master and local files), an Austrian resident entity of a multinational group whose revenue in two consecutive fiscal years is below EUR 50 million is exempt from these obligations.

The bill provides for penalties of up to EUR 50,000 where there is a deliberate failure to comply with the CbC reporting obligations (e.g. a delay in filing, data submitted is missing or incorrect, etc.). In cases of gross negligence, the penalties may be up to EUR 25,000.

Taxpayers may obtain binding rulings on transfer pricing issues.

Thin capitalization

There are no formal thin capitalization rules in Austria. Interest expense generally is tax deductible (but see the commentary on the anti-abuse provision regarding intragroup restructurings below and Deductions under 3.3 above), although interest paid to a related party may be recharacterized as a constructive dividend to the extent the consideration is not at arm's length or the underlying debt is qualified as hidden equity.

Austria's Administrative Court of Justice has developed case law using the concept of "equity-substituting shareholder loans," which is used to determine whether equity funding is sufficient and generally applies to loans granted by direct shareholders, indirect shareholders or a group company. A debt:equity ratio of 4:1 usually is accepted but no safe harbor rules apply.

Anti-abuse provision regarding intragroup restructurings

Interest expenses incurred in connection with the acquisition of direct or indirect participations from a group company are not deductible. Interest and royalty payments to related parties are not deductible if the income is not subject to tax in the recipient company or is subject to a statutory or effective tax rate below 10%.

Controlled foreign companies

Austria does not have a CFC regime, but the international participation exemption contains some anti-abuse rules akin to CFC rules in other jurisdictions. In the case of participations covered by the international affiliation privilege, there is a switch over from the exemption method to the credit method if either of the following applies:

- In the case of shareholdings of 10% or more, if the foreign subsidiary is subject to an effective corporate income tax burden of less than 15% and earns predominantly passive income. If passive income accounts for more than 62.5% of the subsidiary's total income, the threshold for the effective corporate income tax burden is 18.75%, according to the interpretation of the Austrian tax authorities.
- In the case of portfolio dividends (i.e. shareholdings below 10%), if the foreign subsidiary is not subject to a corporate income tax in its country of residence that is comparable to the Austrian corporate income tax, enjoys substantial tax exemptions or the applicable foreign nominal corporate income tax rate is below 15%.

Access to bank data

The federal tax authorities can obtain a court order to obtain access to bank data via a request for information. Such orders are granted only if the tax authorities have reasonable doubts regarding the accuracy of tax returns, it can be expected that such access will clarify those doubts and the intervention into confidential interests is reasonable. The taxpayer first must be granted the right to respond to the tax authorities' concerns.

Corresponding to this simplified access to bank data for the tax authorities, the bank account register act empowers the Ministry of Finance to create a federal register of bank accounts and deposits containing the bank account number and personal data of the account holders. This databank can be made available to the tax authorities, as well as the public prosecution department and criminal courts.

According to the capital outflow reporting act, (coherent) capital "drains" amounting in total to at least EUR 50,000 have to be reported by the banks concerned for the previous calendar year until 31 January of the following year. Payments and cash transfers of sight, time and saving deposits, as well as donations of capital assets and transfers of capital assets to foreign depositories, are considered capital drains.

The standard reporting act implements the common reporting standards (CRS) developed by the OECD. From 1 October 2016, financial institutions are required to report extensive account details of taxpayers resident in a contracting country to the tax authorities. Contracting countries are all EU member states, plus countries with whom an agreement on reporting standards has been concluded. The information to be provided includes personal data, as well as the tax number, income received, etc., so that for these taxpayers, banking secrecy no longer applies. The information must be reported electronically to the Austrian tax authorities by 30 June of the following year. The tax authorities then must forward the information to the foreign jurisdictions by the following 30 September.

General anti-avoidance rule

Austria has a general anti-avoidance rule, which relies on the substance-over-form concept. In tax matters, the true economic substance of a transaction prevails over its formal appearance. Liability to tax cannot be avoided or reduced by abusing the instruments of civil law. In cases of abuse, the tax authorities have the power to levy tax as if the transaction was structured in line with the true economic circumstances.

BEPS measures

On 5 October 2015, the G20/OECD published 13 final reports and an explanatory statement outlining consensus actions under the BEPS project. The output under each of the BEPS actions is intended to form a complete and cohesive approach covering domestic law recommendations and international principles under the OECD model tax treaty and transfer pricing guidelines.

Governments must introduce the necessary legislation to implement BEPS-related measures in the domestic law of their jurisdiction. Certain measures that have been introduced in Austria and are covered within this guide are summarized in the table below.

BEPS measures in Austria

BEPS Action	Related measures
Action 1: Addressing the tax challenges of the digital economy	The EU VAT directive applies and is implemented into domestic law.
Action 2: Neutralizing the effects of hybrid mismatch arrangements	Austria has specific provisions to counter hybrid mismatch arrangements. It is not yet known whether these measures will be amended as a result of the G20/OECD final recommendations (e.g. profit participations of any kind are not tax exempt under the international participation exemption if they are tax deductible at the level of the foreign entity).
Action 4: Interest deductions and other financial payments	Austria has introduced specific measures aimed at limiting the deductibility of interest (and royalty) payments. It is not yet known whether these will be amended as a result of the final G20/OECD BEPS recommendations. As explained above, interest expenses incurred in connection with the acquisition of direct or indirect participations from a group company are not deductible. Interest and royalty payments to related parties are not deductible if the income is not subject to tax in the recipient company or is subject to a statutory or effective tax rate below 10%.
Action 5: Countering harmful tax practices	Legislation on the automatic exchange of advance rulings and advance pricing agreements between tax authorities within the EU has been published. For rulings issued between 1 January 2014 and 31 December 2016 (and rulings issued between 1 January 2012 and 31 December 2013 which were valid on 1 January 2014), the reporting is required in 2017. For new rulings issued as from 2017, reporting is required by 31 March of the following year.
Actions 8-10: Transfer pricing	An official statement on the expected implementation of Actions 8-10 has not yet been made, although it is possible that the Austrian tax authorities will consider the changes in the OECD transfer pricing guidelines to be effective immediately.
Action 13: Transfer pricing documentation	CbC reporting obligations and changes to transfer pricing reporting and documentation obligations have been implemented (see 3.6 above). Austria is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.
Action 14: Make dispute resolution mechanisms more effective	Austria is one of the countries that has committed to mandatory binding arbitration.

3.7 Administration

Tax year

The tax year generally is the calendar year, although a different year may be used if approved by the tax authorities. In any case, the tax accounting period generally may not exceed 12 months.

Filing and payment

Austria operates a self-assessment system.

Corporate income tax is paid in four installments based on tax paid in the previous year. These installment payments are due on the 15 February, May, August and November, with the balance paid (or deducted) once the tax return has been processed. If corporate income tax is assessed by the authorities after 30 September of the year following the relevant calendar year, interest on the outstanding balance is due. Interest payments can be avoided by making an additional payment of the amount of the expected balance.

The minimum tax (generally EUR 1,750 for a limited liability company/EUR 3,500 for a joint stock company) is paid quarterly on the date the normal advance tax payments are due, but there is no refund for an overpayment. A credit is available in future years if sufficient profits are made.

The corporate income tax return must be filed electronically and submitted by 30 June of the year following the tax year. The filing deadline for taxpayers represented by a tax advisor may be extended until 30 April of the second year following the tax year if the tax office does not demand an earlier filing.

The deadline for electronic filing of CbC reports is twelve months after the last day of the relevant fiscal year.

Consolidated returns

Companies may form a consolidated group in Austria. To be eligible to file a consolidated return, a parent company must have a direct or indirect participation of more than 50% in the affiliated company throughout the entire fiscal year of the relevant company and a tax allocation must be in place. Group companies can be resident or nonresident (in the latter case, they must be direct foreign subsidiaries of Austrian tax group members).

Foreign tax group members only may be subsidiaries resident in EU countries or countries that have concluded broad mutual assistance in tax matters agreements with Austria. While foreign losses of nonresident companies can be offset within a group, they are subject to a recapture rule if the nonresident uses/could use the losses in the foreign jurisdiction in subsequent years, leaves the Austrian tax group, changes its business significantly compared to the year in which the losses arose or is subsequently liquidated.

The total amount of foreign tax losses that can be used in a given year is limited to 75% of the taxable income of Austrian tax group members (including the Austrian head of the group). Foreign losses that cannot be used in a particular year become part of the tax loss carryforwards of the head of the group.

Each tax group is subject to a minimum duration of three full tax years and each group member must be a member for three full tax years.

Even though the taxable income of group companies is attributed to the head of the group, annual corporate income tax returns must be filed for each individual member of the group subject to unlimited tax liability in Austria, as well as for the head of the group. The assessment of the total corporate income tax of the group takes place in two steps: first, each member, as well as the head of the group, receives a preliminary assessment note, based on which, as a second step, the total group tax is assessed.

Statute of limitations

The statute of limitations for the assessment/reassessment and collection of tax normally is five years, extended to 10 years in cases of tax evasion. The statute of limitations begins to run from the year following the year in which the tax burden crystallizes. The five-year term can be extended by one year as the result of certain legal acts by the authorities (e.g. the opening of a tax audit). In the case of an appeal, the general statute of limitations for appeals applies. The tax authorities lose their right to levy tax if the tax burden crystallized more than 10 years ago.

Tax authorities

The Ministry of Finance, the country's highest financial authority, is responsible for budgetary planning, economic policy, customs and taxation.

There are around 40 “general” tax offices across Austria that are competent in all matters of taxation unless a special provision prevails. Some offices are mandated with specific issues for particular groups of taxpayers. A “special” tax office is competent for duties and transaction taxes (other than VAT).

Rulings

Taxpayers may obtain binding advance rulings on issues of business restructurings, group taxation and transfer pricing. A fee of between EUR 1,500 and EUR 20,000 (depending on the applicant’s income and whether it is a member of a consolidated group of companies) is due at the time the application is submitted. The fee is reduced to EUR 500 if the application is rejected or withdrawn before it has been addressed.

A nonbinding ruling can be requested for proposed transactions that do not qualify for the binding advance ruling regime, although the tax office is not obliged to issue a bona fide ruling. A ruling does not qualify as an assessment and is, therefore, not legally binding on the tax authorities or the taxpayer. However, in certain cases, informal rulings may be binding on the tax administration based on the principle of good faith.

3.8 Other taxes on business

Bank tax

Austrian banks and foreign banks with an Austrian branch generally are subject to a banking tax based on the balance sheet total reduced by equity and covered contributions. The normal banking tax applies at a rate of 0.024% to assessment bases between EUR 300 million and EUR 20 billion and 0.029% to assessment bases in excess of EUR 20 billion. Complex formulae apply to calculate the assessment base and the minimum and maximum liabilities. The bank tax is not deductible for corporate income tax purposes. In addition, an extraordinary banking tax payment of 0.211% to 0.258% of the FY 2015 balance sheet total is payable in four installments from 2017 to 2020 and there is no minimum or maximum liability.

4.0 Withholding taxes

4.1 Dividends

Dividends paid to a nonresident recipient are subject to a 27.5% withholding tax, unless the rate is reduced under a tax treaty. Under Austrian rules implementing the EU parent-subsidiary directive, no tax is imposed where the dividends are paid to an EU parent company falling under article 2 of the directive and the parent holds at least 10% of the payer for more than one year. Anti-abuse provisions stipulate that the dividend-receiving entity must carry on business activities and have office space and employees to qualify for the exemption at source and that this is properly documented when paying out the dividend, but a refund may be possible if the above criteria are not met.

4.2 Interest

From 1 January 2017, interest payments made by an Austrian resident to nonresident individuals and corporations are only subject to withholding tax of 25%/27.5%, if either the recipient does not provide a certificate of tax residence or is resident in a non-EU country with which Austria has not concluded an agreement on the automatic exchange of information.

Payments made to a nonresident silent partner in an Austrian company are subject to 27.5% withholding tax (reduced to 25% if the silent partner is a corporation).

For such income, the taxpayer must file a tax return. Where the interest paid is not subject to corporate tax in Austria, withholding tax levied at source is refunded. Where the tax rate is reduced under a tax treaty, exemption at source is possible.

4.3 Royalties

Royalty payments made to a nonresident corporation are subject to a 20% withholding tax. Under Austrian rules implementing the EU interest and royalties directive, there is no withholding tax on Austrian-source royalty payments to a qualifying associated company resident in another EU member state or in Switzerland. A tax treaty may provide lower rates for other countries.

4.4 Branch remittance tax

Austria does not levy a branch remittance tax.

4.5 Wage tax/social security contributions

Employment income of residents and nonresidents is subject to wage tax, which must be withheld by the employer and transferred to the tax authorities.

The employer must pay the social security contributions by making its own payments and by withholding from the employee's salary. The contributions are calculated as a percentage of the employee's monthly gross remuneration up to a maximum of EUR 69,720 per year (see 7.2).

4.6 Other

Fees for technical or commercial advisory services are subject to a 20% withholding tax, unless the rate is reduced or the payments are exempt under a tax treaty.

5.0 Indirect taxes

5.1 Value added tax

VAT is levied at each stage of the production and distribution chain. In general, taxable supplies of goods or services within the Austrian territory that are carried out by a VAT entrepreneur, as well as intra-community acquisitions and imports of goods, fall within the scope of Austrian VAT. Austria levies VAT on all goods and services, with a few exceptions, including: air and sea travel; businesses with an annual taxable turnover that does not exceed EUR 30,000; banking transactions and exports. The assessment basis is the value of the goods or services (or the cost attributable to their consumption) or the customs value of the goods.

The standard VAT rate is 20%. A reduced rate of 13% applies to the sale of goods and services regarding animals and pet food; plants and seeds; wood; accommodation; accommodation and related services in schools, youth centers and similar establishments; entrance fees to swimming pools and related services; (domestic) aviation; sales of wine directly from the farm and cultural services (tickets for cinemas, museums etc.). A reduced rate of 10% applies to foodstuffs; pharmaceuticals; agricultural products; rents for residential purposes; entertainment; and public utilities (except electricity). Professional services (such as lawyers and architects) are subject to 20% VAT. Certain supplies are zero-rated and some are exempt.

Austrian entrepreneurs with annual turnover exceeding EUR 30,000 must register for VAT purposes. Nonresidents that make taxable supplies of goods or services in Austria also are required to register regardless of their turnover (however, the reverse charge mechanism may apply to transactions between two entrepreneurs so that registration would not be necessary).

VAT grouping is possible in Austria where a parent company exercises financial, economic and operational control over a subsidiary to the extent that the subsidiary is controlled by the parent. In the case of a VAT group, intragroup transactions between entities in Austria are considered internal transfers and not subject to VAT.

VAT returns must be submitted monthly, with a final return submitted electronically by 30 June of the following year (an extended deadline applies for taxpayers represented by a tax advisor). Quarterly filing is possible for entrepreneurs whose turnover did not exceed EUR 100,000 in the previous year.

The mini one-stop shop (MOSS) regime applies for telecom, broadcasting and e-commerce services provided by businesses established within the EU to nonentrepreneurs because these services are considered to be provided in the place where the recipient of the services is resident. Under this regime, VAT returns and payments can be centrally declared in one member state.

5.2 Capital tax

No capital tax is levied after 1 January 2016.

5.3 Real estate tax

Municipalities levy annual real estate taxes on all Austrian situs immovable property, regardless of whether the property is developed. Property used for charitable, medical, scientific, educational or similar purposes is exempt. The real property tax is levied at a basic federal rate, multiplied by a municipal coefficient on rateable value. The basic federal rate usually is 0.2% and the municipal coefficients range up to 500%. The value assumed tends to be far below the market price.

5.4 Transfer tax

Transfers of real estate are subject to an acquisition tax of 3.5%, known as real estate transfer tax (RETT). The rate is 2% for transfers of agricultural and forestry land between close family members. The general tax base is primarily the consideration; the minimum is the fair market value.

Transfers of at least 95% of the shares in an entity owning Austrian real estate or transfers of a smaller share quota resulting in the transferee hold at least 95% of the shares either alone or together with other members of the same consolidated (corporate income) tax group, are subject to RETT. The tax also applies to partnerships owning Austrian real estate if at least 95% of the partners change within a five-year period. Shares or partnership interests held in trust are attributed to the trustee.

The tax base for the RETT in such cases and for restructurings covered by the reorganization tax act, is the lower of: (i) three times the value of the land according to valuation act plus the value of buildings; (ii) standardized values provided by a Ministry of Finance decree based on the location of the real estate and (iii) the fair market value. A preferential tax rate of 0.5% applies and, upon application, the RETT may be paid in installments over two to five years.

An additional registration fee of 1.1% accrues upon registration of the new proprietor in the Austrian land register. The assessment basis for this registration fee is in general the consideration paid. For certain qualifying transfers (such as reorganizations and transfers between close family members) the registration fee is based on 300% of the rateable value with a ceiling of 30% of the fair market value. There is a registration fee of 1.2% on mortgages.

5.5 Stamp duty

Stamp duty is levied on a number of transactions (including assignment of receivables, rent and lease contracts) at rates ranging from 0.8% to 2%.

5.6 Customs and excise duties

Customs duties are levied on goods imported from outside the EU. Excise taxes are levied on tobacco, alcohol and other beverages, and petroleum products.

5.7 Environmental taxes

Smaller vehicles travelling on Austria's highways must pay a toll tax, which is payable in advance by buying toll stickers. The cost for an annual sticker varies depending on the size of the vehicle. Trucks are subject to a per-kilometer toll.

5.8 Other taxes

Membership of the Austrian chamber of commerce is compulsory and funded from a levy on payroll and transactions liable for VAT (if sales subject to VAT exceed EUR 150,000).

Advertising is taxed at 5%.

Municipalities levy a general payroll tax of 3% on total salaries and wages paid each month by permanent establishments based in Austria.

Local authorities also levy other taxes, for example, on rubbish collection and on entertainment.

6.0 Taxes on individuals

Individuals in Austria are subject to personal income tax, withholding tax on passive income, social security contributions and real estate tax. For expatriates under certain conditions, a flat rate amount of EUR 10,000 can be considered as a deductible payroll expense to reduce the tax base, with no requirement to provide evidence of actual expenditure.

Austria Quick Tax Facts for Individuals	
Income tax rates	Progressive to 55%
Capital gains tax rate	27.5%
Basis	Worldwide basis
Double taxation relief	Yes
Tax year	Calendar year
Return due date	30 April, 30 June if filed electronically
Withholding tax	
• Dividends	27.5%
• Interest	25%/27.5%
• Royalties	20% (only applicable for non-residents)
Net wealth tax	No
Social security	18.12% (of salary, ceiling EUR 4,980)
Inheritance tax	No
Real estate tax	0.2% (multiplied by regional coefficient)
VAT	20% (standard rate)/13%/10%/0% (reduced rates)

6.1 Residence

For tax purposes, a resident is defined as an individual who is domiciled in Austria or who has a habitual abode in Austria (presumed if the individual stays in Austria) for more than six months.

6.2 Taxable income and rates

Residents of Austria are subject to tax on their worldwide income; nonresidents are subject to tax only on certain Austrian-source income. Nonresidents generally are not eligible for personal deductions. Under certain conditions, individuals subject to limited income tax who are EU or EEA nationals may elect to be treated as being subject to unlimited Austrian income tax, if 90% of their taxable income is subject to Austrian income tax or if the income that is not subject to Austrian income tax does not exceed EUR 11,000. Tax treaties should provide individuals living temporarily in Austria or who are nonresident with protection from being taxed twice on the same income.

Taxable income

Taxable income includes income from employment (including certain fringe benefits), income from a trade or business, investment income and most capital gains. Most earned income is taxable and, as a rule, tax is withheld at source. However, interest from certain types of savings products is tax-exempt or exempt up to certain levels of interest. Capital gains are taxable and in most instances (although generally not for nonresident taxpayers), a special tax rate of up to 27.5% applies.

Deductions and reliefs

A number of deductions and tax credits are available to individuals, many of which are deducted at source by the employer.

Automatic tax credits are available related to the number of income-earning individuals in the household and children and to cover travel to work. Before 1 January 2016, a lump sum deduction of EUR 60 for 'special expenses' (certain types of insurance premium and the purchase of a residence or home improvements) was available. The lump sum amount could be replaced by a deduction at 25% for the actual expenditure incurred (subject to a cap). These special tax deductions were abolished from 1 January 2016, but a five-year transition period applies for existing deductions.

Deductions are available for work-related expenses, some of which are at a flat rate, which can be replaced by a claim for actual expenditure, if higher. Deductible expenses can include the cost of keeping a flat close to the workplace if a long commute is not feasible, the professional use of a home computer and broadband internet connection, a mobile phone or a car. Childcare expenses that fulfill certain conditions (including the age of the child) also are tax deductible.

Rates

With effect from the 2016 assessment year, the following rates and bands apply:

Taxable income (EUR)	Rate (%)
0 – 11,000	0
11,001 – 18,000	25
18,001 – 31,000	35
31,001 – 60,000	42
60,001 – 90,000	48
90,001 – 1,000,000	50
Over 1,000,000	55*

*For the years 2016-2020.

The first EUR 620 of special payments, such as the 13th or 14th salary, is tax free. Above that amount, tax is paid at 6% on these special payments, unless the bonuses are higher than two months' normal salary, when any excess is taxed as part of annual salary if no other special tax benefits are applicable. The 6% flat rate is replaced by higher tax rates for annual gross income from employment exceeding EUR 175,000.

A 27.5% withholding tax rate applies on capital income other than income from bank deposits and nonsecuritized receivables with financial institutions to which a 25% withholding tax rate continues to apply. In most cases, the tax is final and the taxpayer does not have to declare income from which tax has been withheld. However, a taxpayer may declare the income if his/her effective tax rate on the capital income is lower than 27.5%, as he/she can claim a repayment of any excess tax withheld.

Dividend and interest income from sources without an Austrian paying agent must be declared and are subject to a maximum 27.5% tax rate. Where tax has been withheld at source on foreign income at a rate higher than the Austrian rate, the difference may be reclaimed under a tax treaty, although not always in full. In most cases, nonresidents can reclaim tax withheld in Austria.

Most capital gains earned by resident individuals are subject to tax at 27.5%, withheld at source. The tax is final but the taxpayer may elect for taxation at his/her effective tax rate on total income. Gains derived from the sale of real estate are subject to a 30% flat rate tax. Shares, investment fund certificates and real estate fund certificates acquired before 1 January 2011, bonds and other debt instruments acquired before 1 April 2012 and real estate acquired before 1 April 2002, usually are subject to more favorable grandfathering rules. Capital gains derived from the sale of Austrian real estate earned by nonresident individuals are taxable at a flat rate of 30%. Rates of up to 55% apply if the gains relate to equity stakes in corporations incorporated or effectively managed in Austria that have exceeded 1% at any time in the previous five years. Capital gains tax on nonresidents is waived under some tax treaties.

Investment funds are treated transparent in Austria. A final 27.5% tax generally is withheld on distributions of investment funds deposited with an Austrian bank. Undistributed ordinary income and 60% of undistributed capital gains also are subject to this 27.5% final taxation. The investment funds have to report the different income items arising each year to the Austrian Kontrollbank. Where the money is held in a (foreign) investment fund that is not registered with the Austrian Kontrollbank and, hence does not provide evidence of the amounts and composition of the actual income of the fund, capital gains are assessed on a lump-sum basis and taxed at 27.5% on the higher of 90% of the difference between the first and last redemption price in a calendar year and 10% of the redemption price at year-end.

6.3 Inheritance and gift tax

There is no inheritance tax but gifts are subject to a notification requirement.

Real estate transfers are subject to 3.5% RETT, charged on the consideration (only 2% of the assessed value for transfers of agricultural and forestry land between close family members) plus a 1.1% registration fee payable to the land register. Generally, the assessment basis for inheritances and gifts is the fair market value.

If the consideration (e.g. purchase price or assumption of a mortgage) amounts to over 70% of the land value, the applicable RETT is 3.5% of the land value ("acquisition with consideration"). Where the value of the consideration is between 30% and 70% of the land value, only the consideration is subject to 3.5% RETT; the remainder of the land value is subject to the progressive RETT rates for acquisitions without consideration ("acquisition with a certain consideration"). Where the consideration does not exceed 30% of the land value ("acquisition without consideration"), the RETT rate is applicable to the entire land value. The progressive tax rates amount to 0.5% for land values up to EUR 250,000, 2% on the consideration between EUR 250,000 and EUR 400,000, and 3.5% on the excess over EUR 400,000.

The land value is defined as the lower of: (i) three times the value of the land according to valuation act plus the value of building, (ii) standardized values provided by a Ministry of Finance decree according to the location of the real estate; and (iii) the fair market value.

6.4 Net wealth tax

Austria does not levy a net wealth tax.

6.5 Real property tax

Municipalities levy annual real estate taxes on all Austrian-situs immovable property, whether or not developed. Property used for charitable, medical, scientific, educational or similar purposes is exempt. The real property tax is levied at a basic federal rate, multiplied by a municipal coefficient on rateable value. The basic federal rate usually is 0.2% and the municipal coefficients range up to 500%. The value assumed tends to be far below the market price.

6.6 Social security contributions

Both the employee and the employer contribute to social security (see section 7.2).

6.7 Other taxes

A flight tax is levied on all passengers departing from an airport within Austria. The tax ranges from EUR 7 to EUR 35, depending on the distance flown.

6.8 Compliance

The tax year for individuals is the calendar year.

Taxpayers that only derive employment income subject to wage tax withheld at source generally are not required to submit an annual income tax return. If such a taxpayer intends to claim additional expenses, a return must be filed within five years. Other income is self-assessed. The income tax return is due on 30 April following the end of the relevant calendar year (30 June for electronic submissions). Taxpayers represented by a tax advisor may file their tax returns until 30 April of the second year following the tax year if the tax office does not require an earlier filing.

Starting with the assessment for 2016, automatic tax assessments are issued to taxpayers where expenses have been reported by the recipient of the funds to the tax office (e.g. donations which from 2017 have to be reported to the tax authorities to be tax deductible), if: i) the taxpayer's only source of income is employment income; and ii) where – based on the information available to the tax authorities about the taxpayer – it is unlikely that any deductible expenses will be claimed. Where there are additional expenses not reported to the tax office, the taxpayer can still file a tax return.

7.0 Labor environment

7.1 Employee rights and remuneration

Labor law is covered by numerous acts and is among the most complex areas of Austrian legislation. Working terms and conditions are similar to those in the rest of the EU, as EU rules govern many of the provisions in this area. Labor law has historically been developed in close consultation between government, business and unions, although this social pact has been less prominent in recent years.

The key pieces of legislation have been in place for many years and have been amended many times, leading some observers to call for a total overhaul, particularly of the workers' constitution law. Other important laws include the white collar law, the labor contract adjustment law and the employee liability law.

A written contract is not necessary for a contract of employment to exist. A contract will always be deemed to have existed, albeit in oral form or because the employee is covered by a collective agreement. All employees must be given a statement of their terms and conditions of service and details of their employer 'immediately' on starting work. This does not constitute a contract, but a new statement must be supplied whenever terms and conditions change.

Remuneration normally is set by collective agreement for both blue and white collar employees.

Working hours

The statutory maximum work week is 40 hours. The statutory maximum working day is eight hours, but may be extended up to 10 hours by collective agreement.

7.2 Wages and benefits

It is illegal to pay less than the wage set by collective agreement. As collective agreements are so widespread, there is no minimum wage. However, EUR 1,000 per month has become a benchmark for negotiations, has been incorporated in some collective agreements and is part of the platform of some political parties.

Pensions

Employers and employees must contribute to the state pension from the first day of employment. The employee contributes 10.25% of salary up to a maximum of EUR 510; the employer contributes 12.55% up to a maximum of EUR625, since the salary ceiling for all social security contributions is EUR 4,980.

Social insurance

The contribution to compulsory superannuation is the largest of the social security contributions, but there also are other contributions (to all of which the monthly salary ceiling of EUR 4,980 applies). The employer must pay 3.78% and the employee 3.87% of salary for sickness insurance. The employer pays 3.35% and the employee 3% towards the unemployment fund. Each contributes 0.5% to the housing fund. The employer pays an additional 1.3% for accident insurance and the employee a further 0.5% for compulsory membership of the chamber of labor. Contribution levels are set on the basis of 14 months' of pay. Many companies also operate occupational pension schemes for their employees and pay additional fringe benefits negotiated through collective agreement.

In addition, payroll related taxes to which the salary ceiling of EUR 4,980 does not apply of between 8.99% and 9.07% have to be paid by the employer. The rates are reduced to 7.46% and 7.54% if the employment started before 2003.

Other benefits

All employees—whether in industry or the service sector—receive the same basic vacation entitlement of 25 work days annually. After 25 years of service, this increases to 30 work days. Employers have limited discretion in deciding when employees should take their holidays. Sick leave entitlement on full pay is the same for white and blue collar workers. There still are some differences between the two categories in subsequent entitlements to half-pay and in time off on full pay as the result of an accident.

Maternity leave extends for eight weeks before and after birth. Pregnant women may not be dismissed and are not allowed to work nights and in certain types of job.

Either parent is eligible for up to two years' parental leave. Parents may take turns at taking parental leave subject to some limits. Employees are entitled to family hospice leave of up to six to nine months with remuneration at a rate equivalent to unemployment payments.

7.3 Termination of employment

Labor regulations prohibit dismissal without notice, except for serious breaches, such as theft, assault on superiors or sexual harassment. Members of works councils may be dismissed for the above offences only if the social and labor court agrees. Employers should expect workers who have been dismissed or given notice to challenge the decision either through the works council or the courts.

The law stipulates minimum notice periods that the employee must give the employer and vice versa. The former are shorter than the latter. They can be varied by collective agreement. By law, industrial workers must be given two weeks' notice once their trial period (generally one month) ends. White collar employees receive six weeks' notice in the first two years of service, two months in years three to five, three months in years six to 15, four months in years 16-25 and five months thereafter. The employee has a one-month notice period that can be extended to up to six months; however, the agreed employer notice period must not be shorter than that of the employee. In the case of white collar employees, notice may be given by the employee at the end of the month, but the employer can only give notice at the end of a quarter or, if specifically agreed, the 15th or last day of each month. Collective agreements generally ensure that notice periods are increased and often require the notice to be given in writing.

Severance pay is paid out of a special investment fund into which employers contribute 1.53% of monthly pay. No ceiling as for social security contributions applies. All private sector employees are entitled to severance pay from the first month of employment onwards regardless of the reason for termination, for example, even if they resign. Industrial workers are entitled to the same severance pay as service sector workers. Different rules apply to employment contracts that were concluded before 1 January 2003. Collective agreements often include more generous provisions, particularly for older workers.

In the event of mass redundancies, the labor market service must be informed 30 days in advance to comply with the labor market promotion law. The works council must be notified and can appeal to the labor court if severe hardship were to result or if the move is seen as socially unjustifiable. The labor market service can authorize the company not to wait for 30 days before laying off staff if there are compelling economic reasons. Members of the works council, pregnant women and other groups of employees may not be laid off without special reason. The Labor Market Service must be notified of the proposed layoff of five or more workers over the age of 50.

Other legislation includes the employment contract law which ensures that a company's workforce may not be dismissed if the company is sold and that the employees' acquired rights are transferred to the new company. The law also stipulates that the employees affected must be kept fully informed of any transaction, irrespective of the size of a company.

7.4 Labor-management relations

All employees must join the chamber of labor and membership is funded by a payroll deduction from their wages or salary. Membership of a trade union is voluntary.

One-third of the membership of company supervisory boards consists of representatives of the workforce, who must be members of the works council. In certain circumstances, there are separate works committees of blue and white collar employees and a combined works council of representatives of both.

The employees in each plant elect works councils. Their size is in proportion to the workforce (e.g. one for five to nine employees, two for 10-19 employees, etc.). The initiative to set up works councils must come from the workforce and there are no penalties for failure to set up a council. However, the employer must not prevent the election of a works council. In many small and medium-sized enterprises, the workforce has not exercised this right.

Groups must have a central works council. The number of employee representatives starts at four and rises with the size of the company. On all these bodies, men and women must be represented pro rata to the number of each employed by the company. Apart from ensuring that the employer respects labor laws and collective agreements, works committees and councils specifically are tasked with improving the position of women. They also must be informed of promotions and dismissals. If management and labor cannot agree, the dispute goes to external mediation.

EU rules on European works councils also have been incorporated in the labor relations law. Any Austrian company with at least 1,000 employees across the EEA and at least 150 employees in at least two member states must institute a European works council.

7.5 Employment of foreigners

Citizens of the EU (except Croatia) or the EEA (the EU member states plus Iceland, Liechtenstein and Norway) and Swiss nationals, benefit from the freedom of establishment and freedom of movement for workers provided they:

- Are pursuing employment as an employee or as a self-employed person in Austria;
- Can demonstrate that they have sufficient resources and comprehensive health insurance for their family and themselves; or
- Are going to study in Austria and can prove that they have sufficient resources and comprehensive health insurance for their family and themselves.

No further authorization to live and work in Austria is then required. The individual simply must register with the responsible immigration office within three months of arrival and obtain a certificate of registration under the requirements mentioned above.

Transitional regulations apply for Croatia, which require authorization according to the employment of foreign nationals act. The main preconditions for granting a work permit are:

- An existing job offer;
- The prospective employer applies for a work permit; and
- The labor market service determines that no other suitable person is available in the Austrian labor market for the job in question (labor market test).

For third country citizens (not EU, EEA or Switzerland) and their family members, the '*Rot-Weiß-Rot – Karte*' (RWR card) applies. This model aims for more flexible immigration of qualified third-country workforce and their families. It is a points-based system where the most important criteria are qualification, work experience, language skills, age, university degrees obtained in Austria, offer of employment according to the qualification and minimum remuneration. The card is issued for 12 months and allows employment with a specific employer for which the application for the RWR card was made. After one year, an application can be made for the "red-white-red card plus" that grants unlimited access to the labor market.

With the RWR card, German language skills do not have to be proven before entering the country. However, points can be collected for knowledge of German or English.

Immigration regulations for qualified workers have also been created at EU level and implemented in each individual member state. In Austria, these were introduced by way of the "EU blue card."

Special regulations apply for very highly qualified employees and key employees. For example, highly qualified persons do not need to provide proof of a job offer prior to immigration or obtain a job seeker visa, if minimum points are reached. Each year a list of shortage occupations based on the needs of the labor market is published. Skilled workers from non-EU countries can apply for the RWR card if they have completed professional education in one of the high demand areas, have a job offer in Austria that is paid the legal or collectively agreed minimum wage plus any customary overpayment and have attained the required minimum number of points (at least 50 out of 75 points) in accordance with the points based system for employees in shortage occupations.

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

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