

Doing Business in Austria

2007



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in nearly 50 countries throughout the world. Business partners work together throughout the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering a business operation in Austria has been provided by the office of UHY's representative there:

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UHY-BGS has been established since 1991 and specialises in restructuring and conversions of enterprises, private donations, Auditing, Merger & Acquisition, appraisal of business.

Clients include the complete spectrum from private firms to quoted corporations.

Information in the following pages has been updated so that it is effective at the date shown, but inevitably it is both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions.

This publication is current at April 2007.

We look forward to helping you do business in Austria.

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2. Business environment

Austria, with its well developed market economy and high standard of living, is closely tied to the other European Union (EU) economies. Foreign investors find the legal set-up in Austria quite conducive to investment. With its stable political, economic and social climate, and a very high level of development, Austria offers an interesting domestic market, and is particularly well placed for expansion into central and eastern European countries.

In recent years, Austria has made changes to harmonise its economic, legal and tax structures with those of the European Community. This has led to a liberalisation of the Austrian commercial laws and, as a consequence, has led to Austria becoming a more attractive market for foreign investors.

The domestic market

Population

The population of Austria is estimated at 8.3 million inhabitants.

Area

The total area of this landlocked country is 83,871 sq km.

The alpine character of the country – about 40% of Austria is more than 1,700 feet above sea level – permits permanent settlement on only 40% of the land.

Gross domestic product (GDP)

The total GDP is € 256 billion, while GDP per head is €31,000. The GDP growth in 2006 was approximately 4.6%.

Currency

Austria is a member of the European Monetary Union (EMU). Since 2002, the Euro has been the official currency of the country, replacing the Austrian Schilling.

Prices and interest rates

Austria's efforts to meet the Maastricht Convergence Criteria for the EMU have resulted in a stabilisation of prices and a decrease in interest rates to historical lows. The basic interest rate is approximately 2.7%, with inflation stable at about 1.5% in 2006.

Unemployment

The unemployment rate according to EU standards in 2006 was 4.8%, well below the EU average of 7.9%.

Banking and finance

The Austrian banking system is highly developed with a network of worldwide correspondent relations. Large Austrian banks such as the Bank Austria Creditanstalt, Raiffeisen and Erste Bank operate offices and branches in major financial centres, as well as subsidiaries and joint venture co-operations in Eastern Europe. Austrian banks offer all banking and financial services.

Austria has a well organised banking system that plays a major role in financing investments by providing businesses with loans, while the rather small capital market cannot facilitate all financing needs. There is only one stock exchange, the 'Wiener Börse', where stocks, options, futures, securities and foreign currencies are traded.

In general, Austria has a very favourable investment climate attracting a substantial amount of Eurozone and overseas investors. A policy with very few restrictions on foreign investment, coupled with EU membership, has contributed to increased foreign investments in Austria with investors enjoying all the benefits of the European Single Market.

Political and legal system

Austria is a democratic republic, established as a federal state. The legislative and executive powers are divided between the federation and nine states (Bundesländer). At a federal level, the legislative institutions are the Nationalrat (federal parliament) and the Bundesrat (the upper house representing the single states). Whilst the power of the Austrian president is limited to representation, the chancellor holds a more prominent and influential position.

Austria's legal system is influenced by both German and Roman law, but not by Anglo-Saxon law. The 'Allgemeines Bürgerliches Gesetzbuch' is one of the world's oldest civil codes. There is no binding case law in Austria. Legislation is decided ultimately by the Nationalrat and Bundesrat. However, judges have freedom of interpretation in their decision-making process.

3. Foreign investment

As a member of the EU and European Economic Area (EEA), Austria is obliged to allow the free movement of capital.

In 2004, Austria enacted a new Foreign Exchange Act (Devisengesetz) to fulfil its obligations under EU law. The foreign exchange control system is administered by the Austrian National Bank acting as the central bank. Under the Foreign Exchange Act, transactions are not subject to any restrictions. However, there are certain exceptions which are set out in provisions of EU law and regulations of the Austrian National Bank in accordance with EU law.

Therefore, the Austrian National Bank can require prior approval for certain transactions. Notification is obligatory in certain cases for statistical purposes under Austrian National Bank regulations. Transactions must be reported by non-banks to the Austrian National Bank including the maintenance of foreign bank accounts.

4. Setting up a business

Foreign investors can legally set up a business in Austria as a non-independent branch of a foreign company or, as an independent subsidiary.

A foreign investor who intends to set up a legally independent subsidiary may choose from a wide range of legal entities. The choice will depend upon the business priorities of the investor.

The most common form of company which a foreign investor establishes and operates in Austria is the limited liability company (Gesellschaft mit beschränkter Haftung - GmbH).

The following information provides basic details about the legal forms of doing business in Austria.

Sole proprietorship

This is the simplest method of setting up a company. The business is carried out by a sole proprietor. There are few formal filing and reporting requirements, other than maintaining proper records and obtaining the necessary local permits.

The sole proprietorship is not a legal entity apart from its owner. The proprietor is both the owner and manager of the company. He is also subject to unlimited personal liability, with all his personal assets for business debts. The proprietor himself is also subject to taxation.

This form of business organisation is commonly used for small enterprises and operations.

Partnerships

General partnership (Offene Gesellschaft - OG)

To form a general partnership the partners enter into a contract of association in order to operate an enterprise based on commercial principles. The trade name of the general partnership must be registered in the register of commerce (Firmenbuch). The partnership can acquire rights, incur liabilities, take legal actions and be sued, but it does not have its own legal personality. Each partner is individually subject to taxation and each partner is personally liable, with his own private assets, for all business debts.

Partners can be individuals and legal entities (e.g. corporations).

Limited partnership (Kommanditgesellschaft – KG)

A limited partnership has two kinds of partners. At least one of them must be personally liable for all business debts without limitation. However, the other partners are only liable to the extent of their capital contribution.

Partners can be individuals and legal entities (e.g. corporations).

Each partner is individually subject to taxation.

The limited partnership must be entered into the register of commerce.

GmbH und Co KG – a special case of the limited partnership

The GmbH & Co KG is a form of business organisation unique to Austria and Germany. Its main characteristics are set out below.

A limited liability corporation (GmbH) is the partner with unlimited personal liability of the limited partnership (KG). The corporation assumes an administrative role and generally provides no capital. The limited partnership (KG) owns the company's assets and runs the actual business. The management and power of representation to third parties fall under the responsibility of the partner with personal liability.

The civil law partnership (Gesellschaft bürgerlichen Rechts)

The civil law partnership is defined as an agreement between two or more partners combining their funds for a common purpose. The civil law partnership will have internal effect only between the partners. The partners of a civil law partnership represent themselves to third parties. Joint ventures or partnerships of professionals, such as law firms, are commonly created as civil law partnerships.

Each partner is individually subject to taxation. The partnership cannot be entered onto the register of commerce. Each partner is personally liable with his own private assets for the debts of the company.

Corporations

A corporation is a legal entity distinct from the individuals who own it. It protects the assets of its owners through limited liability of the shareholders and generally offers investors easier access to capital and financing opportunities than would be offered by an unincorporated venture. The costs of setting up and maintaining a corporation are higher than those of partnerships or proprietorships. In addition, corporations are subject to more government legislation and information requirements.

Austrian corporations can either be privately or publicly owned. Private corporations cannot sell shares to the general public. Public corporations

need to fulfil numerous disclosure and reporting requirements before offering shares to the public.

The privately owned corporation is the limited liability company (Gesellschaft mit beschränkter Haftung - GmbH).

The publicly owned corporation is the public corporation (Aktiengesellschaft - AG).

Limited liability company (Gesellschaft mit beschränkter Haftung - GmbH)

The limited liability company (GmbH) is an incorporated enterprise, where the liability of the shareholders is limited.

The law requires a minimum level of capital investment in the company to provide creditors with a certain degree of security. Therefore, the equity capital of the GmbH must amount to at least €35,000, half of which must be contributed in cash to the company. Investments in kind may also be contributed. A 1% Transfer Capital Tax must be paid when the GmbH is founded.

Articles of Association and the paid-in capital are required in order to set up a GmbH. The Articles of Association must be concluded in the form of a notarial deed. The company must be registered in the register of commerce. The company will not legally exist until such time as it has been entered into the register. The GmbH can be established by a single person or by a single legal entity.

The corporate bodies of the GmbH are:

- the general body of shareholders (Generalversammlung);
- the managing directors (Geschäftsführung); and
- the supervisory board (Aufsichtsrat), which is only mandatory for large GmbHs.

A GmbH can have one or more managing directors. Managing directors have complete authority to represent the company to third parties. The authority of a managing director is not tied to Austrian citizenship. At least one business manager should, however, have his usual place of residence in Austria.

Shares of a GmbH can only be transferred with a notarial deed. The shareholders may be individuals or legal entities, residents or non-residents, Austrians or foreign citizens. The transfer of shares must be noted in the register of commerce.

The GmbH itself is subject to taxation.

Public corporation (Aktiengesellschaft – AG)

Like the GmbH, the AG is a legal entity limiting the liability of its shareholders. Unlike the GmbH, the shares of an AG can be transferred without a notarial deed. The transfer of shares is not required to be noted in the register of commerce.

The share capital of a public corporation must be at least €70,000. A quarter of the share capital (or at least €35,000) must be paid up in cash. An AG is to be set up by a founders meeting, where the founders of the company establish the company and appoint a supervisory board (Aufsichtsrat). The supervisory board then appoints the executive board (Vorstand). The AG becomes a legal entity only after it has been entered into the register of commerce. A 1% Transfer Capital Tax must be paid when the GmbH is founded.

The corporate bodies of the AG are:

- The general body of shareholders (Hauptversammlung).
- The supervisory board (Aufsichtsrat).
- The executive board (Vorstand).

The executive board, which represents the company, is responsible for running the business. The members of the executive board are appointed by the supervisory board, whose members are elected through the Hauptversammlung.

The AG itself is subject to taxation.

5. Labour

Employment contracts

The employment contract is the basis of the relationship between an employee and employer. The terms of the contract can be freely negotiated by the parties subject to existing legislation. There are collective agreements between employer associations and trade unions (Kollektivverträge) and agreements between the management and the work councils (Betriebsvereinbarungen), which have a strong influence upon employment contracts.

There are many laws relating to labour protection, for example:

- working time ordinance
- continued pay in case of sickness
- employment securities
- laws relating to severely disabled persons
- health and safety regulations
- maternity leave
- regulations relating to youth employment
- statutory holidays.

Historically, Austrian employees have been categorised as either blue collar workers (Arbeiter) or white collar workers (Angestellte). This classification has consequences, particularly in terms of protection against unfair dismissal.

Employees in managerial positions are not encompassed under all labour protection laws.

Social security

Austria has a highly developed welfare system. Therefore, employees and employers are required to pay social security contributions regardless of nationality.

Payments must be made for pension insurance, accident insurance, health insurance, unemployment insurance, accommodation promotion insurance and for contributions to the Chamber of Employees.

Rates

Social security contribution rates for 2005:

	White collar workers	Blue collar workers
Payments by employers	21.9%	21.7%
Payments by employees	18.0%	18.2%
Total	39.9%	39.9%

6. Taxation

The taxation of commercial activities in Austria depends on the form of business organisation chosen. The main aspect to be considered is that the income of partnerships is taxed at the level of each individual partner, while a corporation is an independent taxable entity.

Income tax

Only individuals are subject to income tax. The basic principle of Austrian taxation is that an individual may be charged tax on his worldwide income if he is resident in Austria. If the individual is not a resident, he will still be liable for tax on income earned in Austria, but not for tax on any income which arises in foreign countries.

Austria has entered into a large number of double taxation agreements with other countries.

Taxable income

Taxable income comprises the entire annual income from the following sources:

- agriculture and forestry
- self-employment
- trade and business
- employment
- investment (interest and dividends)
- hiring out of real estate and rights
- other forms of income.

Income tax is computed on a progressive scale. Austrian legislation allows for the deduction of certain expenses that are economically linked with the resources of income. The following expenses are not deductible:

- cost of living
- income taxes
- expenses incurred on business or professional activities connected with the taxpayer's private life, if they are deemed inappropriately high. Examples are sports cars, luxury boats etc.
- expenses for entertainment purposes including entertaining business partners, unless the taxpayer can show that the entertainment was substantially for business purposes in which case he may deduct 50% of these expenses.

Income of business establishments or trade is taxed on the basis of net profits.

Tax rate

The income tax rates are:

Over (€)	Not over (€)	Income tax
0	10,000	0
10,000	25,000	TI* x 38.33% - €3,833.00
25,000	51,000	TI* x 43.60% - €5,150.50
51,000		TI* x 50.00% - €8,414.50

*TI = taxable income

Withholding tax on investment income

In respect of domestic investment income or investment income received in Austria from securities representing money claims, income tax is withheld at source. Investment income includes:

- profit shares (dividends)
- interest income from bonds
- interest income on bank deposits.

Withholding tax on investment income is set at a flat rate of 25%. In general, income which is taxed at the source does not need to be declared in tax returns.

Other forms of income – capital gains

Capital gains deriving from non-business activities are not subject to tax. However there are certain exceptions:

Capital gains deriving from speculative transactions

Income generated from sales transactions, where the specified minimum holding period between purchase and disposal (land 10 years; other assets one year) is not reached, is taxable.

Capital gains on investments

Income generated from the disposal of shares, provided that the vendor has held more than 1% of the share capital at any point in time within the last five years, is subject to income tax.

Taxation of non-residents

Non-resident individuals are subject to limited tax liability. Their income is subject to income tax only if it is generated in Austria.

Certain kinds of income are subject to a withholding tax at a flat rate of 20%:

- income generated by writers, lecturers, artists, architects, sportsmen or contributors to entertainment activities
- profit shares of partners of a foreign partnership if the partnership holds a stake in a domestic partnership
- income derived from intellectual property rights and royalties
- income of members of supervisory boards
- income arising from commercial and technological consulting and income from the provision of manpower for work in Austria
- income from employment in Austria.

Corporations

Corporate income tax

Corporations (e.g. GmbH, AG) are subject to corporate income tax.

Partnerships are not subject to it because the profit of the partnership is taxed at the level of every individual partner. If the partner is an individual, his profit is subject to income tax. However, if the partner is a corporation, its profit is subject to corporate income tax.

Income

The basis for the taxable income is the profit of the corporation. There can be differences between the commercial and taxable profit of the corporation.

Tax rate and minimum tax

Corporate income tax is calculated at the flat rate of 25%. Corporations must pay a minimum corporate income tax regardless of whether it is profitable or not. The minimum corporate income tax amounts to €3,500 for public corporations and €1,750 for limited liability companies.

Profit distributions

Profit distributions, including 'hidden profit distributions', do not reduce the taxable income. A 'hidden profit distribution' is a benefit granted to a shareholder, which is not disclosed as a profit distribution and which has not been granted to a third person.

Treatment of dividends

Income received by a corporation resident in Austria resulting from participation in domestic corporations is tax free. Only the profit shares of any kind resulting from participation (shareholding) in domestic corporation is tax free. However, capital gains resulting from the disposal of these shares must be taxed.

Income received by a corporation resident in Austria resulting from participation in foreign corporations is tax free, provided that the participation represented at least 10% and continued for at least one year. The profit shares of any kind resulting from participations in foreign corporations and gains resulting from disposal of these shares are tax free.

Group taxation

The idea of group taxation is the summing-up of profits and losses of associated corporations. The summing-up of profits and losses of associated corporations will be done by the associated corporation at the top of the group. The investment in associated companies must be more than 50% of the shares and voting rights.

Group taxation applies also to foreign associated corporations. Therefore, the Austrian associated corporation at the top of the group can use the losses of foreign associated corporations (not the profits).

It is possible that more than one associated corporation can be on the top of the group. This is of special concern for joint ventures.

The 'goodwill' in the acquisition costs of a new associated corporation can be depreciated over 15 years under certain conditions.

Other significant taxes

Value added tax (VAT)

An Austrian customer must pay the net sales plus 20% VAT, which is listed separately on the supplier's invoice. The customer, in effect, pays the supplier's tax burden. The amount is thereafter deductible from the customer's own VAT burden. Upon transferring these purchased goods to the next customer, the customer (now the seller) lists 20% VAT for that transaction on the invoice presented to the customer, and the process is repeated. The ultimate retail consumer absorbs the final burden.

Among others, exports and certain services for foreign customers are exempt from VAT.

Import transactions from non-EU countries are subject to an import-VAT at the same rates as VAT.

VAT is reduced to 10% on certain products. This applies, for example, to basic foods and printed materials.

Inheritance and gift taxes

These taxes vary from 2% to 60% depending upon the value of the inheritance or gift, and upon the relationship of the beneficiary to the deceased or the donor.

Property tax

Property tax was abolished in 1989.

Land transfer tax

Real estate transactions are exempt from VAT; however for transfers of land and buildings within Austria, the buyer is liable to pay tax amounting to 3.5% of the sales price.

Capital transfer tax

The most significant part of capital transfer tax is the tax imposed on the increase of capital. Tax of 1% is levied on the issue of share capital, on any increase of share capital and on capital contributions to a corporation.

7. Accounting & reporting

Austrian accounting law

Austrian accounting standards are not issued by a professional body, but are instead established in law. The Financial Accounting and Reporting Act (Rechnungslegungsgesetz, RLG) of 1990 facilitated the adjustment of Austrian accounting law to the Fourth and Seventh EU Directives.

Accounting principles in Austria are based on the Accounting Act and on the Basic Principles of Proper Bookkeeping and Accounting (Grundsätze ordnungsgemäßer Buchführung und Bilanzierung), which are supplemented by numerous statutory provisions, court rulings and interpretations as well as recommendations by the Chamber of Public Accountants (Kammer der Wirtschaftstreuhänder).

The Accounting Act applies to all entrepreneurs registered in the register of commerce (Firmenbuch), and particularly to corporations and partnerships. According to the law, book-keeping and financial statements must correspond to generally accepted Austrian accounting principles. Some industries, e.g. banks, insurance companies or investment funds are subject to special regulations.

Financial reporting

Most Austrian companies operate on a calendar year. Financial statements (Jahresabschluss) must be provided annually and must disclose all assets, provisions, liabilities, prepayments, income and expenses. They must give a 'true and fair' view of a company's assets, its financial condition and earnings.

Financial statements comprise:

- a balance sheet including related notes
- an income statement
- notes.

A report of the executive board (Lagebericht) covering the situation of the company during the previous year and in the foreseeable future must be drafted by medium-size and large corporations.

Auditing

A statutory audit is required for:

- banks, insurance companies and investment funds
- every AG (public corporation)

- 'large' and 'medium-size' GmbHs (limited liability companies) or GmbH & Co KGs (partnerships where the fully liable partner is a GmbH) and 'small' GmbHs with a mandatory supervisory board.

A company is treated as 'large' or 'medium-sized' if two of the three following criteria are met:

	Medium-sized company	Large company
Total assets	€3.65 million	€14.6 million
Net turnover	€7.3 million	€29.2 million
Employees	50	250

Companies which issue shares or other securities on the stock exchange of a member state of the EU or the EEA are always classified as 'large' companies.

Auditors are appointed by the assembly of shareholders and must file a report which is addressed to both executive and supervisory board members. The auditors' approval is presented to the shareholders together with the annual reports.

Publication requirements

GmbHs and AGs must submit their annual reports to the register of commerce. In addition, large AGs, banks, insurance companies and investment funds must publish an abbreviated version of their annual report in the Amtsblatt zur Wiener Zeitung, an official insert in the Wiener Zeitung newspaper. Partnerships (except GmbH & Co KGs) are not required to submit their financial statements to the register of commerce.

Consolidated financial statements

Since 1994, it has been compulsory for groups of companies to establish consolidated financial statements (Konzernabschluss) which must be audited before they are submitted to the supervisory board of the parent company. For small groups, the preparation of consolidated financial statements is not mandatory.

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