Doing Business in Austria

I.
Country Fast Facts

GDP	USD 189.80 billion
GDP per head	USD 23.29
GDP growth	USD 3.3 %
Inflation	2.4 % (2000, average)
Local Currency	Euro
Exchange Rate	EUR 1 : USD 0.96
Capital City	Vienna
Population	8.1 million
Language:	German
Area Size:	83.850 sq.kilometres
Top 5 Import Sources:	Germany, Italy, France, US, Switzerland
Top 5 Export Sources:	Germany, Italy, France, Switzerland, US

Austrian Economy

Austria with its well-developed market economy and high standard of living is closely tied to the other EU economies. Foreign investors find the legal set–up in Austria quite conducive to investment. With its stable political, economic and social climate and its very high level of development, Austria offers an interesting domestic market. Austria is particularly well-placed for expanding into central and eastern European countries. In recent years, Austria has made changes in order to harmonise its economic, legal and tax structures with those of the European Community. This has led to a liberalisation of Austrian commercial laws and as a consequence Austria has become more attractive as a market for investors.

International Trade

Since 1995 Austria has been a member of the European Union. As an export-oriented country, Austria maintains a wide-ranging and highly diverse foreign trade-system. It trades with some

150 countries. The countries of the European Union account for some 2/3 of Austria's foreign trade.

Towards the end of the '80s following the opening of eastern Europe, 40 % of all direct foreign investments in eastern Europe came from Austria. The trend reached its peak in the early '90s. By 1997 the figure had declined to 5.3 %. In the same year Austria`s export to eastern European countries increased by 33.7 % against 1996 to reach a total of roughly 10 billion Euros, while imports increased by 22.4 % to a total 6.34 billion Euros.

Legal and Judicial System

Austria`s legal system is influenced by both German and Roman 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 electorate through their MPs and representatives, however, judges have freedom of interpretation in there decision making process. Under Austrian law there are various types of business organisations available (partnerships: the "Gesellschaft bürgerlichen Rechts" (GesbR – civil law partnership), the "Eingetragene Erwerbsgesellschaft" (EEG – registered partnership), the "Offene Handelsgesellschaft" (OHG – open trading partnership) and the "Kommanditgesellschaft" (KG – limited partnership). The two corporate forms that are of special importance to the foreign investor are the "Gesellschaft mit beschränkter Haftung" (GmbH – limited liability company) and the "Aktiengesellschaft" (AG – public company limited by shares or joint stock company). Generally speaking, the GmbH and the AG are the Austrian equivalent of the English Ltd. and the Plc. (or the U.S. corporation).

Government

Austria is a federal republic. The head of state is the federal president, and the government is led by the federal chancellor. The national parliament has two houses: the "Bundesrat" (upper house, consists of 64 delegates from the provincial parliaments) and the "Nationalrat" (lower house, has 183 members elected by proportional representation).

To read more specific information about doing business in Austria, click here

II.
Economy Overview

a) General information

Austria became a member of the European Union in January 1995. This step accelerated the process of economic adjustment initiated when Austria joined the European Economic Area (EEA) in January 1994. Since that time access to the European Market has been improved. Membership to the EU offers Austria the opportunity to enlarge this scope of its integration above and beyond economic matters.

Austria is in a strong position being one of the most stable EU-Member countries. Its economic system, a free market economy, will be retained in the EU, as well the successful system of economic and social partnership, which has traditionally played an important conciliatory rule in the country's wages and pricing policy. Austria is a highly developed industrialised nation with an important service sector. The foremost industries are foodstuff and luxury commodities, mechanical engineering and steal construction, chemicals and vehicle manufacturing. Within the vehicle sector, the production of engines and transmissions is the most important area, accounting for an export quota in excess of 90 %. Austria manufactures some 800.000 engines per annum for many major car manufacturers. In the electronic engineering field, Austria has made a name for itself with the production of customised electronic products like microprocessors and integrated circuits for airbags, ABS braking systems and components for Airbus airliners and for high-speed trains etc.

b) Information on Doing Business in General Market Conditions

Foreign investors find the legal set-up in Austria quite conducive to investment. With its stable political, economic and social climate and its very high level of development, Austria offers an interesting domestic market. Moreover, Austria is particularly well placed for expanding into Central and Eastern European countries. In recent years, Austria has made changes in order to harmonise its economic, legal and tax structures with those of the European Community. This has led to liberalisation of Austrian commercial laws, and as a consequence Austria has become more attractive as a market for investors.

In principle, any kind of foreign investment is possible in Austria. The corporate structures established by Austrian laws contain some minor limitations vis-á-vis foreigners. There are certain limitations in purchasing real estate and in acquiring authorisations to carry out specific trades.

From a fiscal standpoint, Austria can be characterised as a country with comparatively moderate tax rates for international investors. As a location of a holding company, Austria also offers very interesting possibilities for investments in Austria as well as abroad. These include tax exemption for intercorporate interest (stockholdings) and various programs for the promotion of investments. In many areas, Austria also offers attractive special conditions for foreign investments. These conditions depend on the type and extent of the engagement as well as on their location.

Last but not least, there is a well-developed finance system and a system of public services that can facilitate the founding of a business and provide effective support for foreign investment in Austria.

As for Doing Business in Austria it is to say, that the national language is German. However English is the second most widely used language in business and most Austrians can communicate in English.

Information on Austrian Standards can be obtained from the "Österreichische Normungsinstitut" (the Austrian Standards Institute), which will conduct thorough investigations for a charge.

c) Information on Customs and Foreign Trade regulations

Trading within the European Union is largely unrestricted. However, there are exceptions and restrictions in the form of import quotas, anti-dumping duties and UN embargoes. Special rules apply to other products such as textiles, iron and steel, agricultural products, defence materials or so called "dual use" goods. Detailed information on import quotas and import licenses can be obtained from: **www.bmwa.gv.at**

d) Links
www.austria.gv.at

III.
Business Culture

Generally speaking, there are only a few differences between the Austrian and the German business culture. Click for details to
http://www.executiveplanet.com/community/default.asp?section=Germany

IV.
Business Entities

Information on Types of Business Entities

According to Austrian law, foreigners can set up almost any type of business in Austria. There are very few exceptions. In principle, foreign commercial companies are free to open branch offices in Austria. However, since the formal requirements for opening a branch office are more extensive than those for founding a separate company in Austria, the latter procedure is normally recommended.

Under Austrian Law, there are various forms of private companies (partnerships)

1. Gesellschaft mit beschränkter Haftung (GmbH – Limited Liability Company)

1.1 General information on Founding a GmbH

The Gesellschaft mit beschränkter Haftung (GmbH) is a separate legal entity that essentially limits the responsibility of the shareholders to the amount of share capital (capital stock or common equity) owned. It is necessary to adopt Articles of Associates when founding a GmbH. The company becomes a legal entity when it is formally entered in the business register (Firmenbuch) kept by the commercial court (Handelsgericht) having local jurisdiction.

The articles of association must be adopted in the form of a notarial deed (Notariatsakt). Single ownership of share interests (a one-man-company) is permitted. Austrian law permits signing by proxy, if the proxy holds a written special power of attorney (Spezialvollmacht). By law, the articles of associates must contain at least:

- the corporate name and seat (registered office) of the company
- the objects of the business
- the amount of share capital (Stammkapital) and share interests (Stammeinlagen) of the shareholders

With a GmbH, the original share capital (capital stock) must be at least € 35.000.00. At least one fourth of the original share capital (or in any case of minimum of € 17.500.00) must be paid up in cash. The rest of the GmbH´s original share capital can be contributed in kind.

Shareholders in a GmbH may be natural persons or legal entities. Corporate status is not linked to Austrian citizenship, residence or other domestic prerequisites.

1.2 Costs involved in founding a company

A capital transfer tax (Gesellschaftssteuer) equivalent to 1 % of the share capital (Stammkapital) must be paid for setting-up the GmbH. In addition the commercial court charges a fee, when entering the new GmbH in the business register. Additional costs are incurred for legal services, production of the notarial deed (Notariatsakt) and publication of the GmbH-registration. Costs incurred in founding a GmbH are deductible up to the amount expressly stipulated for this purpose in the articles of associates.

1.3 Founding a GmbH by means of Third Parties

Founding a GmbH is in fact a relatively simple procedure. If certain formal requirements are met (including that for notarized or in some cases notarized and apostilled special powers of attorney), all procedures for founding a GmbH can easily be carried out by proxy.

1.4 Executive bodies

1.4.1 General Meeting of Shareholders

The executive bodies of the GmbH include the general meeting of Shareholders (Generalversammlung), the managing director(s) and, if one exists, the "supervisory board" (board of directors). The latter is required only under specific circumstances, for example when a GmbH has more than 300 employees. The general meeting of shareholders authorises the annual financial statements (Jahresabschluss) and appoint, approve or recall the managing directors (Geschäftsführer).

In principle, the general meeting sets the entire company agenda and may issue directives to the managing directors. A meeting of shareholders must take place at least once a year; it may also be convened by the managing directors, whenever the interest of the company so requires.

Written decisions may be adopted and circulated amongst shareholders if all shareholders agree to this method of voting.

1.4.2 Managing Directors

A GmbH can have one or more managing directors. The authority of a managing director is established in the articles of associates, by means of his appointment by the shareholders or – in the absence of this method – according to the law. Managing Directors have complete authority to represent the company to the outside (as established by the conditions of their authority). The authority of a managing directors is not tied to Austrian citizenship. At least one business manager should, however, have his usual place of residence in Austria.

2. Aktiengesellschaft (AG – Joint Stock Company)

Like the GmbH, the AG is a legal entity limiting the liability of its shareholders (Aktionäre). When incorporated, the share capital of this type of company must be at least € 70.000.00. As a matter of principle, one fourth of the share capital must be paid up in cash. The AG is set up within the frame-work of a founders` meeting, where the founders of the company establish the charter and appoint a board of directors (Aufsichtsrat). The board of directors appoints the executive board (Vorstand). The AG becomes a legal entity only after it has been entered in the business register of business enterprises (Firmenbuch). The corporate bodies of the AG are:

- the general meeting of shareholders (where the shareholders execute rights such as ownership and administrative rights: the right to information, to make motions, to make objections and to vote).
- the executive board (responsible for managing the company) and
- the board of directors (with the power to supervise the executive board's activities)

Technically speaking, the auditor should also be considered one of the corporate bodies of the AG.

The executive board is responsible for running the business; it thus represents the company. The members of the executive board are appointed by the board of directors. Unlike the GmbH, the shares of an AG can be transferred without a notarial deed (Notariatsakt).

V.
Accounting and Auditing Requirements

1. Austrian accounting law

Austrian accounting standards are not issued by any professional body but, instead, established in law, specifically the commercial code (*Handelsgesetzbuch*). 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 commercial register, particularly to corporations and partnerships. According to the law, bookkeeping and financial statements have to correspond to Austrian generally accepted accounting principles (GAAP) as well. Some industries, eg, banks, insurance companies or investment funds are subject to special regulations.

2. 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 covering the situation of the company during the last year and in the foreseeable future has to be drafted by medium-size and large corporations.

3. Auditing

A statutory audit is required for:

- banks, insurance companies and investment funds
- every AG (equivalent to a public limited company)
- "large" and "medium-size" GmbHs (equivalent to a private limited company) or GmbH & Co KGs (partnership where the fully liable partner is a GmbH, ie no physical person is fully liable) and "small" GmbHs with a mandatory supervisory board.

A company is treated as "large" or "medium-size" if two of the three following criteria are met respectively:

	medium-size company	**large company**
total assets	> EUR 3.125 million	> EUR 12.5 million
net turnover	> EUR 6.25 million	> EUR 25 million
Employees	> 50	> 250

Companies which issue shares or other securities on a stock exchange of a member state of the EU or the European Economic Area are always considered "large" companies.

The auditors are appointed by the shareholders' assembly and must file a report which is adressed to both, executive and non-executive board members. The auditors' approval is then presented to the shareholders' assembly together with the annual reports.

4. Publication requirements

GmbHs and AGs have to submit their (possibly abbreviated) annual reports to the Commercial Register (*Firmenbuch*). In addition, large AGs, banks, insurance companies and investment funds must have an abbreviated version of the annual report published in the *Amtsblatt zur Wiener Zeitung*, an offical insert in the Wiener Zeitung newspaper. Partnerships (except GmbH & Co KGs) do not even have to submit their financial statements to the commercial register.

5. 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. A parent company is exempt from preparing consolidated financial statements if two of the following criteria are met both at the end of the current fiscal year and the preceding fiscal year either under the gross or the net method:

5.1 Gross method

The amounts are shown before any consolidation adjustments as a total (additive financial statements):
- consolidated total assets < EUR 15 million
- consolidated net sales < EUR 30 million
- total workforce < 250

5.2 Net method

The consolidated financial statements show:

- total assets of the parent company < EUR 12.5 million
- net sales of the parent company < EUR 25 million
- total workforce < 250

VI.
Legal Considerations

1. Acquisition of Real Estate by foreign investors

In principle, acquisitions of real estate in Austria by foreign investors are subject to local government approval. Restrictions on foreign ownership vary slightly from province to province (Bundesland). The actual location of the real estate is the decisive element for determining which regional laws apply. With entry into the European Community, however, the distinction between domestic and foreign ownership was rapidly losing importance. At present, natural persons (who are non EU citizens) and who are non-residents of Austria are restricted in their ability to acquire real estate, unless for example special economic and social interests are involved.

When companies or other legal entities acquire real estate, both the seat (registered office) of the company and ownership rights within the company are evaluated. If the majority of a company’s shares are held by foreigners (whether natural persons or legal entities), the company is treated like a foreigner when acquiring real estate. A detailed examination of the specific regional regulation is advisable before purchasing real estate.

It is important to comply with industrial law and building code regulations when developing real estate. In principle, of course, it is possible for prospective foreign buyers to be active in Austria, directly even in property development. In order to satisfy industrial law and building code regulations, however, it is necessary and advisable to work together with a domestic company or partner. Such a company might be an Austrian company with, for example, a builder`s concession (Bauträgerkonzession); one could also enter into a team project with a company of this type. Architectural planning and actual implementation of the project require collaboration with at least one authorised Austrian planner (architect, civil engineer etc.). This planner also represents the developer during administrative procedures on, among other things, construction techniques and procedures for authorising the operation of a facility. Even aside from compulsory legal regulations, working together with Austrian experts is recommended, efficient implementation of a project in accordance with Austrian regulations (such as building codes) is only possible with their help.

According to international custom, there are a number of legal forms of permissible real estate use. When selling or making use of real estate (in a number of forms regulated by civil law) various provisions of tax law will apply. When initiating real-estate rentals, on the other hand, one must note whether leases are subject to rent – control laws with resulting serious restrictions on profitable use. When rent - control laws apply, tenants', interests are favoured in broad areas, for example, there are limitations set concerning termination of leases (Kündigungsbeschränkung) and on rents charged (Mietzinsgestaltung); and the original tenant may pass on his interest to his children (Weitergaberecht). When the application of the rent laws can be avoided, legal regulations scarcely affect the working of the free market. It should be mentioned that in some provinces of Austria, long-term leases given to foreigners (and only to foreigners) are also subject to the same government approval as was needed by foreigners when acquiring property.

In addition to sales (Veräußerung), leases, rentals (Vermietung) and commercial leases (Verpachtung) for the purpose of running a company, the prevalent international forms of use such as real-estate-leasing are quite common on the Austrian market.

2. Trademarks and Copyright Law

In accordance with the European Agreement on Patents an application for a patent may result in the granting of a European Patent valid in all those countries, which have signed the Agreement, namly Austria, Belgium, Denmark, France, Germany, Great Britain, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Portugal, Spain, Sweden and Switzerland. This means that the patent holder enjoys the same rights in each of the signatory states, as he would if granted a national patent for any of those countries.

The validity of the patent is 20 years. Application for European patent can be made to **www.european-patent-office.org**

Design patents are granted mainly for smaller technical innovations. They offer less protection but are at the same time considerably cheaper and easier to acquire. Design patents guarantee exclusive use for three years with a possible extension of up to 8 years. Applications for these must be made to the European Patent Office. Moreover Austria is a member of the Madrid Trademark Convention, an international trademark registration scheme, which guarantees trademark protection also in Austria.

3. Bankruptcy Law

Declaration of bankruptcy may be made either by the entity itself or by its creditors. If the entity / company is insolvent, the owner / management must contact the Bankruptcy Court without delay. The entity / company has 60 days' respite within which it can reach a settlement with its creditors. At the same time the entity / company is put into receivership. All creditors must file their claims in court.

A compulsory settlement is made if at least 20 % of all creditors' claims can be met and if the creditors agree to the liquidation dividend. Once the liquidation dividend is fulfilled the company is considered to be debt-free and may operate without further restrictions.

Should the liquidation dividend of 20 % not be reached, or the creditors decline to agree to the settlement, bankruptcy proceedings are initiated and the company is liquidated.

4. Arbitration

Austria is a signatory of the Agreement of Recognition and Enforcement of Arbitral Awards (New York Agreement), ratified by more than 100 countries. Those who have signed the agreement are committed to the recognition and enforcement of Arbitral Awards made on the territory of any other signatory state.

The parties involved may agree on the jurisdiction of the International Arbitration Center of the Austrian Federal Economic Chamber, or of any other institutional court of arbitration for the settlement of disputes. Ad hoc submissions are also permitted. The court of arbitration procedure put forward by the UNCITRAL (United Nations Commission for the international Trade Law) is also highly recommended.

VII.
Tax Considerations

1. <u>Taxation of individuals</u>

1.1 Income

Only physical persons (individuals) are subject to personal income tax. Income is only taxable if it falls under one of the seven sources of income:

(1) agriculture and forestry
(2) self-employment
(3) trade and business
(4) employment
(5) investment
(6) hiring out of real estate, moveable goods and rights
(7) certain other income

Individuals whose place of residence or customary place of abode is located in Austria (generally after 6 months), are subject to unlimited tax liability, which means that they are taxable with their world-wide income. Non-resident taxpayers are liable to tax only on Austrian-source income.

1.2 Computation of taxable income

The personal Income Tax Act differentiates between two basic methods for the computation of taxable income:

- comparison of assets for the sources of business income
  (income sources (1) to (3) above)
- surplus of income over professional expenses for the sources of non-business income
  (income sources (4) to (7) above)

1.3 Depreciation

If a depreciable fixed asset is used first during a fiscal year and and is used for more than six months in that year, the one year's depreciation can be deducted, otherwise half the annual amount is deductible. The straight line method is the only depreciation method acceptable for tax purposes.

The amount of depreciation is usually determined by the estimated useful life of the asset. In certain specific cases the percentage for the computation of depreciation is stipulated by the Tax Law:

buildings	1,5 - 3 % p.a.
goodwill	6.7 % p.a.
passenger cars and station waggons	12.5 % p.a.
land	0 % p.a.

1.4 Deductible expenses

All expenses that are incurred wholly and exclusively in acquiring, securing and maintaining of income are deductible from the taxable income of a particular source of income. Losses may be carried forward and set off against a maximum of 75 % of annual profits earned by the same business for an unlimited period of time following the year in which the losses are occurred. Losses may not be carried back. The acquisition or manufacturing costs of fixed assets can be treated as fully deductible in the period when the assets were acquired of manufactured, if the costs do not exceed Euro 400.

1.5 Non-deductible expenses

The most important expenses that are not allowed for tax purposes are:

- expenses incurred for the purpose of the household of the taxpayer and family members
- cost of living
- 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 prove that the entertainment has been for business purposes to a substantial extent in which case he may deduct 50 % of these expenses
- voluntary payments except payments to certain institutions involved in science, research, development and education are deductible up to a certain amount
- income taxes

1.6 Accruals

Deductible accruals include provisions for

- severance payments
- future and current pensions
- uncertain obligations and possible losses resulting from pending transactions

1.7 Capital gains allowance

Where fixed assets are sold, the resulting capital gains deriving from the difference between the sales price and the asset's value stated in the books may remain untaxed if the fixed assets have been held for at least seven years or, in case of land and certain buildings, for fifteen years. The amount which remains tax free may either be offset against the acquisition costs of other fixed assets purchased within the same fiscal year or may be allocated to an allowance which has to be used in the same way within twelve months of the disposal of the fixed asset, otherwise capital gains will be taxed entirely.

1.8 Tax rates

The tax rates increase in progressive steps up to 50 % at and above income exceeding Euro 50,870.

in Euro	tax rate in %
up to 3,640	0 %
3,641 to 7,270	21 %
7,271 to 21,800	31 %
21,801 to 50,870	41 %
income exceeding 50,870	50 %

1.9 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 is regarded as domestic, if the payer has his/her domicile, registered office or management in Austria. Investment income includes:

- profit shares (dividends)
- interest and other income from shares in public corporations or limited liability companies
- interest income on bank deposits

The withholding tax on investment income is 25 %.

1.10 Capital gains

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

- capital gains deriving from speculative transactions
  Income generated from sales transactions, where a certain minimum holding period between purchase and disposal (land: 10 years; other assets, especially shares: 1 year) is not reached are taxable in full if they exceed Euro 440.

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

1.11 Sale of an enterprise

Profits resulting from the sale of an enterprise or part of it (which includes the giving up of a business or of a part of it), or the sale of a partnership share by a partner, are subject to income tax. There are, however, certain tax benefits which may apply, eg amount exempt from tax or reduction of tax progression or tax allowance in the case of retirement of the entrepreneur.

1.12 Wealth tax, tax on capital and property

Since 1994, there has no longer been a tax on net assets except on real estate. For tax purposes the assumed value for real estate is determined by a rather complicated procedure described in the valuation Act and is usually far below market value. The tax is 0.2 % of the assumed value per year. Somewhat lower rates apply for, eg, agricultural and forestry enterprises, residential buildings etc.

1.13 Taxation of non-residents

Individuals who do not have their place of residence or temporary place of abode in Austria, are subject to limited tax liability only. Their income is only subject to income tax if 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 of entertainment activities
- profit shares of partners of a foreign partnership if this partnership holds a stake in a domestic partnership
- income deriving 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

If not subject to withholding tax, income is computed in the same way as for residents and the same tax rates are applied.

2. Taxation of business entities

Business entities that are deemed to be corporations by the Corporate Income Tax Act are subject to corporate income tax. Resident corporations, which have their registered office or the place of management in Austria, are subject to unlimited tax liability. Non-resident corporations are taxed only on their income from Austrian sources. However, taxation may be reduced under a double taxation treaty.

Partnerships are treated as though every individual partner would conduct a partnership business on his/her own account. Partnerships therefore do not pay corporate income tax but each partner is subject to personal income tax.

2.1 Income

The taxable income of corporations is computed in a similar manner to that of individuals. Income from all seven sources of income is included. All income generated by corporations which are subject to double-entry book-keeping according to the Commercial Code is by law regarded as income from trade and business.

2.2 Profit distributions

Profit distributions do not reduce the taxable income. This is true for both for regular and hidden profit distributions. A hidden profit distribution is any pecuniary benefit granted to a shareholder because of his/her shareholding, which is not disclosed as distributions of income and which would not have been granted to a third party under normal circumstances.

2.3 Treatment of dividends

Income received by a corporation resident in Austria from participations (shareholdings) in domestic corporations is tax-free. Therefore, the following income is tax free:

- profit-shares of any kind resulting from participations (shareholdings) in domestic corporations and co-operative societies
- refunds from domestic co-operative societies
- shares in profit resulting from *Genussscheine* and *Partizipationskapital*

Such income is basically tax free, but the distributing corporation usually has to withhold 25 % of any investment income as income tax, up to a participation (shareholding) of 25 %. This withholding tax can be offset against the tax liability of the recipient or, if there is no such liability, it will be refunded. Above that limit income from a participation (shareholding) in domestic corporations is free of withholding tax and the investment income also remains tax free in the hands of the parent company.

Income received by a corporation resident in Austria deriving from participations (shareholdings) in foreign corporations is tax free as well, provided that the participation (shareholding) represents at least 25 % and has been held for 2 years or longer. The following income is tax free under the conditions mentioned above:

- profit shares of any kind resulting from participations (shareholdings) in foreign corporations
- capital gains resulting from the disposal of shares

In such cases the distribution of profit shares is, in addition, exempt from withholding tax if the distributing company is located in another EU member country.

2.4 Private trusts

A private trust is founded by a unilateral trust declaration in the form of a trust deed issued by one or more settler(s). The trust comes into legal existence upon registration with the business register. To be recognised for tax purposes by the tax authorities, the trust deed as well as any amendments to the trust deed have to be presented to the tax authorities.

A private trust may not operate a business itself and is therefore limited (in business activities) to deriving income from participations (shareholdings). Unlike regular corporations, whose income is always deemed to be income arising from trade and business, private trusts may generate income from all seven sources of income. The following kinds of income are tax free for private trusts:

- income from cash deposits with Austrian banks
- income from other receivables from Austrian banks resulting from any kind of banking business
- securities, if the agency paying the coupons is located in Austria
- income from foreign investments, if comparable with domestic income listed above and not subject to benefits in connection with a double taxation treaty
- income from participation in foreign corporations, if those corporations are comparable to Austrian corporations regardless of the amount of participation
- profits resulting from the disposal of shares, which represented a participation of 1 % or more at any time within the last 5 years

The beneficiaries are subject to withholding tax of 25 % on the distributions from the private trust.

2.5 Tax rate and minimum tax

Corporate income tax is 34 % at a flat rate. Corporations subject to unlimited tax liability have to pay minimum corporate income tax (MCT) regardless if profitable or not. This MCT amount to Euro 3,500 pa for joint stock companies or Euro 1,750 for limited liability companies. MCT of Euro 5,452 is due if the taxpayer is a bank or insurance company.

The MCT is levied on a quarterly basis; for the first four quarters after the foundation of a newly established corporation the MCT amounts to Euro 273 per quarter.

Private trusts are also subject to corporate income tax. For income that is tax exempt a corporate income tax of 12.5 % will be applied which can eventually be deducted from the withholding tax levied on the profit distributions later on.

2.6 Treatment of non-resident corporations

Non-resident corporations are basically treated in the same way as non-resident individuals. They are liable to corporation tax on income generated in Austria.

Non-resident corporations, which receive income from participations (shareholdings) in other corporations within a permanent establishment in Austria are not exempt from tax on this income, no matter whether the shareholding is in a domestic or foreign corporation. An exception to the rule applies if the corporation subject to limited tax liability is a foreign corporation comparable to an Austrian corporation which is incorporated in a member country of the European Union. The income of such corporations received from participations (shareholdings) in domestic and foreign corporations in the latter case, is tax free.

3. Social security contributions

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

Payments by employers and employees must be made for pension insurance, accident insurance, sick pay continuation contribution (wage-earners only), health insurance, unemployment insurance, accommodation promotion insurance and for contributions to the Chamber of Employees.

Employers and employees together pay approximately 40 % of the employee's wage or salary for social security taxes. The maximum calculation base for social security taxes amounts to Euro 3,270 per month, meaning that even if the taxpayer's income exceeds this amount, the calculation base remains Euro 3,270. The employer's share of the social security contributions payable amounts to approx 55 %, the employee's share to approx 45 %. As a result of social security contributions, labour costs are rather expensive in Austria.

4. Indirect taxes

4.1 Value added tax (VAT)

The VAT system fundamentally corresponds to the system introduced within the member countries of the European Union. The following transactions are subject to Austrian VAT:

- The delivery of goods and the rendering of other services within Austria by entrepreneurs within the scope of their business.
- The use or consumption of goods and services by entrepreneurs for their own purpose (private consumption).
- Imports into Austrian customs territory from countries that are not member countries of the European Union.

As stated above, basically goods and services are subject to VAT only if the receiver of these goods or services is domiciled in Austria. Revenues on services are subject to VAT if the enterprise or the permanent establishment of the provider is situated in Austria.

There are basically two groups of tax free supplies:

- those which are zero-rated, ie carry an entitlement to the refund of input VAT
- those which are exempt, ie do not carry an entitlement to the refund of input VAT.

Of all types of business transactions listed in section six of the VAT Law, only the following qualify for a refund of input VAT:

- export of goods and services

- processing of existing goods in Austria for foreign customers
- cross-border transport of goods
- cross-border transport of persons by sea and air
- delivery of gold to central banks
- commission related to the listed business transaction

All other kinds of business transactions do not carry entitlement to a refund of input VAT. This is also the case for so called small entrepreneurs. An entrepreneur is deemed to be a small entrepreneur, if his place of residence or registered office is in Austria and his turnover does not exceed Euro 22,000 within the assessment period. This regulation is not violated if the turnover exceeds the limit by not more than 15 % once within five years.

If an entrepreneur domiciled in Austria is the recipient of goods and services provided by another entrepreneur and if those goods and services are purchased for business purposes, the VAT included in the acquisition or manufacturing price is subject to refund of input VAT if an invoice fulfilling certain legal requirements is issued and he himself is entitled to VAT refund (see above).

The standard tax rate is 20 % but for basic goods which are taxed at a rate of 10 %. For leasing or renting of real estate used for residential purposes the tax rate is reduced to 10 % as well.

Foreign entrepreneurs who purchase goods and services in Austria, eg expenses for visiting trade fairs in Austria, are also entitled to VAT refund in Austria if they make their claims by June 30 of the subsequent year at the latest.

5. Issues for the foreign investor

Austria has concluded double taxation agreements with many different countries in the world. Most of the treaties in force follow the standard form of the Organisation for Economic Co-operation and Development (OECD) model treaty. Double taxation is eliminated or minimised either by allocating the right to tax individual items of income to one of the countries involved or the other and thus exempting such items from taxation in the other country or by granting a tax credit for the foreign taxes paid.

6. Other taxes and related issues

6.1 Inheritance and gift tax

Acquisition of property on death by means of inheritance, deeds and wills, statutory transfer on death, receipt of gifts on death, gifts of living persons and tied donations are subject to inheritance and gift tax. Tax law distinguishes between several classes of taxpayers, who are to pay different tax-rates:

I. spouse, children (also adopted children and stepchildren)
II. descendants of children
III. parents, grandparents, step-parents, siblings
IV. children-in-law, direct descendants of siblings
V. all other beneficiaries and tied donations

amount of value transferred in Euro	class I. in %	class II. in %	class III. in %	class IV. in %	class V. in %
≤ 7,300	2.0	4.0	6.0	8.0	14.0
≤ 14,600	2.5	5.0	7.5	10.0	16.0
≤ 29,200	3.0	6.0	9.0	12.0	18.0
≤ 43,800	3.5	7.0	10.5	14.0	20.0
≤ 58,400	4.0	8.0	12.0	16.0	22.0
≤ 73,000	5.0	10.0	15.0	20.0	26.0
≤ 109,500	6.0	12.0	18.0	24.0	30.0
≤ 146,000	7.0	14.0	21.0	28.0	34.0
≤ 219,000	8.0	16.0	24.0	32.0	38.0
≤ 365,000	9.0	18.0	27.0	36.0	42.0
≤ 730,000	10.0	20.0	30.0	40.0	46.0
≤ 1,095,000	11.0	21.0	32.0	42.0	48.0
≤ 1,460,000	12.0	22.0	34.0	44.0	51.0
≤ 2,920,000	13.0	23.0	36.0	46.0	54.0
≤ 4,380,000	15.0	25.0	40.0	50.0	60.0

The tax is increased by 2 % (for spouse, parent, child, grandchild, stepchild, adopted child or child-in-law) or 3.5 % (for all other persons) of the value when real estate is given as a gift. Private trusts are subject to inheritance tax of 5 %.

For persons of classes I. and II. amounts up to Euro 2,200 are tax free; for persons of classes III. and IV. amounts up to Euro 440 and for persons of class V. amounts up to Euro 110 are tax free.

6.2 Real estate transfer tax

The transfer of ownership of real estate and of buildings on premises not owned by the vendor is subject to real estate transfer tax. Real estate transfer tax is not payable, if the transfer is on death, or by way of a gift or effected as a tied donation (see also 6.1). No tax has to be paid if the price of the item transferred is less than Euro 1,100.

The tax rate depends on the relationship between the vendor and the purchaser:

acquisition by spouse, parent, child, grandchild, stepchild or child-in-law	2.0 %
acquisition by spouse from the other spouse, when dividing marital property and savings, due to divorce or cancellation or annulment of a marriage	2.0 %
acquisition by other persons	3.5%

No tax has to be paid if the price of the item transferred is less than Euro 1,100.

If domestic real estate belongs to the assets of a corporation the transfer of all shares to one hand is subject to real estate tax.

6.3 Capital transaction taxes

- Capital transfer tax
  The transfer of equity capital to domestic corporations is subject to capital transfer tax. Not only entities treated as corporations in the sense of the Corporate Income Tax Act but also limited partnerships in which no physical persons are personally liable, professional limited partnerships in which no physical person is personally liable and entities incorporated under foreign law similar to those enterprises are treated as corporations by the Capital Transaction Tax Act.

  The capital transfer tax amounts to 1 % of the transfer value.

6.4 Fees and duties act

Certain documents and legal transactions are subject to duties according to the Fees and Duties Act, eg

- leasing agreements
- loan agreements
- loans granted by domestic shareholders without a loan agreement in writing
- loans granted by foreign shareholders with or without a loan agreement in writing

Legal transactions subject to capital transaction taxes are exempt from any duties according to the Fees and Duties Act.

6.5 Municipal tax and subway-tax

Wages and salaries paid to employees of an enterprise located in Austria are subject to municipal tax. The tax rate is 3 %.

Employers have to pay Euro 0.73 per employee per week as subway tax, if the employees are working in the city of Vienna.

6.6 Excise tax

Excise taxes have to be paid on consumption of gasoline, alcohol, tobacco, etc.

VIII.
Banking and Finance

1. Banking System

The Austrian banking system is highly developed with a network of world-wide correspondent relations. Large Austrian banks such as Bank Austria Creditanstalt, Erste Bank and Raiffeisen operate offices and branches in major financial centres as well as subsidiaries and joint venture co-operations in Central and Eastern Europe. Austrian banks offer a wide array of services, ranging from savings to finance, and the government permits savings banks to perform commercial banking roles, including the brokering of securities and mutual funds. An amendment to the Banking Act (*Bankwesengesetz*), which came into force on 1 November 2000, has abolished the anonymity of savings accounts. A practice of strict banking secrecy is, however, an integral part of Austria's banking system.

Foreign banks may operate in Austria if they obtain a licence from the Minister of Finance. European Economic Area (EEA) members are exempt from this requirement provided they are licensed in their home country, as are banks that already possess a licence in another EEA country. Foreign banks have a considerable presence in Austria but focus their activities mostly on international operations while their local business minimal.

2. Finance

Austria's well-organised banking system plays a major role in financing investments by providing businesses with loans, while the rather small capital market cannot facilitate all financing needs. The only securities exchange in Austria, the Vienna Stock Exchange (*Wiener Börse*), trades in securities, options, futures and foreign currencies. Since November 1999 the Vienna Stock Exchange has shared a common trading platform (XETRA) with the Frankfurt Stock Exchange in order to attract more institutional investors.

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

3. The Euro

Since 1 January 1999 Austria has been a member of the European Monetary Union (EMU). Meanwhile, the Euro is Austria's only legal tender. The Austrian Central Bank (*Oesterreichische Nationalbank, OeNB*) is now part of the System of European Central Banks with its headquarters, the European Central Bank (*Europäische Zentralbank*), located in Frankfurt. The main task of the European Central Bank and the 15 affiliated Central Banks of the Eurozone is to secure price stability.

ALIX FRANK RECHTSANWAELTE KEG
austrolaw@alix-frank.co.at