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**COMPENDIUM 2015**



## → Austria

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Through its expert contact in the world of business, KRAFT & WINTERNITZ has access to the specialist knowledge and experience required to respond more effectively to today's increasingly complex world. These strengths are further reinforced by the firm's international network of law and accounting offices in the European Union, Central Europe and beyond – all of which share a belief in the importance and value of personal contact and responsibility in the practice of law.

In Austria, KRAFT & WINTERNITZ keeps in close touch with accountants, tax advisers, notaries public, real estate brokers and managers, insurance agents and the banking and financial institutions, as well as the numerous experts required to give evidence in court. As a member of the Austrian Bar Association, the firm can represent clients before all the Austrian Courts, including the Courts of Appeal and the Supreme Court. Such strengths allow KRAFT & WINTERNITZ's to respond to the most challenging tasks.

To represent and advise its national and international clients as effectively as possible, KRAFT & WINTERNITZ expertise is available in the following fields:

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- Formation of companies
- Acquisitions, mergers and takeovers
- Joint venture agreements
- Corporate restructuring
- Agency, distribution and franchising
- Unfair competition
- Advertising

#### FAMILY AND ESTATES

- Divorce and judicial separation
- Adoption
- Wills
- Probate
- Trusts
- Estate planning

## EMPLOYMENT

- Employment agreements
- Work and residency permits

## REAL ESTATE

- Acquisition and disposal of property
- Condominium agreements
- Lease agreements

## INTELLECTUAL PROPERTY

- Trademarks
- Model and design
- Licensing

## DEBT COLLECTION

## LITIGATION

- Commercial disputes
- Labour disputes
- Unfair competition
- Lease and property disputes
- Medical liability
- Trademarks
- Product liability
- Personal injury

## CAPITAL MARKETS

- Supervision of capital markets
- Liability of investment counsels
- Licensing proceedings
- Investor proceedings
- Compliance issues

## → Corporate Law

**Regulations and Rules**

The main statutes in corporate law are the Code of Enterprises (*Unternehmensgesetzbuch, UGB*), which entered into force on January 1st, 2007, the Law on Limited Liability Companies (*Gesetz über Gesellschaften mit beschränkter Haftung, GmbHG*) and the Stock Corporation Act (*Aktiengesetz, AktG*).

Other relevant statutes are the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), the Law on Co-operative Societies (*Genossenschaftsgesetz*), the Law on the Commercial Register (*Firmenbuchgesetz*), the Law on Private Foundations (*Privatstiftungsgesetz*), the Insurance Companies Supervision Act (*Versicherungsaufsichtsgesetz*) and the Act on the Statute of the Societas Europaea (*SE-Gesetz*).

**Type of Companies**

The most common types of companies in Austria are the General Partnership (*Offene Gesellschaft, OG*), the Limited Partnership (*Kommanditgesellschaft, KG*), the Company with Limited Liability (*Gesellschaft mit beschränkter Haftung, GmbH*), the Stock Company (*Aktiengesellschaft, AG*) and the Private Foundation (*Privatstiftung*).

The so-called liberal professions (*“freie Berufe”*), as for example lawyers, accountants or architects, and small businesses, who suffered from restrictions concerning the foundation of Partnerships under the regime of the former Commercial Code (Handelsgesetzbuch, HGB), being replaced by the Code of Enterprises at the beginning of the year 2007, may now also found a Partnership (*Personengesellschaft*). According to the Code of Enterprises, everybody is allowed to found a General Partnership or a Limited Partnership. Therefore the Registered Partnerships (General Registered Partnership and Limited Registered Partnership) are not needed any more. By law (*“ipso iure”*) the General Registered Partnership (*Offene Erwerbsgesellschaft, OEG*) was transformed into a General Partnership and the Limited Registered Partnership (*Kommanditerwerbsgesellschaft, KEG*) into a Limited Partnership.

Further types of companies are the Civil Law Association (*Gesellschaft nach bürgerlichem Recht, GesbR*), the Cooperative (*Genossenschaft*), the European Economic Interest Grouping (*Europäische wirtschaftliche Interessenvereinigung, EWIV*), the European Company (*Europäische Gesellschaft, SE*) and the European Cooperative Society (*Europäische Genossenschaft, SCE*).

### **Liability of Shareholders**

The liability of the shareholders of a Company with Limited Liability or a Stock Company is limited to their capital contribution. On the contrary the partners of a General Partnership are fully and personally liable for the debts of the Partnership, the liability to creditors cannot be limited. A Limited Partnership consists of at least one general partner (*Komplementär*), who is liable like a partner of a General Partnership, and of at least one limited partner (*Kommanditist*), whose liability is restricted to the amount of his capital contribution (*Einlage*).

### **Share Capital**

The minimum share capital (*Stammkapital*) of a Company with Limited Liability is EUR 35,000. In principle, at least one half of the capital must be paid in cash (but there are exceptions for contributions in kind). The minimum face value of one share has to be EUR 70.

The minimum stock capital (*Grundkapital*) of a Stock Company is EUR 70,000. At least 25 per cent of the stated capital stock (plus any premium) must be paid up prior to the registration. The minimum nominal value of the shares is EUR 1,00 unless the shares simply represent a percentage of the share capital (without a nominal value). It is possible to issue non-voting preferred shares which grant a right to a preferred dividend but do not include any voting rights. Since 2011 non-listed companies have to issue registered shares.

There is no minimum share capital for General Partnerships and Limited Partnerships.

## Corporate Governance

All partners of a General Partnership (and all general partners of a Limited Partnership) are entitled and obliged to manage and to represent the partnership. The partnership agreement may stipulate other regulations.

Companies with limited liability must have the following corporate bodies: (i) managing director(s) (*Geschäftsführer*), (ii) shareholders assembly (*Generalversammlung*). A supervisory board (*Aufsichtsrat*) is only compulsory for large companies (e.g., more than 300 employees) and optional for the others.

The shareholders assembly must meet at least once a year and is called by the managing directors. Shareholders resolutions can also be adopted by written consent, if all shareholders agree. The following decisions - *inter alia* – require a resolution by the shareholders:

- the appointment and dismissal of managing directors
- approval of the annual report
- distribution of profits
- release from liability of the managing directors
- changes to the articles of association, including an increase or reduction of the share capital
- raising of claims against the managing directors
- liquidation of the company
- mergers.

Generally, shareholder resolutions of a Company with Limited Liability require a simple majority of the shareholders present. Unanimous voting is required *inter alia* for a change of the object of business of the company. A majority of 75 per cent is required *inter alia* for changes to the articles of the association (with a few exceptions) or the sale of the corporate assets as a whole. The articles of association may provide other rules.

The management board of a Company with Limited Liability consists of one or more managing directors, who are appointed and dismissed by the shareholders. The managing directors represent the company and do the day-to-day business. Usually the managing directors have an employment contract with the company which stipulates the remuneration of the directors. The managing directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks. They are not personally liable towards creditors of the company in general but only if they violate special legal rules (e.g., the requirement that they file for bankruptcy on a timely basis).

The corporate bodies of a Stock company are the board of directors (*Vorstand*), the shareholders meeting (*Hauptversammlung*) and the supervisory board (*Aufsichtsrat*).

A shareholders meeting is called by the board of directors and must be held at least once a year within eight months after the end of an accounting year. The following matters, inter alia, require a shareholders resolution:

- appointment of the members of the supervisory board
- appointment of the auditors
- changes to the articles of association, including an increase or reduction of the share capital
- approval of the annual report (unless the supervisory board approves it)
- distribution of profits
- release from liability of the board of directors and the supervisory board.

Shareholders resolutions are in principle adopted by a simple majority. For certain fundamental decisions, in particular changes of the articles of association a qualified majority of 75 percent of the votes is required.

The board of directors consists of one or more members, represents the company and carries out the day-to-day business. The members of the board of directors are appointed by the supervisory board for a period of 5 years (reappointment is permitted). Usually the members of the board of directors are employed with the company, and are regarded as free employees (*"freie Dienstnehmer"*), so they are not protected by labour laws. Profit shares are common. The members of the board of directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks.

The supervisory board members are appointed by the shareholders meeting (except the representatives of the employees). There have to be at least three members. The supervisory board must supervise the management board. A number of transactions must be approved by the supervisory board, e.g., the acquisition, alienation and mortgaging of real estate, opening and closing of branches, determination of the general business policy etc. The liability of the members of the supervisory board is the same as the liability of the members of the management board.

### **Annual Account - Financial and operating results**

The financial statements (*Jahresabschluss*) consist of the balance sheet, the profit and loss statement, an appendix and a position report.

The financial statements have to be prepared by the management within five months of the end of the accounting year. They require the approval of the shareholders assembly in the case of a Company with Limited Liability and the supervisory board in the case of a Stock Corporation. Furthermore a statutory audit is required for Stock Corporations, large or medium sized Companies with Limited Liability, banks, insurance companies and investment funds.

The financial statements must be filed with the commercial register (except Partnerships which must only register if the general partner is a corporation) within nine month of the end to the accounting year. Large Stock Corporations, companies listed on the stock exchange, banks, insurance companies and investments funds must publish the financial statements in the "Wiener Zeitung". Any delay in such filing of the financial statements is subject to a penalty which is imposed against the company and the managing director (Sec 283 UGB).

### **Establishing of a Company**

For the foundation of a Company with Limited Liability the registration with the Commercial Register is necessary. The following documents have to be filed: (i) articles of association including at least the name and the legal seat of the company, the company purpose, the amount of the share capital and the contribution of every shareholder. The founders have to appoint managing directors, who have to sign specimen signatures, which are deposited at the Commercial Register. The Application for Registration has to include an Affidavit to be issued by the managing director that the share capital has been paid to the bank account of the company and that the managing director may dispose of it without third party rights.

### **Liquidating a Company**

For Corporations such as the Company with Limited Liability and the Stock Corporation a formal winding-up procedure is provided by law. If the shareholders agree to dissolve the company or the company is dissolved of any other reason, the company enters into a liquidation period. During this period the company is represented by the liquidators (who may be the directors or third parties). The property of the company is sold and the debts are paid. The remaining funds are distributed to the shareholders. At the end of the procedure the company is struck from the register.

### **Reforms Affecting Companies with Limited Liability**

In 2013 a reform was issued allowing the foundation of a company with limited liability with a minimum capital of EUR 10,000, which has to be paid in half. This privilege of foundation ("*Gründungsprivileg*") has to be mentioned in the company register. With a change of the articles of association and payment of the missing "normal" minimum capital of EUR 35,000 this privilege ends. In any case the privilege ends after 10 years after the foundation, which means that the capital has to be increased to EUR 35,000. The main advantage of this reform is a reduction of foundations costs.

## → Foreign Investments

### Registration with Government, Authorities and Permits

There are in general no restrictions on converting or transferring funds related to foreign investments. All cross-border capital transactions for non-residents and residents, including the acquisition of Austrian securities, debt services, the repatriation of profits, interest payments, dividends and proceeds from the sale of investment are unrestricted.

Nevertheless the Austrian Central Bank (*Nationalbank*) is entitled to enact restrictions pursuant to EU-law under certain circumstances, e.g., major difficulties in international relationships, where the security of Austria is endangered, etc. In this case certain transactions require the permission of the Austrian Central Bank.

Furthermore various transactions related to foreign countries, e.g. foreign direct investments, must be notified to the Austrian Central Bank for statistical purposes.

The nine provinces have established regulations (*Grundverkehrsgesetze*) under which the acquisition of real estate (and certain rights related to real estate) by foreigners (in some cases also by Austrians) is subject to approval by the provincial authorities. These restrictions concern primarily real estate for agriculture use and real estate in tourist regions. The regulations differ from province to province.

Most business activities in Austria require a business license (*Gewerbeberechtigung*). If the business is conducted by a corporation, a partnership or a branch of a foreign company an individual person (trade manager) must be named who is responsible for the correct conduct of the business. This person is commonly called the "gewerberechtlicher Geschäftsführer", who must be resident in Austria, in the EEA or Switzerland or in a country where penalties of Austrian administrative authorities can be executed. Since the manager must be in a position to work in the business accordingly which the authority checks, therefore, in most cases a "gewerberechtlicher Geschäftsführer" is nominated who is resident in Austria.

### Transfer of Dividends, Interests and Royalties Abroad

Austria does, generally, not restrict the transfer of dividends, interests and royalties abroad. The exemptions are mentioned above. For the taxation of these transfers see section "Tax Law".

### Repatriation Procedures and Restrictions

Austria applies no repatriation procedures or restrictions.

## Foreign Personnel

There are restrictions on employment of foreign employees. Citizens of the “old” EU member states plus citizens of the member state of the enlargement 2004 have already been entitled to work in Austria without a work permit. On December 31st, 2013 the restrictions concerning citizens of Bulgaria and Romania ended. Currently special transition rules still apply for citizens of Croatia.

The former system of a quota-based system has been changed. For key personnel, high qualified persons and skilled workers in shortage occupations the “Red-White-Red-Card” is possible: the work permit is valid for a certain job in a certain company for a maximum period of one year. After a year a (i) “Red-White-Red-plus” card or (ii) a temporary residence permit is possible. The “Red-White-Red-plus” allows working not only in a certain job but in the whole country. After five years a residence permit EC (Daueraufenthalt EU) can be obtained if an integration agreement (especially evidence of knowledge of the German language has to be provided) is fulfilled.

Additionally, there are special provisions regarding juvenile persons, family reunification and citizens of non-EC member states having a residence permit of another EC-member state.

Foreign companies who perform services in Austria with foreign personnel have to consider that some rules of Austrian labour law apply, e.g., the minimum salaries stipulated in collective bargaining agreements, restrictions of working time etc. Any violation of provisions can lead to administrative penalties.

## → Labour Law

Austrian labour law is characterized by high standards of protection of the employees’ rights and the importance of collective bargaining (company agreements are less important). Therefore, the possibility to govern the labour conditions by individual contracting is restricted.

### Employment Contracts

The most important distinction is drawn between white-collar workers (*Angestellte*) and blue-collar workers (*Arbeiter*). White-collar workers are employed in commercial, higher non-commercial or clerk services, all other employees are blue-collar workers. Since this distinction is commonly seen as antiquated, in recent years the legal rules for white-collar workers and blue-collar workers have been adjusted, but there are still some differences, e.g. the periods of termination still differ. Furthermore, in many sectors there are different collective bargaining agreements for white-collar workers and blue-collar workers.

In addition to the usual labour contract, there is the possibility to enter into a free labour contract (*freier Dienstvertrag*). In a free labour contract the “employee” is not personally dependent on the “employer” (e.g., he can set his working time by himself, he works with his own equipment etc.). Only a few labour laws apply to free labour contracts.

A labour contract may be concluded for a definite or indefinite period of time. A contract for indefinite time can always be terminated by an ordinary termination (*Kündigung*) by both of the parties, provided they comply with certain notice requirements (termination periods and dates). The termination period the employer must comply with depends on the years of service: in case of white-collar workers, it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). A white-collar worker must comply with a termination period of one month. The statutory termination period may be lengthened but not shortened by the individual contract. The period the employee has to comply with must not be longer as the period the employer has to comply with. The employer of a white collar worker may terminate the contract to the end of each quarter; the white-collar employee may terminate employment to the end of each month. This rule can be changed by contract, so that both parties may terminate the contract on 15th or the last day of the month. In the case of bluecollar workers, the applicable termination period is two weeks for both parties, there are no certain termination dates. The period may be lengthened or shortened by collective bargaining or by contract. In enterprises where a work council is actually established the work council must be informed by the employer before giving notice of the termination to the employee.

An ordinary termination may be challenged by the employee if he works in a plant/factory where establishment of a work council is required (see below). A termination can be challenged because of a proscribed reason of the termination (e.g., union activity, activities in organizing the election of a work council) or because it was socially unjustified (important for elder employees). For some protected groups as members of the work council, pregnant employees, handicapped people or apprentices terminations are restricted.

Beside ordinary termination contracts (whether for a definite or indefinite period of time) may be terminated with immediate effect if there are important reasons that make the continuation of the employment unacceptable for one of the parties. The employer may immediately terminate the labour contract if the employee is disloyal in his service, incapable of performing his services, refuses to comply with orders of the employer etc. If the dismissal is not justifiable because there is no important reason the employment nevertheless ends immediately, but the employee will be entitled to full pay as if the employer would have ordinarily terminated the employment.

If an employment contract or a freelance contract is terminated after 31.12.2012, generally (e.g., in case the contract is terminated by the employer, in case of unjustified dismissal or contracts ending by passage of time), a fee of EUR 115 in 2014 (*Auflösungsabgabe*) has to be paid by the employer. Under certain circumstances no such fee applies: termination by employee, justified dismissal.

An employee, whose employment has lasted for at least three years, is entitled to severance payment (*Abfertigung*) in the event of ordinary termination by the employer, termination by mutual consent, justified immediate resignation by the employee and unjustified dismissal by the employer. The severance payment depends upon the time of service and ranges from 2 months' salary to 12 months' salary. The Act on Statutory Corporate Employment Retirement Scheme (*Betriebliches Mitarbeiterversorgungsgesetz*) applies to contracts beginning after December 31, 2002 (there is an opt-in-possibility for older contracts). Under this new legislation the employer has to pay 1.53 % of the monthly remuneration to a fund which pays the severance payment.

The members of the managing board of a Stock Corporation are excluded from the protective provisions of the labour law. However, labour law may apply to managing directors of a Company with Limited Liability depending on the rights and duties they have. Shareholders holding a majority or a blocking minority of shares will not be regarded as employees if they serve as managing directors of that company.

### **Employees Representatives and Union Representation**

In Austria there is only one trade union, the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund, ÖGB*). The influence of the trade union is traditionally big but has declined in the last years in particular since the inauguration of the former conservative government and a scandal involving the trade union-owned Labour and Economics Bank (*Bawag*). The influence of the trade union is still significant since the Austrian Trade Union Federation conclude collective bargaining agreements (see below).

Members of the staff of companies having at least five employees are entitled to establish a work council (*Betriebsrat*). The number of members depends on the number of employees. The members of the work council need not to be members of the trade union. The work councils, therefore, are formally independent from the trade union although in fact there are often connections. A work council may conclude company agreements with the owner of the company (see below).

The members of the work council enjoy certain privileges and the law provides them specific protection (e.g., protection against termination). If their duties as members of the work council requires them to perform such activities during normal working hours their salary must not been reduced. In companies with a great number of employees (more than 150) one or more members (2 if there are more than 700 employees, 3 if there are more than 3000 employees) of the work council are entitled to be totally released from their duty under their employment contract. Members of the work council must not be discriminated against.

There are no specific privileges for members of the Trade Union but a termination because of union activities is not justified (see above).

## **Collective Bargaining Agreements, Company Agreements**

The parties of collective bargaining agreements are the Austrian Trade Union Federation and statutory employer organisations, in particular the chamber of commerce (*Wirtschaftskammer*) and its sub-organizations. Generally collective bargaining agreements are concluded for a specific sector or branch, in most of the cases they apply to the whole territory of Austria, but there are also collective bargaining agreements applicable only in a certain province. The collective bargaining agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. Collective bargaining agreements govern the main aspects of the employment like wages, working conditions, working time etc. They apply to all employment relations, overriding the individual contract, except where the terms of the individual contract are more favourable to the employee. Collective bargaining agreements are thus of great significance in Austria.

Company Agreements are concluded between the management of the company and the work council (if there is no work council, no company agreement can be concluded). Only specified matters can be governed by a company agreement, e.g., establishing of piece-work system, regulation of the daily work time etc. Company Agreements are less important than collective bargaining agreements.

### **Wages and other Types of Compensation**

There is no statutory minimum salary in Austria, but minimum salaries are stipulated in the collective bargaining agreements. The minimum salaries depend on the duties and the years of service. It is important that usually collective bargaining agreements grant 14 payments a year (so called 13th and 14th salary or Christmas and vacation pay, these payments are subject to a reduced income tax at a 6 per cent rate).

Other types of compensation common in Austria are the provision of a company housing or a company car, contributions to a pension funds or meals at a reduced price. Since collective bargaining agreements usually stipulate a salary paid in cash (transferred to the bank account of the employee) remuneration in kind has no great importance in Austria. If an employer repeatedly grants additional benefits (e.g., a bonus at the end of the year) the employee is entitled to receive these benefits in the future. The employer can avoid this by explicitly reserving the right to terminate the practice at will.

The normal statutory working time is eight hours a day and 40 hours a week. Many collective bargaining agreements stipulate shorter working-times (38 hours a week are common). Overtime hours have to be paid at the normal hourly rate plus 50 % (collective bargaining agreements may stipulate higher extra pays in particular for overtime hours on Sundays). It is permissible to agree on a lump-sum for overtime hours or an all-in- salary as long as the lump-sum or the all-in-salary exceeds the minimum payment for overtime hours set by the applicable

collective bargaining agreement. Besides payment for overtime hours it is also possible that the employee takes a compensatory time off whereby one overtime hour is equal to at least one and a half hours of extra free-time.

## Employment Regulations

Austrian labour law is split up to many different statutes. For white-collar workers the Act on white-collar workers (*Angestelltengesetz*) is of great importance. Other important acts are the Labour Relations Act (*Arbeitsverfassungsgesetz*), the Vacation Act (*Urlaubsgesetz*) and the Working Time Act (*Arbeitszeitgesetz*).

## Social Security Costs

The employer must notify the beginning and the end of an employment to the social insurance agency. The employer is liable for the payment of the social security costs. The contributions must be paid monthly by the last day of the month. The social security contributions consist of an employee's contribution which is deducted from the salary and an employer's contribution which must be paid in addition to the salary. The employer is liable for the payment of the employer's contribution and the employee's contribution.

The employees contribution is currently (2014) 18.07 per cent of the salary for white collar-workers and 18.20 per cent of the salary for blue-collar workers

The employers contribution is currently (2014) 21.83 per cent of the salary for white collar workers and 21.70 per cent of the salary for blue collar workers.

There is a ceiling on the basis for contribution (*Höchstbeitragsgrundlage*) of EUR 4,530 a month (in the year 2014) which means no social insurance contributions have to be paid for the part of the salary exceeding this ceiling.

Generally, all parts of the remuneration (including remuneration in kind and overtime payments) are the basis for the social insurance contribution, but there are a few exceptions, e.g. work clothes, meals at a reduced price, contributions to a pension's fund.

## Health and Safety

Austrian labour law includes detailed provisions on occupational safety and health which the employer has to comply with. The employer has the duty to take measures to protect the life, the health and the morality of his employees at their work place. These regulations cover the size, lightning and ventilation of rooms, fire prevention, first aid, compulsory safety instructions etc. Compliance with these provisions is monitored by the Work Inspection Authority

(*Arbeitsinspektorat*). Depending on the numbers of employees one or more person responsible for safety (*Sicherheitsvertrauensperson*) has to be appointed.

Important statutes in this field are the Act on Safety and Protection of Health at work (*ArbeitnehmerInnenschutzgesetz*) and the Act on Work Inspection (*Arbeitsinspektionsgesetz*).

### **Contracting and Outsourcing of Work or Services**

If work is outsourced this may be deemed as transfer of business (*Betriebsübergang*) and the corresponding regulations apply (liability of the old owner, position of the employee must not deteriorate). According to the Austrian provisions any transfer of business, generally, has no consequence for the employees being affected – any purchaser enters into their unchanged contracts. An important exception exists for the transfer of a business by share deal: since the employer (being the company itself) is still the same, no transfer of business is made and the above mentioned protection provisions are not applicable.

If freelancers are engaged it is important to formulate a contract which is not deemed as illegal avoidance of labour law. Therefore the freelancer must not be personally dependent on the employer (see above). If the contract is deemed as illegal avoidance of labour law, labour law nevertheless applies.

## **→ Real Estate Law**

The following statutes regulate real estate in Austria:

- General Civil Code (*Allgemeines Bürgerliches Gesetzbuch - ABGB*);
- General Land Register Act (*Allgemeines Grundbuchsgesetz*);
- Real Estate Transaction Laws (*Grundverkehrsgesetze*) of the nine provinces of Austria;
- Rent Control Act (*Mietrechtsgesetz*).

### **Types of ownership**

OWNERSHIP – CO-OWNERSHIP – CONDOMINIUM: Ownership in the sense of Austrian law is generally defined in § 354 ABGB. Consequently ownership on a piece of real estate means, as in all states of Central Europe, the right on the one hand to make use of the substance and the proceeds from a property, principally without any restriction, and on the other hand to exclude other people therefrom. It is also possible, that more than one person is owner. In the case of joint ownership (*Miteigentum*) each owner has the right to participate proportionately on the earnings of the property and to request dissolution of the co-ownership. This is however not allowed, if the dissolution would be detrimental to at least one other co-owner.

Condominium is a special form of the co-ownership and means, that each co-owner has the exclusive right to use a certain apartment in a building, existing on the purported property.

“USUS FRUCTUS”: “*Usus fructus*” means the right to use a certain piece of real estate whose owner is someone else and consume all earnings of this property.

CONSTRUCTION RIGHT (*Baurecht*): A construction right principally means the right to construct a building on the surface of a property owned by another one. This right is transferable and has to be constituted by a contract with the owner of the real estate. Furthermore it is limited for certain time.

Closely related with the Construction Right is the “*superaedifikat*”.

### Land Register

In Austria rights according to real estate, especially the ownership, “*usus fructus*”, mortgages (*Hypotheken*), easements (*Dienstbarkeiten*) and Construction Rights (*Baurecht*) are recorded in the Land Register, administrated by the District Courts (*Bezirksgerichte*). Currently there exist 134 District Courts.

The Land Register is divided into in the main register (*Hauptbuch*) and the document collection (Urkundensammlung). Each piece of real estate has a lot number (*Einlagezahl*). This register maintains three schedules of each lot number:

- Schedule A is the schedule of estate (*Gutbestandsblatt*)
- Schedule B is the schedule of the ownership (*Eigentumsblatt*)
- Schedule C is the Schedule of encumbrances (*Lastenblatt*). This schedule especially shows mortgages and easements.

The Austrian land register is a public data bank, so everyone is entitled to inspect all documents. Furthermore the Land Register is subject to the principle of priority, which means that a right registered first prevails over all rights which have been registered subsequently, and the principle of confidence, which means, that everyone can rely on the assumption that the registered information concerning the ownership and especially the schedule of encumbrances is right and complete.

### Transfer Formalities

It is not necessary that a contract to establish rights and encumbrances on real estates is constituted in the form of a notary deed. Only the declaration of the registered owner that he agrees to the registration of the right which is subject matter of the concerning contract in the Land Register (*Aufsandungserklärung*) needs a certification by a notary public.

## Mortgages

A mortgage is the right of a creditor to obtain satisfaction of a debt from a certain piece of real estate if the obligation is not fulfilled as agreed. The mortgage depends on the existence of the secured debt and comes into existence with its registration in Land Register schedule C.

A registration is only allowed in case that the document, which is the basis for the mortgage, contains a certain sum of money or a reference to a maximum amount of money (*Höchstbetragshypothek*). Furthermore it is possible that more than one mortgage is registered on one piece of real estate. In this case the ranking between the mortgages depends on the day of registration in the Land Register (principle of priority).

Where the secured debt is not repaid as agreed, the creditor has the right to initiate a public sale of the property by order.

## Restrictions on Acquisition

All nine provinces of Austria have enacted Real Estate Transaction Laws (*Grundverkehrsgesetze*) which contain various restrictions. Since Austria became member of the EU many restrictive provisions in these laws have been liberalized, so that all EU-citizens are equally treated.

The existing restrictions are to be split up in two parts: On the one hand there are constraints for real estates used for agricultural purpose and on the other hand there are restrictions on properties in certain areas which are of special interest for tourism.

In both cases the acquisition of real estate and other certain rights is subject to approval by the Land Transfer Authorities (*Grundverkehrsbehörden*).

## Special Legal Protections for Parties

In case a consumer concludes an agreement to become owner or tenant of a property, he has the special right to withdraw from this contract within one week, if the contract was signed on the day of the first examination of the subject matter of the contract.

## Construction and Use Restrictions

A number of restrictions concerning the use of real estate law can be found in public law. Not all of them can be mentioned here. The most important are:

- If it is planned to build a house or another building on a certain property, it is necessary to obtain a building license (*Baubewilligung*);

■ It is not possible to obtain a building permit on every piece of real estate. It is important to know that there is a land development plan (*Flächenwidmungsplan*) for every piece of Austria. This plan divides the concerning area in different zones. For example you can find there agricultural or building land. It is forbidden to construct buildings on agricultural land.

### Leasehold Types

The Austrian civil law differentiates between two kinds of leases. One is named “*Miete*” and the other “*Pacht*”. The difference is very important, as legal consequences differ. In a “*Miete*” the lessee (Mieter) has the right to use the object of lease. In case of “*Pacht*” the lessee (*Pächter*) has not only the right to use but also to participate in the earnings of the concerning property.

In case of “*Miete*” the lessee is highly protected by the provisions of the Rent Control Act (*Mietrechtsgesetz, MRG*). Especially restricted is the right of the lessor (*Vermieter*) to terminate the lease contract of land and to determine the amount of rent.

Of certain interest are the following limitations of the lessor:

TEMPORAL LIMITATIONS: It is only possible to place a contract of lease under temporal limitation, if this agreement was settled in written form. Moreover not every temporal limitation is possible, as the Rent Control Act appoints minimum respites.

REASONS FOR THE LESSOR TO TERMINATE THE CONTRACT: Generally the lessor is only allowed to terminate the contract for important reasons. The Rent Control Act enumerates several important reasons. It is for example possible to terminate the contract, if the lessee does not use the property for the purpose under the contract or does not pay the rent punctually.

UPPER LIMIT FOR THE RENT: Generally the lessee and the lessor can stipulate an adequate rent. For certain kinds of apartments, especially if they are of a lower category, the Rent Control Act provides low upper limits for the rent.

The whole provisions of the Rent Control Act (*Mietrechtsgesetz*) are mandatory (*ius cogens*) and cannot be (with some exceptions) changed by contract to the disadvantage of the lessee. Where a contract includes some less favourable passages, the lessee is not bound by these contractual obligations and can rely on the provisions of law.

§ 1 MRG regulates the appliance of the Rent Control Act. Not all leases are subject to the Rent Control Act. In particular, leases which fall under the category of “*Pacht*” are not regulated by Rent Control Act. In this case the lessee consequently cannot rely on the protections of the Rent Control Act.

## **Lease formalities**

Generally there are no formalities for lease contracts in the Austrian law, albeit there are several exceptions to this tenet. Most of these exceptions are provided in the above mentioned Rent Control Act.

## **→ Tax Law**

### **CORPORATE TAXES**

#### **Taxes on Corporate Income**

The profits of a corporation are taxed at the company level at a flat rate, while profits of individuals (and Partnerships) are taxed at a progressive rate (exceptions see below).

Since 2005 the rate of the corporate income tax is 25 per cent (previously being 34 per cent). Therefore, the level of corporate income tax in Austria is now comparatively low.

The profits of a corporation are taxed whether the profits are paid out to the individual shareholders or retained in the company. Dividends paid to individual shareholders are subject to a withholding tax of 25 %. (Therefore, profits of a corporation which are paid to their shareholders are taxed in all with a rate of 43.75 per cent). Corporations have to pay a minimum tax related to the minimum capital. For Stock Corporation this amounts to EUR 3,500. For existing companies with limited liability the tax amounts to EUR 1,750 (due to some reforms last year - decrease of minimum share capital and increase to EUR 35,000 again - the minimum tax for such companies in 2014 amounts to EUR 1,437.50. For companies with limited liability founded after June 30th, 2013 the minimum tax for the first five years is EUR 500 per year, during the next five years EUR 1,000.

The minimum corporate income tax has to be paid even if no profit is generated.

The taxation of Private foundations differs from the taxation of other legal entities: the dedication of assets to a foundation is, generally, taxed with 2.5 % (the tax rate is 25%, e.g., if the documentation is not disclosed or the foundation is not comparable to an Austrian one). Some types of incomes, e.g., income from bank deposits, debt securities or from the sale of participations are subject to a tax rate of 25 % (interim tax) as long as they are retained (this tax is credited when the amount is paid to the beneficiary). Dividends from participations in an Austrian corporation and – under certain circumstances - from a participation in a comparable foreign corporation are tax exempt. Benefits to the beneficiary from the substance are tax-free, whereas such from the proceeds are subject to the capital gains tax of 25%.

## Corporate Residence

A company is resident in Austria if it has its legal seat (as designated in its statutes) or its place of effective management in Austria. A company with its residence in Austria is taxed on its worldwide income. A company with no residence in Austria is taxed on its income earned through the activities of a permanent establishment in Austria and its incomes from immovable property located in Austria, capital gains on the sale of shares in resident companies (if the shareholding has amounted at least 1 % at any time during the last 5 years) and royalties (see below).

## Other Taxes

**VALUE ADDED TAX:** The rate is in general 20 %; 10 % are charged for leases of land and buildings for residential purposes, services rendered by theatres, museums etc, transport of passengers, foodstuff, books, etc.

**REAL ESTATE TRANSFER TAX (*Grunderwerbssteuer*):** rate 3,5 % (2 % if real estate is transferred between close relatives and/or spouses).

**CAPITAL TRANSFER TAX (*Kapitalverkehrssteuer*):** rate 1 % in particular for issuing shares in a domestic corporation (company with limited liability and stock company),

**STAMP DUTIES:** e.g. for lease agreements, suretyships, assignments etc.

**ENERGY TAXES** on natural gas, electricity, coal, petroleum

There is NO PROPERTY TAX in Austria, only the possession of real estate is taxed with an annual rate of app. 1 % of the assessed value (*Einheitswert*), which is regularly beneath the actual value. Since 2008 no inheritance and gift tax is imposed any longer due to a ruling of the Austrian Constitutional Court.

## Branch Income

A company with its residence in Austria is taxed with its worldwide income (including the incomes of a foreign branch). A company with no residence in Austria is taxed on its income earned by a branch in Austria. Austria is party to a number of tax treaties which seek to avoid double taxation.

## Income Determination

Inventory generally has to be valued at the lower of cost and market value. If inventory is valued according to cost, the FIFO method is generally accepted. The LIFO method is allowed only if it is in accordance with the company's actual practice.

Capital gains from the sale of business assets are generally included in taxable income and are taxed at the standard rate.

### **Participations**

Capital gains (dividends) from a shareholding in domestic subsidiaries and foreign companies (under certain circumstances, e.g., EC companies or other foreign companies comparable to Austrian companies from countries providing Austria with full administrative assistance) are exempt from taxation. This exemption applies irrespective of the amount of holding and the holding period. Withholding tax is levied for dividends from domestic participations not exceeding a 10% participation. Gains from the sale of participations or from liquidation of the company are taken into account.

Dividends from international participations (parent company is subject to unlimited income taxation in Austria, subsidiary is comparable to an Austrian company, the participation exceeds 10% of the subsidiary's capital and is held for more than one year) are tax-free. This also applies to gains from the disposal or liquidation of such participations unless the parent company irrevocably opts into taxability (including the possibility for depreciation to the shares' fractional value).

The above mentioned exemption does not apply if the foreign company is either not subject to a comparable company tax abroad or tax-exempt due to special foreign provisions or the foreign tax rate is below 15%. In such cases Austrian Law changes the system: instead of the exemption method the credit method is applicable. Furthermore no exemption applies if foreign capital gains are deductible abroad.

### **Deductions**

Generally, all expenses being caused by running a business are deductible. The costs for business lunches are deductible with 50% if made for promotion purposes. Since March 2014 costs for personnel exceeding EUR 500,000 per year and person are not deductible anymore. Compensation payments for supervisory board members are only deductible with 50%.

The basis for depreciation is the cost price or production cost. Only the straight line method of depreciation is permitted by tax laws (no progressive or diminishing balance depreciation is allowed). The depreciation period is from 5 to 10 year for machines, at least 8 years for passenger cars, 15 years for the goodwill, 33 1/3 years to 66 2/3 years for buildings depending on the use of the building. Excess write down to the lower going concern value (= fraction of the total purchase price that a buyer of the whole company would pay for a certain asset assuming the buyer intends to continue the business) is only possible in case of technical or economic obsolescence. Some assets cannot be depreciated, in particular real estate.

Net profit losses may be carried forward without any time limit. The former provisions that only loss carry forwards can only be set off against 75% of the income applies only to companies after the year 2014. To avoid misuse of losses carried forward a change in ownership of the company shares under certain circumstances, namely a substantial change of the shareholders (more than 75 per cent), a substantial change in the organization and a substantial change in the economic structure without reorganization reasons (so called "Mantelkauf"), lead to a loss of the ability to carry forward the net profit losses of the previous years.

Although there are no statutory provisions specifically dealing with transfer pricing the arm's length principle is applied in Austria because of general rules of the Austrian tax law.

The income tax and the corporate income tax are not deductible.

### **Group Taxation**

Since 2005 Austrian tax law allows the building of a tax group. The group parent needs an equity participation of more than 50 per cent (directly or indirectly) including the majority in voting rights. It is also possible to build a group where one company holds at least 40% and another at least 15% (*Mehrmüttergruppe*). Such participation has to last for at least three years and an application with the tax office has to be filed. Irrespective of the participation held, 100 % of the profits and losses of Austrian group members will be attributed to the group parent, while losses of foreign group members will be attributed according only to the ownership percentage of the participation held. Undistributed profits of foreign group members are not attributed to the parent company, distributed profits are tax-free (international participation). Foreign group members resident in countries without administrative assistance cannot become members anymore, with 2015 such existing foreign group members are excluded from the group by law.

### **Tax Incentives**

There are several tax incentives in Austria, e.g., different forms of research tax allowances, an education allowance and an education premium, or an apprentice premium. An invention allowance for example is granted for expenses incurred in the development or improvement of inventions valuable for the economy. An education allowance is granted for expenses incurred for the education and training of employees. It amounts to 20 % of these expenses.

Since 2010 individuals can participate from the new profit tax allowance (*Gewinnfreibetrag*): a differentiated rate of the profits can be deducted as notional operating expenses, in total up to EUR 45,350. A part of EUR 3,900 can be set off without any further requirements; the other parts depend on the actual investment in securities and certain assets.

## Withholding taxes

A withholding tax of 25 % is levied on dividends distributed by a resident company to its Austrian shareholders. For natural persons, generally, the taxation is final (*Endbesteuerung*). No withholding tax is levied if the parent company holds more than 25% of the capital, for lower participations the withholding tax is credited. Dividends of resident companies to its foreign shareholders in the EC/EEA are tax-free if the participation exceeds 10% and exists for more than one year.

Double taxation treaties can contain lower tax rates. Interest income from other sources is subject to standard corporate income tax (or individual income tax).

Royalties paid to non-residents are subject to a final withholding tax of 20 % unless a reduced rate applies under a tax treaty. Tax rate on dividends, interest and royalties according to tax treaties (selected countries):

Country	Dividends	Interest	Royalties
Australia	15	0	10
Belgium	15	0	10 (0 in some cases)
Brazil	15	0	Up to 20
Canada	5 or 15	0	10 or 0
Denmark	10	0	10 (0 in some cases)
France	0 or 15	0	0
Germany	5 or 15	0	0
Italy	15	0	10 (0 in some cases)
Japan	10 or 20	0	10
Korea	5 or 15	0	2 or 10
The Netherlands	5 or 15	0	10 (0 in some cases)
Portugal	15	0	10
Russia	5 or 15	0	0
Spain	10 or 15	0	5
Switzerland	0 or 15	0	0
United Kingdom	5 or 15	0	10 (0 in some cases)
USA	5 or 15	0	0 (on films 10)

## Tax Administration

A company must file the annually corporate income tax return by April 30 (by June 30 when filed electronically) of the subsequent calendar year (no matter when the financial year ends). If the company is represented by a tax advisor the period for filing the return may be extended.

Prepayments of Corporate Income tax must be made in four equal payments by February 15, May 15, August 15 and November 15 in accordance with the assessment notice issued by the tax authorities (based on the previous year's tax payments). If the Corporate Income Tax is more than the prepayments the difference must be paid within a month after receiving the tax statement. Excess prepayments are refunded.

## INDIVIDUAL TAXES

Different from the Corporate Income Tax the individual Income Tax is not a flat tax. The tax rate here is progressive (3 rates, maximum rate is 50 %).

Partnerships as such are not a subject of taxation, but the partners are. The profits of the partnership are first calculated for the partnership as a whole and then shared amongst the partners. The partners have to pay income tax (or Corporate income tax if the partner is a corporation) to their portion of the profit.

### Territoriality and Residence

Individuals who are residents of Austria are liable to Austrian Income Tax on the worldwide income. A person is regarded as resident if he has a domicile (= place where he occupies a residence under circumstances, which indicates that he will retain and use it on a basis which is not merely temporarily) or his customary place of abode (= physical presence over an extended period) is in Austria. A person who remains in Austria for 183 or more days during a year in Austria is considered to have his customary place of abode.

A person with no residence in Austria is only subject to Austrian income tax for specific income sources or assets.

### Gross Income

There are seven sources of income:

- Agriculture and forestry
- Trade or business
- Independent personal service (e.g. lawyers, tax advisors)
- Employment
- Investment of capital
- Rental and royalties
- Other income sources

The income from the first three sources (so called business income) is calculated in a manner similar to the treatment of income of a corporation (see above).

The taxable income from the four other sources is determined by deducting from the gross income any expenses that are incurred to acquire, safeguard and maintain this income (so called *Werbungskosten*).

From the employee's gross salary social security contributions, kilometre and daily allowance (up to a certain limit) or distributions of the employer to a pension funds in favour of the

employee are deducted. Non-recurring payment of salaries, in particular 13th and 14th salary (vacation and Christmas remuneration) enjoy a tax-free allowance of EUR 620 per year and excess amounts are also tax-advantaged depending on the amounts been paid.

In 2012 the tax treatment of capital gains from the sale transfer of non-business property has been changed: profits from the sale of real estate (difference between proceeds and acquisition costs) after April 1, 2012 are taxed with a special rate of 25%. An option to the normal taxation with the standard rates is possible.

Exemptions apply if the real estate has been the main place of residence for at least 2 years since the acquisition or for at least 5 years within the last 10 years or if the building has been newly built and not used as an income source in the last 10 years.

Gains on the sale of other goods despite capital assets and real estate within one year are tax-free if below EUR 440. Losses cannot be deducted.

After April 1st, 2012 gains on the sale of participations will be taxed on the new withholding tax regime (25 % withholding tax) regardless of the amount of holding and the holding period.

## Deductions

As mentioned above expenses that are incurred to acquire, safeguard and maintain this income are deductible. Furthermore taxable income is reduced by:

■ SPECIAL PERSONAL EXPENSES (*Sonderausgaben*), e.g. premiums paid into voluntary health, accident and life insurance programs, payments incurred to finance private house building and improvement, purchase of newly issued shares or profit sharing certificates. The maximum amount being deductible, generally, is EUR 2,920; only 25 % of the payments made are deductible with limitation; contributions to churches, contributions to charitable organisations, tax losses carried forward from previous years etc. are deductible, too.

■ EXTRAORDINARY EXPENSES (*außergewöhnliche Belastungen*): Payments incurred by a taxpayer because of extraordinary circumstances (e.g. natural catastrophes, children's tuition away from home, etc.).

■ SEVERAL DEDUCTIBLE AMOUNTS STIPULATED BY LAW (*Absetzbeträge*), e.g.: Sole earners: EUR 494, -- (with one child) + additional amount depending on the number of children). Sole earners with children and no spouse or partner: EUR 494, -- + additional amount depending on the number of children)

Employees: EUR 54,--.

**Tax credits**

Some of the deductible amounts stipulated by law reduce the income tax even if they exceed the tax. Therefore, a negative income tax is possible and the taxpayer is granted a tax credit which is paid to him.

**Other taxes**

Social security distributions are mandatory, but these are not regarded as taxes in Austria. There are no local taxes on income, but the employer has to pay a local tax (*Kommunalsteuer*) on basis of the sum of wages he pays to his employees (tax rate is 3 %).