

Austria

Kraft Rechtsanwalts GmbH & Co KG

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The Vienna based law firm was established in 1987 by Rainer Maria Kraft and is now managed by Elisabeth Mayer-Wildenhofer. The firm provides a comprehensive range of services to corporate and private clients with national or international interests. Unlike large law firms, Kraft & Wildenhofer's partners can ensure the sustained individual attention on which the successful solution to a case so often depends.

Through its expert contact in the world of business, it 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, the firm 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 Austrian Courts, including the Courts of Appeal and the Supreme Court. Such strengths allow Kraft & Wildenhofer to respond to the most challenging tasks.

COMMERCIAL AND CORPORATE

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

EMPLOYMENT

Employment agreements
Work and residency permits

REAL ESTATE

Acquisition and disposal of property
Lease agreements

INTELLECTUAL PROPERTY

Trademarks
Model and design

FAMILY AND ESTATES

Wills
Probate
Trusts
Estate planning

CAPITAL MARKETS

Compliance issues
Liability of investment counsels
Licensing proceedings

IT LAW / DATA PROTECTION

E-Commerce
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LITIGATION

DEBT COLLECTION

Austria

Corporate Law

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Regulations and Rules

The main statutes in corporate law are the Austrian Commercial Code (*Unternehmensgesetzbuch*, UGB), 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) especially for companies constituted under civil law (*Gesellschaft bürgerlichen Rechts*), 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*).

Since 2007 most types of companies are also open to the so-called liberal professions (“*freie Berufe*”), as for example lawyers, notaries, doctors, pharmacists, accountants or architects; however the various professional codes contain certain restrictions.

Further types of companies are the companies constituted under civil law (*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 stock capital (*Grundkapital*) of a Stock Company is EUR 70,000. At least 25% 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 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) General Assembly (*Generalversammlung*). A supervisory board (*Aufsichtsrat*) is only compulsory for large companies (e.g. more than 300 employees) and optional for the others.

The General 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% 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 and are also subject to directives of 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, exceptions exist if they violate special legal rules (e.g. the requirement to 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% 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 and are not subject to directives. 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 employee with free labour contract (“*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 to 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 months 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 filing the financial statements is subject to a penalty which is imposed against the company and the managing director (§ 283 UGB).

Establishing 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 for 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 for Small Enterprises

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 10 years after 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.

As of January 1, 2018 it is possible to establish the so called “single member” or “one-person Company with Limited Liability”. The purpose of this new concept is to simplify and thereby to speed up the process of foundation of a company with limited liability and therefor to minimize the expenses.

The simplified creation of a Company with Limited Liability is possible when an individual person is the one and only shareholder and managing director at the same time. To establish the company a notarial deed is not needed. The electronical way of foundation is enough, yet it is required to doubtlessly determine the identity of the only shareholder. The application for registration in the companies register is carried out electronically by the bank after the capital is paid in cash and the identity of the shareholder is successfully determined.

Austria

Tax Law

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1. 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% (previously being 34%). Therefore, the level of corporate income tax in Austria is now comparatively low. As part of the Eco-Social Tax Reform 2022, it was decided to reduce the corporate income tax rate further in stages to 24% from 2023 and to 23% from 2024.

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 27.5% since January 1, 2016. (Therefore, profits of a corporation which are paid to the shareholders are taxed in all with a rate of 45.63 per cent). Corporations have to pay a minimum tax related to the minimum capital even if no profit is generated. For stock corporations this amounts to EUR 3,500. For companies with limited liability the tax amounts to EUR 1,750. For companies with limited liability founded after June 30, 2013 the minimum tax for the first five years is EUR 500 per year, during the next five years EUR 1,000. As of the 11th year the full minimum tax has to be paid.

The taxation of private foundations differs from the taxation of other legal entities: the nonpaid dedication of assets to a foundation is, generally, taxed with 2.5% (the tax rate is 25%, though, if the documentation is not disclosed or a foreign foundation is not comparable to an Austrian for example). Some types of income, 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 being subject to taxation). Dividends from participations in Austrian corporations and – under certain circumstances – from participations in a comparable foreign corporations are tax exempt, whereas income from business operations is subject to the corporate income tax of 25%. Benefits to the beneficiary from the substance are tax-free, whereas such from the proceeds are subject to the capital gains tax of 27.5%.

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 from the sale for shares in resident companies and royalties (see below).

Other Taxes

Other relevant taxes are:

Value added tax (*Mehrwertsteuer*)

The rate is in general 20%; 10% are charged for leases of land and build-ings for residential purposes (including camping and hotel accommodation), transport of passengers (except airfares), foodstuff, books; 13% are charged for services rendered by film-theatres, artists, sale of livestock, plants, .

Real estate transfer tax (*Grunderwerbssteuer*)

rate 3.5%; (as of January 1, 2016 the tax rate is staggered if the acquisition of the real estate was entirely or partly free of charge)

Capital transfer tax (*Kapitalverkehrssteuer*)

none (until December 31, 2015 the rate was 1% in particular for issuing shares of a domestic corporation (company with limited liability and stock company)).

Stamp duties

e.g. for lease agreements (not for living quarters after November 11, 2017), suretyships, as-signments etc.

Energy taxes on natural gas, electricity, coal, petroleum

Digital tax

After December 31, 2019, online advertising will under certain circumstances (esp. high sales fig-ures) be taxed at a rate of 5%. Before, here has only been an **advertising tax** of 5% for advertisements in print media, radio, TV and billboards.

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 Austrian-source income. 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 com-pany'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 are exempt from taxation. Portfolio divi-dends (i.e. participation of less than 10%) of foreign companies listed in the EU parent-subsidiary-directive or other foreign companies comparable to Austrian companies from countries providing Austria with full administra-tive assistance) are also exempt from taxation. Other dividends from non-resident companies are exempt if the foreign company is a company comparable to an Austrian company or a type of company listed in the EU par-ent-subsidiary-directive, and only if the parent company has held at least 10% of the shares of the foreign com-pany for the minimum of one year. Withholding tax is levied for dividends from domestic participations not ex-ceeding 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 15 % or below. In such cases Austrian Law changes the system ("*Methodenwechsel*"): 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 are not deductible anymore. As of January 1, 2016 expenses for construction work of more than EUR 500 are only deductible, if payments thereof have not been made in cash.

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, 40 years (2,5% per year for business purpose) to 66,6 (1,5% per year for residential purpose) 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 loss carry forwards can only be set off against 75% of the income applies after the year 2014 only to companies. 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%), 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% (directly or indirectly) including the majority in voting rights. It is also possible to build a group, where one company must hold at least 40% and each of the other ones at least 15% (*Mehrmüttergruppe*). Such participation needs a group agreement, 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; as of January 1, 2015 the loss attribution of foreign group members can only be taken into account by 75% of the total amount of the domestic taxable income. The remaining losses can be carried forward and be taken into account in subsequent years. 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 were excluded from the group by law.

Tax Incentives

There are several tax incentives in Austria, e.g., different forms of research tax allowances and deduction of tax for education.

An invention allowance for example is granted for expenses incurred in the development or improvement of inventions valuable for the economy. Some education (e.g. for training in similar fields to the current job) and advanced training costs are deductible.

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. For profits up to EUR 30,000 a part of 13% (at most 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 27.5 % (since January 1, 2016) 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 10% 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):

Tax administration

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

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.

2. Individual Taxes

Different from the corporate income tax the individual income tax is not a flat tax. The tax rate here is progressive (7 rates, maximum rate is 55% - Limited until 2025, 50 percent thereafter.).

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

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 indicate 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) in Austria. A person who remains for 183 or more days during a year in Austria is considered to have his customary place of abode there.

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 13 and 14 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 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%. After January 1, 2016 the tax rate has increased to 30%. 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 (in this case only for the building).

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

After January 1, 2016 gains on the sale of participations will be taxed on the new withholding tax regime (27.5% 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 the 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 (contracted before January 1, 2016), purchase of newly issued shares or profit sharing certificates. The maximum amount being deductible, generally, is EUR 2,920; only 25 % ("*Sonderausgabenviertel*") of the payments made are deductible. Contributions to churches, contributions to charitable organisations, tax losses carried forward from previous years etc. are deductible, as well.

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,--; from 2016, the deduction for employees is component of the deduction for travel expenses and automatically considered in payroll accounting (EUR 400,--)

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.

The Familienbonus Plus (from tax assessment 2019 onward) will lead to credit (other than single parent deduction).

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%).

Austria

Labour Law

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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. reasons for early termination, or special payments. Furthermore, in many sectors there are different collective agreements for white-collar workers and blue-collar workers.

Alternative 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), therefore just a few labour laws apply to free labour contracts. However, this classification depends less on the contract and its designation, but rather on the actual dependence on the employer, so that the agreement of a free labour contract only for the purpose of avoiding labor law, is illegal and therefore still applicable.

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 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: it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). As of October 1st, 2021, the notice periods for blue-collar workers were adjusted to those for white-collar workers, so that they are now the same (with a few exceptions).

The legal termination period may be lengthened but not shortened by the individual contract. The period the employee has to comply with must not be longer than the period the employer has to comply with. The employer may terminate the contract to the end of each quarter. 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 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.

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 the termination is socially unjustified (important for elder employees). For some protected groups, such as members of the work council, pregnant employees, handi-capped 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 by either one of the parties, if there are important reasons that make the continuation of the employment unacceptable. 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 of the employee is not justifiable due to lack of an important reason, the employment nevertheless ends immediately. In that case the employee remains entitled to full payment, just as if the employer would have ordinarily terminated the employment. On the other hand the employee suffers from negative consequences, such as loss of severance payment under the scheme “old” or compensation claims against the employer, in case the employee terminates the contract without any justification.

If an employment contract or a free labour contract was terminated after December 31, 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 (*Auflösungsabgabe*) of EUR 131 (2019) had to be paid by the employer. Under certain circumstances no such fee applied: termination by employee, justified dismissal, etc. However with effect from January 1, 2020 employers no longer have to pay the dissolution tax.

When the employment ends, the employee is generally entitled to severance payments. Since there are two systems of severance payments in Austria, the claim of the employee depends on when the employment contract has begun. For contracts started before January 1st, 2003 (severance scheme old/*Abfertigung alt*) the employment had to last for at least three years for the employee to be entitled to a severance payment, and only if the employment has been ordinarily terminated by the employer, by mutual consent, by justified immediate resignation by the employee, by unjustified dismissal by the employer, time lapse or resignation due to pregnancy. The amount of the payment of severance scheme old 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 (severance scheme new/*Abfertigung neu*; there is an opt-in-possibility for older contracts). The employee is entitled to severance payment regardless how the employment ends. Under this new legislation the employer has to pay 1.53% of the monthly remuneration to a fund, which pays the severance payment to the employee in the end.

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 (Except for the Working Hours Act, these mandatory provisions do not apply to managing directors and executives, as well as company agreements). 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 still significant since the Austrian Trade Union Federation concludes collective agreements (see below).

Staff members of companies having at least five employees are entitled to establish a work council (*Be-triebsrat*). The number of members of the work council depends on the number of employees. The members of the work council do not need 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 as the law provides them with specific protection regulations (e.g. protection against termination). If they have to perform their duties as members of the work council during normal working hours, their salary must not be 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 while still receiving payment thereof. Members of the work council must not be discriminated.

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

Collective Agreements, Company Agreements

The parties of collective agreements are the Austrian Trade Union Federation and statutory employer organisations, in particular the chamber of commerce (*Wirtschaftskammer*) and its sub-organizations. Generally collective agreements are concluded for a specific sector or branch. In most cases they apply to the whole territory of Austria, but there are also collective agreements applicable only in a certain province. The collective agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. These 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 those terms of the individual contract that are more favourable to the employee. Collective 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 agreements can be concluded). Only specified matters can be governed by a company agreement, e.g. introduction of piece-work system, regulation of the daily work time. Company agreements are of less importance than collective agreements.

Wages and Other Types of Compensation

There is no legal minimum salary in Austria, but minimum salaries are stipulated in the collective agreements. Those minimum salaries depend on the duties and the years of service. Usually collective 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% rate).

Other types of compensation in Austria are the provision of a company housing or a company car, contributions to pension funds or meals at a reduced price. Since collective agreements usually stipulate a salary paid in cash (transferred to the bank account of the employee), those remunerations in kind have no great importance in Austria. If an employer repeatedly grants additional benefits (e.g. a bonus at the end of the year) to the employee, the employee can become entitled to those benefits in the future (*betriebliche Übung*). To avoid entitlement of the employee, the employer has to explicitly reserve the right to terminate the practice at will.

The normal statutory working time is 8 hours a day respectively 40 hours a week. Many collective bargaining agreements stipulate shorter working-times (38.5 hours a week are common). Overtime hours have to be paid at the normal hourly rate plus 50% (collective agreements may stipulate higher extra payments 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 agreement. Besides payment for overtime hours, it is also possible that the employee takes a compensatory time off, whereby 1 overtime hour is equal to at least 1 1/2 hours of extra compensatory time.

Employment Regulations

Austrian labour law is split up into 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 as well as the employee's contribution.

The employees contribution is currently (2022) 18.12% of the salary for white- and blue-collar workers.

The employers contribution is currently (2022) 21.13% of the salary for white- and blue collar workers.

There is a ceiling on the basis for contribution (*Höchstbeitragsgrundlage*) of EUR 5,670 per month (2022), 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 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 persons responsible for safety (*Sicherheitsvertrauensperson*) have to be appointed.

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

Contracting and Outsourcing of Work or Services

The outsourcing of work may be deemed as transfer of business (*Betriebsübergang*), in that case the corresponding regulations apply (liability of the old owner, position of the employee must not deteriorate). In general the transfer of business has no consequence for the employees being affected – the new owner of the company enters into the existing 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.

Austria

Foreign Investments

Kraft Rechtsanwalts GmbH & Co KG / Elisabeth Mayer-Wildenhofer (Managing Partner)

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 and sanctions 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.

The EU-directives on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing do apply. As a national implementation of the 4th EU-directive, the Financial Markets Anti Money Laundering Act (Finanzmarkt-Geldwäschegesetz) was adopted by the Austrian parliament and came into force on January 1, 2017. The Beneficial Owners Registry Act (Wirtschaftlicher Eigentümer Registergesetz) became effective as of January 15, 2018 and requires companies, associations and legal entities to register their beneficial ownership information to the Federal Institute Statistics Austria; therefore creating a new register to ensure transparency in view of more complex corporate structures, associated companies, trusts and private foundations. Alongside, there are also provisions to be found, e.g. in the Codes of Professional Conduct for Attorneys at Law (Rechtsanwaltsordnung) and Notaries (Notariatsordnung), in the Austrian Trade Act (Gewerbeordnung), and Gambling Act (Glücksspielgesetz).

Directive (EU) 2018/843 (5th Money Laundering Directive) amending Directive (EU) 2015/849 (4th Money Laundering Directive) was published in the Official Journal of the EU on June 19, 2018 and must be implemented with-in the general implementation period by January 10, 2020. The implementation has been carried out with the EU Financial Adjustment Act 2019 (Articles 16 to 18), Federal Law Gazette I No. 62/2019.

This directive expands the use cases of customer due diligence to include, among others, tax-related service providers; service providers that exchange virtual currencies into fiat money and vice versa; electronic wallet providers; and art dealers. This directive also aims to increase transparency about who really owns companies and trusts. It further requires Member States to establish publicly accessible beneficial ownership registers to prevent money laundering and terrorist financing through opaque structures. The individual national registers will be directly interconnected to facilitate the exchange of information between member states.

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

Austrian Foreign Trade Law and the applicable EU directives provide for restrictions regarding the import and export of certain goods (e.g. firearms).

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 agricultural 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 responsible for the correct conduct of the business. This person is commonly called the “gewerberechtl-icher Geschäftsführer”, who must be resident in Austria, in the EEA or Switzerland or in a country where penal-ties of Austrian administrative authorities can be executed. Since the manager must be in a position to work in the business accordingly, in most cases a “gewerberechtl-icher Geschäftsführer” resident in Austria is nominated.

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”.

Foreign Personnel

There are restrictions on employment for foreign employees.

EU-citizens as well as EEA-citizens and Swiss-nationals are entitled to work in Austria without a work permit. Furthermore, special temporary provisions apply to refugees from the Ukraine in order to be able to guarantee employment.

The former quota-based system has been changed. For key personnel, high qualified persons, skilled workers in shortage occupations and start-up founders 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 two years. After two years 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 EU (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-EU member states having a residence permit of another EU 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.

Austria

Real Estate

Kraft Rechtsanwalts GmbH & Co KG / Elisabeth Mayer-Wildenhofer (Managing Partner)

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, generally 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 each co-owner has the exclusive right to use a certain apartment in a building.

“Usus Fructus”

“usus fructus” means the right to use a certain piece of real estate and consume all earnings thereof, even though the owner is someone else.

Construction Right (*Baurecht*)

A construction right is 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 to a certain time period.

Closely related to the Construction Right is the “*Superaedifikat*”, a non-permanent building on the surface of another one’s property. Unlike the construction right, the “*Superaedifikat*” is considered movable property.

Land Register

In Austria rights connected 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 are 116 District Courts existing.

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

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

The Austrian land register is a public data bank, therefore 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 pre-vailes over all rights that have been registered subsequently, as well as to the principle of confidence, which means 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

In most cases, it is not necessary that a contract to establish rights and encumbrances on real estate is constituted in the form of a notary deed. Only the declaration of the registered owner agreeing to the registration of the right 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 debtor does not fulfil his obligation as agreed. The mortgage depends on the existence of the secured debt and comes into existence with its registration in the Land Register Schedule C.

A registration is only allowed if the mortgage contains a certain sum of money or a reference to a maximum amount of money (*Höchstbetragshypothek*) and is duly signed by the registered owner as well as certified by a notary. 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 arrival of the registration application to the Land Register (principle of priority).

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

Restrictions on Acquisition

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

The existing restrictions can be classified as follows: On the one hand there are constraints for real estate used for agricultural purpose and on the other hand there are restrictions on property 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 its subject matter (Article 30a Consumer Protection Act). The possibility to withdraw from the contract is not accessible if the subject matter of the contract is a vacation flat or business premises.

Construction and Use Restrictions

A number of restrictions concerning the use of real estate can be found in public law. The most important ones are:

∴ It is necessary to obtain a building license (*Baubewilligung*) for the construction of buildings;

∴ It is not possible to obtain a building permit on every piece of real estate. The Austrian land development plan (*Flächenwidmungsplan*) divides every piece of Austria's property in various zones, such as building land or agricultural land. The construction of buildings on agricultural land is prohibited.

Leasehold Types

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

The lessee is highly protected by the provisions of the Rent Control Act (*Mietrechtsgesetz*, MRG) in case the lease agreement is considered as "*Miete*". Especially the right of the lessor (*Vermieter*) to terminate the lease contract as well as the determination of the amount of rent are subject to legal restrictions.

Following limitations of the lessor should be mentioned here as well:

Temporal limitations

It is only possible to place a contract of lease under temporal limitation if the agreement was settled in written form. Moreover not every temporal limitation is possible, as the Rent Control Act appoints a minimum respite of 3 years.

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 according to the contract or does not pay the rent punctually after admonition.

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 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.

Section I Rent Control Act 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 the 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.