Setting up your Business in Austria
Issues to consider

With a population of 8.7 million, Austria is a small but dynamic European Union Member State that is best rated compared to other EU countries in many statistics. Located in the heart of Europe, at the gate to Southeast Europe, a stable political structure and attractive tax regulations for groups, Austria is an attractive location for regional headquarters of foreign companies.

However there are a number of issues which you must consider when you are looking to set up your business in Austria. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Austrian operations
- If you have a permanent establishment in Austria then profits from this PE are liable to Austrian Corporation tax
- Must file annual statements of the permanent establishment, prepared under Austrian Commercial Code (UGB) and in German language at the Austrian commercial register.

Limited Company:

- Provides limited liability and ring-fencing to Austrian operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits
- Must file annual statements prepared under Austrian Commercial Code (UGB) and in German language at the Austrian commercial register.
- Accounts require auditing if individual financial statement shows Revenues > € 10m and/or Gross Assets > €5m and/or the company has more than 50 employees (2 of 3 criteria to be fulfilled. Moreover all group financial statements have to be audited and all public limited companies have to be audited.

Limited/Unlimited Liability Partnership:

- Members (partners) have limited liability (in case they are limited companies) or unlimited liability (in case they are private persons)
- Profits are allocated to members who then pay Income Tax (or Corporation tax) on these profits personally
- The tax residence of the member, and where the profits in the LLP originated will determine in what jurisdiction and how these profits are taxed

How much Corporation Tax will the business pay?

- Current Corporation Tax rate in Austria: 25% flat.
- Income Tax rate (for individuals): Progressive; 0% till € 11,000 - 50% from € 90,000 (55% from € 1,000,000)
- Capital Gains Tax rate (interest at banks): 25% flat
  Capital Gains Tax rate (on all realized capital gains, dividends): 27,5% flat

(NB: rates are for the tax year to 31/12/2017)

All permanent establishments of foreign companies are subject to 25% Corporation Tax.

Tax loss carry forwards are not limited. The offset against taxable profits is limited to 75% of taxable income for limited companies. The offset against taxable profits is unlimited for individuals.

If a permanent establishment incurs a loss, this loss can be carried forward in Austria or offset against profits of the foreign parent company.

The Austrian group taxation regime allows the cross border use of losses (of foreign subsidiary corporations from EU countries or countries providing exchange of information according to Art. 26 OECD Model Tax Convention). Losses of non Austrian subsidiaries (fulfilling criteria as stated above) may be used for offsetting taxable profits of the Austrian group parent if the Austrian group parent holds more than 50% of the shares and voting rights in the subsidiary. If losses are offset at the foreign subsidiary subsequently, they must be added to the Austrian profit in the respective year. **This regime is a key driver, that encouraged many foreign companies to move their headquarters to Austria.**

Furthermore, Austrian companies and permanent establishments can apply for a 12% bonus (cash payment) of their research and development expenses.

What if we use Austria to set up our holding company?

The group taxation regime (as outlined above) is one of the main reasons, why Austria is a very attractive place to set up a holding company.

Dividends an Austrian company receives from another Austrian company are exempt from Corporation Tax. If an Austrian company sells its shares in another Austrian company, capital gains are subject to Corporation tax. The same applies for shares of an Austrian company in EU corporations, certain EEA corporations or companies of third countries that have agreed to exchange tax information (International portfolio participation).

Dividends an Austrian company receives from a foreign company (that does not qualify for the International portfolio participation) are exempt from Corporation Tax if at least 10% of the shares are held in the foreign company for a period longer than a year (international participation exemption). In this case, capital gains out of the sale of an international participation are exempt from Corporation tax.

Both the rules for international portfolio participations and the international participation exemption only apply if the subsidiary performs an operating business and is subject to a tax rate of above 15% in its home country.

Companies are exempt from withholding tax if the Austrian or EU parent company holds at least 10% of the shares of the company. In all other cases, the withholding tax rate (27.5%) on dividends applies but may be reduced based on double tax treaties.

What if we make cross-border transactions between group companies?

Austria follows internationally recognised Transfer Pricing (TP) rules (OECD) where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans

A business will need to prepare a Transfer Pricing Report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis.

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in Austria then they are subject to Austrian tax laws. Residency in Austria is triggered if the individual has an Austrian domicile or his habitual residence (more than half of the year) in Austria.

We would advise any new entrant to Austria or person who spends time working in Austria to take professional advice to determine whether they are Austrian tax resident.

Current Personal Income Tax rates in Austria are:

Band of Income in €	**Tax rate (%)**
< 11.000	0.00%
11.000 to 18.000	25.00%
18.000 to 31.000	35.00%
31.000 to 60.000	42.00%
60.000 to 90.000	48.00%
90.000 to 1.000.000	50.00%
1.000.000<	55.00%

(NB: rates are for the tax year to 31/12/2017)

Current Social Security rates (including health insurance, accident insurance, unemployment insurance and pension insurance) are:

	Band of Income in €	**Rate (%)**
Employer	**-**	21,48%
Employee	**<= 1.342**	15,12%
	1.342 to 1.464	16,12%
	1.464 to 1.648	17,12%
	1.648<	18,12%

(NB: rates are for the tax year to 31/12/2017)

Wages and salaries are subject to additional taxes and fees:

- Employer Contribution to the Family Compensation Fund:
  4.5% of the wage bill (gross salaries and wages).
- Employer Contribution Surcharge:
  Percentage rates vary between 0.36% and 0.44% of the wage bill.
- Municipal Tax:
  3% of the wage bill.
- Contributions to Employee Pension Funds:
  1.53% of the wage bill for all employment types

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Austrian tax authorities.

Austria has a Reciprocal Agreement with the USA, EU countries and many others whereby when an overseas national of those countries is seconded to Austria for a defined period of time and continues to pay social security in their home country, then the employer and employee are exempt from paying Austrian social security.

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 20%. If an Austrian business makes taxable supplies in excess of € 30,000 in any 12 months then it MUST be registered for VAT.

If supplies from foreign businesses to Austrian private customers exceed a total amount of € 35,000 per year, deliveries are subject to Austrian VAT. Most services provided in Austria to private customers are subject to Austrian VAT if performed in Austria (some exceptions exist). In both cases, registration for VAT purposes in Austria is necessary.

There are three types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Austrian VAT system

The supply of most types of goods and services in Austria would be classed as Taxable supplies. However when these supplies are made to companies which are outside of Austria advice needs to be sought as to what rate of VAT, if any, to use.

If an Austrian entity sells goods or provides services to its non EU parent then there is no VAT chargeable on this overseas supply, however on the basis that the supply would be VAT'able if made in Austria then the entity will be able to reclaim all its input VAT.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Austria has a number of "approved" share option plans which give tax benefits to employees and employers alike and it is often possible to adapt an overseas stock option plan to fit into one of these "approved" plans.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Austria.

How else can we compensate our employees?

Austria has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Austrian businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to "spend" their benefits allowance; which can range from "purchasing" additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

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