



**PrimeGlobal**

*An Association of  
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# DOING BUSINESS IN AUSTRIA





# COMPANY FORMATION IN AUSTRIA

## MAIN FORMS OF COMPANY/BUSINESS IN AUSTRIA

Austrian company law provides for different types of companies, tailored to the specific needs in tax and liability. Basically, there are corporate and non-corporate legal forms.

### Corporations

- Company with limited liability (GmbH)
- Stock corporation (AG)
- Societas Europea (SE)

### Non-corporate Forms

- General partnership (OG)
- Limited partnership (KG)
- Dormant partnership (stG)
- Civil law partnership (GesbR)

The company with limited liability (GmbH) is the most widely used form.

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

Notice of Business Operations to the Revenue Authorities and Registration of Employees

A branch of a foreign company is subject to taxation in terms of income and value added tax. It has to apply for a tax identification number.

A private limited company is subject to corporate income tax and value added tax. After registration in the Companies Register, the company has to apply for a tax identification number.

Social security: Registration of the employees with the competent social insurance institution is required prior to the commencement of their work.

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

When setting up a GmbH (Ltd.) in Austria, you have to adhere to the following rules and regulations:

- Drawing up and signing of the shareholders' agreement (notarial deed)
- Appointment of managing director(s) (shareholders' resolution with notarised signature(s))
- Cash contribution/non-cash capital contribution (minimum nominal capital € 35,000/10,000, at least € 17,500/5,000, to be paid in cash upon formation)
- Opening of the company's bank account and payment of the cash contribution
- Application according to the Business Start-Up Promotion Act ("Neugründungs-Förderungsgesetz"), if applicable



Application for entry in the Companies Register, signed by all managing directors with signatures attested, including:

- Shareholders' agreement, notarised copy
- Shareholders' resolution on the appointment of the managing director(s)
- Specimen signature statement(s) by the managing director(s), in attested form
- Evidence of payment of the cash contribution

#### **Registration under Trade Law**

- Extract from the Companies' Register
- Declaration(s) on the non-existence of reasons for exclusion from the trade or forbearance of the exclusion from the trade
- Declaration for managing directors under trade law (adequate occupation in the enterprise, authority)
- Identity document of each managing director under commercial law and trade law, for inspection (residence registration certificate when the usual residence is outside Austria; police certificate from the home country)
- Accurate designation of the trade
- Exact location where the trade is exercised (place, street name, house number)
- Evidence of citizenship of the trade-law managing director
- Residence permit of the trade-law managing director (unless EEA or Swiss citizen), and evidence of the residence in Austria or in an EEA contracting state
- If required: evidence of employee status of the trade-law managing director (registration with the regional health insurance fund)
- If required: certificate of professional competence of the trade-law managing director

### **CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY**

Attractive business environment:

- Austria is the second richest country in the EU
- Companies as good customers
- Highly developed infrastructure
- Efficient public administration
- High political stability and a reliable legal system
- Good relations between labor and management
- Low strike rate
- High personal security



# PERMANENT ESTABLISHMENT IN AUSTRIA: BRANCH OR SUBSIDIARY?

## DEFINITION OF A PERMANENT ESTABLISHMENT

Simply put: a provision of service involves a service, which is temporarily provided in another state while in the case of a permanent establishment, the business itself becomes part of the 'foreign' economy. The latter usually involves a fixed infrastructure. This difference is not solely defined by time – a provision of service could last several years, for example in construction – and can therefore only be determined by looking at the double taxation agreements and each specific case individually. The temporary character of a service is also evaluated considering its frequency, regularity and continuity.

## DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

From a legal perspective, a branch office means that the foreign entrepreneur or business entity is itself the direct holder of all rights and obligations arising out of all transactions of its Austrian branch office. Thus, all business transactions by the Austrian branch office will entail personal liability on the part of that entrepreneur or business entity.

If the foreign entrepreneur or business entity wishes to limit personal liability, for business activities in Austria a subsidiary should be formed, e.g. in the legal form of a GmbH, AG.

Austria is also popular as a location for holding companies. In practice, holding companies are usually incorporated entities (i.e. a GmbH, AG, SE) or in certain circumstances private foundations: even though private foundations cannot issue shares, there are legal constellations that may nevertheless make it advantageous to form a private foundation in Austria.

## TAX AND ACCOUNTING OBLIGATIONS

Business entities in Austria are taxed based on the legal form in which the business is operated.

Profits of incorporated entities (GmbHs, AGs, SEs) are subject to a 25% rate of corporation tax (flat tax) in Austria. Losses attract a minimum tax, which is € 1,750 in the case of a GmbH and € 3,500 in the case of an AG. The minimum tax is credited against corporation tax in subsequent years.

Distributions of profits received by an Austrian incorporated entity from equity interests held in domestic or foreign "corporations" are, as a rule (exemptions for tax evasion), exempt from corporation tax at the level of the recipient. In the case of equity interests in corporations whose registered office lies outside the EU or is located in a country with which there is no bilateral administrative assistance agreement, this exemption from corporation tax for dividends will only apply on the condition that the equity holding equals at least 10% of the foreign corporation's total share capital and has been held for at least one year without interruption. Gains upon sale and liquidation received by an Austrian incorporated entity from a foreign corporation are likewise exempt from corporation tax, subject to the above-referenced conditions.

### Group Taxation

A parent company may form a tax group together with all or any of its subsidiaries or affiliates. The condition precedent to this is that the parent company's equity stake amounts to more than 50% of the stated capital of the affiliate; the minimum duration of a tax group is three years. There are various tax benefits available

to tax groups, for example losses by individual members of the group may be immediately offset by profits of other group members.

The profits of a partnership entity are not taxed at the level of the entity itself. Rather, the share of each partner's profit (depending on whether the partner is a natural person or legal entity) is subject to income or corporation tax, respectively.

### **VAT**

Austrian value-added tax (VAT) applies to turnover generated by profit-oriented business entities within Austria, irrespective of whether the entrepreneur is domiciled in Austria or not. The rate of VAT is, as a general rule, 20%, and in certain circumstances a reduced rate of 10%, 12% and 13% will apply. There are also cases of complete exemption from VAT.

As a rule, entrepreneurs may deduct VAT invoiced to them by other entities for their goods or services as input tax. However, businesses will not be entitled to deduct input tax where the good and services are used for purposes of generating tax-exempt turnover.

Supplies of goods within the EU and in third countries will be exempt from VAT under certain circumstances. As a general rule, other services will be subject to VAT in the country in which the recipient of the service has his registered office.

### **Accounting**

Subsidiaries and branches have an obligation to keep separate books and file tax returns in Austria and are required to submit and disclose their annual financial statements in German to the Austrian Commercial Register court.

## **REGISTRATION FORMALITIES**

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Application for entry in the Companies Register, signed by all managing directors with signatures attested.

Registration of the Trade Announcement of the Appointment of the Managing Director under the Trade Law.

After registration in the Companies Register, the company has to apply for a tax identification number.

## **STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH**

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See above.



# HOW TO HIRE MY FIRST EMPLOYEE IN AUSTRIA

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

As a general principle, employer and employee may negotiate the content of the employment agreement on a private contractual basis. However, the applicable statutes and collective agreements often prescribe minimum standards (e.g., in the case of minimum wage, overtime supplements, maximum permitted working hours, annual leave) that may not be departed from to the detriment of the employee.

Certain data of new employment contracts have to be forwarded to the health insurance fund before the start of the employment.

Termination by notice is the unilateral, ordinary termination of employment which complies with notice periods and dates. As a general rule, no particular grounds of termination are required. Particular rules apply to certain groups of employees, such as disabled persons afforded special recognition, staff representatives, pregnant women, employees who have taken part-time parental leave, etc.

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

As a general principle, there is no particular form prescribed for concluding an employment agreement. An employment agreement may be made orally, in writing or implicitly by action. Where a contract is made only orally, a notice of employment (Dienstzettel) must be issued. A notice of employment is a confirmation of the material rights and obligations arising out of the parties' employment agreement.

## CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

There is a very important distinction between employees and self-employed workers.

### Employees

An employment contract obliges the employee to personal, repeated and regular presence. The employee has to follow the personal instructions of the employer, is integrated in the organisation of the employer and gets paid according to the hours worked. The employer takes care of social security and income tax payments of his employees.

### Self-employed Workers

In a contract for work and labour (Werkvertrag), a contractor undertakes to carry out a particular service or work. In contrast to the employment contract or persons working as independent short-term contractors, in the contract for work and labour the result of the services rendered is decisive. The contractor is responsible for successfully performing the services (i.e. the specified service) or achieving a specific result.

### Characteristics of Contracts for Work and Labour

- personal and economic independence from the principal
- no obligation to perform the work or service personally (sub-contracting is allowed)
- they are not incorporated into the corporate organisation of the contract assigner

Self-employed workers have to fulfil their obligations concerning social security and income tax payments themselves.



## HOW TO READ AUSTRIAN FINANCIAL STATEMENTS

Standard Austrian Financial Statements consist of a Balance Sheet, a Profit and Loss Account, Notes (that give further information to accounting rules used, items in the balance sheet etc.) and a review of the economic and financial situation of the company. There is no need to set up a review for small companies.

The following structure of Balance Sheet and Profit and Loss Account is effective from January 1st 2016. This is the stipulated structure for corporate entities and may /has to be amended if necessary. All figures must be shown for the current and the previous year.



Aktiva	Assets
<p><b>A. Anlagevermögen</b></p> <p>I. Immaterielle Vermögensgegenstände</p> <ol style="list-style-type: none"> <li>1. Konzessionen, gewerbliche Schutzrechte und ähnliche Rechte und Vorteile</li> <li>2. Geschäfts-(Firmen-)wert</li> <li>3. geleistete Anzahlungen</li> </ol> <p>II. Sachanlagen</p> <ol style="list-style-type: none"> <li>1. Grundstücke, grundstücksgleiche Rechte und Bauten, einschließlich der Bauten auf fremdem Grund</li> <li>2. technische Anlagen und Maschinen</li> <li>3. andere Anlagen, Betriebs- und Geschäftsausstattung</li> <li>4. geleistete Anzahlungen und Anlagen in Bau</li> </ol> <p>III. Finanzanlagen</p> <ol style="list-style-type: none"> <li>1. Anteile an verbundenen Unternehmen</li> <li>2. Ausleihungen an verbundene Unternehmen</li> <li>3. Beteiligungen</li> <li>4. Ausleihungen an Unternehmen, mit denen ein Beteiligungsverhältnis besteht</li> <li>5. Wertpapiere (Wertrechte) des Anlagevermögens</li> <li>6. sonstige Ausleihungen</li> </ol> <p><b>B. Umlaufvermögen</b></p> <p>I. Vorräte</p> <ol style="list-style-type: none"> <li>1. Roh-, Hilfs- und Betriebsstoffe</li> <li>2. unfertige Erzeugnisse</li> <li>3. fertige Erzeugnisse und Waren</li> <li>4. noch nicht abrechenbare Leistungen</li> <li>5. geleistete Anzahlungen</li> </ol> <p>II. Forderungen und sonstige Vermögensgegenstände</p> <ol style="list-style-type: none"> <li>1. Forderungen aus Lieferungen und Leistungen</li> <li>2. Forderungen gegenüber verbundenen Unternehmen</li> <li>3. Forderungen gegenüber Unternehmen, mit denen ein Beteiligungsverhältnis besteht</li> <li>4. sonstige Forderungen und Vermögensgegenstände</li> </ol> <p>III. Wertpapiere und Anteile</p> <ol style="list-style-type: none"> <li>1. Anteile an verbundenen Unternehmen</li> <li>2. sonstige Wertpapiere und Anteile</li> </ol> <p>IV. Kassenbestand, Schecks, Guthaben bei Kreditinstituten</p> <p><b>C. Rechnungsabgrenzungsposten</b></p> <p><b>D. Aktive latente Steuern</b></p>	<p><b>A. Fixed Assets</b></p> <p>I. Intangible Assets</p> <ol style="list-style-type: none"> <li>1. concessions, trademarks, patents and similar intangible rights</li> <li>2. goodwill</li> <li>3. payments made on account</li> </ol> <p>II. Tangible Assets</p> <ol style="list-style-type: none"> <li>1. real estate, real estate like rights and buildings including buildings on real estate owned by others</li> <li>2. machines and equipment</li> <li>3. tools, fixtures and fittings</li> <li>4. payments made on account and assets under construction</li> </ol> <p>III. Financial Assets</p> <ol style="list-style-type: none"> <li>1. shares in affiliated undertakings</li> <li>2. loans in affiliated undertakings</li> <li>3. equity holdings</li> <li>4. loans in undertakings, with which there is an equity holding</li> <li>5. securities (value rights) held as fixed assets</li> <li>6. other loans</li> </ol> <p><b>B. Current Assets</b></p> <p>I. Inventories</p> <ol style="list-style-type: none"> <li>1. raw materials, supplies and consumables</li> <li>2. work in progress</li> <li>3. finished goods and goods</li> <li>4. services not yet billable</li> <li>5. payments made on account</li> </ol> <p>II. Receivables and other Assets</p> <ol style="list-style-type: none"> <li>1. receivables arising from deliveries services</li> <li>2. receivables due from affiliated undertakings</li> <li>3. receivables due from undertakings with which there is an equity holding</li> <li>4. other receivables and assets</li> </ol> <p>III. Securities and Shares</p> <ol style="list-style-type: none"> <li>1. shares in affiliated undertakings</li> <li>2. other securities and shares</li> </ol> <p>IV. Cash on hand, checks, bank deposits</p> <p><b>C. Prepaid expenses, deferred charges</b></p> <p><b>D. Deferred Tax</b></p>



Passiva	Liabilities and Owner's Equity
<p><b>A. Eigenkapital</b></p> <p>I. Nennkapital (Grund-, Stammkapital)</p> <p>II. Kapitalrücklagen</p> <p>    1. gebundene</p> <p>    2. nicht gebundene</p> <p>III. Gewinnrücklagen</p> <p>    1. gesetzliche Rücklagen</p> <p>    2. satzungsmäßige Rücklagen</p> <p>    3. andere Rücklagen (freie Rücklagen)</p> <p>IV. Bilanzgewinn/-verlust</p> <p>    davon Gewinnvortrag/davon Verlustvortrag</p> <p><b>B. Rückstellungen</b></p> <p>    1. Rückstellungen für Abfertigungen</p> <p>    2. Rückstellungen für Pensionen</p> <p>    3. Steuerrückstellungen</p> <p>    4. sonstige Rückstellungen</p> <p><b>C. Verbindlichkeiten</b></p> <p>    1. Anleihen</p> <p>    2. Verbindlichkeiten gegenüber Kreditinstituten</p> <p>    3. erhaltene Anzahlungen auf Bestellungen</p> <p>    4. Verbindlichkeiten aus Lieferungen und Leistungen</p> <p>    5. Verbindlichkeiten aus der Annahme gezogener Wechsel und der Ausstellung eigener Wechsel</p> <p>    6. Verbindlichkeiten gegenüber verbundenen Unternehmen</p> <p>    7. Verbindlichkeiten gegenüber Unternehmen, mit denen ein Beteiligungsverhältnis besteht</p> <p>    8. sonstige Verbindlichkeiten</p> <p>        davon aus Steuern</p> <p>        davon im Rahmen der sozialen Sicherheit</p> <p><b>D. Rechnungsabgrenzungsposten</b></p>	<p><b>A. Capital and Reserves</b></p> <p>I. Stated Capital</p> <p>II. Capital Reserves</p> <p>    1. appropriated</p> <p>    2. not appropriated</p> <p>III. Profit Reserves</p> <p>    1. statutory reserves</p> <p>    2. reserves pursuant to the articles of association</p> <p>    3. other reserves (free reserves)</p> <p>IV. Balance Sheet Profit/Balance Sheet Loss thereof profit/loss carried forward from the previous years</p> <p><b>B. Accruals</b></p> <p>    1. accruals for severance payments</p> <p>    2. accruals for pensions</p> <p>    3. tax accruals</p> <p>    4. other accruals</p> <p><b>C. Liabilities</b></p> <p>    1. borrowings</p> <p>    2. liabilities to banks</p> <p>    3. payments received on account for orders</p> <p>    4. liabilities arising from deliveries and services</p> <p>    5. liabilities arising from the accept of bills of exchange or bills made out</p> <p>    6. liabilities to affiliated undertakings</p> <p>    7. liabilities to undertakings with which there is an equity holding</p> <p>    8. other liabilities</p> <p>        thereof taxes</p> <p>        thereof social security</p> <p><b>D. Prepaid expenses, deferred charges</b></p>



Gewinn- und Verlustrechnung	Profit and Loss Account
1. Umsatzerlöse	1. Turnover
2. Veränderung des Bestands an fertigen und unfertigen Erzeugnisse sowie an noch nicht abrechenbaren Leistungen	2. Increase or decrease in the stock of finished good, work in progress and services not yet billable
3. andere aktivierte Eigenleistungen	3. Work performed by the undertaking for its own purpose
4. sonstige betriebliche Erträge	4. Other operating income
a. Erträge aus dem Abgang vom und der Zuschreibung zum Anlagevermögen mit Ausnahme der Finanzanlagen	a. income from the disposal of and the value adjustment to fixed assets with the exception of financial assets
b. Erträge aus der Auflösung von Rückstellungen	b. income from the reversal of accruals
c. übrige	c. other
5. Aufwendungen für Material und sonstige bezogene Herstellungsleistungen	5. Raw material expense and expenditures for services
a. Materialaufwand	a. raw material expense
b. Aufwendungen für bezogene Leistungen	b. expenditures for services received
6. Personalaufwand	6. Staff expenses
a. Löhne und Gehälter	a. Wages and Salaries
b. Soziale Aufwendungen, davon Aufwendungen für Altersversorgung	b. Social Expenses thereof Expenses for pensions
aa. Aufwendungen für Abfertigungen und Leistungen an betriebliche Mitarbeitervorsorgekassen	aa. Expenses for severance pay and payments to severance funds
bb. Aufwendungen für gesetzlich vorgeschriebene Sozialabgaben sowie vom Entgelt abhängige Abgaben und Pflichtbeiträge	bb. Expenses for social security payment
7. Abschreibungen	7. Depreciation and Amortization
a. auf immaterielles Anlagevermögen und Sachanlagen	a. of intangible assets and fixed assets
b. auf Gegenstände des Umlaufvermögens soweit diese die im Unternehmen üblichen Abschreibungen überschreiten	b. of current assets
8. sonstige betriebliche Aufwendungen	8. Other operating expenses
a. Steuern, soweit nicht vom Einkommen	a. taxes, as far as they are not on income
b. übrige	b. other
<b>9. Zwischensumme Z 1 - 8</b>	<b>9. Subtotal Pos. 1 - 8</b>
10. Erträge aus Beteiligungen	10. Income from investments
davon aus verbundenen Unternehmen	thereof from affiliated companies
11. Erträge aus anderen Wertpapieren und Ausleihungen	11. Income from other long-term securities and loans
davon aus verbundenen Unternehmen	thereof from affiliated companies
12. sonstige Zinsen und ähnliche Erträge	12. Other interest and similar income
davon aus verbundenen Unternehmen	thereof from affiliated companies
13. Erträge aus Abgang von und der Zuschreibung zu Finanzanlagen und Wertpapieren des Umlaufvermögens	13. Income from the disposal of and revaluation of financial assets and trade securities
14. Aufwendungen aus Finanzanlagen und Wertpapieren des Umlaufvermögens	14. expenditure related to financial and security investments
a. davon Abschreibungen auf Finanzanlagen	a. thereof depreciation



b. davon Aufwendungen aus verbundenen Unternehmen	d. thereof expenses concerning affiliated undertakings
15. Zinsen und ähnliche Aufwendungen davon betreffend verbundene Unternehmen	15. Interest and similar expenses thereof concerning affiliated undertakings
<b>16. Zwischensumme Z 10-15</b>	<b>16. Subtotal Pos. 10-15</b>
<b>17. Ergebnis vor Steuern</b>	<b>17. Profit/Loss before tax</b>
18. Steuern vom Einkommen und vom Ertrag	18. Taxes on income and revenue
<b>19. Ergebnis nach Steuern</b>	<b>19. Profit/Loss after tax</b>
20. Sonstige Steuern	20. Other taxes
<b>21. Jahresüberschuss/Jahresfehlbetrag</b>	<b>21. Net Income</b>
22. Auflösung von Kapitalrücklagen	22. Reversal of capital reserves
23. Auflösung von Gewinnrücklagen	23. Reversal of profit reserves
24. Zuweisung zu Gewinnrücklagen	24. Allocation to profit reserves
25. Gewinn-/Verlustvortrag aus dem Vorjahr	25. Profit/loss carried forward from the previous years
<b>26. Bilanzgewinn/Bilanzverlust</b>	<b>26. Balance Sheet Profit/Loss</b>