

# BUSINESS OPPORTUNITIES

## IN AUSTRIA

### LEGAL AND TAX ASPECTS OF DOING BUSINESS IN AUSTRIA

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## 1 BUSINESS ORGANISATIONS UNDER AUSTRIAN LAW

Austrian law recognises **civil partnerships, general and limited partnerships**, silent partnerships, commercial cooperatives as well as **companies with limited liability, joint stock companies** and the newly introduced *societas europeae*.

Furthermore, there is the possibility to establish a **private foundation** which under fiscal law aspects is an attractive vehicle for high net-worth individuals to invest in Austria.

Foreign individuals and legal entities may operate under any of these business forms in Austria, save for private foundations. The vast majority of foreign companies operate through a **limited liability company in Austria** (*Gesellschaft mit beschränkter Haftung*). The latter is relatively easy and simple to establish and to run; furthermore, the shareholders can issue binding instructions to the managing directors, thereby ensuring the parent company with substantial control.

Therefore, this folder will focus on the limited liability company:

## 2 LIMITED LIABILITY COMPANY

### 2.1 Formation

This legal entity is primarily designed for small- and medium-sized businesses and is the **prevalent structure for Austrian subsidiaries of foreign parent companies**. A limited liability company may undertake any legal activity with the exception of insurance business and political associations.

The formation of a limited liability company requires **only one founding shareholder** and comes into existence upon registration in the commercial register. However, if you wish to issue shares, you have to choose the legal entity of a joint stock company, which is more expensive and time-consuming with regard to its foundation and the running of business.

The **minimum share capital** of a limited liability company amounts to **EUR 35.000,-**; an amount of at least **EUR 17.500,- in cash must be paid in** upon incorporation. Due to contributions in kind the original cash contribution, however, may also be lower.

The formation and running of a limited liability company will usually involve the following (minimum) costs:

<b>Costs of Formation</b>	<b>EUR</b>
Notary Public	1.000,--
Stamp Duty, Publication Costs, Articles of Association	600,--
Tax on Capital Formation	175,--
Contribution in Cash	17.500,--
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<b>Annual Cost of Operation (minimum)</b>	
Minimum Corporate Income Tax	1.750,--
Accountings	1.000,-- to 2.000,--

## 2.2 Managing Board

Managing directors are either appointed by shareholders' resolution or in the articles of association. Shareholders are not excluded as managing directors. The Austrian Act on Limited Liability Companies neither requires that any managing director shall have his habitual residence in Austria, nor that the managing director needs to be an Austrian citizen.

Managing directors may be removed at any time by shareholders' resolution. Unless otherwise provided, all managing directors appointed represent the company jointly.

Managing directors are prohibited from competing with the company, whereas this does not apply to managing directors who are also shareholders in the company.

## 2.3 Supervisory Board

Basically, a limited liability company need not appoint a supervisory board, which is only mandatory under the conditions set forth in Section 29 of the Limited Liability Company Act, e.g. if the shareholders in the company exceeds the number of 50, or the persons employed by the company average out to exceed the number of 300 etc.

## 2.4 Shareholders' meetings

Shareholders' resolutions can either be adopted at shareholders' meetings or by written consent, if all shareholders agree. Unless otherwise provided in the articles of association, shareholders' meetings are to be held at the registered domicile of the company.

The articles of association can only be amended by shareholders' resolution which must be authenticated by a notary public. Basically, any amendment requires a ¾-majority vote.

## 2.5 Foreign companies

While it is possible for foreign companies to establish branches in Austria, the procedure – especially depending upon the seat of the foreign company – can be rather cumbersome and time-consuming. Therefore, foreign companies prefer to do business in Austria by means of subsidiaries rather than branches.

## 3 CORPORATE TAXATION

In response to the flat tax system of other central and eastern European Countries, the Austrian Tax Reform 2005 implemented a considerable reduction of the corporate income tax, lowering the former nominal rate of 34% to 25%. Moreover, the **effective tax rate** is said to level off at **approximately 21%**.

The principal item of the Tax Reform 2005, however, is the newly introduced system of **group taxation**, laying the foundation for uncomplicated consolidation of losses and profits at the level of a group parent company. In order to take advantage of the fiscal opportunities of the new group taxation, only a **direct or indirect participation of more than 50 %** in another company and a corresponding application with the fiscal authorities stating the formation of a tax group (minimum duration: 3 years) is required. Hence, any further economic or organisational integration is no longer necessary.

Within such tax group, the taxable income of any domestic group member becomes fully attributable to the group parent, meaning that even if the participation ranges below 100 % of the corporate capital of the group member, 100% of its taxable losses/profits will be consolidated at the level of the group parent. Moreover, even **losses of foreign group members will be entitled to be offset against domestic profits**, however, limited to the extent of the participation in the foreign group member: A 60 % participation in a foreign group company, therefore, results in a 60 % setting-off of its taxable losses, ascertained pursuant to Austrian tax law principles.

Furthermore, accompanying measures such as further tax-deduction opportunities round off the picture: **Interest for loans raised for the acquisition of domestic and foreign participation is deductible**. The same applies for the **goodwill of Austrian companies**, purchased in order to form a tax group, which is **deductible up to 50 %** (including undisclosed reserves) over a period of 15 years.