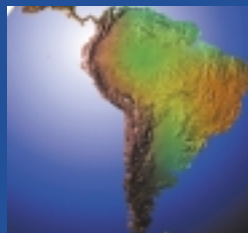
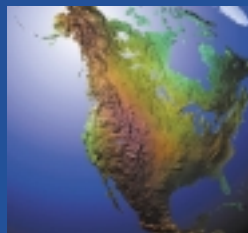
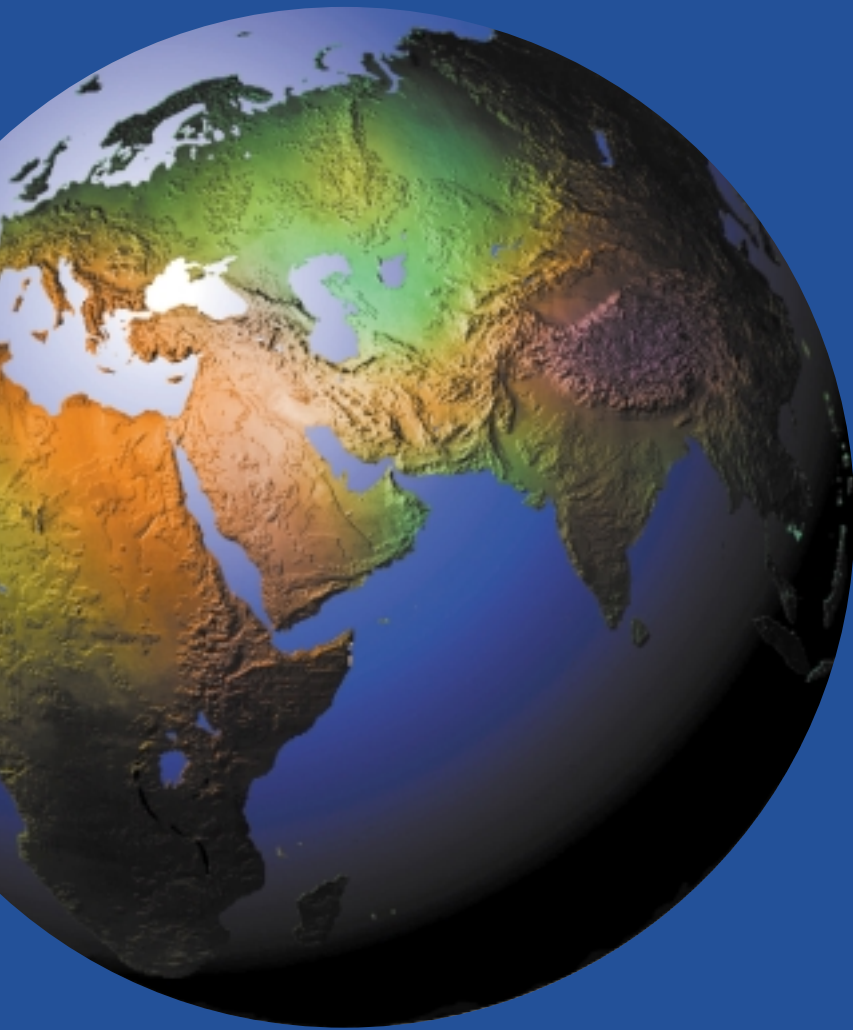




Doing Business In Austria



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2 Disclaimer

The information contained in this booklet is intended solely to provide general guidance on matters of interest for the personal use of the reader, who accepts full responsibility for its use.

While we have made every attempt to ensure the information contained in this booklet has been obtained from reliable sources, Steirer, Mika & Comp. Wirtschaftstreuhand GmbH is not responsible for any errors or omissions.

Nothing herein shall to any extent substitute for the independent investigations and the sound technical and business judgement of the reader. Laws and regulations are continually changing, and can be interpreted only in the light of particular factual situations.

3 Introduction

This booklet presents an overview of matters to be considered by those contemplating investment in Austria. While it covers the relevant areas, it can, of course, not be exhaustive and it is emphasized that this booklet was not designed to provide the comprehensive and detailed information necessary to make investment decisions.

All information contained in this booklet is as of January 2006.

Vienna, January 2006

4 Austria

4.1 Size and population

With an area of approx. 83.858 square kilometres (32.377 square miles) and a population of approx. 8.1 million, Austria is one of the smaller European countries. The alpine character of the country, with about 75% of the area being more than 1,700 feet above sea level, permits permanent settlements on only about 40% of the territory. The population density of 259 inhabitants per sq. mile is close to the European average.

4.2 Economy

Key economic indicators are:

	1998 %	1999 %	2000 %	2001 %	2002 %	2003 %	2004 %
Inflation	0.9	0.6	2.3	2.7	1,8	1,3	1,8
Unemployment (seasonally adjusted)	4.0	3.9	3.7	3.6	4,3	4,4	4,5

	1997 billion EUR	1998 billion EUR	1999 billion EUR	2000 billion EUR	2001 billion EUR	2002 billion EUR
GNP	182.5	190.6	197.2	207.0	211.9	216,3

The economic opening of the Central and Eastern European (CEE) countries has had a stimulative effect on Austria's economy. Austrian firms have invested sizable sums and continue to move labour intensive low-tech production to these countries. Austria has the potential to attract EU firms seeking convenient access to the emerging markets of the CEE. The Austrian government, as well as business interests, support the EU's eastern enlargement plans, but under the condition that the enlargement candidates meet EU standards prior to EU accession and that transition periods for free movement of labour and of services are implemented to prevent competitive distortions in the Austrian labour market.

Based on per capita GDP, Austria is the fourth richest EU country. Austria has a skilled labour force and a record of excellent industrial relations. Its economy is dominated by services, accounting for two thirds of employment followed by the manufacturing sectors.

Small and medium-sized companies are predominant. By 1997, the government completed a 10-year privatisation program. Most of the formerly state-owned industries are now in private hands. Further privatisations are underway, including in the telecommunications and energy sectors.

Exports of Austrian goods and services account for over 40 percent of GDP. Austria's major export market is the EU, accounting for 60 percent of Austrian exports (35 percent to Germany, 8 percent to Italy). However, given Austria's traditional expertise in Central and Eastern European (CEE) markets, exports to that region have soared since 1989, accounting for 17 percent of Austrian exports by 1997. Numerous multinationals have established their regional headquarters in Austria as a "launching pad" to the CEE markets. Hungary surpassed Switzerland as Austria's third largest export market.

The government sets economic policy in consultation with the so-called "Social Partnership," consisting of the representative bodies of business, farmers and labour. Designed to minimize social unrest, this consensual approach has come under criticism for slowing the pace of economic reforms, particularly in inflexible labour and product markets.

4.3 Currency and banking

Austria's accession to the EU on January 1, 1995, has had a positive impact on foreign investment, inflation and growth by providing access to the single market and by fostering liberal policies to promote competition and dismantle protectionism. Austria was among the eleven founding members of the Economic and Monetary Union (EMU) launched on January 1, 1999 and has adopted the common "Euro" currency, which replaced the Austrian Schilling in 2002 (**fixed exchange rate 1 Euro= ATS 13,7603**).

In addition Austria has a well organized and highly developed banking system. The Austrian National Bank with its main office in Vienna is the country's central bank. It issues money, serves as source of refinancing, clearing and collection to other financial institutions and as bank of the government. The principal measures of influencing the conditions on the money market are the discount rate policy, minimum reserve requirements and open-market interventions.

Commercial banks are usually universal banks, i.e. they offer a full range of banking services:

They grant all sorts of credit facilities, take securities and other valuables in safe custody, underwrite issues and trade in securities for customers and on their own account. They are also allowed to own shares and to hold interests in other enterprises. The larger commercial banks usually have foreign correspondence banks at all important banking centres, so that they can offer their services on a worldwide basis.

Savings banks (*Sparkassen*), credit cooperatives for trade (*Volksbanken*) and for agriculture (*Raiffeisenkassen*) are organized on a local basis with central institutions serving as clearing houses.

Mortgage banks (*Hypothekenbanken*) specialize in long-term loans secured by mortgages on real estate and in loans to public entities. Instalment financing houses (*Teilzahlungsbanken*) are engaged in various forms of consumer financing.

In addition, a number of mainly public banks provide highly specialized services such as export financing, housing financing, etc.

4.4 Political and legal system

4.4.1 Legislation

Austria is a democratic republic established as a federal state. The legislative and executive powers are divided between the federation and the nine provinces, namely, Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg; the federation holds a dominant share of legislative powers.

Political objectives are developed by the political parties, which are represented in the legislative bodies in accordance with their electoral strength. The legislative bodies comprise the Federal Parliament – consisting of the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*) – and the provincial assemblies (*Landtage*). The permanent contest of wills resulting from this pattern serves to safeguard political stability.

At the federal level, legislative power is vested in the National Council and the Federal Council.

The National Council is elected by the people for a term of four years, on the basis of proportional representation and equal, direct, secret and universal suffrage. Before the end of this term the National Council can decide its dissolution by simple law; subject to certain conditions it can also be dissolved by the Federal President. The Federal Council represents the interests of the individual provinces in the sphere of federal legislation. Its members are elected by the provincial assemblies in accordance with the individual provinces' share in the

Austrian population. By international comparison, the position of the Federal Council as a representative assembly may be regarded as rather weak.

Each province has a single legislative chamber which is elected on the basis of the same principles that apply to elections to the National Council.

The Constitutional Law on Austria's Permanent Neutrality was enacted in 1955.

4.4.2 Executive Power

The Federal President, the Federal Government and the Federal Ministers are the major executive bodies of the federal state. The Federal President is elected directly by the people for a term of six years. His main functions include the appointment and dismissal of the Federal Government, the convening and dissolution of the National Council, the supreme command of the Austrian Federal Army as well as the representation of the Republic abroad. The remaining federal administrative functions are vested in the Federal Chancellor, the Vice Chancellor and the Federal Ministers; these, as a body, form the Federal Government.

At the provincial level, executive power is vested in the provincial government, which is presided over by the provincial governor. Besides the provinces, the individual municipalities represent a further level of decentralisation. They are local authorities with the power of self-government and are headed by a local council and a mayor.

5 Forms of business enterprise

Austrian commercial law offers a variety of incorporated and unincorporated forms of business.

The most common forms in which a foreign enterprise may operate in Austria are the Limited Liability Company (*Gesellschaft mit beschränkter Haftung* ('*GesmbH*' or '*GmbH*')) and the Stock Corporation (*Aktiengesellschaft* ('*AG*')).

5.1 Limited companies

5.1.1 Limited Liability Company

The *GmbH* is an incorporated enterprise the shareholders' liability of which is limited to the unpaid portion of the par value of the shares. Unless it is intended to raise funds on the Austrian stock market, the *GmbH* will be the most convenient form of organization owing to the relative flexibility it offers. Most foreign-owned businesses in Austria are operating in that legal form.

5.1.1.1 Formation

A *GmbH* has to be formed by one or more persons; they may be individuals or legal entities, resident or non-resident, Austrian or foreign citizens.

The articles of incorporation (together with the by-laws) have to be reordereed by notarial act; they must include: name, registered domicile and purpose of business of the company, the total amount of share capital and the initial contribution of each shareholder. The articles also frequently contain provisions as to the number of managing directors (*Geschäftsführer*).

A *GmbH* comes into legal existence when it is entered into the Commercial Register (*Firmenbuch*). Before registration, any person acting in the name of the *GmbH* is personally liable for obligations arising from such acts.

According to the Austrian Commercial Code (*Handelsgesetzbuch*; '*HGB*') there are three different size classifications for *GmbHs*, i.e. 'small', 'medium-sized' and 'large' *GmbHs*:

- Small *GmbHs* are those meeting at least two of the following criteria:
 - balance sheet sum must not exceed € 3,65 million

- revenue must not exceed € 7,3 million within 12 months prior to balance sheet date
- annual average number of employees must not exceed 50 persons. The respective average number of employees is determined by the number of employees on the respective ends of month within the preceding calendar year.
- Medium-sized GmbHs are those exceeding at least two of the small GmbH's criteria and meeting at least two of the following criteria:
 - balance sheet sum must not exceed € 14,6 million
 - revenue must not exceed € 29,2 million within 12 months prior to balance sheet date
 - annual average employees must not exceed 250 persons.
- Large GmbHs are those exceeding at least two of the above stated criteria.

Small GmbHs are allowed to prepare notes to the financial statements which are limited to a minimum volume of details. They are not subject to statutory audit unless they are obliged to appoint a supervisory board by virtue of law (e.g. more than 300 employees). Furthermore, they are not legally bound to publish their annual statements.

Medium-sized and large GmbHs have to include all basic particulars in the notes to the financial statements, they are subject to statutory audit.

There has to be a supervisory board if:

- Nominal capital exceeding € 70.000 and more than 50 shareholders, or
- an annual average number of employees exceeding 300, or
- centralized management control (holdings of more than 50%) of stock corporations or limited liability companies having a mandatory supervisory board, and the total number of employees of these companies together exceeds 300 employees on an average.

A manager cannot be a member of the supervisory board of the same GmbH.

The cost of formation depend in principle on the amount of share capital. In the case of a share capital of € 35.000 the overall cost will amount roughly € 5.000 to € 10.000.

The following cost items must be considered:

- capital transfer tax 1% of each shareholder's contribution
- fees for consultation and drafting of documents, particularly those of the legal counsel and the tax adviser. These fees reflect the time and amount of work involved.
- cost of notarization charged by the notary public according to the fee schedule.

As a rule, the cost of formation are borne by the company to be formed; therefore, it is required to include a respective provision in the articles of this company. According to commercial law the cost of formation are deemed to be expenses; for tax purposes they are allowable.

5.1.1.2 Annual Meetings

A general meeting of shareholders must be held at least once a year (ordinary meeting). In addition to the cases expressly referred to in the law or the articles, it shall be called whenever required in the interest of the company. In particular, it shall be called without delay after it has been ascertained that one half of the stated capital has been lost.

The meeting shall be held at the registered domicile of the company unless the articles determine otherwise. Decisions that the law or articles have made subject to a shareholders' resolution shall be made in the shareholders' meeting unless all shareholders have, in the individual case, given their written consent to the provision to be adopted or at least to a written vote.

The shareholders decide on the audit and approval of the annual financial statements, the distribution of net profits and the release of the managers and members of the supervisory board (if any). The resolutions mentioned above shall be adopted with respect to the preceding financial year within the first eight months of each financial year.

5.1.1.3 Share Capital

The minimum share capital of a *GmbH* is € 35.000. This must be subscribed in full on formation of the company, but only the higher of either € 17.500 or 25% of the total share capital must be paid in before registration.

The law does not provide for the issue of share certificates; shares in a *GmbH* cannot be traded on the stock exchange. Accordingly, a valid transfer of the ownership of shares is only possible by means of an assignment before a notary public.

5.1.1.4 Insolvency, Liquidation

A *GmbH* is considered insolvent when it cannot pay its debts as they mature, or as soon as the liabilities exceed the fair market value of the assets. In both cases, the managers are required, without delay, to apply to the court for liquidation proceedings or for a settlement with creditors (*Ausgleich*). Failure to initiate the appropriate proceedings can involve the

managers in personal liability. A petition in bankruptcy may also be filed by any creditor of the company.

Liquidation procedures are initiated by a 75% majority of the voting stock. The general meeting has to appoint a liquidator, usually one of the (former) managers who must file a relevant notification with the Commercial Register. The registration must be published in the official gazette '*Wiener Zeitung*'; it must be accompanied by a request to all creditors to submit their claims. After settlement of all the creditors' claims, the remaining assets are distributed to the shareholders, but not earlier than three months after the public notification of the creditors.

After the company has been finally wound up, its termination has to be notified to the Commercial Court which deletes the *GmbH* from the Commercial Register.

5.1.2 Stock Corporation

5.1.2.1 Formation

A stock corporation (*AG*) is formed by at least two promoters who subscribe for the shares and sign the Articles of Incorporation to be certified by a notary public. Besides the name, legal seat, business object and total amount of share capital, the Articles must include the par value of the different types of shares to be issued and name the publications in which the audited annual accounts etc. are to be published.

The promoters of the stock corporation appoint the supervisory board (*Aufsichtsrat*) which in turn appoints the board of management (*Vorstand*). The stock corporation comes into legal existence with its entry in the Commercial Register. For this purpose the Articles of Incorporation, the opening balance sheet as well as evidence that the capital has been settled in and the 1% capital transfer tax has been paid must be filed with the Commercial Register.

Special requirements must be complied with if shares are issued against contributions in kind.

The size classifications as described in the case of a *GmbH* (see Chapter above) also apply to *AGs*. *AGs* whose shares of stock are admitted to listing or are included in semi-official listing are always deemed to be large legal entities.

The cost of formation of a stock corporation depend in principle on the amount of its capital stock. The cost items referred to in Chapter 5.1.1.1 also apply to stock corporations. In the case of a formation by incorporators and subscribers, additional cost including cost of prospectus, additional meetings of shareholders must be included. For a stock corporation

with a stated capital of € 70.000, total formation cost of € 10.000 through € 15.000 must be envisaged.

5.1.2.2 Supervisory Board

The statutory supervisory board consists of at least three members who are elected by the shareholders' meeting. According to a special act of law members of the works council (*Betriebsrat*) are delegated to the supervisory board as representatives of the employees. The number of these delegated members amounts to 50% of the members elected by the shareholders.

The main functions of the supervisory board are to appoint and remove the members of the management board, to supervise and, as appropriate, give advice to the management board, to safeguard the shareholders' interests and to give the corporation's employees some participation in management matters. The audited annual financial statements must be approved by the supervisory board before they are submitted to the shareholders' meeting.

5.1.2.3 Board of Management

The members of the board of management are the main officers of the corporation and are responsible for its management. They have legal power of representation which cannot be limited as far as their dealings with third parties are concerned. They periodically report to the supervisory board and submit the annual financial statements for their approval.

5.1.2.4 Annual Meetings

A general meeting of the shareholders (*Hauptversammlung*) is to be held annually within eight months after the balance sheet date. In the ordinary annual meeting the shareholders decide on the distribution of profits, the formal discharge of the supervisory board and board of management from legal responsibilities and the appointment of the auditors.

For fundamental decisions, e.g., increases or reductions of capital and other changes of the articles of incorporation, mergers, profit and loss pooling agreements, liquidation, etc., the approval of 75% of the votes is required.

The shareholders' meeting is usually called by the board of management; in addition, the supervisory board or shareholders holding at least 5% of the voting common stock are entitled to call an extraordinary shareholders' meeting. In order to become legally binding, the decisions of a general meeting must be certified by a notary public.

5.1.2.5 Share Capital

The statutory minimum capital stock for an *AG* is € 70.000. Before registration in the Commercial Register, at least 25% of the capital subscribed (but at least € 35.000) and, if the shares are issued at a premium, the full premium amount has to be paid in. Shares must not be issued at a discount. A company may issue par-value shares or non par-value shares. Normally, bearer certificates are issued; registered shares are required as long as the shares are not fully paid up. As a rule, one common share entitles its holder to one vote in the general meeting. Preference shares without voting rights may be issued up to 50% of the common stock. Shares with multiple voting rights are not permitted.

5.1.2.6 Insolvency, Liquidation

As regards insolvency, see above.

Liquidation proceedings for an *AG* are, in principle, the same as for a *GmbH*, except that the request to all creditors to submit their claims must be published three times and that the liquidation proceeds must not be distributed earlier than twelve months after the latest publication of such request.

5.1.3 Stock Corporation and Limited Liability Company in Comparison

Stock Corporation		Limited Liability Company
	<i>Minimum share capital</i>	
€ 70.000		€ 35.000
	<i>Shares</i>	
Share certificates issued		No share certificates issued
Quotation on stock exchange possible		Quotation on stock exchange not possible
Shareholders can be anonymous		List of shareholders must be filed with the Commercial Register
Assignment of shares by physical transfer		Assignment of shares by notarial deed of assignment
	<i>Management</i>	
Managing board members appointed by supervisory board		Managers appointed by shareholders
Appointment for a maximum period of 5 years possible		Appointment for indefinite period of time
Not bound by direct orders of shareholders		Bound by direct orders of shareholders
Revocation for good cause only		Appointment revocable at any time without cause
	<i>Formation</i>	
At least two shareholders are needed		Single person can found
	<i>Supervisory Board</i>	
Obligatory		Obligatory under certain conditions only
Number of members depends on capital stock, at least three		Number of members unlimited, at least three
Shareholders entitled to elect two-thirds of the members		Shareholders entitled to elect two-thirds of the members
	<i>Minority Protection</i>	
5% of capital stock entitle shareholders to exercise most of the minority rights		10% of capital stock required for exercising minority rights

Both types of corporations have in common that after incorporation all share certificates or share quotas may be concentrated in a single owner. Corporate existence is not affected thereby and the corporation remains a legal entity distinguishable from the personality of its sole shareholder who as a rule is not liable for the debts of the corporation.

5.1.4 European Company (Societas Europaea – SE)

Since October 2004 it is possible to set up this type of legal entity in Austria. The SE is a European public limited company. An SE may be created on registration in any one of the Member States of the European Economic Area (EEA). Member States have to treat an SE as if it is a public limited company formed in accordance with the law of the Member State in which it has its registered office. Austrian national laws that apply to Stock Corporations also apply, in most respects, to SEs registered in Austria.

There are several ways of forming an SE and different types of bodies may be involved in each (see the table below).

Method of formation Commercial bodies that may be involved

Merger	Two or more public limited companies (including SEs)
Holding SE	Two or more private or public limited companies (including SEs)
Subsidiary SE	Two or more companies (including SEs), firms or other legal bodies
Subsidiary SE	An existing SE
Transformation	An existing public limited company

The statutory minimum capital for an SE is € 120.000. Before registration in the Commercial Register, at least 25% of the capital subscribed (but at least € 35.000) and, if the

One of the aims of the Regulation is that an SE should be able to transfer its registered office to another Member State without being wound up. An SE registered in Austria may transfer its registered office to another Member State and, conversely, an SE registered in another Member State may transfer its registered office to Austria.

5.2 Sole proprietorship

A Sole Proprietorship has to be registered with the local Commercial Register if the business requires an administrative or commercial organization. The owner of the business has unlimited liability for any debts.

5.3 Partnership

Partnerships may be formed in the legal forms of General Partnership (*Offene Handelsgesellschaft, OHG*; changed to *Offene Gesellschaft OG* from 1.1.2007) or Limited Partnership (*Kommanditgesellschaft, KG*). In the *OG*, all partners are fully liable for the partnership's debts, whereas in the *KG* there are general partners with unlimited liability and limited partners whose liability is restricted to their fixed contributions to the partnership. Although a partnership itself is not a legal entity, it may acquire rights and incur liabilities, acquire title to real estate and sue or be sued.

The *GmbH & Co KG* is a limited partnership with, typically, the sole general partner being a limited liability company. It can thus combine the advantages of a partnership with those of the limited liability of a corporation.

A Dormant Partnership (*Stille Gesellschaft*) comes into existence when a person makes a contribution to an existing enterprise (company, partnership, sole proprietorship) and shares in the latter's profits and, possibly, in the losses as well. The dormant partner has no liability for the debts of the enterprise; in case of insolvency of the enterprise he is creditor with the portion of his contribution not consumed by losses. Strictly speaking, the dormant partnership is nothing more than an 'undisclosed participation'.

A Civil-Law Association is not a legal entity and cannot sue or be sued. It is often used for single joint ventures (e.g. construction projects) and comes to an end when the joint project has been completed.

5.4 Austrian Private Foundation

A *Private Foundation (Privatstiftung)* constitutes a conglomeration of property having legal personality but no shareholders; its activities involve managing its own funds and assets for the beneficiaries.

The requirements for a private foundation are:

- legal domicile in Austria
- registration with the Commercial Court
- no activities by way of business or trade (ancillary activities are permitted); and
- minimum assets of € 70,000.

5.5 Branches of foreign companies

A foreign enterprise may establish a branch in Austria; the branch must be registered with the local Commercial Register which requires:

- proof of the legal existence of the foreign company and of a regular business activity in the country where it is domiciled;
- appointment of an authorized representative residing in Austria.

An Austrian branch of a foreign enterprise is considered a taxable entity and usually has to maintain proper books and records in Austria.

6 Taxation of income

6.1 Income tax – individuals

6.1.1 Personal Tax Liability

Individuals who are resident in Austria are liable for Austrian income tax on their worldwide income. Individuals who are resident outside Austria are exempt or only liable with respect to income sources or assets that are situated there.

A person whose domicile or customary place of abode is located in Austria is deemed to be resident.

The domicile of an individual is the place where he occupies a residence under circumstances which indicate that he will retain and use it not merely temporarily (e.g. if he maintains a house or apartment).

Customary place of abode is given in case of physical presence over a somewhat extended period of time. Individuals are considered to have a customary share of abode in Austria if they remain there for 183 days or more in any tax year. Citizenship and nationality are not relevant.

Sometimes an individual may be treated as resident both in Austria under Austrian law and in another country under that country's tax law. If the foreign country has a double tax treaty with Austria, the treaty usually contains rules to decide in which of the two countries the individual is resident for the purposes of giving double tax relief and determining the respective countries' taxing rights.

According to a special rule, individuals with a domicile in Austria, but being resident for the purpose of double tax relief in another country for more than 5 years are deemed to be residents only by using their Austrian domicile more than 70 days a year.

6.1.2 Taxable Income

Residents are subject to income tax on their worldwide income derived from the following seven sources:

- Agriculture and forestry
- Trade or business, including gains on the sale of a business or partnership share
- Independent personal services; typically professional activities
- Employment; e.g. wages and salaries, social security pensions
- Investment of capital; e.g. dividends, interest, profit shares of dormant partners

- Rentals and royalties
- Other income specified by law.

Other than the mentioned income is not taxable.

6.1.3 Determination of Taxable Income, Tax Rates

6.1.3.1 Business Income

Net income from agriculture and forestry, from trade or business, and from independent occupations is called profit; it is determined by deducting business expenses (*Betriebsausgaben*) from gross income. The accrual method is mandatory if turnover exceeds € 400,000 (in the case of grocery retailing and general merchandise stores € 600,000).

Losses incurred in these categories may be carried forward, provided that proper books and records are maintained.

Net income from the other categories is determined by deducting from gross income any expenses that are incurred to acquire, safeguard and maintain this income (income-related expenses; *Werbungskosten*). The net income usually is arrived at on an accrual basis. However, there are types of businesses which may use the cash basis of accounting (e.g. firms of members of the liberal professions, such as, doctors, lawyers, certified public accountants, architects, and businesses not exceeding certain limitations as to taxable revenue).

There are no general standard deductions for business-related expenses. However, expenses can in specific cases be set off with a lump sum percentage of gross turnover (6%–12%).

6.1.3.2 Salary income

Typical examples for expenses deductible from employment income are contributions under the Austrian social security system or obligatory contributions to foreign schemes. Furthermore income from employment is reduced by income related expenses not covered by the employer (e.g. amortisation of necessary home-computer, business books). As minimum lump sum deduction € 132 are granted as income-related expenses. Non-recurring payments of salaries and wages, e.g. 13th and 14th salaries, bonus payments, etc., enjoy a tax-free allowance of € 620 per year in the aggregate; the exceeding amounts up to 1/6 of the current annual salaries are taxed at reduced fixed rates.

6.1.3.3 Dividend income

Income tax on dividends and profit shares of dormant partners is withheld at source at a rate of 25%. The recipient has to gross up income received with the tax withheld being a credit item against tax liability.

Dividends are received tax-free on newly issued shares and profit-sharing certificates which were purchased under the special expenses benefit (see below).

With the 25% tax withheld in the case of dividends, the dividends are no more subject to income taxation. Inheritance tax (in case of transfer by reason of death) and gift tax will, however, accrue.

Dividends from abroad were taxed at the individual's regular tax rate till 31.03.2003. To eliminate that discrimination of foreign dividends, dividends paid (from 31.03.2003 on) from abroad also are taxed at a fix rate of 25%

6.1.3.4 Interest income

Interest income from saving deposits and credit balances on current accounts if paid by domestic credit institutions and, furthermore, interest income from interest-bearing securities (bonds and debentures, mortgage bonds, if the interest paying agency is located in Austria) are subject to 25% withholding tax. By withholding this tax the interest income will no more be subject to income taxation. In the case of transfer of property by reason of death no inheritance tax will accrue. There is no exemption for gift tax (transfer of property *inter vivos*).

If the dividend or interest is paid by an agency abroad there will be no withholding tax. This income has to be included into the income tax return and is subject to the respective standard income tax rate applicable (up to marginal tax rate of 50%). There are plans to eliminate that discrimination between dividend and interest from abroad soon.

6.1.3.5 Double Taxation Relief

Residents are liable for Austrian income tax on their worldwide income, but there exist more than 60 Double taxation treaties. Foreign income taxes may be credited against the Austrian tax liability, but, however, limited to the amount of Austrian income tax payable on that income. Where foreign income is exempt from Austrian tax under a treaty, Austria is entitled to include this income for the purposes of determining the applicable tax rate on the income taxable in Austria.

Employment income is normally taxable in the country where the work is performed. However, most treaties grant the sole right of taxation to the country of residence in cases where

- the individual's stay in the country where the work is performed is less than 183 days, and
- the salary is paid by an employer of the resident state and is not borne by a permanent establishment in the country where the work is performed.

Income from independent personal services is usually taxed in the country of residence, unless the individual has a permanent establishment (*feste Einrichtung*) in the other country for the purpose of performing his activities. Special rules apply to remuneration paid to artists, athletes, to directors' fees, etc.

If there is no treaty, a general double taxation relief is available to residents.

6.1.3.6 Taxation, Tax Rates, Deductions

In May 2004, the Austrian Parliament enacted the Tax Reform Act 2005, which came into force on the 1st of January 2005. The Austrian Tax Reform causes essential changes in income tax law. Especially medium and small income earners benefit from this Reform.

Till 2005, an income of € 7.300,-- and below remained income tax free. Due to the Tax Reform this tax-free amount of € 7.300,-- has been raised to € 10.000,--.

One of the major goals was to reform the income and wage rates. Currently, individuals were taxed at marginalized gradual rates ranging from 21 % to 50 % with a complicated system of tax credits. This system had been replaced by a progressive average tax rate that implements tax credits. The top tax rate of 50 % for income exceeding the threshold of € 50.870,-- had been remained in place, but the thresholds for tax free income had been raised as above-mentioned.

Income in €	Tax calculation in €	Average tax rate in %	Marginal tax rate in %
= 10.000	0	0	0
> 10.000 to 25.000	(income – 10.000)*38,33333 %	0 – 23	38,33333
25.000	5.750	23	38,33333
> 25.000 to 51.000	(income – 25.000)*43,59615 % + 5.750	23 – 33,5	43,59615
51.000	17.085	33,5	43,59615
>51.000	(income – 51.000)*43,59615 + 5.750	>33,5	50

The following deductions from the income tax due are available to resident taxpayers:

- Until the 31st December 2004, a general deduction of € 887 per year (phased out if income exceeds € 14.535 up to € 36.400). From the 1st of January 2005, the general deduction is not applicable because it is already included in the new tax calculation.
- taxpayers with employment income are entitled to € 54 per year
- solitary earners may deduct € 364 per year, if the spouse's income does not exceed certain limits
- taxpayers with employment income are entitled to € 291 for expenses incurred in travelling between private residence and employment site
- pension earners are entitled to a deduction of € 400 per year.
- Special personal expenses (*Sonderausgaben*)

The taxable income can also be reduced by the following items not related to income of a particular source: premiums to voluntary health, accident and life insurances; payments incurred to finance private house building and improvement; purchase of newly issued shares or profit-sharing certificates. For these three categories a flat annual allowance of EUR 60 per year is granted unless higher payments are substantiated. 25% of the actual payments are deductible, with limitations of € 730 per year for the taxpayer, another € 730 if

the spouse has no income or only a very low income, from the tax basis. From 1997 onwards, these expense deductions and also the flat annual allowance are phased out from an income exceeding € 36,400 up to € 50,900.

Other special expenses are certain recurring payments; expenses for professional tax advice; contributions to churches and other religious bodies if recognized by law (up to € 100,-- p.a.); donations for research purposes, with limitations; tax losses carried forward from previous years. These are not subject to phase out.

- Extraordinary expenses (*außergewöhnliche Belastungen*)

Expenses necessarily incurred by a taxpayer due to extraordinary circumstances may be deducted from taxable income, usually after considering a retention ranging from 6 to 12% of the taxable income. The percentage of retention is reduced by another 1% for the spouse and for each child that enjoys children's allowance (see below). Certain expenses are deductible at flat amounts (e.g. children's tuition away from home; invalidity certified by the health authorities) or without considering a retention (e.g. expenses following natural catastrophes).

No actual deductions from tax due or from taxable income are available for children. However, child subsidies and transfer tax payments are granted to all taxpayers with dependent children.

6.1.4 Taxation of Non-Residents

Non-resident individuals are subject to income tax only on the following categories of income derived from Austrian sources:

- Domestic agriculture and forestry
- Trade or business carried out through a permanent establishment or a permanent representative in Austria
- Independent personal services performed or used in Austria
- Employment if the activities are performed or used in Austria
- Capital yields such as dividends and other earnings from Austrian stock corporations and private limited liability companies, similar earnings from participation rights, earnings from a dormant partnership, interest on loans secured by mortgages on real estate located in Austria.
- Rentals and royalties if the real estate is located, or the patents etc are utilized in Austria
- Speculative transactions referring to Austrian real estate

- Gain on the sale of interests (at least 10%) held in stock corporations and private limited liability companies.

Depending on the type of income, Austrian income tax is payable either by way of annual assessment upon filing of an income tax return or through withholding at source.

Income tax is withheld at a flat rate of 25% on dividends received from an Austrian company, at 20% on income from commercial or technical consulting services, directors' fees, royalty income and income from personal independent activities carried out in Austria, as artist, athlete, supervisory board members etc.

Normally, there is no withholding tax on interest income.

Since 01.07.2005 there is a withholding tax on bank interests **for EU-residents**, to maintain the Austrian Banking Confidentiality while most other member states have decided an information exchange between the tax authorities. The withholding tax is 15% from 01.07.2005 to 30.06.2008; 20% from 01.07.2008 to 30.06.2011 and 35% from 01.07.2011.

In cases where income tax is withheld at source, no income-related expenses may be deducted from the tax base. Tax is finally determined by the withholding at source, unless the income is derived through a permanent establishment in Austria.

Where income tax is assessed, income or business related expenses are only deductible to the extent that they are economically related to the respective Austrian source income. Losses from one category of income may only be offset against profits from another if both categories are subject to tax through assessment rather than withholding. Special personal expenses (*Sonderausgaben*) are only deductible if incurred in relation to circumstances which are positioned in Austria.

6.2 *Income tax – companies*

A company's taxable status depends on whether it is incorporated. A corporation is a taxable entity, taxed on net profits at the corporate level. A partnership or a sole proprietorship is not a taxable entity; items of income and loss are passed through and taxed directly to the owners.

6.2.1 Corporations subject to tax

Corporations resident in Austria (*domestic corporations*) are unlimited subject to corporate income tax on their worldwide income whether or not remitted to Austria.

Non-resident corporations (*foreign corporations*) engaged in a trade or business in Austria are taxed on certain Austrian source investment and other passive income and on income that is effectively connected with the conduct of a trade or business in Austria. Non-resident corporations not engaged in an Austrian trade or business are taxed only on certain Austrian source investment and other passive income.

Gains from the disposition of Austrian real property interests are taxable to foreign corporations whether or not otherwise engaged in an Austrian business.

6.2.2 Residence

Under domestic law a corporation is resident in Austria if its registered office or its corporate management is located there. This is subject to the provisions of applicable double tax treaties.

The definition of residence as applying to corporate management has evolved from a number of court decisions: According to this the corporate management is deemed to be located where the central business management and control is exercised; that means where the important measures required for the conduct of business are directed.

6.2.3 The general taxation of domestic corporations

A company pays corporation tax **on all its profits**, whether income or capital gains, and whether distributed or undistributed.

The rate of corporate income tax is cut to 25 % (from currently 34 %) for profits derived after December 31, 2004 (in case of deviating business years, profits derived in 2004/05 will therefore partly be taxed at 34 %, partly at 25 %).

In conjunction with the rules governing the computation of taxable income, this should reduce the effective corporate tax rate to 21 % (according to the Government's Report on the Tax Reform Act 2005).

The preferential tax rate (25 %) for increases in equity exceeding the average equity of the past three years ceases to exist because since from 2005 the normal corporate income tax rate is 25 %.

Resident corporations are obliged to pay a **minimum corporate income tax of € 1,750.– for GmbH** and € 3,500.– for AG (5 % of the minimum stock capital), even in years with losses. For the first year of unlimited tax liability this minimum tax is reduced to € 1,092,- .

The minimum corporate income tax is payable in 4 quarters on 15th February, 15th May, 15th August and 15th November. It may be credited against the corporate income tax liability of the assessment period or of the subsequent years.

Losses can be carried forward (unlimited) and may be deducted from the taxable income of succeeding years without time limit. As far as capital losses are not tax-neutral (e.g. losses from the sale of an international participation), they are treated in the same way as ordinary losses. A carry-back of losses is not permitted. As a rule, loss carry forwards can only be set off against 75 % of the income of the current year, this means that only 75% of the (succeeding) years profit can be reduced by losses carried forward, 25% will be taxed (but might be credited against minimum corporate tax of previous years). You cannot carry back losses in Austria.

Example: (taxable) losses carried forward € 2.000.000 ; annual profit 200x € 100.000:
Consumption of losses: € 75.000; remaining losses carried forward € 1.925.000,
Corporation tax 200x: € 6.250 (25% of € 25.000); former minimum tax could be credited.

- Utilisation of foreign tax-losses in Austria

The Administrative Court recently held that losses generated by a foreign permanent establishment can be deducted by an Austrian taxpayer, even though income derived from the foreign establishment would be exempted from taxation under an applicable tax treaty,

provided that the loss is not deductible abroad. However, if in the following years the loss can be deducted – wholly or partly – from taxable profits abroad, the tax base of the Austrian taxpayer will be increased by an amount corresponding to the deduction. The Tax Reform Act incorporates the case law into the Income Tax Act and the Corporation Income Tax Act and, in respect of group taxation, as described below, extends the scope of the principle to losses generated by foreign subsidiaries of Austrian resident companies.

Expenses incurred in connection with non-taxable income are not deductible. So expenses for founding and financing the company itself are deductible, but expenses for a tax-free holding daughter are not deductible. Corporate income tax itself is not deductible. No deduction is permitted for corporate profits distributed as dividends to shareholders (income appropriation).

Dividends to the shareholders are in principle subject to a withholding tax of 25% which is deducted at source. Dividends distributed to corporate shareholders are exempt from withholding tax under certain conditions (e.g. under the regime of the EC Parent-Subsidiary-Directive). [For more details see chapter 6.4.1 \(Withholding taxes / Dividends\)](#)

6.2.3.1 Dividends and capital gains (to an Austrian holding company)

- National participation exemption

Any dividends received by Austrian (resident) companies from Austrian (resident) subsidiaries remain exempt from corporate income tax with the recipient irrespective of the percentage of stock holding. The participation exemption also applies to undisclosed profit distributions (constructive dividends).

- International participation exemption

Austria's tax regime regarding the international participation exemption was recently amended in principle with effect from 2004 onwards. For companies formed before 2001, some of the changes in the capital gains treatment and anti-abuse provisions apply only from 2006 onwards.

Dividends and capital gains derived from qualifying shares in foreign subsidiaries are exempt from corporate income tax, if the following requirements are met:

- The receiving company is a corporation which is subject to unlimited corporate income tax liability in Austria.
- The subsidiary takes one of the legal forms listed in the Annex to the EC. Parent-Subsidiary Directive or the legal form of the subsidiary is comparable to an Austrian company limited by shares.
- The Austrian company holds at least 10 % in the capital of the subsidiary (formal share capital or other forms of holding). An indirect shareholding (e.g. via a partnership) also qualifies for the exemption.
- The shareholding exists for a minimum holding period of one year prior to the receipt of a dividend or the disposal of shares. Decisive for the one-year holding period is the date of the legal acquisition of the participation.

Dividends received within the first year of stock holding are preliminarily subject to tax. After meeting the -one year holding requirement the tax can be recovered upon the parent company's application.

The "legal comparability" requirement (of above) is usually met if the foreign corporation

- has its own legal entity
- has a fixed share capital
- offers more than one shareholder the possibility to participate and
- if all shareholders are subject only to a limited responsibility for the liabilities of the corporation and have the chance to participate in a shareholder's assembly thus influencing the management.

Partnerships, trusts and unit trusts are therefore not comparable to an Austrian company. However, it is not required that the foreign subsidiary is treated in its "native country" as a separate taxpayer. Even if the foreign tax legislation regards the corporation as transparent and levies taxes similar to the partnership taxation, the Austrian participation exemption may apply if the foreign corporation is comparable as outlined above.

Furthermore, the international participation exemption applies if the recipient is a permanent establishment of a parent company resident in another EU member state provided that the participation is attributable to the permanent establishment.

If the above requirements are met, the (regular and constructive) dividends received from abroad are exempt from the corporate income tax. The tax exemption is granted automatically; it is not necessary to apply for a special ruling.

Anti-abuse rules: The international participation exemption is denied if there are reasons which induce the tax authorities to suspect cases of tax avoidance or abuse. Such reasons particularly may be assumed if:

- The non-resident company's activities above all directly or indirectly lie in deriving interest income, income from the transfer of movable tangible or intangible assets or the use thereof and income from the disposal of participations; AND
- The foreign company's income does – with regard to the tax base or tax rate – not suffer a tax burden comparable to the Austrian corporate income tax; (per decree: minimum 15% tax rate)
- Under these conditions a tax relief can only be claimed through a tax credit system.

Until the taxation of the year 2004 there was another exception for companies proofing that the majority of direct or indirect shareholders of the receiving company are / were physical persons who are not subject to unlimited tax liability in Austria. European Union forced Austria to change / eliminate that difference between domestic individuals and companies and such from abroad (mainly from EU-countries). For companies registered before 1. January 2001, that exception will be effective until the taxation of the year 2006.

Though profits from qualifying shares from abroad were exempt from tax, losses were deductible till now. This will change

- from the tax year 2004 for companies registered after 31.12.2000
- from the tax year 2006 for companies registered before 1.01.2001

Tax treatment of capital gains/losses up to 2004/2006

Under the legislation applicable to tax assessments up to 2004/2006, capital gains realized on the sale of a qualifying participation in a foreign subsidiary (see above for the requirements) are tax exempt in Austria. Capital gains are subject to tax only if and up to the amount of a tax-effective write-down of the book value of the participation in prior years (unlimited recapture period).

In contrast to capital gains, losses from the sale of liquidation of international participations and write-downs of the book value are in principle fully tax-effective but must be spread over seven years. These losses and write-down may reduce (other) taxable profits.

Tax treatment of capital gains/losses from 2004/2006 onwards

Under the new regime (applicable from January 1, 2004/2006 onwards), the tax treatment of capital gains and losses is twofold:

- 1) “Tax-exempt” status: Both, the capital gains/losses realized on the sale of an international participation and the write-downs of the participation are tax neutral. Therefore, capital gains realized remain tax-free. To obtain this exemption, the previous tax-effective write-down must be recaptured and taxed over a seven-year period. Losses realized on the liquidation of a foreign subsidiary are tax deductible to the extent they exceed the previous five years’ tax-free dividends.

- 2) “Tax-effective” status: As an alternative to the tax-exempt status of international participations, an option-model has been introduced allowing a taxpayer to opt for the tax deductibility of capital losses and write-downs but, in this case, capital gains are fully taxable at the standard rate. Dividends are not covered by this option and remain tax free (see above). Thus, under the option, there is no recapture of the previous write-down. In order to avoid the taxation of unrealised capital gains accumulated before the new regime came into force, the tax book value of the international participation will be stepped up to its fair market value.

The option for the “tax-exempt” or “tax-effective” status can be exercised independently for each international participation held. The option chosen is irrevocable.

Regarding the period for exercising the option, the following rules apply. Companies that were registered in the Commercial Register before January 1, 2001 must exercise the option for the international participations acquired before January 1, 2006 in the course of filing the corporate income tax return for 2006. Companies registered after December 31, 2000 must exercise the option for the international participations acquired before January 1, 2004 in the course of filing the return for 2004.

6.2.3.2 Transfer pricing

The tax authorities may adjust, for taxation purposes, the prices at which transactions are carried out between an Austrian resident company and its non resident associated companies, to ensure that the taxable profit reflect those transaction on the basis of arm’s length prices. The power to make adjustments applies not only to purchases and sales of goods, but e.g. to rental and hire payments, transfers of other assets and payments for other services. The Austrian tax authorities rely on the OECD transfer pricing guidelines for their assessments.

6.2.3.3 Group Consolidation Rules

Since 01 January 2005 the rather complicated and old-fashioned system of the Austrian tax unit (Organschaft) was replaced by a modern group taxation system enabling the pooling (no consolidation) of profits and losses of Austrian resident group-companies.

In addition, it is possible to use the tax losses of foreign subsidiaries directly held by Austrian group companies. The use of foreign tax losses will be subject to a clawback at the time the foreign subsidiary earns profits against which the foreign loss carry-forwards can be offset or the subsidiary leaves the group (apart from insolvency). In contrast to the inner-Austrian pooling of profits and losses, the use of foreign losses in Austria is only of temporary nature, resulting in a cash flow-benefit for the group.

Conditions:

1. Control of more than 50% of the ordinary, nominal or registered capital of a company located in Austria and a voting majority of one vote. The participation can be held directly but also only indirectly via a partnership or -besides a (small) direct participation - via another group-corporation.
2. A written application to the appropriate tax authorities by the group's parent company (the top level of the corporate group) including the names of the member companies.
3. The group's retained earnings must be maintained for three years.

6.2.3.4 Chargeable periods

Companies are assessed by reference to accounting periods, which are normally the same as those for which they prepare their statutory accounts. Where a company's financial year does not coincide with the calendar year, the amount assessable is computed on the basis of the financial year that ends within the calendar year. A change of the financial year to a period other than the calendar year is subject to an approval of the tax office.

Tax audits of the company's books and records are made periodically and may result in the revision of assessments. Proper books and records must be maintained in order to avoid a tax assessment based on estimates.

Quarterly prepayments for corporate income tax are to be paid on 15th February, 15th May, 15th August and 15th November of each year; usually, their amounts are based on the latest

annual assessment available with annual increases of 4% (if imposed in the first year) or 5% (if imposed in the second or in further years following the assessment). The final amount payable after the issue of the annual assessment notice is due within one month; overpayments are refunded or credited against other tax liabilities. Interest is levied only on late payment of assessed amounts.

6.2.3.5 Corporation Tax Returns

A company must annually file a corporation tax return. The due date for the filing of tax returns is 31st March of the subsequent year, irrespective of the financial year-end. Taxpayers represented by a tax adviser may file their tax returns up to 31st March of the second subsequent year with the tax office (e.g. tax returns for the financial/calendar year 2002 have to be filed with the tax office up to 31st March 2004, at the latest). Further extensions may be granted upon application.

The following documents have to be filed together with the corporation tax return: financial statements; the auditor's report, if any; separate financial statements for tax purposes or a re-conciliation between the figures shown in the financial statements and in the tax return.

After the tax return has been filed and reviewed by the tax office, a notice of assessment will be issued which determines the amount of corporate income tax payable. The taxpayer may lodge an appeal against an assessment within one month after receipt thereof.

The computation, and the submission of the return, are usually handled by the company's tax adviser, who will also deal in the first instance with any queries raised by the tax office.

6.3 Taxation of private foundations

6.3.1 Establishment

The contribution of assets to a private foundation is taxed at a reduced **flat rate of 5%**. Contributions in the form of real estate are not subject to normal real estate transfer tax but to inheritance and gift tax. The house tax rate of 5% increases by a surcharge for real estate transfer to 8.5% in the case of real estate contributed to a private foundation. The reduced 5% tax rate is also applied to subsequent contributions to the foundation made by the grantor, but not to supplementary contributions made by other persons who do not enjoy the status of a grantor.

To avoid misuse a retroactive tax liability has been provided for. If assets contributed or property replacing this property are disposed of without consideration within ten years, the difference between the initial reduced 5% tax rate and the regular rate on gifts is to be levied

(the normal tax rate amounts up to 60% depending upon the amount of the contribution). Limited exemptions apply in some cases.

6.3.2 Private foundation

The Austrian private foundation is subject to corporate income tax on the worldwide income on a flat rate of 34% till the 31 December, 2004 and a flat rate of 25 % from the 1 January, 2005. The Austrian CIT Act provides for tax exemptions for certain types of income from capital and direct investment. To qualify for these tax exemptions the primary and supplementary declarations of establishment must be submitted to the competent tax authorities. In particular,

- earnings which would otherwise be subject to final withholding tax (interest income from cash deposits and other claims against domestic banks; investment income from debt instruments with payments agents in Austria)
- earnings from the sale of holdings of over 1% in corporations (within the last 5 years), if these participations do not constitute part of a trade or business run by the foundation

are exempt from corporate tax, but there is a (temporary) withholding tax of 12,5 %. At the time of distributions to beneficiaries, when the private foundation is required to withhold a capital yield tax of 25%, that “temporary” tax can be credited.

Tax exempt status does not apply to speculative transactions, so that any sale of holdings within one year of their purchase is subject to taxes.

Dividends of any type accruing from participations in Austrian corporations or trading and industrial cooperatives, refunds from trading and industrial cooperatives and dividends paid on dividend right certificates or participation capital can be retained tax-free in a private foundation. The party which distributes dividends on participations is required to withhold capital yield tax (for participations of up to 25%). The private foundation is, however, entitled upon application to the return of the funds thus withheld.

Comparable foreign assets (e.g. money on deposits with foreign banks) and income from foreign participations (e.g. dividends paid on foreign shares) are also exempt from Austrian corporate tax if no tax relief is provided by a double taxation agreement. On income of this type earned in countries with which Austria has signed a double taxation treaty, the private foundation may either pay tax abroad (with the corresponding tax-exempt status of these revenues in Austria), or avail itself of the exemption from foreign taxes accorded by the agreement, thereby forfeiting exemption from Austrian taxes. Income from capital and direct investments which is earned by the private foundation in countries having no double taxation

treaty with Austria are tax-exempt in Austria regardless of whether tax is levied on such earnings abroad.

6.3.3 Beneficiaries

Distributions of a private foundation to beneficiaries are considered as beneficiaries or final beneficiary's earnings on capital and are treated in the same way as distributed dividends by corporations. The private foundation is required to withhold a capital yield tax of 25%. In the case of distributions to individuals this capital yield tax represents a final withholding tax. Distributions to beneficiaries are exempt from gift tax. Gift tax becomes payable only if the assets of a foundation are transferred within the first ten years under the circumstances described above in connection with the recapturing of taxes.

6.3.4 Dissolution and revocation of a private foundation

The dissolution of a private foundation does not represent a liquidation. Hence, the undisclosed reserves of a private foundation are not taxable. A final tax is levied only if firms or partnership shares are sold upon dissolution of the private foundation. A dissolution of a foundation and the subsequent disbursement of its assets to the final beneficiary is considered a distribution without consideration and therefore exempt from gift tax.

The final beneficiary is, however, fully liable to tax on income from capital for the assets received. A final tax of 25% is levied.

The grantor, if a natural person, may make provisions for the revocation of a private foundation in the declaration of establishment. The 5% inheritance and gift tax levied on the assets originally contributed is refunded upon revocation of a private foundation. Gift tax at a regular rate upon assets disposed of without consideration within a 10-year-period is not levied retroactively.

In respect of taxes on profits, the revocation of a private foundation is on the same footing as the dissolution of a private foundation and the distribution of its assets to the final beneficiaries, in which case the grantor is the final beneficiary. As a consequence the assets of a dissolved private foundation which are returned to the grantor are deemed to be income and are liable to income tax. The grantor may, however, claim a reduction of this income by the value of the assets at the time of their contribution to the private foundation, so that only the amount by which the assets changed in value during the period they were the property of the foundation is actually taxable.

6.4 Tax on capital gains

For business enterprises, a gain on the sale of business assets is generally included in taxable income and taxed at ordinary rates. Where sales of fixed assets result in capital gains, tax may be deferred by offsetting gains against the cost of other fixed assets acquired within a certain period following the date of sale.

Capital gains realised from the sale of a qualifying participation in a foreign subsidiary of an Austrian Limited Company are totally tax exempt in Austria after a two-year (from 2004 : one year) holding period if the company has not opted to treat ANY PROFITS AND LOSSES of that specific subsidiary taxable. [Details see 6.2.3.1](#)

However, a gain on the sale by an individual of his entire business or an independent division thereof, or a partnership interest, is taxed over a three years period upon application. This amount is reduced proportionately if only a part of the business is sold.

Before applying the tax rate, a tax-free amount of € 7.300 is deducted unless the profit is taxed over the three years period; this amount is reduced proportionately if only part of the business is sold.

In Austria, individuals are generally not taxed on gains from the sale or other disposition of non-business property, except in the following two cases:

- Gains from transactions considered as speculative by tax legislation (*Spekulationsgeschäfte*), i.e. if real estate is sold within ten years (with certain exceptions), or other property (especially securities) within one year after the date of purchase, or if the sale occurs before the acquisition.

The total net gains from such transactions are taxed at ordinary rates if more than € 440 in the calendar year. Losses from speculative transactions can only be offset against gains from such transactions realized in the same year.

- Gains on the sale of holdings in corporations if more than 1% of the share capital were held at any time within five years before the date of transfer.

Although the holding was privately owned, the gain qualifies as income from trade and business; it is taxed in the same way as a gain from the sale of an enterprise (see above).

In cases where the provisions on speculative transactions and on sale of substantial holdings in corporations coincide the provisions for speculative transactions rule.

6.5 Withholding taxes

6.5.1 Dividends

Basically, Austria imposes a 25% withholding tax on dividends unless dividends are paid to other Austrian companies or double taxation treaties provide otherwise.

Since Austria has adopted the EC Parent-Subsidiary Directive withholding tax will not be imposed on intra group dividends if the following requirements are met:

- Dividends are distributed by a corporate entity resident in Austria to a parent company resident in another EU member state.
- The parent company holds at least 10 % of the subsidiary's nominal capital; and the shares have been held for a minimum period of one year prior to the receipt of dividends
- The legal form of the parent company complies with the requirements set forth in Art. 2 of the Parent-Subsidiary Directive.
- The parent corporation provides a residency certificate issued by the foreign tax authorities which has been issued within one year before or after the dividend is paid.

If there are reasons which induce the tax authorities to suspect cases of tax avoidance or abuse the withholding tax exemption can only be claimed through a refund procedure.

6.5.2 Interest

In principle, Austria levies a 25% withholding tax on certain interest payments as specified below:

- Interest income from cash deposits with resident banks and interest income from other receivables against resident banks that are based on a bank transaction. An Austrian branch of a non-resident bank is put on par with a resident bank. No withholding tax is due on this interest income if the debtor is a non-resident bank.
- Capital income derived from securities that represent a money claim (different kinds of bonds) and income from investment funds as far as bond income is included therein. This income is subject to a withholding tax if it is drawn in Austria, which means that the coupon-paying agency is physically located in Austria. If payment is made abroad the capital income is not subject to Austrian withholding tax.

The payer of the investment income is obliged to withhold the amount due and pay it over to the Inland Revenue. This person is liable to the Inland Revenue for withholding and payment of the tax.

Corporate investors may achieve a tax exemption if the following conditions are met: The recipient makes a written declaration to the person obliged to withholding that the interest income is to be assessed as business income of a domestic or foreign trade or business. Thereby the recipient has to produce evidence of his identity. Furthermore, a duplicate of the declaration of exemption must be forwarded to the competent tax office.

In case of capital income derived from securities the security as well as the coupon must be deposited in a custodian account with the bank.

According to a decree of the Ministry of Finance foreign investors may claim an exemption from Austrian withholding tax if evidence of the investor's non-resident status is furnished (the bank will make a note of the investor's name and address as well as certain particulars from the passport); investors who are Austrian nationals or nationals of Austria's neighbouring states must declare in writing that they do not have their residence or customary abode in Austria. .

Since 01.07.2005 there is a withholding tax on bank interests for EU-residents (other than Austrian residents), to maintain the Austrian Banking Confidentiality while most other member states have decided an information exchange between the tax authorities.

The withholding tax is	15% from 01.07.2005 to 30.06.2008
	20% from 01.07.2008 to 30.06.2011
	35% from 01.07.2011.

6.5.3 Other Income

For the groups of income as outlined below income tax of taxpayers subject to limited income tax liability is collected through a withholding tax of 20%:

- Income from independent services as writer, lecturer, architect, sportsman, artist etc.
- Profits of an Austrian partnership, the participation of which is held by a foreign partnership if the identity of the beneficial owners of the profits is not disclosed.
- Income from commercial or technical consulting services rendered in Austria.

- Income from royalties for patents, licences, know-how, copy-rights etc., if the underlying right is filed with a domestic public register, e.g. patent rolls or if they are utilised in a permanent establishment in Austria.
- Supervisory board fees

In these cases no assessment is required; the corporate income tax is withheld on the gross income with no deduction for expenses. Most of the double taxation treaties provide for a reduced withholding tax rate. The debtor of this income – usually an Austrian resident person – is personally liable for the withholding and the remittance of the amount to be withheld.

6.6 Double tax treaties

Austria has concluded a considerable number of double tax treaties thus providing relief from double taxation.

Relief is given in two ways: first, some types of income flowing from one country to the other are exempted from tax, or subjected to a reduced rate of tax, in one of the countries; second, where income remains fully or partially taxable in both countries, the tax charged on the same income in the country in which the income arises is allowed as a credit against the tax charged on the same income in the country in which the recipient is resident. In the latter case, the foreign tax allowed as a credit against Austrian corporation tax in respect of any income may not exceed the amount of the corporation tax attributable to that income, a credit must be taken on a country by country basis: any excess cannot be set against the Austrian liability on income other than from the source country.

Regarding the treatment of certain categories of income many of Austria's treaties follow the O.E.C.D. Model Convention 1963, 1977 and 1992 as outlined below:

- Business profits are exempt from tax in Austria insofar as they are attributable to a permanent establishment in the treaty country.
- Dividends, interest and royalties (unless attributable to a permanent establishment in the other country) received by an Austrian company may be subject to a withholding tax in the treaty country. Usually the domestic withholding tax rate is reduced under the treaty provisions. As far as the foreign source income lead to taxable income in Austria credit may be claimed for foreign tax paid on this income against the Austrian corporation tax payable on this income.

- Capital gains are usually taxable only in Austria, unless the gains result from the alienation of immovable property situated in the treaty country or movable property forming part of the business property of a permanent establishment in the other country.
- Income from immovable property situated in the other contracting state is exempt from Austrian corporation tax.

In the absence of a tax treaty, under the domestic provisions the Austrian Ministry of Finance may grant, upon request, unilateral relief from double taxation.

7 Other forms of taxation

7.1 Sales tax/VAT

In principle, value-added tax (VAT) is neither an expense nor an income item to most businesses. Subject to exceptions discussed below, input tax paid to suppliers is recoverable from the fiscal authorities and tax collected from customers is payable to such authorities.

A legal entity lacks the independence that is required for VAT purposes, if it is financially, economically, and organisationally controlled by another enterprise. In this case a fiscal unit is created. The VAT Law is based on the Sixth EC Directive on the harmonisation of VAT and supplementary directives issued thereto.

7.1.1 Taxpayer

VAT covers any entrepreneur (sole traders, partnerships, companies etc.) who independently carries out supplies and renders services within the domestic territory for a consideration within the scope of this enterprise regardless of nationality or residence.

Under the fiscal unit concept which does not require a profit and loss pooling agreement for VAT purposes all companies included are treated as one taxpayer meaning that inter-company sales and services are not subject to VAT. The fiscal unit implications are limited to supplies and services performed between business divisions located within the domestic territory. If the controlling enterprise has its management abroad, the economically most important domestic business division is deemed to be entrepreneur liable to VAT.

7.1.2 Taxable Transactions

The taxable transactions comprise:

- the supply of goods
- the performance of services (transport, repair and maintenance, professional services, advertising, etc.)
- the importation of goods from a non-EU territory into Austria;
- withdrawal of goods for non-business purposes if the goods gave rise to a refund of input VAT
- use of services for non-business purposes
- the intra community acquisition.

In principle the point-of-tax is based on the date when the goods supplied available to the recipient or when the services rendered are completed. As a rule the place where an entrepreneur has his seat/domicile is deemed to be the place of performance (however, there are exceptions).

7.1.3 Collection, Filing and Payment of Tax

The standard VAT rate is 20%.

10% VAT is imposed on the

- supply of goods listed in an Appendix to the VAT Act (e.g. certain foodstuff, books, newspapers and periodicals, objects of art under certain circumstances, etc.)
- leases of land and buildings for residential purposes, including hotel accommodation
- services rendered by theatres, museums, musicians, the broadcasting and television corporation, cinemas, artists, etc.
- transport of passengers, etc.

12% VAT is imposed on the

- wine from farm production carried out by the producing farmer

Exempted are, *inter alia*,

- most of banking and insurance services (however, an option for taxation combined with input tax refund is available)
- leases of land and buildings to entrepreneurs
- small entrepreneurs with a turnover not exceeding € 22,000 in the assessment period
- medical care by physicians in the field of public health and social welfare

Zero-rated are, *inter alia*,

- supply of goods into non-EU territories (export)
- contract improvements for foreign principals if the goods are subsequently transported to non-EU territories

- transportation of goods in transports across the border and in international railroad freight traffic
- transportation of persons by ships and aircraft in transports across the border
- supply of goods into EU territories, if the customer is registered for VAT in another EU member state.

Zero-rating means that VAT is *nil* and VAT charged on inputs relating to the respective supplies and services may be claimed for refund.

7.1.4 Intra-Community Trade

A VAT registered Austrian entrepreneur supplying goods to a customer who is registered for VAT in another EU member state can zero-rate this supply provided the following conditions apply:

- the Austrian supplier obtains the VAT registration number of the customer and quotes it on his invoice;
- the goods are dispatched to another EU member state (this need not be the country where the customer is based);
- the Austrian supplier retains proof of dispatch to the other EU member state.

If any of these conditions are not fulfilled the Austrian supplier must charge VAT at the Austrian rate. It is important to keep evidence of the VAT status of the purchaser and of the dispatch of goods.

Transfer of goods (e.g. the transport of goods between two branches of the same taxable person) are treated as an intra-community supply of goods provided that each branch is established within EU territory. There are certain exclusions from the concept of taxable supply (e.g. the temporary use of goods in the territory of arrival, for services to be supplied by a taxable person in the other member state, e.g. tools of a plumber who will carry out a repair in the other member state).

An Austrian VAT registered entrepreneur who receives goods from another VAT registered entrepreneur in another EU member state is required to calculate the VAT due at the Austrian VAT rate but is entitled to claim the refund of this VAT, if the acquisition of the goods is not used for certain exempt transactions.

Distance selling occurs if a VAT registered supplier from one EU Member State supplies goods to any person in another Member State who does not need to be registered for VAT

purposes. If sales (excluding sales of goods liable to any excise tax and of new vehicles) are made to Austrian non-taxable persons and delivery is organised by a EU supplier, VAT is charged under the destination system in Austria if such sales exceed the Austrian local distance selling threshold. This threshold amounts to € 100,000 and must have been exceeded in the previous or be exceeded presumably in the current calendar year.

7.1.5 Formalities

A taxable person must issue a proper invoice to another taxable person in order to enable the latter to reclaim the input tax. If the amount invoiced (including VAT) exceeds € 150 the amount of VAT and the VAT basis must be shown separately on the invoice. From 2003 on, invoices have to be numbered consecutively and the VAT identification number has to be stated on the invoice.

VAT liability is payable by the 15th of the second month following the end of the month of the transaction. The entrepreneur has to file a monthly preliminary VAT return (U30), if the taxable sales and services of the last year did not exceed € 22.000; the VAT return has to be filed, and tax has to be paid only per quarter (report/ payment for January to March is due till 15th of May)..An annual VAT return has to be filed by 31st March of the following year. If the entrepreneur has the possibility to use Internet, VAT returns have to be filed by a special electronic data system, or directly at a special homepage of financial authorities.

7.1.6 Chain Transactions

Since the beginning of 1997 the rule, that in the case of the chain trade each entrepreneur is deemed to have carried out a taxable transaction in the form of a simultaneous supply of goods at the place of supply by the first entrepreneur to the last recipient, is not longer applicable. Now the place of supply of goods is only for the first entrepreneur at the place where the goods are at the time when dispatch or transport begins.

7.1.7 Foreign entrepreneurs

Foreign entrepreneurs who have neither their registered office, or their place of abode, nor a permanent establishment in Austria are – like any other entrepreneur – in principle liable for VAT if they effect a taxable supply of goods or ruder taxable services in Austria. Such foreign entrepreneurs have to register with the tax authority (Finanzamt Graz-Stadt).

If foreign entrepreneurs who are not established in Austria perform services or work supply (work on movable tangible property, if the property is delivered in the country of origin after the service is made) to a taxable person established in Austria, the reverse charge mechanism is applicable. Therefore the tax liability shifts to the Austrian recipient of the services, but the foreign entrepreneur who rendered the services also remains liable. The invoice must not show VAT.

7.1.8 Fiscal representative

A foreign taxable person who is not established in the European Union (or a country with a special agreement of cooperation between authorities) and who performs taxable supplies in Austria must appoint a fiscal representative. For services rendered to Austrian persons not VAT-taxable, (and reverse charge system therefore not applicable) he also needs a fiscal representative.

7.1.9 VAT Refund Procedure for Foreign Entrepreneurs

Non residents that are neither registered nor required to be registered for VAT in Austria are not required to use the procedures set out above to recover the VAT that they incur.

Recovery may be obtained through a special refund supreme. To be eligible, the non-resident must be an entrepreneur who makes no taxable supplies in Austria. Recovery is not available for expenditure against which input tax credit is specifically prohibited.

7.2 Property taxes / Taxes on Capital

7.2.1 Net Worth Tax and Estate Duty Equivalent

The net worth taxation was abolished with effect of 1 January 1994. On and after this date, neither net worth tax nor estate duty equivalent will be collected.

7.2.2 Taxes on Real Estate

The real estate tax is levied by the municipalities on the assessed value of real property at a rate of about 1%.

In addition, vacant land with an assessed value exceeding € 14.600 is subject to federal land duty at a rate of 1% (after deduction of an allowance of € 14.600 according to article 4 (2) BWA).

Both taxes are payable in quarterly prepayments due on 15th February, 15th May, 15th August and 15th November of each year.

7.3 Payroll tax

The following taxes and contributions are based on payroll and are borne by the employer:

- A municipal tax amounting to 3% on the salaries and wages paid is collected by the municipalities in whose area the enterprises are located.
- A contribution to the Family Burdens Equalization Fund is payable at a rate of 4.5% on the gross wages and salaries – this tax is also levied for employees working in Austria without fix base and payroll liability; in Vienna a 0,4 % surcharge (percentage varies from 0,36 % to 0,44 % in the various provinces) is payable by members of the Chamber of Commerce.
- Enterprises with staff employed in Vienna are subject to a special levy of € 0,72 per week and employee for the financing of the Vienna underground.

7.4 Tariffs

Goods imported from non-EU-member states are subject to customs duty. The basis of charges and the rates vary according to classification of the goods in the customs tariff based on EU-law. The value of the goods imported will in principle be the invoiced price. Advance rulings in the classification of certain products for customs purposes may be obtained.

7.5 Inheritance and Gift tax

Inheritance and gift tax (*Erbschafts- und Schenkungssteuer*) is imposed on gratuitous transfer of property by reason of death or of gifts during lifetime.

If the deceased (at death) or donor (at the time of donation) or the beneficiary is an Austrian citizen or a foreign citizen who is deemed to be resident in Austria for income tax purposes, both domestic and foreign property is taxed (unlimited tax liability). Otherwise tax liability is limited to agricultural and business property and real estate situated in Austria.

Austria has concluded double tax treaties that cover inheritance and gift tax with Germany, Switzerland and France.

The five classes of relationship and the respective applicable tax rates and tax-free amounts are:

class 1 Spouse or children	2–15%	€ 2.200
2 Grandchildren	4–25%	€ 2.200
3 Parents and linear ancestors; brothers and sisters	6–40%	€ 440
4 Nephews and nieces; parents-in-law and children-in-law	8–50%	€ 440
5 Other beneficiaries	14–60%	€ 110

Exemptions include the transfer of household goods, gifts between spouses up to a value of € 7.300, gifts to provide for the maintenance and education of the beneficiary, etc.

Contributions made by a donor to a private foundation are subject to 5% regardless of the amount donated. In case that real estate is donated to class 1 beneficiaries the inheritance tax is increased by additional 2%, otherwise 3,5% (calculated from the assessed value three times (*Einheitswert*)).

The tax is computed on the assessed value of the property transferred. For purposes of determining the applicable tax rate, transfers within a period of 10 years are accumulated and tax already paid during this period may be credited against the amount due.

8 Regulations

8.1 Exchange controls

Under the Foreign Exchange Act (*Devisengesetz*), the Austrian National Bank (*Österreichische Nationalbank*) – which otherwise acts as the Austrian central bank – is responsible for administering the exchange control system, and therein acts as a public authority. It is thus authorized to issue exchange control regulations (*Kundmachungen*).

The Austrian National Bank, however, removed the restrictions on foreign exchange on 4th November 1991. As of this date, foreign exchange transfer is fully liberalized.

For foreign exchange law purposes nationality is irrelevant. Individuals are non-resident within the meaning of the Foreign Exchange Act if they do not have their residence or habitual domicile in Austria or do not stay in Austria for more than three consecutive months. A foreign exchange resident (*Deviseninländer*), therefore, is defined as a natural person or legal entity having its domicile (*Wohnsitz*) or usual place of abode (*gewöhnlicher Aufenthalt*), seat (*Sitz*) or place of management in Austria; all Austrian branches and establishments of a foreign enterprise and all Austrian companies owned by non-residents are regarded as foreign exchange residents, even if their place of management is abroad and irrespective of whether they are legally independent or not.

Austrian National Bank has retained several reporting duties (*Meldepflichten*), mainly for the purpose of statistics.

Transactions to be reported to the National Bank by foreign exchange residents include

- participation in foreign enterprises, and
- the maintenance of foreign bank accounts.

As beginning in 2006 the system of making the balance of payments has changed from imposing data from the banks to imposing data from entrepreneurs, there is a set of data to be reported for all people doing business with abroad now.

8.2 Immigrants

A foreigner can only be employed if an employment permit has been obtained or a valid dispensation is produced. A permit must be issued if the labour market situation allows the employment of foreigners and neither public nor national economic interests stand against it.

Permits are issued by the local labour office for specified employment and are valid for one year with annual extensions available. Current practice is liberal with regard to permits for management and specialist staff, but limited by a quota system for other personnel.

As far as foreigners are nationals of EEA states, they are entitled to work in Austria without a work permit. They may search work for 3 months without the requirement of a residence permit for the period in question. Students and retired persons who want to settle or study in Austria will no longer need residence permits.

9 Grants and incentives

A host of investment incentives exist in the form of special financing, guarantees of loans and tax incentives.

9.1 Financing

Long-term loans at favourable conditions are available out of funds of the European Recovery Program for investments in trade, industry, tourism and transportation.

Favourable financing may be granted for small and medium size business (*Bürgschaftsfonds GmbH*), for investments in research and development (*Forschungsförderungsfonds*), labour market promotion (Federal Ministry of Social Administration), for anti-pollution purposes, for the improvement of the regional economic structures, etc.

A variety of loan and guarantee schemes for the financing and promotion of exports and of Austrian investments in developing countries that serve to promote Austrian exports are available from the state-owned *Oesterreichische Kontrollbank AG*, from the *Exportfonds GmbH* and from other sources.

Financing assistance may be obtainable at both the federal and provincial level.

9.2 Tax Incentives

9.2.1 Research and Development

There are some forms of tax incentives for research and development.

- For research and development expenses (excluding administration and distribution costs as well as cost of fixed assets) for inventions valuable to the economy (which has to be confirmed by the Federal Minister of Economic Affairs) there is the possibility to access a tax-free amount of 25 %. No certificate is required if a patent has already been issued.

An increased allowance of 35 % is granted to that portion of expenses exceeding the average expenses (on R&D) throughout the last three fiscal years.

- Alternatively, an allowance of 25% is granted for certain R&D expenses that increase knowledge or generate new applications of know how, without the need of developing new inventions.

- Since 2005, an allowance of 25 % (but not more as € 100.000 a year) is also granted on ordered (external) R&D expenses. The contractor has to be located in Austria or another EU member country. The customer has to inform the contractor till the end of the fiscal year up to which extent the allowance on those expenses will be taken. On that part of expenses the contractor cannot access the tax-free amount or premium himself.
- Alternatively to the allowances above a research bonus of 8 % can be used which is credited to the tax account.

Another form of incentive is, that business enterprises may deduct donations to universities and other institutions dedicated to research work and acknowledged as such by the tax authorities up to 10% of the taxable profit of the preceding year.

9.2.2 External and internal Schooling

Expenses for external and internal schooling can be deducted by the employer at a rate of 20 % (Bildungsfreibetrag). It reduces the taxable income.

As an alternative it is possible to take advantage of the 6 % schooling bonus . 6 % of the expenses for external and internal schooling are credited to the tax account.

9.2.3 Apprentices

As an incentive for enhanced apprenticeship training a tax-free allowance of EUR 1.460, - (reduction of tax-base) is granted for an apprentice's first year of training, for the completion of an apprenticeship and for the successful final apprenticeship exam.

Alternatively, to the allowance, a premium of EUR 1.000, - can be asserted for each apprentice during the whole period of training (usually 3 to 5 years).

10 Quality of life

10.1 Infrastructure Situation

Austria has a modern communication and transportation infrastructure. An extensive highway system provides convenient access to major European industrial centres and ports. The Austrian railroad offers efficient passenger and freight service and modernization plans will

introduce higher-speed rail service in the near future. Several airline carriers offer direct flights from the Vienna International Airport to major U.S. destinations. The Austrian telecommunications network is sophisticated and reliable, though expensive by U.S. standards. However, according to latest studies, liberalization, and increased competition have led to a sharp decline in telecom prices, which have not yet bottomed out.

10.2 Social security

Austrian social insurance is compulsory and comprises health insurance, old-age pension insurance, unemployment insurance and accident insurance. Social security contributions are determined as percentages of total monthly earnings (but only up to specified maximum amounts) and are paid partly by the employee and partly by the employer.

As regards pension insurance, every employee is entitled to draw an old-age pension after having worked for a specified minimum period, and after having reached retirement age (normal retirement age 65 years for men and 60 for women, early retirement age 61,5 years for men (born before 31 December, 1942) and 56,5 years for women (born before 31 December, 1947); the early retirement age will be increased at four months every year. In Austria many employees get pensioned at the early retirement age). The old-age pensions have amounted to a maximum approximately 75% of the monthly assessment base for pension insurance contributions in the last 15 years (at long term this period of the last 15 years will be raised to 40 years); the assessment bases of previous years are valued up every year by the same percentage as the pensions in order to equalize the reductions of the value of money.

Since 2003 every employer has to contribute 1,53 % of gross wages and salaries to a so called "Mitarbeitervorsorgekasse" as redundancy payment for all working contracts from 1st January 2003 on.

Social security costs

For 2006 the percentages are as follows:

	Contributions by employee	Contributions by employer	total	Monthly maximum assessment base
Pensions insurance	10,25 %	12,55 %	22,80 %	3.750
Accident insurance		1,40 %	1,40%	3.750
Health insurance	3,75 %	3,75 %	7,50 %	3.750
Unemployment insurance	3 %	3,70 %	6,70 %	3.750

Various other minor contributions are payable; e.g. for housing purposes and to a special fund intended to safeguard wages and salaries in case of insolvency, etc.