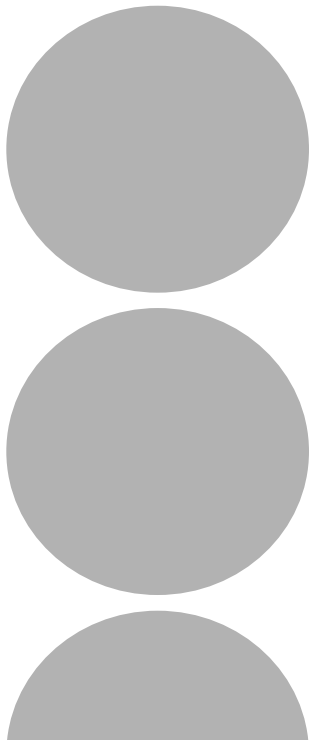


September 22nd, 2017

TTN Conference Vienna 2017

Doing Business in Austria

presented by Robert Schneider



TRANSNATIONAL TAXATION NETWORK
A WORLD WIDE ORGANIZATION OF INDEPENDENT PROFESSIONAL FIRMS



- Federation of nine countries in the heart of Europe
- 83.900 km², 8.8 mio inhabitants, GDP: 386,7 bn USD, 44.5 USD pc
- Capital: Vienna; Language: German
- Founding Member of OECD, Member of the EU since 1995
- Vienna is seat of several UN-headquarters, e.g. IAEA; hub to CEE; 1st place in Mercer ranking of big cities with best living quality

Political System

- Federal, representative democratic republic, based on Federal Constitution of 1920 as amended 1929
- Official head of state: Federal President, elected for 6 years, max. 1 re-election, currently A. Van der Bellen (since 01/2017), resides at “Hofburg”
- Federal Government: Body of Ministers (currently 13; coalition of SPÖ and ÖVP), chaired by Federal Chancellor (currently Mr Kern, SPÖ), officially appointed by President, but based on suggestion of Chancellor backed by the Parliament; new government will be appointed after October 15th, 2017



Ballhausplatz

September 2017

Doing Business in Austria

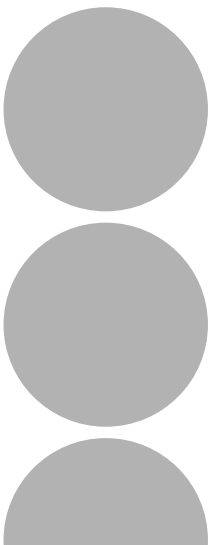
Political System



- **Federal Parliament** - two chambers:
 - Lower House: National Council (***Nationalrat***), 183 seats, elected every five years (or after earlier dissolution) by a general election through all citizens over 16 years; candidates are appointed by parties, voters elect party, but may also vote for a candidate; seats are appointed to parties according to votes, threshold 4%; next general elections: October 15th, 2017.
 - Upper House: Federal Council (***Bundesrat***), currently 61 members, not directly elected but appointed by the parliaments of the nine countries in accordance with their legislation period.
- The *Nationalrat* is the dominant chamber in Austria's legislation, the *Bundesrat* has just a very limited right of a (preliminary) veto.

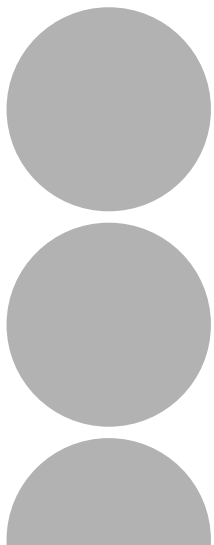
Political System

- Austria is characterised by its many chambers, that are established by law for almost each profession, both businesses, self-employed and employed persons; the most important chambers are **WKO** (Austrian Federal Economic Chamber), **AK** (Chamber of Labour) and **LWK** (Chamber of Agriculture); smaller chambers are those for lawyers, accountants, notaries, doctors, dentists, pharmacists etc.
- The “**Sozialpartnerschaft**” – the clandestine government
 - Established after World War II in 1946, the *Sozialpartnerschaft* (social partnership) is a voluntary cooperation of **WKO**, **LWK**, **AK** and **ÖGB** (Austrian Federation of Trade Unions, established as association by a private statute) that has enormous influence on the political agenda in Austria through the close link between the chamber’s officials, the parties and the political players (members of parliament, government)



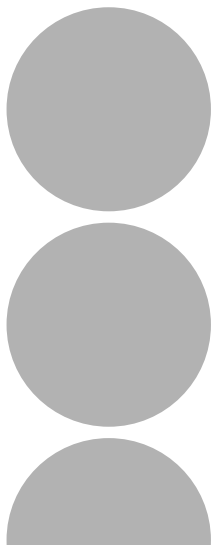
Tax System

- Tax legislation predominantly passed by the federal parliament, i.e. no tax differences between the nine countries
- Countries and communities have only limited competence to pass tax laws, mainly tourist taxes, entertainment taxes, dog taxes and similar levies
- The main tax revenue results from
 - Personal income tax: € 29.7 bn
 - Corporate income tax: € 7.5 bn
 - Income tax on interest and dividends: € 3.0 bn
 - VAT: € 28.8 bn (general VAT-rate: 20%; reduced rates 10%/13%)
 - Other consumption taxes (mineral oil tax, tobacco tax etc.): € 13.3



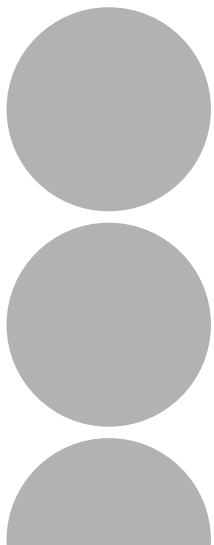
Tax System

- There is **no** general **wealth tax** in Austria, **but** only **tax on real estate** at the annual rate of 1% of an assessed tax value (which is regularly below market value) levied by the communities
- There is also **no** general **gift and inheritance tax**, however, **transfer of real estate** is subject to transfer tax at the rate of 3.5%, generally on the purchase price, in case of transfer without (at-arm's length) consideration, i.e. also in case of an inheritance, on the estimated market value of the real estate



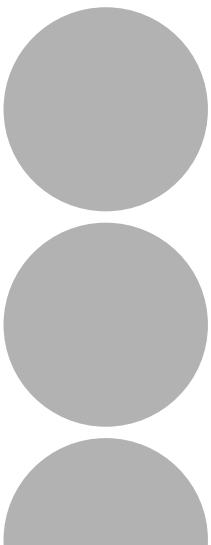
Income Tax

- Natural persons resident in Austria are subject to income tax with their **world-wide** income, DTTs restrict Austria's taxation rights
- The Austrian Income Tax Act defines seven kinds of income, for which different rules to calculate income apply:
 - Income from *agriculture*, income from *self-employed professional services* and income from any *other kind of business* are **business income** – capital gains derived from business assets are part of taxable income
 - Income from *employment*, income from *financial assets*, *rental income* and *other income* are **non-business income**; formerly tax on capital gains from the sale of non-business assets was limited to so called speculative earnings, i.e. sales within a certain period after acquisition; now capital gains **from financial assets** are subject to a **flat tax of 27.5%**, capital gains **from real estate** subject to a **flat tax of 30%**



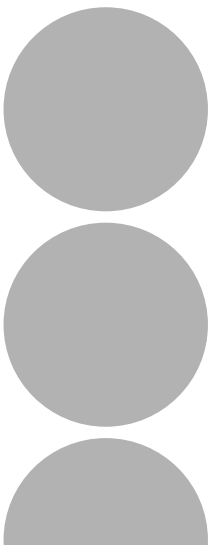
Income Tax - Tax base and tax rate

- The total of all income/losses calculated for each kind of income forms a uniform tax base
- Losses derived within business income can be carried forward
- The income tax rate is progressive as follows:
 - 0% for the first T€ 11
 - 25% for income > T€ 11 up to T€ 18
 - 35% for income > T€ 18 up to T€ 31
 - 42% for income > T€ 31 up to T€ 60
 - 48% for income > T€ 60 up to T€ 90
 - 50% for income > T€ 90 up to € 1 mio, above that 55%
- However: „final“ taxation of most **interest and dividend income** at the flat rate of **27.5%** (interest from savings accounts at banks **25%**), such income is included in the general tax base only by application



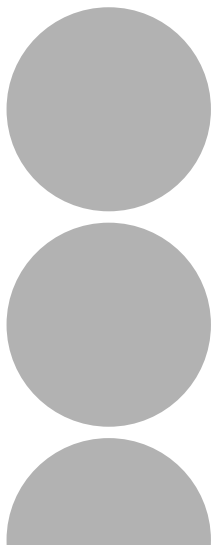
Income Tax on salaries and wages

- In principle, salaries and wages are included in the tax base, however:
- Employees are obliged to withhold income tax (on basis of the extrapolated annual income) for salaries and wages paid to their employees
- Social security contributions are tax deductible
- Various allowances reduce tax burden
- In addition: preferential tax rates on 13th and 14th salary:
 - no tax, if both salaries do not exceed € 2,100; otherwise:
 - 0% for the first € 620
 - 6 % for the next € 24,380
 - 27 % for the next € 25,000 and 35,75% for the next 33,333



Social Security System

- Social Security is obligatory for any person earning business income or employment income; no social security for interest and dividend or rental income
- There are numerous public insurance entities, competent for certain kinds of risks/professions/countries, in particular PVA, AUVA, SVA, SVB, BVA and one GKK for each country - there is no free choice of the insurance entity!
- The Social Security contributions refer to
 - Pension insurance
 - Health insurance
 - Accident insurance
 - Unemployment Insurance



Social Security System

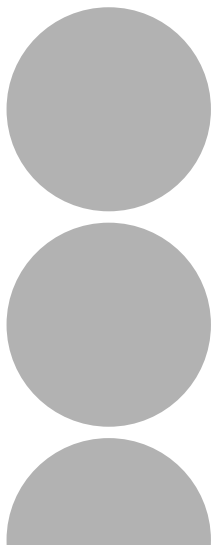
- Social Security contributions for self-employed persons:
 - Basis: income before tax and social security, min T€ 8.6/a, max T€ 69.7/a (= € 5,810/m)
 - Pension insurance: 18.5% (i.e. T€ 1,6 to T€ 12.9/a)
 - Health insurance: 7.65% (i.e. T€ 1,1 to T€ 12.9/a)
 - Accident insurance: fixed amount of € 9.33/m = € 111.96/a
 - Unemployment Insurance: optional; 6% of T€ 1.4, 2.9 or 4.3 (i.e. € 87, 174 or 261/m)

Exemptions for micro-entrepreneurs: t/o < T€ 30/a, income < T€ 5.1/a

- Social Security contributions for employed persons:
 - Basis: income before tax and social security, max € 4,980/m
 - Pension insurance: 10.25% + 12.55% = 22.80%
 - Health insurance: 3.87% + 3.78% = 7.65%
 - Accident insurance: 0.00% + 1.30% = 1.30%
 - Unemployment Insurance: 3.00% + 3.00% = 6.00%
 - Bankruptcy-surcharge: 0.00% + 0.35% = 0.35%
 - Residential constr. funding 0.50% + 0.50% = 1.00%
 - Membership fee AK 0.50% + 0.00% = 0.50%

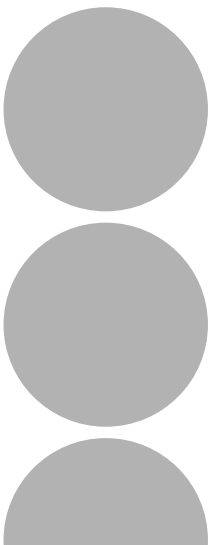
Total: 18.12% + 21.48% = 39.60% (borne by employed/employer)

Exemptions for micro-employments: one-off or monthly income < € 425.7



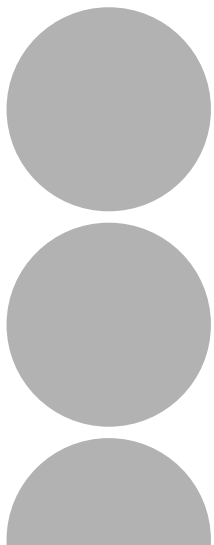
Additional non-wage labour costs

- Contribution to employees provision fund: 1.53% of wage/salary
- Municipality tax: 3% of wages and salaries
- Contribution to Family Fund: 4.1% of wages and salaries
- Surcharge for WKO: 0.36% to 0.44% (depending on country)
- in Vienna: € 2 per employed person/week for underground



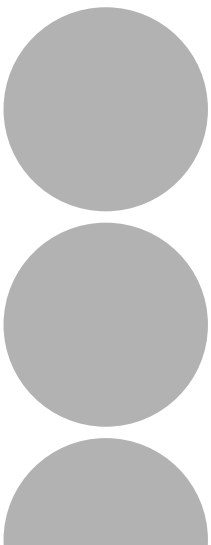
Labour law issues

- Salaries, fringe benefits and working hours are regulated by collective bargain agreements
- Working hours per week: 38.5 to 40 (depending on industry)
- Holidays: 25 working days; after 25 years of employment: 30 days
- In addition 13 public holidays
- Termination period: 4 weeks for employee; 6 weeks for employer, after 2 years of employment 2 months, after 5 years 3 months, after 15 years 4 months, after 25 years 5 months
- Maternity leave: 8 weeks before/after birth (paid by health insurance); after that right to stay at home until child's 2nd birthday; state payments



Corporate income tax

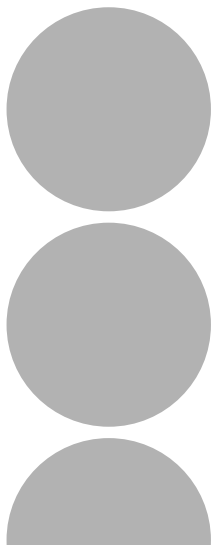
- Corporations are subject to corporate income tax
- Income is calculated in line with provisions of the income tax plus additional provisions in the corporate income tax act
- Specific provisions in the corporate income tax:
 - Capital contributions/repayments and dividend payments are tax neutral
 - **Group taxation:** companies of a group may opt for taxation of their income at the level of the group head – thus losses of a company (including **foreign** companies!) can be set off against profits of other companies
 - **Participation exemption:**
 - Applies to **dividends** received from companies seated in Austria, in the EU or in a country with comprehensive administrative assistance
 - Applies to **dividends AND capital gains** from **qualified** participations in a **foreign** company (may be waived). Qualification:
 - at least 10% participation
 - held for at least 1 year



Corporate income tax

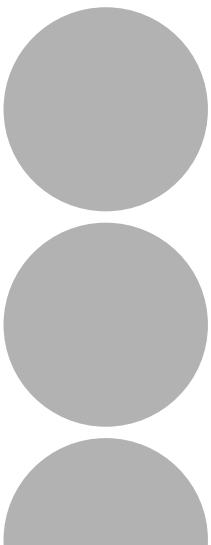
- Anti-Avoidance-Provision:
 - Participation Exemption for qualified participations switches over to credit method if foreign company derives mainly passive income AND is subject to no or low tax
 - Participation Exemption for dividends from other foreign participations switches over to credit method if foreign tax rate is less than 15% or entity is not subject to tax at all
- Anti-BEPS :
 - Interest expenses/royalties paid to a group company in a low tax jurisdiction (tax rate < 10%) are not tax deductible

But: so far no CFC-rules, no thin-capitalisation rules!



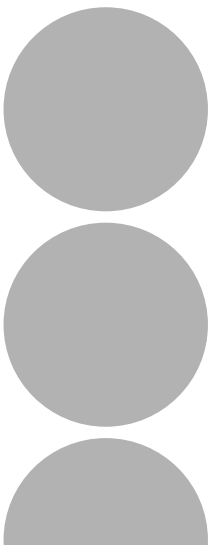
Corporate income tax

- Flat tax rate of **25%**
- Minimum tax per year:
 - **€ 1,750** for GmbHs, payable in 4 instalments; during the first 5 years after establishment reduced to € 500, for the following five years € 1,000
 - **€ 3,500** for AGs, payable in 4 instalmentsCan be set off against future tax on profits
- Tax Credit for R&D-expenses (applies to all tax subjects):
 - **12%** tax credit on R&D-expenses, credit is granted (and paid) also in case of losses
 - Eligible expenses:
 - internal, domestic R&D-expenses, positive statement of FFG required
 - external R&D-expenses provided by EU-entity up to an amount of € 1 mio



Company Law

- Partnerships (tax transparent)
 - Offene Gesellschaft (General Partnership)
 - Kommanditgesellschaft (Limited partnership)
- Corporations (subject to corporate income tax)
 - Gesellschaft mit beschränkter Haftung (GmbH) – Ltd (details following)
 - Aktiengesellschaft (AG) – stock company
Minimum share capital T€ 70; obligatory supervisory board; independent directors; subject to annual audit; shareholders not published in the companies' register
 - Privatstiftung – private foundation
Minimum share capital T€ 70; obligatory supervisory board; independent directors; subject to annual audit; shareholders not published in the companies' register
 - Genossenschaft – cooperative society
 - (gemeinnütziger) Verein – (charitable) association

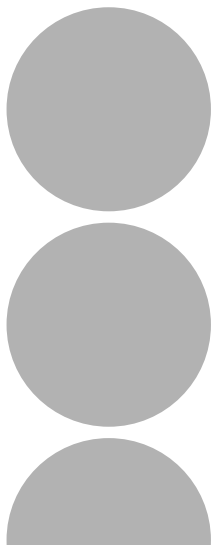


Setting up an Austrian Ltd (GmbH)

- Minimum Share Capital: **€ 35,000**, half to be paid in before registration
- Privileged Establishment: **€ 10,000** during the first 10 years
- **Notary Deed** required; min. **1 shareholder**, natural person or corp.
- May be represented for establishing company, requires **legalised and supra-legalised** (Apostille!) **special power of attorney**
- **Min. 1 Director**, must be **natural** person, Austrian residence generally not required; director files legalised application for registration of Ltd
- Time from 1st contact to registration: generally about **2 weeks**
- **Costs** of setting up: legal costs for standard articles of association in German language (lawyer plus notary) about € 2,400 plus VAT; court fees for registration and publication appr. € 400; no capital transfer tax
- **Current Costs**: holding without activities appr. € 4,500 plus VAT p.a.

Trade Law

- Almost any business activity in Austria is subject to trade law and must be registered with the trade authority
- After successful registration, trade licence is issued
- Holders of a trade licence are automatically members of WKÖ!
- Companies must have a natural person appointed as manager for trade law purposes
- General requirements for the manager:
 - Full contractual capability, minimum age of 24 years
 - No criminal convictions, no convictions because of smuggling and certain tax frauds
 - Not responsible for bankruptcy of a company
- Certain businesses require special qualifications of the manager
- Certain businesses require a special permit



Thank you for your attention!

For further information please contact:

Dr. Robert Schneider

Attorney at law – Austrian Tax Advisor – Certified Public Accountant

Ebendorferstraße 10, 1010 Vienna, Austria

Tel +43 1 486 720 900, FAX +43 1 486 720 919

r.schneider@tax-law.at

WWW.TAX-LAW.AT

