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**Private Client Guide
for High Net Worth
Individuals
Moving to Austria**

Wolf Theiss



Private Client Guide for High Net Worth Individuals Moving to Austria

This **2023 Wolf Theiss Private Client Guide for High Net Worth Individuals Moving to Austria** is intended as a practical guide to the general principles and features of the basic legislation and procedures in Austria.

While every effort has been made to ensure that the content is accurate when finalised, it should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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Introduction

Economic and political stability, a clean and safe environment, excellent infrastructure, famous skiing resorts, good schools and a reliable healthcare system, make Austria one of the most attractive countries in the world to live in.

While Austria admittedly has high income tax rates, the fact that no wealth, gift and inheritance taxes are levied is often a reason for high net worth individuals to consider relocating to Austria. Vienna in particular is attractive for wealthy individuals. For many years in a row it has ranked highest for quality of living in a worldwide study conducted by the HR consultancy Mercer. In addition, real estate in Vienna is in general much more affordable than in similar European cities such as Zurich or Munich.

However, relocating to another country is always complex and entails many different legal issues. We hope that this guide will be of interest to individuals and families considering relocating to Austria and will help them make an informed decision.



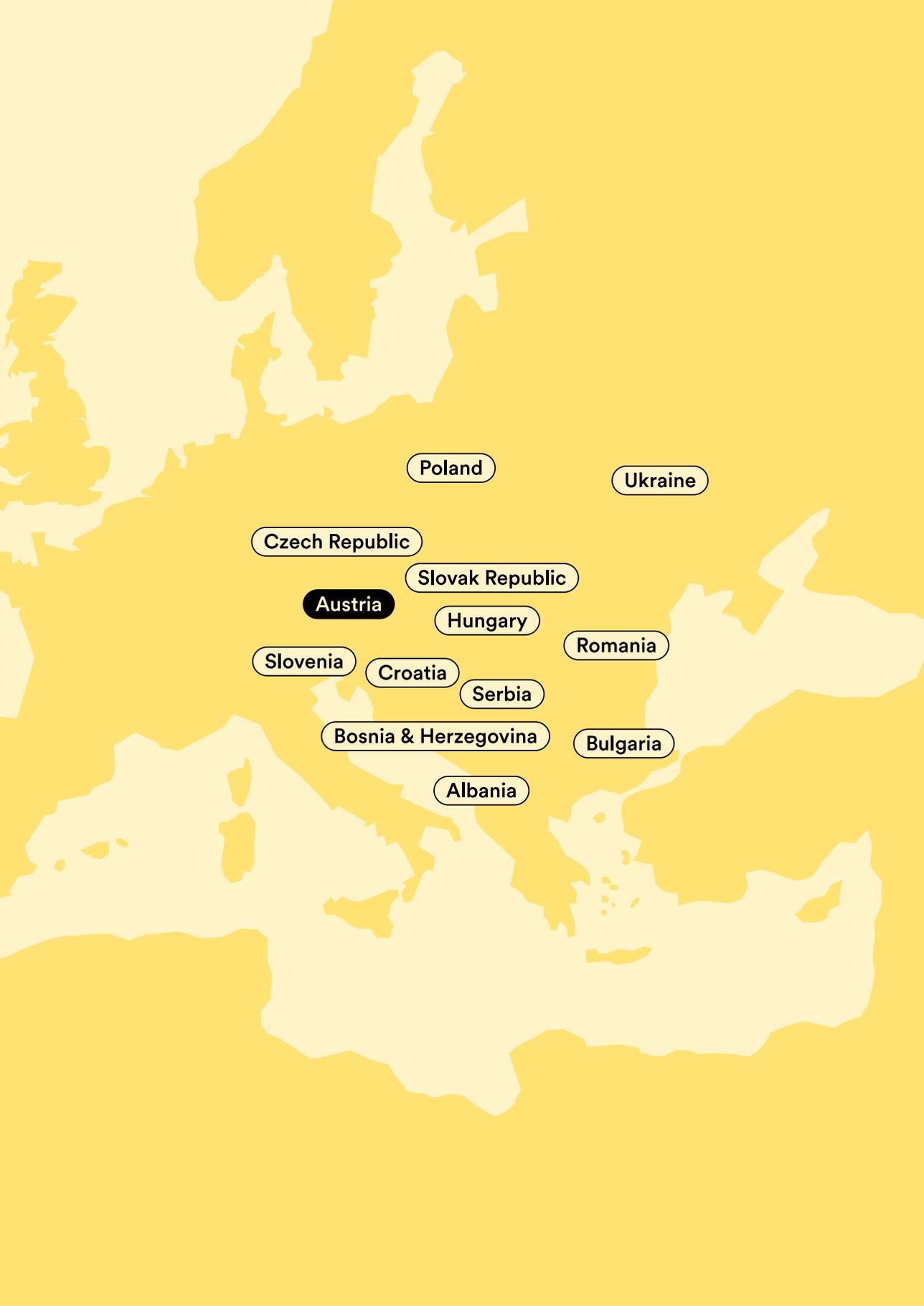
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Poland

Ukraine

Czech Republic

Slovak Republic

Austria

Hungary

Slovenia

Croatia

Romania

Serbia

Bosnia & Herzegovina

Bulgaria

Albania

1. About Austria

Austria is a landlocked country in Central Europe with a population of approx. 8.9 million. It is bordered by the Czech Republic and Germany to the North, Hungary and the Slovak Republic to the East, Slovenia and Italy to the South, and Switzerland and Liechtenstein to the West. Austria's territory covers approx. 83,900 square kilometers (32,400 square miles) and is highly mountainous due to its location within the Alps. Historically speaking, the origins of modern-day Austria date back to the time of the Habsburg empire.

Austria has a strong economy, with a GDP (PPP) per capita of approx. USD 64,750, making it one of the richest countries in the world. Major industries in Austria are tourism, banking, foodstuffs, luxury commodities, mechanical engineering, steel construction, chemicals and vehicle manufacturing. The majority of Austrian businesses are small and medium-sized enterprises, but due to Vienna being a hub to Eastern Europe, more than 300 multinationals have set up their Central and Eastern European (CEE) headquarters in Austria's capital. In addition, Austria has a vibrant start-up scene, showing that Austria is very forward-looking.

Austria is a member of the European Union (EU, including the Eurozone), the Schengen Agreement, the OECD and the WTO. Vienna is actually one of the four major UN office sites worldwide (next to New York, Geneva and Nairobi), with various constituent agencies being headquartered here. Many important diplomatic meetings have been held in Vienna in the second half of the 20th century, putting the city on the international map.

Culture has a long tradition in Vienna, including theatre, opera and classical music. Vienna's museums such as the Albertina, the Belvedere, the Leopold Museum and the Kunsthistorisches Museum are world famous, as is the "New Year's Day Concert" performed and broadcast annually by the Vienna Philharmonic Orchestra. Vienna is also the capital of the 19th-century style ball, with over 450 balls per year being held, many of them in Vienna's beautiful palaces.

2. Income Tax

2.1 Residency

For income tax purposes, Austrian tax law distinguishes between residents and non-residents: Individuals having a domicile (*Wohnsitz*) and/or their habitual abode (*gewöhnlicher Aufenthalt*) in Austria are considered as residents and are subject to comprehensive income tax liability in Austria on their worldwide income. All other individuals (i.e., individuals having neither a domicile nor their habitual abode in Austria) are considered as non-residents and are subject to limited income tax liability, namely on certain types of Austrian-source income only. Citizenship is thus not decisive for the purpose of tax residency.

- A domicile for tax purposes exists if a taxpayer has a dwelling place under circumstances which allow the conclusion that the taxpayer intends to keep and use it. This must consist of one or more rooms which are furnished for the purpose of living there regularly. In most cases a dwelling place consists of rooms which are either owned or rented by the respective taxpayer. However, not the legal title to the dwelling place is decisive, but rather the factual possibility to make use thereof. Thus, also a holiday home or a hotel room which is always available can qualify as a domicile. Just having a dwelling place is, on its own, not enough; in addition, there have to be circumstances which allow the conclusion that the taxpayer intends to keep and use it for a longer period of time. For example, a residence notification to the municipal authority (*Meldebehörde*) may serve as an indication (however, that does not mean that no domicile exists if a taxpayer has not fulfilled this obligation).
- A habitual abode for tax purposes exists if a taxpayer stays there under circumstances which allow the conclusion that he/she intends to stay there not only temporarily. Staying in Austria for more than six months irrefutably leads to a habitual abode (although repeated short-term stays in Austria are generally not added up). The six months do not necessarily have to be in the same calendar year. Whereas a taxpayer can have more than one domicile, for tax purposes it is never possible to have more than one habitual abode. To establish a habitual abode, it is not necessary to stay in the same municipality, staying anywhere in Austria is decisive. Mere temporary stops in Austria do not result in a habitual abode in Austria, e.g., in case of short-term visits.

Apart from the statutory rules, also the ordinance regarding secondary residences issued by the Austrian Minister of Finance is relevant. Pursuant thereto, in case of taxpayers whose so-called “centre of vital interests” (see 2.2 below) is outside of Austria for more than five

calendar years, an Austrian dwelling place qualifies as a domicile only in those years in which the dwelling place is actually used (alone or together with other Austrian dwelling places) for more than 70 calendar days. This rule is only applicable if the taxpayer keeps a list of the days during which the dwelling place is used. Thus, if an individual owning, for example, a vacation home, stays in Austria for at most 70 calendar days per calendar year and keeps the above-mentioned documentation, he/she remains subject to limited income tax liability in Austria. If, however, – inadvertently or on purpose – no documentation is kept, then the individual will be considered an Austrian tax resident and will be subject to worldwide taxation. For day count purposes, all days are relevant on which the vacation home is used – even if only for a few hours (but not days on which, for example, hotel rooms in Austria are used). Married couples generally both have to fulfil the 70-day requirement.

2.2 Double Taxation Treaties

A person can be tax resident in several jurisdictions. Thus, it is not uncommon that two or more states want to comprehensively tax an individual's income pursuant to their domestic tax rules. Such domestic rights of taxation are often restricted by double taxation treaties. Austria currently has double taxation treaties with around 90 other jurisdictions. These treaties generally follow the OECD Model Convention and take priority over Austria's domestic tax laws.

Generally, if a person is subject to comprehensive taxation in two treaty states, for treaty purposes the following tie-breaker rule typically applies:

- Primarily, such person will be deemed a resident of the state in which he/she has a permanent home available to him/her.
- If the person has a permanent home available to him/her in both states, then the centre of vital interests is decisive. The term “centre of vital interests” denotes the state to which a taxpayer's personal and economic relations are closer. Personal relations (the first aspect) are defined as family ties and activities exercised in respect of social, cultural and religious interests. Economic relations (the second aspect) are generally measured with respect to income derived from different states. Pursuant to Austrian case law, in case of doubt, personal relations (and here in particular family ties) take priority over economic relations.
- If the treaty state in which a taxpayer has his/her centre of vital interests cannot be determined or if the taxpayer does not have a permanent home available to him/her in either treaty state, for treaty purposes he/she is deemed to be a resident only of that state in which he/she has a habitual abode (while for Austrian domestic tax

purposes a person can only have one habitual abode, for treaty purposes a person can have two or more habitual abodes, as the definitions slightly differ).

- If an individual has a habitual abode in both treaty states, or in neither of them, for treaty purposes he/she is considered a resident only of the treaty state of which he/she is a national.
- Finally, if the taxpayer is a national of both treaty states, or in neither of them, then the competent authorities of the treaty states shall settle the question of residency for treaty purposes by mutual agreement.

Under a double taxation treaty, generally the treaty state of which an individual is a resident for treaty purposes has the right to comprehensively tax such individual's income. The other treaty state may generally only tax the individual's source income from that treaty state. The residence state, in turn, either has to credit taxes paid in the source state or has to exempt from taxation the income that may be taxed in the source state. Thus, if a person is deemed to be a resident of Austria under an applicable double taxation treaty, Austria has the right to comprehensively tax that individual's income. The other treaty state may only tax that person's source income from that other treaty state. Depending on the wording of the treaty, Austria will either have to exempt such income from taxation or credit the taxes payable in the other treaty state.

Finally, pursuant to an ordinance by the Austrian Minister of Finance, unilateral relief from double taxation is generally possible if Austria has not concluded a double taxation treaty with a specific country.

2.3 Tax Basis

The tax year is the calendar year. The income tax basis is defined as the sum total of the following categories of income earned in the tax year (with income not mentioned not being taxable):

- income from agriculture and forestry;
- income from professional and other independent services;
- income from an active trade or business;
- employment income;
- investment income (meaning interest, dividends, capital gains from financial instruments, income from derivatives and income from crypto assets);

- rent, lease payments and royalties; and
- other specified income.

The last category includes certain annuities as well as capital gains on real estate.

Certain types of losses may be offset against other income. In addition, certain types of income are tax-exempt (e.g., some in-kind benefits made available by an employer). Finally, certain personal allowances exist for the taxpayer and his / her family members.

2.4 Tax Rates

An individual's income is subject to progressive income tax, with the following rate bands applying:

Income	Income tax rate
up to and including EUR 11,693	0 %
over EUR 11,693 up to and including EUR 19,134	20 %
over EUR 19,134 up to and including EUR 32,075	30 %
over EUR 32,075 up to and including EUR 62,080	41 %
over EUR 62,080 up to and including EUR 93,120	48 %
over EUR 93,120 up to and including EUR 1 million	50 %
over EUR 1 million	55 %

Apart from these progressive income tax rates, certain types of income are subject to a flat tax rate (although, if more advantageous, a taxpayer may apply for taxation of these items at the progressive income tax rate):

Type of income	Flat rate
Interest from bank accounts	25 %
Interest from bonds, dividends, capital gains from financial instruments, income from derivatives and income from crypto assets	27.5 %
Capital gains from real estate	30 %

2.5 Procedural Aspects

Income tax is levied by way of assessment, meaning that a taxpayer has to file a tax return and the tax authorities issue an assessment notice.

Certain types of income are subject to withholding at source, including:

- employment income (withholding tax is levied by the employer);
- investment income (withholding tax is, e.g., levied by the Austrian bank); and
- capital gains from real estate (withholding tax may be levied by attorneys in certain situations).

Such withholding tax may either be considered a prepayment of the taxpayer's final income tax (and will be credited against the assessed income tax liability) or may constitute the final amount of tax.

Austria does not provide a tax splitting concept for married couples. Husband and wife are rather taxed separately on a stand-alone basis with their respective individual income.

Individuals are obliged to file their income tax returns electronically; paper-based filing is only exceptionally permissible. The income tax return must be filed by 30 April or, if electronic filing is made use of, by 30 June of the year following the tax year. Taxpayers represented by tax advisors benefit from longer deadlines. Also, an extension of the filing date is possible in justified cases.

Quarterly pre-payments of income tax are due on 15 February, 15 May, 15 August and 15 November. Such pre-payments are creditable against the final amount of income tax assessed. Any balance is payable within one month after receipt of the income tax assessment notice.

2.6 Preferential Tax Regime

While a handful of countries provide general preferential regimes for individuals moving there permanently, Austria unfortunately does not have such rules. However, there exists a preferential tax regime for certain groups of people.

Scientists, researchers, artists and sportspersons whose move to Austria serves the promotion of science, research, arts or sports and is therefore considered to be in the public interest, are granted tax relief upon application. A potential additional tax burden resulting from such an individual's relocation to Austria is to be eliminated as follows: Non-Austrian sourced income is to be subjected to a flat tax rate. This tax rate is determined by dividing the individual's non-Austrian taxes paid in the three calendar years prior to the relocation through its non-Austrian income earned in this period of time, with a minimum rate of 15 % applying. After ten calendar years from the move to Austria, the flat rate rises by two percentage points per year; the preferential regime ends once the tax rate reaches at least 48 %. If a taxpayer avails himself / herself of the flat rate on non-Austrian sourced income, double tax treaties may not be relied upon.

In addition, scientists and researchers whose move to Austria serves the promotion of science or research and is therefore considered to be in the public interest benefit from a tax allowance. This tax allowance amounts to 30 % of the income from scientific activities performed in and outside of Austria, as far as such income is subject to taxation at progressive income tax rates (thus, income benefiting from the flat tax rate outlined immediately above is not to be taken into account when determining the tax allowance). The tax allowance applies for a period of five years as of the scientist's move to Austria.

2.7 Step Up

As outlined above (see 2.4), capital gains from the sale of financial instruments, derivatives and crypto assets are generally taxed at a flat rate of 27.5 %. The tax basis is normally the difference between the sales price and the acquisition costs. In case an individual moves to Austria, a so-called step up is granted regarding such assets: If an Austrian tax resident individual sells financial instruments, derivatives or crypto assets that he / she already held before becoming an Austrian tax resident, the tax base is the sales price minus the fair market value of these assets at the time of moving to Austria. This shall ensure that hidden reserves accrued before an individual has become an Austrian tax resident are not taxed in Austria.

3. Other Taxes

3.1 Corporate Income Tax

3.1.1 General

Corporations having their legal seat (*Sitz*) and/or their place of effective management (*Ort der Geschäftsleitung*) in Austria are deemed to be tax residents of Austria and are thus subject to comprehensive corporate income tax in Austria on their worldwide income. Non-resident corporations are subject to limited corporate income tax liability in Austria only on specific types of income with a nexus to Austria. Corporations are thus considered as separately taxable entities. By contrast, partnerships are treated as transparent for tax purposes. The income of a partnership is attributed to its partners and is subject to income tax or corporate income tax at the level of the respective partners.

To determine whether a foreign company qualifies as a corporation (and thus as opaque for tax purposes) or as a partnership (and thus as transparent for tax purposes), it has to be reviewed, on a case-by-case basis, whether the foreign entity is comparable in its legal structure to an Austrian corporation or rather to an Austrian partnership.

Corporate income tax is levied at a rate of 24 % for the year 2023 and will be levied at a rate of 23 % from the year 2024 onwards. A corporation's tax basis is the profit as shown in its financial statements. In addition, where mandatory tax provisions deviate from financial accounting rules, adjustments have to be made. Profits are generally taxed on an accrual

basis. As a general rule, expenses incurred in acquiring, securing and maintaining taxable income are tax-deductible. Losses can be carried forward to future years. The utilization of such losses carried forward is limited to 75 % of the income of the respective year in the case of corporations (no time limit applies). A carry-back of losses is not permitted

3.1.2 Corporate Income Tax Exemptions

Regarding dividends and capital gains received from subsidiaries, the following tax exemptions exist:

- Under the national participation exemption, dividends received by an Austrian corporation from an Austrian subsidiary are exempt from corporate income tax regardless of the extent of the participation or the holding period.
- Under the international qualified participation exemption, an Austrian corporation is exempt from corporate income tax on dividends received from a foreign subsidiary or capital gains realized on the alienation of shares in that foreign subsidiary, if the parent has held a participation of at least 10 % for a minimum duration of one year, and if the foreign subsidiary is a qualifying EU corporation or legally comparable to an Austrian corporation. This exemption is subject to anti-abuse provisions.
- Under the international portfolio participation exemption, an Austrian corporation is exempt from corporate income tax on dividends received from a foreign subsidiary, regardless of the participation or the holding period, if the Austrian international qualified participation exemption outlined above is not applicable, and if the foreign subsidiary is either a qualifying EU corporation or a corporation which is legally comparable to an Austrian corporation and has its legal seat in a state with which Austria has agreed to the comprehensive exchange of information. This exemption does not cover capital gains and is subject to anti-abuse provisions.

3.1.3 Group Taxation

Austria has a group taxation regime for affiliated companies. The formation of a tax group results in 100 % of the taxable income of each resident member of the group being attributed to the top-tier company in the tax group. In the case of non-resident companies that are members of a tax group, only negative income of such companies is attributed to the top-tier company, and only on a *pro rata* basis (subject to certain limitations this makes the utilization of foreign losses possible; however, note that this is only of a temporary nature, with a claw-back provision applying).

3.1.4 CFC Rules

Austria also has controlled foreign company (CFC) rules. Pursuant to these, non-distributed passive income of a low-taxed controlled foreign company (wherever resident) is to be included in the tax base of the controlling corporation if the following prerequisites are fulfilled:

- the controlled foreign company is low-taxed, meaning that its effective foreign tax rate is not more than 12.5 % (in order to determine the effective foreign tax rate, the foreign company's income is to be calculated in line with Austrian tax provisions and contrasted to the foreign tax actually paid);
- the passive income of the controlled foreign company exceeds a third of its total income (the income is to be calculated in line with Austrian tax provisions, whereby also tax-exempt dividends and capital gains are taken into account when calculating the total income);
- the controlled foreign company does not carry out a substantive economic activity supported by staff, equipment, assets and premises (in case a substantive economic activity exists, the controlling corporation has to furnish proof thereof); and
- the controlling corporation – alone or together with its associated enterprises – holds a direct or indirect participation of more than 50 % of the voting rights or owns directly or indirectly more than 50 % of the capital or is entitled to receive more than 50 % of the profits of the controlled foreign company.

3.1.5 Dividend Withholding Tax

Dividends paid by a corporation having its legal seat and/or its place of management in Austria are generally subject to Austrian withholding tax at a rate of 27.5 % (or 24 % in case the shareholder is a corporation, 23 % from the year 2024 onwards). That rate is usually reduced to 15 % (or lower in the case of qualified participations) under applicable double taxation treaties. Further, pursuant to the Austrian provisions implementing the EU Parent/Subsidiary Directive, dividends paid to a qualifying EU corporation which has held at least 10 % of the capital in the Austrian company for a minimum period of at least one year are generally exempt from withholding tax if certain substance requirements are fulfilled.

3.2 Value Added Tax

Austria levies a value added tax (*Umsatzsteuer*) at a rate of 20 %, which applies to the supply of goods and services by entrepreneurs. A reduced rate of 10 % applies, for example, to foodstuffs, books, the transportation of persons and residential rent, while a reduced rate of 13 % applies for example to plants, works of art and cultural services. There are a number of exemptions applicable to certain supplies (e.g., financial services, health services and the sale of real estate); an exemption also applies to entrepreneurs carrying out their business in Austria if their yearly turnover subject to value added tax does not exceed EUR 35,000. Entrepreneurs generally have the right to reclaim the VAT paid to their suppliers as input tax. Since VAT is paid by businesses and borne by consumers, it is an indirect tax. Within the EU, value added tax is largely harmonized.

3.3 Real Estate Transfer Tax

Agreements regarding the transfer of Austrian real estate trigger real estate transfer tax (*Grunderwerbsteuer*). This applies to: (i) transfers against consideration and (ii) gratuitous transfers:

- Transfers against consideration are generally subject to real estate transfer tax at a rate of 3.5 %. The tax basis is the higher of (i) the consideration (including value added tax, if any) and (ii) the so-called property value (*Grundstückswert*). The property value reflects the fair market value and may be calculated either (i) by adding the value of the building to the value of the land determined in line with a decree of the Austrian Minister of Finance; or (ii) by using the average real estate values published by Statistik Austria. If the fair market value is lower than the property value, then – upon the taxpayer’s furnishing proof thereof by means of an appraisal – such lower fair market value may be used as the property value.
- Gratuitous transfers (whether *inter vivos* or *mortis causa*) are subject to the following rate bands, with the tax basis being the property value:

Property value	Tax basis
EUR 0 up to and including EUR 250,000	0.5 %
from EUR 250,000 up to and including EUR 400,000	2 %
over EUR 400,000	3.5 %

All transfers within the last five years are to be added together for purposes of calculating the tax. Note also that transfers of real estate *inter vivos* against consideration qualify as gratuitous transfers if such transfers are carried out between certain relatives (such as to spouses, children and siblings).

Real estate transfer tax is generally jointly and severally owed by the parties involved in the transfer (in practice, however, the tax is usually contractually borne by the transferee).

This tax is triggered not only upon the direct transfer of Austrian real estate, but also in case of certain indirect transfers, namely if:

- at least 95 % of the shares/interests in a company/partnership holding Austrian real estate are transferred to one acquirer or unified in the hands of one acquirer (several acquirers belonging to a tax group pursuant to the Corporate Income Tax Act are deemed to be one acquirer), in which case the tax is owed by the acquirer of the shares/interests; or
- at least 95 % of the interests in a partnership are transferred to new partners within a time period of five years, in which case the tax is owed by the partnership.

In such cases, the tax rate is 0.5 %, with the tax basis for such transfers being the property value. Shares/interests in a company/partnership that are held by a nominee are to be attributed to the beneficial owner.

3.4 Foundation Transfer Tax

Gratuitous endowments of assets to Austrian private foundations (see 9.1) and to similar estates (including trusts; see 9.2) are generally subject to a foundation transfer tax (*Stiftungseingangssteuer*) on the fair market value of the assets endowed. Tax exemptions apply regarding the transfer of (Austrian or non-Austrian) real estate and transfers *mortis causa* of certain financial assets (such as bank deposits or publicly placed bonds).

3.5 Wealth Tax

Austria does not levy a general wealth tax on all types of personal assets. A special type of wealth tax only on Austrian real estate is currently being levied by Austrian municipalities (*Grundsteuer*). Its tax basis is the tax value (*Einheitswert*) of the property; its rate is at most 1 % (depending on the respective municipality).

3.6 Inheritance and Gift Tax

Austria currently does not levy inheritance and gift tax. Such taxes were abolished in August 2008. Although there have been ongoing political discussions regarding a reintroduction, these have led nowhere. Although inheritances and gifts are not taxed, the following should be noted:

- Gratuitous transfers of Austrian real estate (and under certain circumstances shares/interests in companies holding Austrian real estate) are subject to real estate transfer tax (see 3.3 above).
- Gratuitous transfers of assets to private foundations and similar structures (such as trusts) are subject to foundation transfer tax (see 3.4 above).

In addition, there is a special notification obligation for gifts of money, receivables, shares in corporations, participations in partnerships, businesses, movable tangible assets and intangibles. The notification obligation applies if the donor and/or the donee have a domicile, their habitual abode, their legal seat and/or their place of effective management in Austria. Both the donor and the donee are obliged to electronically effect the gift notification within three months from the donation. Intentional violation of the notification obligation may trigger fines of up to 10 % of the fair market value of the assets transferred. Not all gifts are covered by the notification obligation: In case of gifts to certain related parties, a threshold of EUR 50,000 per year applies; in all other cases, a notification is obligatory if the value of the gifts made exceeds EUR 15,000 during a period of five years. Furthermore, gratuitous transfers subject to Austrian foundation transfer tax (see 3.4 above) are exempt from the notification obligation.

3.7 Stamp Duties

Austria levies stamp duties (*Rechtsgeschäftsgebühren*) on a wide range of legal transactions, including, *inter alia*, lease and rental agreements, surety agreements, mortgages, assignment agreements and pre-nuptial agreements. Stamp duty is triggered if a document evidencing a stamp dutiable transaction is signed and a certain Austrian nexus exists. An Austrian nexus is assumed if a stamp duty relevant document is signed in Austria or, if signed outside of Austria, certain other prerequisites are fulfilled. Depending on the legal transaction, the tax rate ranges from 0.8 % to 2 % of the underlying value. Such stamp duties can, in many cases, be legally avoided by way of careful structuring.

3.8 Car Registration Tax

Car registration tax (*Normverbrauchsabgabe*) is triggered when cars (or motorcycles) not yet having been registered in Austria are either purchased in Austria or imported into Austria. The tax base is the purchase price and the fair market value, respectively. In case of cars, the tax rate depends on the car type and the carbon dioxide emission; thus, electric vehicles are fully tax exempt.

4. Buying and Renting Real Estate

4.1 Acquisition of Real Estate

Before an acquisition of Austrian real estate takes place, it should be checked whether any legal provisions restrict the right to own and/or use Austrian immovable property. In this respect, it is necessary to distinguish between two groups of cases:

- Firstly, if foreigners purchase a property as a primary place of residence, often a mandatory approval by the competent land transfer authority is required. However, citizens of Member States of the EU, citizens of signatory parties to the Agreement on the European Economic Area (EEA) and, based on treaties, citizens of other countries (e.g., Switzerland) enjoy the same legal status as Austrian citizens and thus do not require any such approval. Sometimes it might be possible to legally circumvent the approval requirement by interposing an entity. In Vienna, for example, it is possible for non-EU/EEA citizens to acquire real estate without needing an approval by interposing two entities (e.g., two Austrian limited liability companies) in a chain.
- Secondly, due to the scarcity of land, many Austrian provinces (in particular in the Alps) to a certain extent restrict the use – whether by Austrians or by foreigners – of real estate for leisure purposes. There are certain investment models (e.g., buy-to-let concepts) that can be utilized in this respect.

The process of acquiring real estate in Austria requires (i) a written purchase agreement with the signatures certified by a notary public and (ii) the registration of the acquisition in the land register. The purchaser is not considered to be the legal owner of the real estate prior to this registration. The land register is a public register to which everybody has full access.

Regarding taxes and fees, the following should be noted:

- In general, the sale of real estate is VAT exempt (see 3.2). However, the seller can opt in for VAT taxability of each respective sale. If the buyer is an entrepreneur and has the right to deduct the VAT as input tax, then the increase of the sale price by 20 % VAT (in case the option is exercised by the seller) will not burden the buyer. For the seller, it is sometimes essential to exercise the option and sell subject to VAT, since otherwise any input tax reclaimed in the past might have to be repaid.
- Furthermore, the acquisition of real estate triggers 3.5 % real estate transfer tax (see 3.3).
- In addition, a 1.1 % registration fee typically based on the purchase price is due when the transfer is recorded in the land register. In cases of transfers between certain relatives (such as to spouses, children and siblings) a reduced base applies, namely three times the tax value (see 3.5), up to a maximum of 30 % of the fair market value.
- Finally, mortgages can also trigger certain duties: A court fee of 1.2 % of the mortgage's value falls due when it is recorded in the land register (which is mandatory for its validity). While there is also a stamp duty of 1 % on mortgage agreements (see 3.7), an exemption applies to mortgages securing claims from loan agreements.

4.2 Renting of Real Estate

As with the acquisition of real property, also rental agreements may be subject to restrictions by land transfer and/or local zoning laws. Austria has strong tenancy protection, which may result in various impediments, e.g. the protection of the lessee against termination, caps on the permissible lease amount (basically depending on the age of the building at hand) or the obligation for the lessor to maintain the property. There are distinctions regarding the scope of applicability; therefore, a potential lessee should check whether the property falls – fully or partly – within the scope of the Tenancy Act.

Leases (with the exception of residential leases) are subject to stamp duty (see 3.7) amounting to 1 %. The tax base depends on the contractual duration of the lease: In case of an indefinite term, the tax base is the triple value of the annual rent (including operating costs and VAT, if applicable). If the lease agreement is entered into for a definite term, the annual rent multiplied by the number of years (but capped at eighteen years) is decisive.

4.3 Registration with Municipal Authority

Under public law, anybody taking up residence in an Austrian municipality must notify the municipal authority within three days of such fact.

5. Setting up a Company

There are two types of Austrian companies, namely corporations and partnerships. Due to their limited liability, often corporations are preferred. Owing to its less burdensome corporate governance requirements, the limited liability company (*Gesellschaft mit beschränkter Haftung; GmbH*) is used much more often than the more complex stock corporation (*Aktiengesellschaft; AG*).

As regards the incorporation of an Austrian *GmbH*, the following steps have to be taken:

- One or more shareholders must execute articles of association of the *GmbH* in the form of a notarial deed (*Notariatsakt*).
- The shareholders must pass a resolution appointing at least one managing director (signatures to be notarized).
- The director(s) must sign a specimen signature form (signatures to be notarized).
- The company must open a bank account with an Austrian bank. The minimum share capital for a *GmbH* (and the amount to which liability is limited) is EUR 35,000. In general, at least half of this amount (i.e., EUR 17,500) must be paid into this bank account, with the bank issuing a statement to this effect. However, the shareholders have the possibility to opt for a lower initial contribution (and shareholders' liability) of EUR 10,000 (meaning that only EUR 5,000 have to be paid in). The privilege of having a reduced capital applies for ten years after registration.
- The directors must file an application for incorporation of the company with the competent commercial court (signatures to be notarized).
- The company must apply for a taxpayer identification number with the competent tax authority.

The registration of the company in the commercial register (*Firmenbuch*) usually takes approximately one week from supplying all the necessary documents in the requested form.

In this context it should be noted that various Austrian legal entities (notably limited liability companies) are obliged to report their actual beneficial ownership structure to a central register. The main purpose of such register is the prevention of money-laundering and terrorism financing. A beneficial owner is considered to be a natural person holding directly more than 25 % of the shares or voting rights or otherwise having de facto control over the legal entity. The following facts must be disclosed for each beneficial owner: name, date of birth, place of birth, nationality, address and details about the beneficial ownership. In general, access to the register is available to the public at large.

6. Succession Law Issues

6.1 General

There are three ways to pass on assets after death: by law (intestacy law; the most common case), through a will (the best manner to provide for succession) or through a contract of inheritance (which is rare in practice and is only possible in case of spouses).

If an individual passes away without having left a will or a contract of inheritance, the closest relatives become the legal heirs, mainly the children and the spouse (or registered partner) of the deceased person. In the absence of descendants, the ascendants (e.g., parents, siblings or nephews and nieces) may inherit instead. The share of a legal heir in the estate depends on the relationship to the deceased: In case the deceased was married and had children, the surviving spouse is entitled to a quota of $\frac{1}{3}$ of the estate, and the children to the remainder in equal shares (e.g., in case of a spouse and two children, the spouse and the two children would get $\frac{1}{3}$ each). If the deceased was married, but had no children, the spouse would be entitled to a quota of $\frac{2}{3}$, whereas the parents of the deceased would be entitled to $\frac{1}{3}$.

The second possibility is to set up a will. For a valid will, the testator has to fulfil several formal requirements. The most common form of will is a hand-written will; this must be entirely written by hand (i.e., not written on a computer and printed out) and signed by the testator. It is also possible for the testator to sign a printed document containing the will, but then the will must be signed in front of three independent witnesses physically present at the same time (whose signature also has to satisfy certain formal requirements), and the document must include an explicit hand-written statement that it reflects the testator's

last will. Finally, a so-called public will may be set up, either at court or before an Austrian notary public. In all cases, it is recommended to register a will so that in the event of death, the will can be quickly retrieved.

6.2 Compulsory Portion

Generally, a testator is free to deviate in his/her will from the statutory concept (intestacy law) outlined above. However, the so-called compulsory portion (*Pflichtteil*) must be taken into account. This means that the spouse and descendants of the deceased who would have been heirs based on intestacy law are entitled to claim a portion of a deceased's estate, even if there is a conflicting testamentary disposal. The compulsory portion is typically $\frac{1}{2}$ of the statutory quota (see above). If for example a testator has a spouse and three children and in his/her will bequeaths his/her entire estate to his/her spouse, then each child would have a monetary claim *vis-à-vis* the spouse amounting to $\frac{1}{9}$ of the value of the estate (had there not been a will, then each child would have received $\frac{2}{9}$; the compulsory portion is half of that). In the absence of a contrary provision in the will, the compulsory portion constitutes a monetary claim. There are only very limited grounds based on which a testator may deprive statutory heirs of their compulsory portion. Moreover, while the law offers a certain flexibility as to how the compulsory portion may be provided (including provisions allowing for this obligation to be deferred for some time), Austrian succession law contains a number of safeguards ensuring that testators cannot reduce their estate to the detriment of the statutory heirs. Therefore, upon request of the statutory heirs, even gifts that have been given well before the death of a testator can be considered when determining their compulsory portion. Time limits for such claims apply.

6.3 Transfer of the Estate

Once a person passes away, that person's assets, debts, rights and obligations are assumed by its estate (*Nachlass*). The estate is deemed a legal entity which is either represented by the legal heirs or a court appointed administrator. The estate ceases to exist once probate proceedings are completed and the heirs take over the estate. Such transfer to the heirs does not happen automatically by way of law but requires a court order (*Einantwortung*) following an explicit declaration to be given by the heirs in writing upon the probate court's request (*Erbantrittserklärung*).

6.4 International Aspects

In international cases (e.g., a non-Austrian citizen dying in Austria or an Austrian citizen dying outside of Austria), the law applicable to the succession has to be determined. Pursuant to the EU Succession Regulation, generally the laws of the jurisdiction apply in which the deceased had his/her habitual abode at the time of death; it is, however, also possible to opt for the laws of the jurisdiction of which the testator is a citizen. Finally, foreign wills having been set up in accordance with the rules applying at the place of signature will normally be recognized in Austria from a formal perspective.

7. Matrimonial Law Issues

7.1 Matrimonial Property Regime

Austrian law generally provides for the separation of the property of the two spouses. Thus, assets brought into the marriage as well as assets acquired during the marriage by only one spouse remain in the sole ownership of the respective spouse. Furthermore, spouses can generally freely dispose over their own assets during the marriage. However, it is possible to conclude a matrimonial agreement, which would restrict the alienation and/or encumbrance of assets in favour of the other spouse. As such agreements can be entered in the land register, when concerning real estate, they can also be effective against third parties. Further, a spouse is generally not liable for debts entered into by the other spouse.

7.2 Consequences of Divorce Regarding Property

Despite the general principle of separation of matrimonial property, in case of divorce, all assets the spouses have acquired together during their marriage will be divided up between them. The assets to be divided up consist of the so-called marital assets and marital savings:

- The marital assets comprise all movable or immovable property that served the use of both spouses during their marriage; this includes household goods and the marital dwelling.
- The marital savings are all savings the spouses have accumulated during their marriage.

Some assets are generally excluded from division, e.g., assets which one spouse has obtained by way of inheritance or gift from a third party, assets which serve the personal use of one spouse, assets which serve the exercise of the profession of one spouse, assets that belong to a company and shares in a company. However, such generally excluded assets must nevertheless be divided if they have been (explicitly or implicitly) dedicated as marital assets or marital savings. A different handling of the process of dividing up assets is generally possible based on a contractual agreement (although the courts might deviate therefrom if the contractual agreement is “unfairly discriminating” against one of the two parties).

8. Health Insurance

In Austria health care and social security are provided at a very high level. A system of mandatory social insurance is in place for all forms of gainful employment; insurance obligations are triggered as soon as monthly earned income exceeds a certain minimum amount. For each profession there are pre-determined insurance institutions (*Sozialversicherungsträger*), for example the *Österreichische Gesundheitskasse* for employees. Opting out of social security is normally not possible. While the health services covered by various insurance institutions may slightly differ, the Austrian social security system does not offer coverage at a basic level with the possibility to add further coverage options; however, in order to receive benefits beyond the standard level, it is possible (and recommended) to take out private supplementary insurance. Family members (such as non-working spouses and children) may also benefit from the mandatory insurance of a family member.

For employees, the insurance obligation commences with the taking up of employment. The social security contributions are levied as a percentage of the gross remuneration. These consist of (i) contributions to be paid by the employer in addition to the employee's gross remuneration (i.e., generally 21.13 %) and (ii) contributions to be paid by the employee and to be deducted from the employee's gross remuneration (i.e., generally 18.12 %). For certain groups of employees, the rates differ slightly. All contributions are capped at a maximum base of EUR 81,900 per year (figure applicable for 2023). Self-employed persons are also subject to mandatory social insurance. The basis is normally their gross income.

9. Wealth Management Vehicles

9.1 Austrian Private Foundations

9.1.1 Civil Law Aspects

Austrian private foundations (*Privatstiftungen*) can be used for many purposes. Apart from their very common use as family foundations, private foundations are sometimes established as top-tier entities in a multinational group or as holding entities for purposes of international tax planning. Apart from the relatively favourable taxation of a private foundation, its main benefits are the possibility to preserve assets and to prevent the fragmentation of estates due to legal succession. This is possible due to its legal personality, which enables the separation of the founder's property from the private foundation's property (for civil and tax law purposes).

A private foundation is a legal entity without owners or shareholders, which is endowed with assets by the founder and which, by way of the use, management and investment of its assets, shall serve a legally valid purpose determined by the founder. The private foundation may basically serve any permissible purpose. However, it may neither carry out a commercial activity exceeding a mere ancillary activity nor be a shareholder with unlimited liability of a partnership.

A private foundation is established by way of a deed of foundation set up by the founder (or its representative under a power of attorney) in front of an Austrian notary public. It comes into legal existence upon its registration with the Austrian commercial register. Some provisions have to be contained in the deed of foundation, which is publicly available in the Austrian commercial register. Other provisions, such as the determination of beneficiaries or the extent of endowments to beneficiaries, may be contained in a supplementary deed of foundation, which is not publicly accessible.

The founder may retain certain rights, such as the right to revoke the private foundation or to amend the deed and supplementary deed of foundation. Further, he / she may generally be a member of the board of directors.

9.1.2 Tax Law Aspects

In connection with a private foundation, there are basically three levels of taxation, namely (i) the taxation of endowments to a private foundation; (ii) the taxation of income at the level of the private foundation; and (iii) the taxation of distributions to beneficiaries:

- Gratuitous endowments of assets to a private foundation are subject to foundation transfer tax (see 3.4), generally at a rate of 2.5 % of the fair market value of the assets endowed.
- A private foundation is usually subject to corporate income tax at a rate of 24 % (23 % from 2024 onwards), with dividends received normally being tax-exempt. Some types of income (such as interest income) are subject to a special type of corporate income tax, namely the so-called interim tax (*Zwischensteuer*) at a rate of 24 % (23 % from 2024 onwards). Interim tax is not payable if and to the extent certain distributions are made to beneficiaries. Note also that a private foundation qualifies as a resident person for the purposes of double taxation treaties concluded by Austria and is thus eligible to treaty benefits (e.g., reduction of withholding taxes in source countries).
- Distributions of any kind to a beneficiary are subject to a flat withholding tax of generally 27.5 %. In contrast, distributions of substance may normally be effected tax neutrally. However, under most double taxation treaties concluded by Austria, Austria does not have the right to levy withholding tax on distributions if the beneficiary is resident in the other treaty state (thus a private foundation can normally refrain from withholding the 27.5 % tax).

9.2 Common Law Trusts

9.2.1 Civil Law Aspects

Given the fact that Austria is a civil law jurisdiction (and has not signed the Hague Trust Convention), the trust concept is alien in Austria. Very few court cases exist. In particular, registering ownership of Austrian real estate in the land register on behalf of a trust or registering ownership of Austrian companies in the commercial register on behalf of a trust is problematic.

9.2.2 Tax Law Aspects

Depending on their set-up, trusts can for Austrian income tax purposes generally be seen as non-transparent (and are thus seen as separately taxable entities) or as transparent (and are thus disregarded for tax purposes). Broadly speaking, non-transparency is the case if neither the settlor nor the beneficiary have comprehensive instruction and supervision rights over the management of the trust assets. Typically, discretionary trusts, where the settlor has transferred the entire management to the trustees and where the trustees have full discretion regarding the management of the assets as well as regarding distributions to beneficiaries, are qualified as non-transparent. Transparency would for example be the case with bare trusts, where the trustee acts on the instruction of the beneficiaries and has to transfer the assets to them upon request.

- In case of non-transparent trusts, Austrian tax resident beneficiaries shall be tax exempt if they receive only a one-off distribution from the trust (no matter the amount). If, however, they receive several distributions, they shall be taxable at their personal income tax rates (of up to 55 %) on such distributions.
- In case of transparent trusts, the income of which is attributable to an Austrian tax resident beneficiary, the beneficiary is subject to Austrian income tax on the income received by the trust (irrespective of whether the beneficiary receives distributions from the trust or not).

Note that gratuitous endowments of assets to a common law trust (whether seen as non-transparent or as transparent) are subject to foundation transfer tax (see 3.4) at a rate of generally 25 % of the fair market value of the assets endowed.

10. Opening of Bank Accounts

10.1 General

High net worth individuals moving to Austria will typically want to open a bank account with an Austrian bank. While all the larger Austrian commercial banks have their own private banking departments, there are also a number of specialized private banks catering to this clientele.

10.2 Banking Secrecy

Banking secrecy is a highly cherished tradition in Austria and a very emotional topic for the public at large. It means that credit institutions, their employees and other persons acting on their behalf may not disclose to any third party (including the government or the tax authorities) details of the banking relationship which are not already in the public domain. Certain exceptions exist (e.g., in the case of suspected criminal offences or tax evasion). It should be noted, however, that in the last few years banking secrecy has been more and more eroded (see 10.3 below).

10.3 Exceptions to Banking Secrecy

10.3.1 Information Exchange with Other Countries

One of the exceptions to banking secrecy concerns the information exchange with tax authorities of other countries: Pursuant to applicable double taxation treaties, Austria – upon request of a treaty state – discloses information (that would normally be covered by banking secrecy). Austria has also ratified the Convention on Mutual Administrative Assistance in Tax Matters (as amended by a protocol from 2010) and participates in information exchange upon request on this basis with a large number of jurisdictions.

Austria is also a signatory to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (which implements the OECD's Common Reporting Standard) and automatically exchanges bank account information (that would normally be covered by banking secrecy) with other countries. Furthermore, Austria has concluded a Model 2 Intergovernmental Agreement (IGA) with the United States, implementing automatic information exchange under the US Foreign Account Tax Compliance Act (FATCA).

10.3.2 Bank Account Register

Austrian banks are obliged to report certain data concerning current accounts, savings accounts, savings books and securities accounts to a bank account register managed by the Austrian Minister of Finance. The reported data contain only general information on the account holder (i.e., name, date of birth and address), other potentially authorized persons, the account number, the opening date and the closing date (but not account activities or account balances). The tax authorities have access to this register under specific circumstances.

10.3.3 Reporting on Capital Outflows

Austrian banks are further required to report to the Austrian Minister of Finance capital outflows (transfers of cash or securities) exceeding EUR 50,000 from current accounts, savings accounts, savings books and securities accounts of natural persons. Accounts held for business purposes are exempt from such reporting obligation. The notification must include personal data of the individual, the account number and the amount involved.

11. Immigration

Citizens of the EU, of the EEA or of Switzerland as well as their closest family members can stay up to three months in Austria without having to apply for a visa. For longer stays, it is necessary to obtain a certificate of registration (*Anmeldebescheinigung*). The requirements therefor are (i) that the applicant has adequate health insurance coverage and (ii) is either working or studying in Austria or has sufficient own funds so that his/her livelihood is secured. An individual may then acquire a certificate of permanent residence (*Bescheinigung des Daueraufenthalts*) after uninterrupted legal residence of five years in Austria without having to meet any further conditions.

For citizens from countries other than those mentioned above, further distinctions have to be met:

- For stays of up to 90 days within a period of 180 days the EU has exempted citizens of several further states from any visa requirements. Citizens of all other states, however, have to apply for a so called “tourist-visa”.
- For stays of three to six months, generally a visa is obligatory for all non-EU / non-EEA / non-Swiss citizens.

For longer stays a residence permit is obligatory. There are various types of residence titles depending on whether the individual concerned is only allowed to reside or also to work in Austria and on whether he/she is an employee or self-employed. For each possible residence permit, the applicant has to fulfil general and special criteria. The first application for a residence permit generally has to be filed at the consulate in the country of origin. Most residence permits are issued for one year and can then be renewed annually. After a ten-year stay (or six years in some cases) an individual may apply for citizenship (see 12 below).

The two most important possibilities for obtaining a residence permit when relocating to Austria from outside the EU, the EEA or Switzerland are the following:

- Residence permit for persons of independent means: The key criteria for applicants are that they have a permanent accommodation in Austria, health insurance that provides full coverage in Austria and fixed and regular monthly income of a sufficient amount, which is determined by the authorities on a case-by-case basis. Further, at least very basic German language skills are required. A spouse and children under 18 years can be included in such application. Due to a strictly applied quota system, the processing time for applications under this category can, however, be quite lengthy.
- Residence and work permit as a key manager: This permit is based on a point system: Through various qualifications (e.g., language skills, academic degrees, age etc.) points may be earned, which must in total exceed a minimum threshold in order to qualify for admission. Further, the considered individual must then actually exercise a profession in Austria that corresponds to his/her qualifications and thereby receive a salary of at least EUR 2,925. A spouse and children under 18 years can be included in such application. The processing time for applications under this category should normally be not more than about three months. One considerable benefit of this form of residence permission is that neither the main applicant nor his/her relatives have to prove German language skills.

12. Citizenship

Acquiring Austrian citizenship is mainly possible by descent or by award.

The first possibility of acquiring citizenship (i.e., by descent) applies if either the father or the mother of an individual was an Austrian citizen at the time of his/her birth.

The second possibility of acquiring citizenship (i.e., by award) applies if individuals fulfil certain conditions and apply to be awarded citizenship. The main prerequisite is that the respective individual has been resident in Austria for an uninterrupted period of at least ten years (but only six years in some cases, e.g., in case the spouse is an Austrian citizen). In addition, there are further general requirements such as that the applicant:

- has not been sentenced to a prison term due to having committed a crime;
- has a positive attitude towards the Republic of Austria;
- has sufficient own funds, so that his/her livelihood is secured;
- has German language skills and a basic knowledge of Austrian history and Austria's democratic system (which is verified through a written exam);
- has not been subject to a residency ban or other border police measures;
- does not have close connections to terrorist or extremist groups; and
- gives up any other citizenships he/she has (dual citizenship is generally not allowed in Austria).

Note that additionally there exists a provision pursuant to which citizenship may be awarded to an individual due to exceptional achievements in the particular interest of the Republic of Austria. In such case, some crucial requirements for the granting of citizenship (e.g., residency of ten or six years) are waived. Generally, persons who have distinguished themselves regarding the Republic of Austria (and are expected to do so in the future) shall be granted easier access to Austrian citizenship. In the past, sportsmen, famous artists or businesspeople have successfully made use of this provision.

Recently, Austria has allowed the simplified obtaining of citizenship by direct descendants of victims of Nazi persecution.

13. Customs Duty and Import VAT

The relocation of an individual to Austria will normally entail the cross-border move of household items into Austria. The consequences of such a move depend on whether the individual's country of origin is an EU Member State or not.

In case of a move from an EU Member State, there will be no customs or tax consequences.

In case of a move from a non-EU Member State, the importation of goods is generally subject to both customs duty and import VAT. However, there is an extensive exemption (covering both customs duty and import VAT) for all goods considered personal property when relocating. This mainly applies to household effects, motor vehicles, pets and certain instruments required for the pursuit of a trade or profession. Further the following prerequisites have to be fulfilled:

- the normal place of residence has been outside the EU for a continuous period of at least twelve months;
- the personal property has been in the possession of and used by the person concerned at his/her former normal place of residence for a minimum of six months before the date on which he/she ceased to have his/her normal place of residence in the country of departure (thus, no exemption applies to new goods);
- relief is granted only in respect of personal property entering the EU for free circulation within twelve months of the date of establishment, by the person concerned, of his/her normal place of residence in the EU; and
- the personal property may not be lent, given as security, hired out or transferred until twelve months after the date on which its entry into the EU for free circulation was accepted.

Alcohol and tobacco products can, however, never be imported free of customs duty and VAT even if they are considered personal property.

Regarding car registration tax (which is triggered when cars are imported into Austria – both in EU and non-EU cases) see 3.8 above.

14. Checklist for Relocation

Before relocation

- Contact an Austrian lawyer
- Check possible exit taxation in country of prior residence
- Check Austrian tax status of foreign companies and trusts and possibly restructure for tax optimization before immigration
- Prepare documentation for purposes of step up of tax basis relating to financial instruments
- Apply for preferential tax regime, if relevant
- Apply for residence permit, if necessary
- Apply for work permit, if necessary
- Purchase or rent real estate
- Enter into healthcare insurance

Upon relocation

- Move personal belongings to Austria and check whether tax and customs exemptions apply
- Register car, apply for Austrian license plate and convert driving license
- Notify the municipal authority on taking up of residence
- Document the effective date of the relocation
- Notify the competent Austrian tax authority on becoming tax resident
- Open bank accounts
- Modify last wills
- Set up Austrian company or private foundation, if necessary
- Set up redirection order for mail

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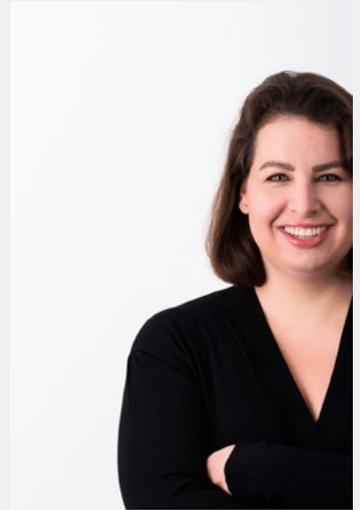
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