

## Austria: Innovative market, straightforward investment



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**A**ustria is, even in times of European economic challenges, an innovation driven market which offers a lot of possibilities for far-sighted investors. Thanks to an investment treaty signed in 2001, investors from India and Austria enjoy equal legal treatment.

Small to medium-sized companies, which are mostly family owned or run, are the core of Austria's economy and investors are welcome to help them expand.

### Few limitations

Foreign investors who intend to buy an Austrian company require clearance from the Department of Commerce only in cases where the target is involved with the defence industry, energy or water supply, or public utility infrastructure.

Clearance from the department must also be obtained for investments in banks, companies quoted on the stock exchange, companies which deal with games of chance, and private broadcasting services. Another sensitive topic is the employment of foreign personnel. This is regulated by a special act, which allows relaxations for key employees who have special knowledge or experience.

When it comes finding the right object for an investment, the Austrian Chamber of Commerce and special consultants can provide helpful information and contacts.

### Legal issues

As elsewhere, the purchase of a company may be designed as a share or asset deal.

The sale of shares of a limited company, called GmbH, must be acknowledged and published in the commercial

register. In a share deal, to enjoy the advantages of keeping up the contractual relationships, contracts need to be checked to see if they contain "change of control clauses" or if the share deal itself could be grounds for the contract partner to terminate the agreement.

In an asset deal, the buyer will face multiple liability regulations, under different acts. Some of these liabilities can be shifted by contract but most are compulsory. According to the civil code, contractual partners must generally approve the succession when the intention is to keep up the business.

Employment contracts also must be transferred to the new entity. Under Austrian labour law, terminating an employment relationship can be costly and time consuming.

### Setting up a business

The easiest way to establish a business is to set up as a "sole proprietor". This means bearing full personal liability. A person holding an Austrian residence permit can also obtain a permit to carry on a trade. To limit liability, a GmbH, an AG, an SE or a GmbH & Co KG can be formed, as well a "privileged GmbH". With the latter, the founding shareholders are only required to pay in €5,000 in cash and are personally liable for a further €5,000 for the first 10 years.

Foreign entrepreneurs or business entities that do business in Austria may establish a branch office. With a branch office, the individual or entity is the direct holder of all rights and obligations arising out of all transactions of the office and will be liable for all of its business transactions.

The foreign individual or entity will be subject to tax in Austria on the income of the Austrian branch office. Even if the office is not registered with the commercial register, it can constitute

a "branch establishment" for tax law purposes.

Companies operating in Austria are subject to corporate income tax on their entire income. Profits are taxed at the standard rate of 25%. Unlimited tax liability is extended to all domestic and foreign sources of income.

Individuals are subject to limited tax liability for Austrian source income unless their habitual abode is in Austria. If their stay in Austria exceeds six months, their tax liability is unlimited.

Austria has no trade tax or net worth tax. Moreover, tax and tax base can be reduced by taking the advantage of tax deductions and allowances. Under certain circumstances, premiums or allowances can be claimed for research, education, etc. Taxpayers may also be able to take advantage of a profits allowance, a net operating loss carry forward or the transfer of hidden reserves.

As for the effective tax rate, Austria is regarded a business-friendly location within the EU. A comparison of the average effective tax burden shows that Austria's 22.4% is significantly lower than in other countries of the EU.

In addition to the bilateral investment treaty, a double taxation avoidance treaty between Austria and India has been in force since 2001. These treaties permit investors to enter an interesting market in the middle of Europe at low risk with predictability of legal decisions.

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