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# The provision of services by foreign enterprises in Austria

## Trade and Industry Code

A distinction shall be made between occasional/temporary or permanent activities in Austria.

**Occasional activities:** A notice of services must be lodged with the Federal Ministry for Economic Affairs (*Bundesministerium für Wirtschaft*) not later than one month before commencement of the activities.

**Permanent activities:** for permanent activities, it is not sufficient to lodge a notice of services. It is necessary to establish the registered office of the company in Austria (registration in the Commercial Register) and a trade licence which is valid in Austria must be obtained.

## Trade-law requirements

### ■ Activities excluded from the free movement of services

Services subject to trade license which may not be offered are as follows: chimney-sweep's trade; repairs of items and equipment which are considered to be military weapons.

### ■ Free trade (= trade without a certificate of qualification)

Prior notice of the planned provision of the services is not required.

### ■ Qualified trade (= a certificate of qualification must be submitted)

The certificate of qualification need not be submitted if the activities are considered qualified trade in the country of origin (a certificate of qualification is required) or the provider of the service performed this trade in the country of origin independently for at least two years. A notice of services must be submitted.

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### ■ Special verification of qualification

Required for some types of trade (builder, well digger, electro-technician, gas and sanitary technician, carpenter, etc.). The Federal Ministry may, based on the qualification of the service provider, order an adaptation course or a qualification exam. A notice of services must be submitted.

## Notice of services

The entrepreneur must submit, at least one month before commencement of the activities, a written notice to the Federal Ministry of Economic Affairs. The authorisation obtained is always valid for one year. It therefore must be renewed each year and all documents must be submitted again.

## Reporting a posting

At the Central Co-ordination Centre of the Federal Ministry for the Control of Illegal Employment (*Zentrale Koordinationsstelle des Bundesministeriums für die Kontrolle illegaler Beschäftigung*). At least one week before commencement of the activities, all employees to be posted to Austria must be reported to the Illegal Employment Control, KIAB (*Kontrolle illegaler Arbeitnehmerbeschäftigung*).

## Social insurance

For all employees to be posted to Austria the A1 form must be requested in their EU member state.

## BUAK

All employees to work in Austria are subject – within the scope of the activities listed by BUAG (see Annex Sec. 2 of BUAG) – to the BUAK [*Bauarbeiter Urlaubs- und Abfertigungskasse*] Construction insurance company, and must be registered by BUAK. The reports are prepared and payments made monthly.

## Law against social dumping and salary dumping

It is checked on the basis of the payroll documents whether the employees are paid at least the basic salary they are entitled to according to the relevant law, regulations or collective agreement taking account of their professional classification.

The documents required for this purpose, in addition to the employment contract and the statement of the terms and conditions [*Dienstzettel*], comprise the record of working hours, salary records and documents on the payment of the salary (for example, confirmation of the bank transfer and/or a receipt for cash payment).

In this respect, special obligations are imposed on foreign employers, who must have all the required documents in the German language and keep them at the place of performance of the activities during the entire term of posting of the person in question.

For cross-border hiring-out of employees, the obligation to keep the required payroll documents applies to the domestic user enterprise. A foreign entity posting a person abroad must make these documents available to the user enterprise.

### **Scope of monetary penalty in case of remuneration which is less than the set minimum amount**

If it is discovered with regard to not more than three employees that the remuneration paid is less than the set minimum remuneration, the amount of the monetary penalty for each employee is EUR 1,000 to 10,000 and increases to EUR 2,000 to 20,000 in case of repeated breach.

## **Municipal tax**

The obligation to municipal tax depends on the existence of domestic permanent establishment.

Construction and assembly activities give rise to permanent establishment if their duration exceeds 12 months. The profits attributable to the permanent establishment must then be taxed in the country where the permanent establishment is located. The institute of construction and assembly permanent establishment extends and supplements the basic list of situations giving rise to permanent establishments in the international tax law.

(Exception – cross-border hiring-out of employees: if foreign employees are hired out to a domestic user company, they are considered to be the user company's employees for taxation purposes. In this case, the domestic user company is subject to the municipal tax, where the tax base equals 70% of the amount of the hire fee).

For further questions do not hesitate to contact us.

**Your Stöger & Partner Team**