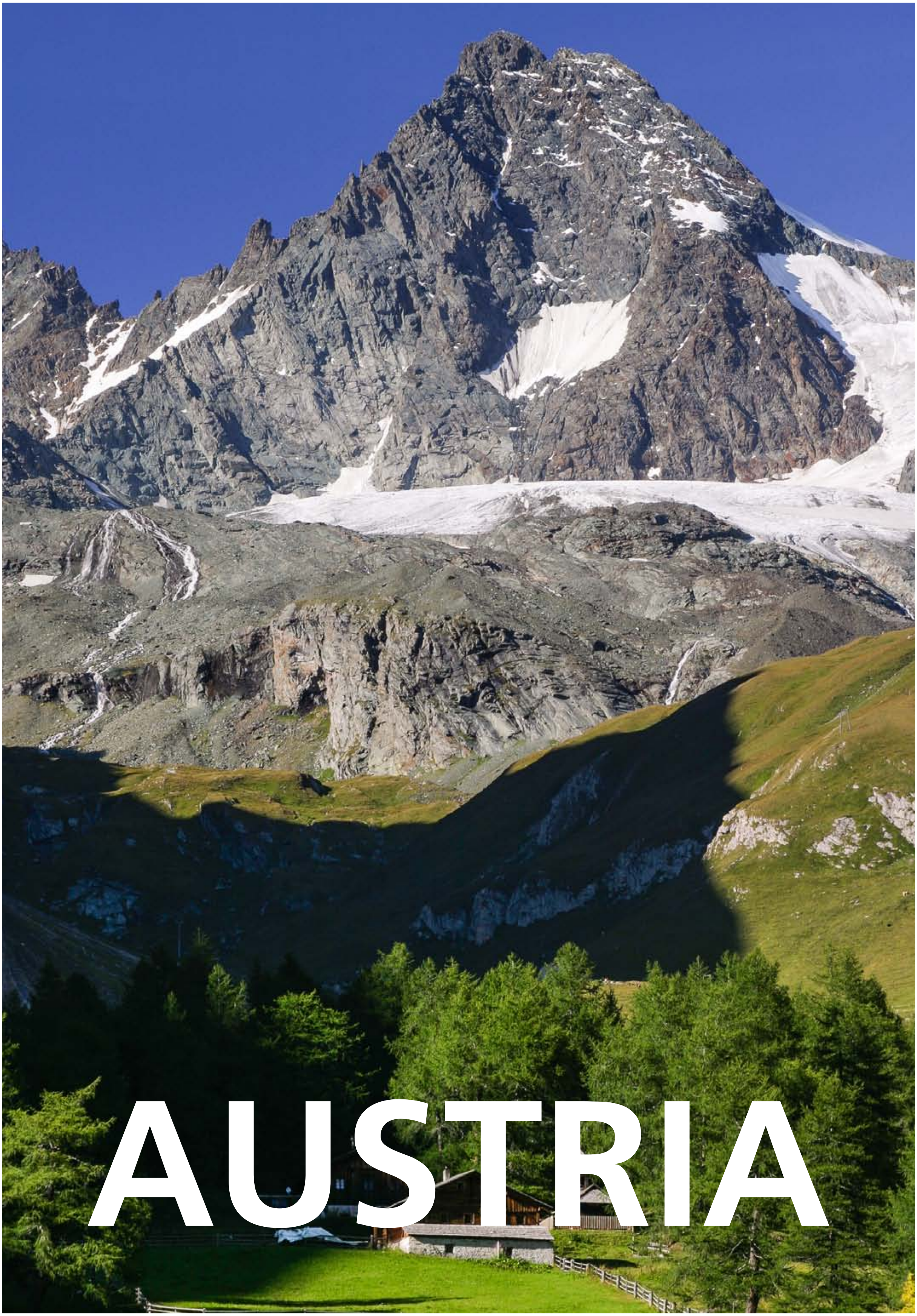
AUSTRIA

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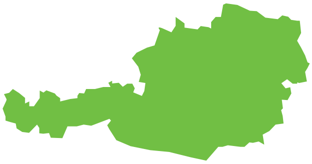

German holidaymakers are not the only parties who maintain intensive relations to the neighbouring country of Austria. In economic terms Germany is also by far Austria's most important trading partner. Both exports and imports exceed the trade conducted by Germany with other countries such as Italy, France or Switzerland.

The economic structure is increasingly dominated by the growing trade and services sector while in comparison the areas for production, construction and forestry are steadily losing their significance.

A healthy economy is obviously not harmed by this development because according to official statistics for 2011 Austria can describe itself as the EU country with the lowest unemployment rate.

Generally speaking German entrepreneurs must surely not fear as many big surprises in Austria as perhaps in Asian countries. For example, in the area of financial accounting and balance sheet preparation there are hardly any differences. Most entrepreneurs will also not experience any big surprises with regard to tax.

However, the fee laws in Austria are not commonly known. Basically speaking, fees may be charged for a number of written documents, administrative acts and legal transactions, e.g. with rental contracts which in some cases can even amount to several thousand euros. If the fees are not correctly assessed, a fee increase of between 50 and 100 % can result. However, here the principle of acting quickly in good time is valid as often it may be difficult to correct errors.

Austria corporation tax is also a mystery to many. This could be in connection with, for example, a capital increase for a domestic joint stock company or a capital injection from a shareholder into a domestic joint stock company (waiver of claims, etc.). The corporation tax amounts to 1 % of the respective value of the performance and in some circumstances can be painfully high.

The use of company vehicles also involves one or two stumbling blocks. For many, the Austrian car registration tax regulation (abbreviated to NOVA) is indeed a novelty. The tax is a one-off levy calculated from the consumption or engine capacity as a percentage of the vehicle value. The tax is due when a new vehicle is delivered to the buyer or if a vehicle is registered for the first time in Austria. It should be observed that the vehicle is subject to an appropriateness check with regard to the tax (based on the level of luxury). If the acquisition costs of a car or estate car exceed a certain value (40,000 euros), depreciation on the amount above this value is not possible.

An element known to bind Germany and Austria together is the common language. Naturally in the area of auditing there are one or two differences worth mentioning which is why the auditor of the annual financial statement in particular with companies with international operations has to point out these finer points to the company group management with regard to German differences and therefore the auditor must have knowledge of national as well as international financial accounting and auditing standards. The required independence (also in Austria) of the auditor means that a long-term connection to a client is not possible. Every year the company to be audited has to choose and commission the auditor of the annual financial statement. The condition for the execution of a binding audit of the financial statement for joint stock companies is that on two consecutive closing dates at least two of the following criteria must be fulfilled: a 4.84 million euros balance sheet total, 9.68 million euros sales revenue or an annual average of 50 employees.

Furthermore, regardless of the size of the company there are business sector specific requirements for the execution of statutory audits for banks, insurance companies, and, for example, pension funds. Private trusts are addiitonally subject to a statutory audit of the annual financial statement. Due to the ISA 600 auditing standard, companies integrated in national and international company groups which under local law are not subject to a statutory audit increasingly decide to carry out a voluntary audit whereby the scope or extent of the audit (full audit, review, agreed upon procedures) for such companies is laid down by the auditor of the company group and this is generally co-ordinated in advance with the company group management.

# Practical examples

## Auditing

### Background facts:

A third generation German family-owned company developed a sales network in a number of European countries. Since the eighties the family group had founded subsidiaries abroad or concluded contracts with commercial agents. The sales market in Austria was processed by an (independent) commercial agent whereby rumours began to circulate concerning the worsening creditworthiness of the commercial agent and then there was some apprehension that the market in Austria may collapse in the short or medium term due to the bankruptcy of the commercial agent. Furthermore, reports became more frequent from the financial accounting department of the company group regarding accounting irregularities with the commercial agent and the logistics department also sent reports more frequently to the company group management which was concerned with the subject of sales and warehousing in Austria. In the last three years larger stocks were taken by the Austrian commercial agent who then at irregular intervals made return shipments to Germany due to alleged defects and the issue of credit notes was requested. In short, co-operation with the Austrian commercial agent led to an inherent risk potential and to higher administrative expenses which had a negative effect on profitability.

## What can be done now?

Due to the contract conditions in the specific case there is in principle the possibility of execution of "agreed upon (audit) procedures" which could be carried out by internal group employees or by an auditing firm to be commissioned which can make use of the appropriate expertise and legal know-how. As an alternative there is also the possibility of founding a subsidiary in Austria. In recent years and decades Austria has often especially been called a "bridgehead" by German companies and in particular selected for the eastern European area to enable processing of the Austrian market and also to enable expansion in the bordering countries. Naturally this strategy is associated with further (long-term) investments. Among other things the consolidated group accounts are enlarged by a further unit. However, in addition to the evaluation of reports during the year this also offers the possibility of the local annual financial statement or the resulting HB-II reporting (prepared acc. to German commercial law or international balance sheet regulations) by an external trustee firm. Above all, family-owned companies which have grown organically and are expanding in Europe which do not have an international internal auditing system increasingly use the possibility of the audit of the financial statement of their foreign subsidiary companies to carry out specific additional audits or also commission specific investigation activities in the case of firm evidence. The auditing activities required here often bridge the gap of routine inspection of the internal (local) control system up to the execution of embezzlement audits.

## What should one have done differently from the beginning?

In company groups and sales structures which have grown historically, the taking of decisions regarding the maintenance of the status quo or the execution of changes to the legal and commercial fabric is not easy. It is hereby certainly beneficial to know you have a strong partner at your side which already has its own international network and can point out other decision alternatives. Rödl & Partner offers a large range of (cross-border) services ranging from the identification of alternative actions to the execution of legal, tax and commercial due diligence and on-going tax representation and the provision of auditing services. Companies can, for example, co-ordinate with the company group auditor and the locally commissioned auditor of the annual financial statements to set investigation activities and special audit tasks which in the area of "fraud" can have a preventive effect and contribute towards increasing the degree of control. Finally, mention should be made of the excellent punctuality which Rödl & Partner comprehends to be normal and due to the "one firm" concept of Rödl & Partner makes a contribution to a result which is satisfactory for all involved parties.

# Taxes

## Background facts:

A German company operating in the area of IT consulting and distribution of IT products would like to get a foothold in in Austria. As the company assesses the Austrian market to be extremely positive a local office was immediately founded in the form of a GmbH (from now on: subsidiary) in order to process the Austrian market. For this purpose three sales representatives were employed. One is assigned to the western part, one to the middle part and one to the eastern part of Austria.

Naturally and without delay in order to take the extensive travel program of the sales representatives into account a mid-range car equipped with comfortable options was procured and made available to each sales representative. The respective purchase price of each car was approximately 55,000 euros including Austrian sales tax.

In order to save these costs at a different place, the setting up of a separate financial accounting department at the local subsidiary was dispensed with. The financial accounting and the monthly sales tax return was carried out by the German parent company. Without questioning the case the bookkeeper deducted the input tax from the purchase of the car and all other costs in connection with the car in the sales tax return. Unfortunately the bookkeeper was not informed that a deduction of input tax in connection with a car in Austria is not permissible. This is also valid for all other costs such as fuel and repairs.

After business developed as well as expected, the financial accounting for the subsidiary was placed in local professional hands. As "non-deductible input tax" suddenly appeared in the financial accounting, the first questions were asked by the parent company and as a result the hitherto incorrect handling of the input tax came to light.

## What can be done now?

First of all the completely frustrated bookkeeper had to be calmed down. At the same time, however, there was no way to avoid the correction of the previous years which were partly already considered as final in order to avoid further damage. The biggest impact was in the year of the acquisition because the highest input tax amounts were booked in this year and for these input taxes the interest on arrears was the highest.

If the financial accounting had continued to be managed by the parent company, one would have had to discuss this with the personnel of the financial accounting department and provide appropriate training. As in this case the financial accounting was passed on, the problem is unlikely to repeat in the future.

## What should one have done differently from the beginning?

There is surely nothing against the parent company managing the administration (for example financial accounting) of a foreign subsidiary. However, there would have been inexpensive methods to learn about the possibilities in advance. The safest way would naturally have been to consult a professional local tax consultant. Even if it is “only” the neighbouring country – one should act according to the old proverb of “When in Rome, do as the Romans do!”