

## LEAFLET

# Working in Austria for a foreign employer that does not have a branch in Austria

### Social security law

Generally, all employees who work in Austria are subject to the Austrian Social Security. Employees who work for a foreign company that does not operate a domestic branch are considered employed domestically when working from a place of residence located in the country (Austria) and not being subject to a system of social security abroad. The latter would be the case, for instance, when an employee is posted from abroad to Austria for less than two years.

The fact whether the employer or the employee is obligated to pay social security contributions into the Austrian social insurance system (to the ÖGK) depends on whether the employer is from an EU/EEA-country or Switzerland or on whether the employer has his residence in a third country.

#### **1. Third-country employers**

Here, the Austrian „Allgemeine Sozialversicherungsgesetz (§ 53 ASVG)“ applies. This law says that the contributions to the Social Security are always imposed on the employee. Therefore, the employee needs to ensure that he/she concludes a written gross wage agreement that forms the basis for determining the social security contributions. In addition to the gross wage, the employer needs to undertake (preferably in writing) to transfer the employer's Social Security contribution to the employee. This contribution amounts to 21,03% of the gross wage. The employee has to transfer this contribution together with the employee's contribution that amounts to 18.12% of the gross wage to the Gebietskrankenkasse. These contribution rates apply to gross incomes from € 2.228.- up to the maximum contribution rate (€ 5.850.-).

#### **2. Employers from EU/EEA-countries or Switzerland**

In this case, it is the employer who undertakes to pay both the employee's and the employer's contributions to the Social Security to the ÖGK and to pay out the

remaining amount (gross minus social security contribution) to the employee. However, it is possible that the employer concludes a written agreement with the employee which says that it is the employee who pays the contributions herself/himself and the employer, in return, undertakes to pay the employer's contribution additionally to the gross wage. The employee then forwards the employer's contribution (21.03%) as well as his/her own contribution (18.12%) to the TGKK. These contribution rates apply for gross incomes from € 2.228.- up to the maximum contribution rate (€ 5.850.-). The exact rates can be calculated on the [webpage of the Austrian umbrella association for the Social Security](#). If the employee concludes a written agreement with the employer (Art. 21 Reg. 883/2004/EC-Agreement) on the payment of the gross wage plus employer's contributions, he/she can easily check whether he/she is covered by social security as it is him/her who is in charge of paying the social security contributions. In the event of non-payment of the contributions to the employee, it is the employee who has to take action against the foreign employer. In addition to this written agreement an own form should be filled in for the ÖGK which can be obtained on the [webpage of the ÖGK](#).

### **3. Workplace in several states (e.g. partly home office, partly office)**

If employees work for a foreign employer partly in Austria (e.g. home office) and partly in the country, where the employer has its domicile (e.g. office), the subject to social security legislation depends on the percentage of the work performed in Austria. If it is 25% or more, normally the obligation to contribute to social security insurance changes entirely to Austria and the procedure described above is to be applied when paying the contributions. In these cases, however, in the case of home office up to 50% of the working time, the employer and/or employee can apply for an exception to the competent social security authority and the social security in the country of employment (seat of the company/place of office) can be retained.

## **Tax law**

According to tax law, employees who live and work in Austria – whether for a domestic or foreign employer – **are subject to Austrian tax law**.

Foreign employers can either pay the wage tax directly to the Austrian tax authorities or through an Austrian tax accountant. Moreover, the employer is obliged to hand in an annual wage slip (*form L17*). Since January 1, 2021, it is also permissible to pay gross wages to employees and to oblige them to tax their income in Austria themselves. In this case as part of the **tax declaration** (*form L1*), the employee has to enclose form L1i if the employer has not submitted the annual wage slip (*form L17*) to the Austrian tax office.

### **Workplace in several states (e.g. partly home office, partly office)**

If employees work for a foreign employer partly in Austria and partly in the country, where the employer has its domicile, the tax liability is divided between the two countries involved. The employee remains subject to the unlimited tax liability in the country of residence. In the country in which the employer is domiciled and the employee works part-time, there is only limited tax liability. That means that the income that is earned at the headquarter's country is taxable there. For example, if working 40% in a home office in Austria and 60% in the office at the employer's location abroad (e.g. Germany), then 60% of the income abroad is subjected to the limited taxation. In practice, the employer is obliged to pay the income tax there. In the country of residence Austria, on the other hand, the entire income must be reported to the tax office by the employee as part of the employee assessment (forms L1 and L1i). Depending on the method used to avoid double taxation, the Austrian tax office will then exempt income that has already been taxed abroad from Austrian income tax and apply a higher tax rate to income earned in Austria (tax exemption method with progression clause, e.g. with Germany) or credit the tax already being paid abroad against Austrian tax (tax credit method, e.g. with Switzerland or Italy)

## **Employment law**

If the employer is a foreign company or if the employee is employed via a foreign subsidiary of a domestic company, it may happen that another law is being concluded in the employment contract despite working in Austrian territory.

Generally, it should be ensured that neither an express choice of law of another law nor any references to foreign sources of law appear. Usually, it is of advantage for the employee when being able to rely on Austrian law known to the Austrian courts/lawyers. Therefore, an express choice of Austrian law would be ideal.

However, if the application of foreign law results from the employment contract, a safeguard clause for employees can be found in Rom I-Regulation. This Article 8 Reg. 593/2008/EC says that despite choice of law those mandatory labour law requirements that apply in the country in which or from which the employee habitually carries out his/her work shall not be waived, provided that they include more favourable provisions for the employee. According to this favourability principle, it is to be examined whether this concluded foreign law puts the employee in a worse position than the Austrian law. If this is the case the more favourable **mandatory Austrian labour standards** apply despite choice of law. If no choice of law has been made, the law of the workplace applies automatically. If the place of employment is located in Austria, it is possible to sue the employer in Austria without any choice of court agreement.

### ***Working place in different states***

If an employee usually does not work in the same country such as truck drivers, who work in international freight transport, caution is needed as the law of the respective

country applies in which the branch that has employed the employee is located. Therefore, when it comes to internationally operating companies with several branches the employee should not be employed via a foreign subsidiary. In such a case it is important to consider that in the event of a labour law related dispute an Austrian place of jurisdiction at the labour and social court is agreed. This court should be geographically the closest to the place of residence to the employee. Otherwise, an employee who usually does not work in Austria would have to sue his/her employer at the Court in the country of the branch that has employed the employee.

***Severance indemnity: choice of staff provision fund***

If Austrian law applies, the employer has to pay contributions to the staff provision fund. These contributions are paid together with the social security contributions to the health insurance company (ÖGK). If the social security contributions are paid by the employee, he/she also has to pay the contribution for the staff provision fund. Therefore, it is to be ensured that these contributions in the amount of 1.53% of the monthly gross wage as well as the employer's social security contributions are paid by the employer to the employee additionally to the gross wage. Beforehand, a staff provision fund has to be chosen with which the employer needs to conclude a contract of accession. If the employer has not yet chosen a staff provision fund it is recommended to the employee to propose one and to force a contract of accession at the employer as otherwise the contributions remain at the ÖGK. Samples of contracts of accession are available at the staff provision funds.