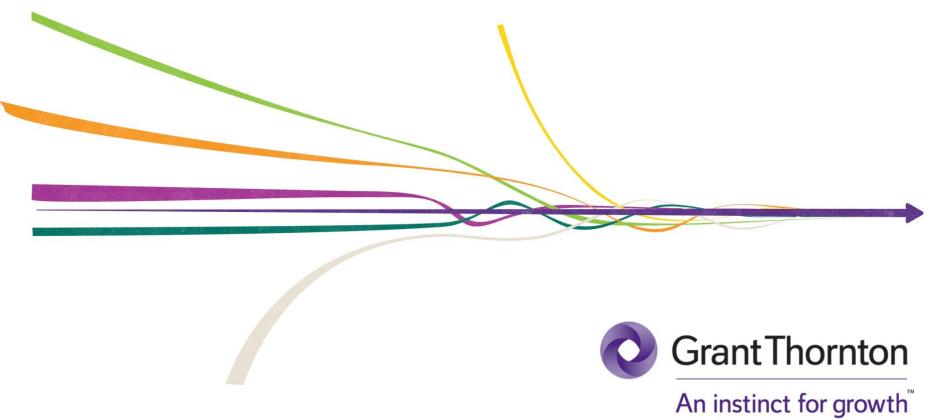
# Posting of employees to Austria

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## Cross-border services

- Free provision of services in general
- Notifications required for services that are classified as regulated trades in AT (e.g. builders, electrical engineering, pest control) BEFORE the first provision of service & annual renewal in case of continued activities
- ! No cross-border services any more, when the company systematically focuses on searching for opportunities to exercise the activity in Austria

## Employee secondment SK - AT

- Employee Secondment notification ZKO 3 (intra-group or intra-company secondment)
   BEFORE work starts! (or for mobile employees in the transport sector BEFORE entry into federal territory) → electronically!
- ZKO 4 notification (for commercial hiring-out) BEFORE work starts! → electronically!
- Notices are to be submitted separately, no "stock notices" are permitted Exceptions:
  - Framework notification (relating to one client in Austria for a period up to three months)
  - **Collective notification** (in case of similar service provision contracts for several different clients)
- A 1 certificate for every employee
- Insurance in BUAK (Construction Workers Leave and Severance Pay Fund) in case of posting of construction workers to AT
- The provisions of the Anti-Wage and Social Dumping Act (LSD-BG) shall be complied with: The minimum wage applicable in Austria is to be paid!, pay documents to be kept available at the place of employment (for mobile workers in the vehicle)



## Exceptions to LSD-BG

No notification of posting if the worker is posted to Austria exclusively for the purpose of performing the following small, temporary tasks:

- business meetings without rendering any other services
- participation in seminars and lectures without rendering any other services
- participation in trade fairs except for preparatory and concluding activities for the event
- attending and participating in congresses and conventions
- participation in (and organisation) of cultural events (dance, music, etc.)
- participation in and organisation of international competitions, with the exception of preparatory and concluding activities for the event
- work as a crew member in the cross-border transport of freight and passengers provided that the work is performed exclusively within the scope of transit traffic and the habitual place of work is not in Austria, except for a transit journey that is interrupted for the purpose of cabotage operations (traffic in stages) and terminating traffic
- Activities within a group, when the employee receives current average gross renumeration of at least € 6.075,00
- work within the scope of international education and further training or research programmes at universities/University Colleges of Teacher Education
- particularly skilled workers, whereas group-internal postings must not exceed a total length of two months per calendar year
- **'Exception for assembly' (Montageprivileg)** in case of performing service for installations which were manufactured abroad (up to 3 months)



## Exceptions (II)

Example: Transit

#### Option a)

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava via Vienna to Munich. Exeptions concerning the transit traffic are applicable.

### Option b)

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava to Vienna. **Exeptions** concerning the transit traffic are **NOT applicable**.

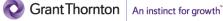
The foreign employer has following legal responsibilities in regards to the part of the route that leads through Austria, that shall be met BEFORE entering the country and available (in the truck):

- All secondment certifications (ZKO 3 or ZKO 4, A1) of the driver shall be kept in the vehicle or made available electronically (= transmission of data to the competent authorities)
- Pay documents shall be kept available in the vehicle or in the premises of an Austrian group company or by a legal professional (in German)
- Compliance with Austrian collective agreements and labour legislation

### Option c)

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava via Vienna and Salzburg to Munich. Journey is interrupted in Salzburg for the purpose of unloading and loading the truck. **Exeptions** concerning the transit traffic are **NOT applicable**.

BEFORE the stop in Salzburg, the foreign employer has the same responsibilities as in the option b).



## Exceptions (III)

## Example: 'Exception for assembly' (Montageprivileg)

- The ,exception for assembly has been limited to cases in which the installations were manufactured abroad by the posting company or a Group company.
- Example: The Austrian company Z-GmbH awards a contract for service works of an installation to a German Y-GmbH. The employees of Y-GmbH are specially trained for these works, the employees of Z-GmbH are unable to perform these services themselves. The work will take approximately 2 months.
  - The company Y-GmbH has NOT manufactured the installation.
  - The company Y-GmbH has manufactured the installation.
- Soluation to a): The ,exception for assembly CANNOT be applied as the foreign company has NOT manufactured the installation. Therefore all legal consequences become effective:
  - All secondment certifications (ZKO 3 or ZKO 4, A1) shall be kept within the country or shall be made available electronically (= transmission of data to the competent authorities)
  - Pay documents shall be kept available within the country or in the premises of an Austrian group company or by a legal professional (in German)
  - Compliance with Austrian collective agreements and labour legislation
- Solution to b): As the installation was manufactured by the company Y-GmbH and the service works will take only two months, the ,exception for assembly is applicable.



## Administrative penalties for breaches of regulations

- Fine for infringement of the requirement of timely or complete ZKO-notification is between € 1.000 and € 10.000 and if repeated, between € 2.000 and € 20.000 per employee:
- Fines will be imposed also in case of infringement of the requirement of availability of pay documents - a fine between € 1.000 and € 10.000 and if repeated, between € 2.000 and € 20.000 per employee.
  - In case it concerns more than three employees, the amount of fine is between € 2.000 and € 20.000
  - if repeated, between € 4.000 and € 50.000 per employee.
- In case the underpayment concerns maximum three employees, the financial penalty amounts to
  - between € 1.000 and € 10.000 per employee
  - if repeated, between € 2.000 and € 20.000
- If it concerns more than three employees
  - between € 2.000 and € 20.000 per employee
  - if repeated, between € 4.000 and € 50.000
- In case of underpayment over several related pay periods, it is to be considered as single offence
- Bonus payments can be paid out by the end of the calendar year without incurring any penalty
- In case of minor fault (slight negligence), it shall be refrained from imposing penalties



# Employee Secondment SK – AT to perform (Construction) works for clients

# ! Differentiation between Service Agreement with the client and Employee secondment to client:

Depending on the contract:

#### **Basis of Service Agreement:**

- the Contractor is liable for the success of services
- no integration of staff members in Customers's operation
- works are performed mainly with material and tools of the Contractor
- product/service of the Contractor is different from that of the Customer
- the Contractor bears the economic risks of the contract
- the Contractor exercises administrative and technical supervision of the employed labour

#### **Basis of Employee Secondment:**

- no work is performed that differs from the products/services of the Customer and is attributable to the Contractor
- works are not performed mainly with material and tools of the Contractor
- the Contractor is not liable for the success of services or the Customer bears the economic risks
- → different tax consequences!



## Employee Secondment SK – AT for construction works:

Employee Secondment		Service Agreement	
Foundation of a permanent establishment under double taxation agreement (corporate tax)		Foundation of a permanent establishment under double taxation agreement (corporate tax)	
Attendance < 12 months	Attendance > 12 months	Attendance < 12 months	Attendance > 12 months
NO	NO	NO	YES
Income Tax Liability Staff		Income Tax Liability Staff	
Attendance < 183 days in calendar year	Attendance > 183 days in calendar year	Attendance < 183 days in calendar year	Attendance > 183 days in calendar year
usually YES, as the Employer is economic employer	YES	NO	YES
Customer's Liability according to §82a Income Tax Act and 67a General Social Security Act		Customer's Liability according to §82a Income Tax Act and 67a General Social Security Act	
Retention of 25% by the Customer unless company is included in the HFU-List (List of Indemnifying liability company)		Retention of 25% by the Customer unless company is included in the HFU-List (List of Indemnifying liability company)	
Tax deduction according to §99 Income Tax Act		Tax deduction according to §99 Income Tax Act	
Tax deduction of 20% unless certificate of exemption of the Tax Office Bruck/Eisenstadt/Oberwart is provided		No tax deduction	

# Contacts



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# Questions & Feedback



