

2nd Edition
May 2016

People & Organisation Latest news



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Editorial

HRS becomes P&O

Why People & Organisation?

Our new name recognises workers as people. It highlights our place in aligning the needs of people and the organisations who employ them.

At PwC we build tailored people and organisation solutions to help you as our clients achieve your strategic ambitions - reflecting your uniqueness but also grounded in rigorous analysis and data-driven insight - to create lasting, differentiated value.

We help you to implement organisational transformation, improve the performance of your workforce, develop and move talent around your business, and manage your human capital risks.

We bring together an unmatched combination of industry, business, strategy, talent, HR, analytics and technology expertise with more than 10,000 people in 138 countries.

That means you get the right team with the right skills and experience wherever you need us round the world to help you deliver the value you're looking for – **from people strategy through to organisational execution.**

Our team is happy to assist you



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Latest news

Summertime is internship time - a few important points

Many students use their holidays to obtain work experience and/or to supplement their pocket money; they apply as an "intern". It must definitely be appreciated when employers offer such an opportunity. However, as the employer several labour-law and tax-law issues have to be dealt with.

To answer the questions that are important in practice, such as, e.g.

- How much does an intern get paid?
- Is registration with a social security institution required for interns? If so, what has to be done?
- Is an intern entitled to a 13th and 14th salary and annual leave?
- Do I have to pay the intern also in the case he/she becomes ill?

It will have to be clarified in a first step whether the person is to be considered a **genuine summer intern** (unpaid or receiving pocket money) or a **summer employee**.

Genuine summer intern means

- a student of a secondary school, college, academy or university,
- who in the course of his/her ongoing studies
- renders prescribed practical work (compulsory internship according to the curriculum),
- with the focus being on learning and training.

Summer interns

- may be in the office/plant,
- but are under no obligation to carry out work,
- no integration into or subordination within the organisation,
- the main purpose is practical implementation of the subjects taught and the intern must also be given a job that is in line with the study programme;

Summer interns may be employed for no remuneration or may be paid pocket money.

"**Non-genuine summer interns**", also referred to as **summer employees**, are usually students who are integrated into the organisation in personal dependence with respect to workplace, working time and job-related behaviour. Often their job is to help out or assist during the holiday period.

But even for students doing a compulsory internship you will have to check on the basis of the actual circumstances whether the contractual relationship must be classified as an internship or as an employment contract.

Summer employees must be treated in the same way as "normal employees".

Social security and contributions to the severance pay and pension fund

Both genuine summer interns receiving pocket money and summer employees must be registered with the regional health insurance fund (A1, D1); unpaid summer interns will not be registered; they are covered by the student accident insurance. In the opinion of the regional health insurance funds summer interns receiving pocket money are also subject to severance pay and pension provision, a legal view which is, however, seen very critically by legal practitioners (as there is no employment contract).

Payroll tax and related costs

Both genuine summer interns getting pocket money and summer employees are, in principle, subject to payroll tax; the employer has to pay the usual employer taxes (employer contribution, surcharge on the employer contribution, municipal tax).

Labour & employment law

The main difference between genuine and non-genuine interns concerns applicability of labour-law provisions:

Genuine interns (whether they receive pocket money or not) are not subject to the collective bargaining agreement or other labour laws, whereas summer employees are.

Getting back to the **initial questions**:

For summer interns the amount of pocket money may be fixed freely (NB. Some collective bargaining agreements provide for a minimum amount) whereas the summer employee is classified according to his/her job in accordance with the collective bargaining agreement, he/she is entitled to continued payment of remuneration in case of illness and to pro-rata annual leave, to which genuine summer interns are not entitled.

Some additional information on that subject

Protection of children and young persons

- Usually children below 15 years of age must not be employed.
- Until the 18th birthday protective legislation applies, e.g. on working times, breaks, rest periods, night's rest, prohibition of work on Sundays and public holidays (with exceptions, e.g. for the catering and hotel industry).

Earning limits for family allowance

- No limit until the age of 19
- Thereafter, EUR 10,000 per year

If you have any questions regarding the above issues or if you need further information, in particular about interns from abroad or special provisions in specific collective bargaining agreements please do not hesitate to contact the P&O Team.



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Deduction of input tax for overnight allowances from 1 May 2016 - Have you updated your travel expenses systems yet?

If employees stay overnight at the place of deployment in connection with a business trip, a tax-free amount of EUR 15 may be claimed as overnight allowance in the travel expenses, with no evidence of the actual costs incurred being required. This flat rate covers accommodation and breakfast.

Input tax of 10% was previously deducted from the flat rate overnight allowance. Usually this calculation method is the default method in travel expenses systems for vouchers.

From 1 May 2016 accommodation services will be subject to 13% VAT whereas breakfast is still subject to 10%. The Amendment Decree [*Wartungserlass*] 2015 to the Value Added Tax Guidelines [*Umsatzsteuerrichtlinien/USTR*] clarifies how input tax must be calculated then:¹

For calculation purposes it is assumed that 80% of the amount of EUR 15 accounts for accommodation and 20% accounts for breakfast. Accordingly, from 1 May 2016 the overnight allowance of EUR 15 contains EUR 1.65 of input tax:

Accommodation	$\text{EUR } 15.00 * 80\% / 1.13 * 13\%$	= EUR 1.38
Breakfast	$\text{EUR } 15.00 * 10\% / 1.10 * 10\%$	= EUR 0.27
Total input tax	EUR 1.38 + EUR 0.27	= EUR 1.65

Tip: Has your travel expenses system already been updated according to the new regulation?



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¹ Para 1369 *USTR*, Decree of the Federal Ministry of Finance [*BMF*] dated 4 November 2015, BMF-010219/0414-VI/4/2015, BMF-AV No. 170/2015

Meals at the workplace - Federal Finance Court [BFG] overturns the finance administration's restrictive interpretation

In the Amendment Decree 2015 to the Payroll Tax Guidelines [*Lohnsteuerrichtlinien/LStR*] the finance administration tightened the requirements for tax-exempt meals at the workplace for no obvious reasons.² Price-reduced or free meals for employees should only be granted on the business premises. The Federal Finance Court³ ruled against this restrictive new interpretation.

According to the Federal Finance Court the term "at the workplace" in Section 3(1) No. 17 *EStG* not only means the building as such but also the close surroundings of the place where the employees work on behalf of the employer. That means that tax exemption may continue to be applied also to a canteen situated in close proximity of the business premises, a works canteen operated by an external service provider or an agreement concluded between the employer and a nearby restaurant on meals for the employees.

The finance administration has lodged an official appeal [*Amtsrevision*] against this decision with the Austrian Supreme Administrative Court [*Verwaltungsgerichtshof/VwGH*].



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² Para 93 *LStR* as amended before 11 December 2015 re Section 3(1) No. 17 of the Austrian Personal Income Tax Act [*Einkommensteuergesetz/EStG*].

³ BFG of 18 February 2016, RV/3100522/2012

Labour law - always important

Registration duties and keeping available payroll records in the case of cross-border posting of staff:

What needs to be observed by you as the recipient of the service or employer in the case of secondments or assignments of staff to Austria.

We have already provided detailed information on that topic - [Newsletter - Official Wage Control](#). Due to intensified controls by the finance police in the past few months we are taking up this issue again and are summarising a few important points for you:

For staff who are temporarily seconded or assigned to Austria from another EU/EEA country or Switzerland a so-called Registration with the CCU is required. CCU is short for "Central Coordination Unit of the Federal Ministry of Finance for the Control of illegal employment".

In the case of "genuine" (business) secondments ("active service") a "CCU3" Registration is required, for non-genuine secondments ("assignment of staff") a "CCU4" Registration. "Genuine" **secondment** means that the staff temporarily works in Austria to fulfil a contract for work or services of his/her foreign employer under a project.

It is irrelevant to the registration duty whether it is a secondment within a group of companies or to a third party. If the staff is integrated in the business in Austria and is subject to instructions from the Austrian organisation or if the result of his/her services is only for the benefit of the Austrian business, this constitutes an **assignment of staff**.

Depending on whether there is a genuine secondment or assignment from abroad, different duties in connection with the CCU Registration, the "A1 Form" and the keeping available of payroll records apply.

→ Registration duty of the foreign employer

For all persons seconded/assigned from an EU/EEA country or Switzerland who are in validly existing employment relationships the foreign employer must file a CCU Registration. Exemptions apply, in particular, to brief business meetings and attendance at trainings or seminars.

Please note: The so-called "assembly privilege" is irrelevant in connection with this registration duty.

The registration must, in principle, be submitted online via a web form not later than **one week prior to commencement of work**. Both non-registration and late registration will be sanctioned.

→ Duty of the foreign employer to keep available payroll records

In the case of a genuine secondment exclusively the foreign employer or an agent appointed by it, if any, who exercises the employer's right to give instructions to the seconded staff is obliged to keep available payroll records, the CCU Registration and the so-called A1 Form.

In this connection **payroll records** means:

employment contract, short-form employment contract, payslip, bank transfer voucher, working time records and evidence of classification/remuneration.

The payroll records must be kept available in German language for the total period of secondment or assignment.

As the recipient of the service, i.e. in the case of a genuine secondment, you are not obliged by law to keep available the payroll records, the CCU Registration or the A1 Form at the workplace or place of deployment.

→ Duty of the Austrian employer to keep available payroll records

As the employer, i.e. in the case of an assignment of staff, you are, however, obliged by law to keep available a copy of the CCU Registration, the so-called A1 Form and the payroll records at the place of assignment.

A1 Forms - intensified controls regarding foreign labour

The A1 Form serves as evidence of the EU/EEA Member State where the staff is insured under a statutory social security system during his/her temporary work abroad.

For persons who work in Austria for job-related reasons (e.g. due to a secondment, assignment of staff or simply a business trip) but are insured in a state other than Austria the form must be available for presentation in the case of an inspection by the Austrian authorities. According to the EU law provisions as amended the A1 Form must be applied for in the competent Member State prior to commencement of work abroad and must be available from the first day of work. That means that if staff travel, for example, from Germany to Austria for one day to attend or hold a meeting, an A1 Form must be issued for that day already.

Our experience has shown that due to the administrative workload the (free) A1 Form is not always applied for before every work abroad.

However, due to recent events please be advised that the finance police has carried out more (spontaneous) controls in the past few months where in particular the A1 Form of the foreign staff working in Austria was checked and fines were imposed in the case that it was not available.

Sanctions

In the case of violations of the said duties regarding registration and keeping available of records the public authorities are entitled to impose administrative fines of between EUR 500 and EUR 5,000 for any staff concerned. Repeat offences may be sanctioned by amounts of EUR 1,000 to EUR 10,000 per staff.

The new Austrian Act to Combat Wage Dumping and Social Dumping [LSDBG]

We would like to inform you that the Austrian Parliament adopted the Act to Combat Wage Dumping and Social Dumping on 18 May 2016. We will keep you informed about future developments.

**Do you have any other questions?
Do you need help with this delicate subject?**

Please contact your client service agent or the Labour Law / Immigration Team of PwC Austria:



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Secondment to the Austrian branch - has your staff packed the CCU Registration?

An employer whose registered office is in another EU or EEA Member State second staff to the Austrian branch. So far the public authorities' opinions as to whether in that circumstance a CCU Registration is required or not differed.

By means of its ruling of December 2015 (*VwGH* 14.12.2015, Ra 2015/11/0083) the Austrian Supreme Administrative Court has now clarified this point. In the case mentioned above the secondment requires registration and the relevant provisions on minimum wages must be observed as well.

The reason given for the ruling is the comprehensive definition of secondment as defined in Directive 96/71/EC. "Secondment" is already assumed if an undertaking established in a Member State second staff to a branch or entity belonging to the group of companies in the territory of a Member State, provided that an employment relationship between the seconding entity and the staff exists for the term of secondment.

No secondment is assumed if the staff has his/her usual workplace in Austria and the work in Austria is not merely of a temporary nature.



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(No) work permits for third-country nationals assigned from an EU Member State

Recently the Austrian Supreme Administrative Court [*VwGH*] had to deal with the question of whether for an assignment of Croatian and Bosnian workers from a **Slovenian undertaking to an Austrian undertaking** for work on a construction site for a short period a work permit is required (Ra 2015/09/0006).

The Supreme Administrative Court arrived at the conclusion that the Austrian regulations, under which a work permit or other permits or certificates with constitutive effect is required for employing assigned third-country nationals, are in conflict with Community law and must therefore not be applied.

Accordingly, a few comments in academic writing referred to a general "exemption" from the duty to obtain work permits in the case of assignments/secondments between EU countries.

In our opinion, however, the underlying ruling of the Supreme Administrative Court **cannot** be applied to all assignments of third-country nationals from other EU countries **without restriction and in a generalised manner**.

Moreover, the ECJ decision underlying the *VwGH* ruling is **interpreted more restrictively in practice (e.g. by the AMS [Public Employment Service] in Vienna)**

In our opinion the following criteria were decisive for the *VwGH* ruling (with reference to the ECJ ruling *Essent Energie Productie C-91/13*):

- Assignment of staff between two undertakings established in two different Member States within the principle of freedom to provide services as laid down in Art 56 and 57 TFEU
- Assignment for a very short period (in the cited case before the *VwGH* it was only 11 days or 17 days)
- No obvious intention of the staff to integrate themselves into the labour market of the host Member State
- Lawful residence and lawful work in the home country (in the case at hand this fact is yet to be ascertained by the administrative court in the course of the proceedings to be continued)
- The principal activity is carried out in the home country and not in the host Member State

In our opinion the general assumption based on the said ruling that for "secondments or assignments of third-country nationals within the EU or EEA no AMS documents are required" (as stated by some authors in academic writing) **is therefore wrong**. Rather this will remain an **isolated decision** also in future, which is why it will always have to be checked whether the above criteria are met and whether the facts and circumstances are thus comparable to the case cited above or to the ECJ ruling used by the Supreme Administrative Court.



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Good to know...

Employees are not always entitled to continued payment of remuneration in the case of sick leave

If employees are unable to work due to illness or accident, they are entitled to continued payment of remuneration by the employer. Always? Not always; in the following cases employees are not entitled to continued payment of remuneration or the employer may claim reimbursement of the same from third parties:

Illness or accident caused by wilful intent or gross negligence

Employees are only entitled to continued payment of remuneration if they have not caused the illness or accident themselves by wilful intent or gross negligence.⁴ However, engaging in sports involving a high risk of injury, such as football or motorcycle races, constitutes no grossly negligent behaviour as such. Only in the case of a conspicuous and extraordinary breach of the duty to exercise due care by the employee that leads to the injury, such as, e.g. if the employee goes skiing completely drunk, this will lead to a loss of the entitlement to continued payment of remuneration. If sick leave is caused, e.g., by a cosmetic surgery which was not medically necessary, it will be considered caused by wilful intent. The employer bears the burden of proof. In unclear circumstances sick pay should be paid expressly reserving the right to claim refund.

Falling ill before commencement of work on the first working day

If an employee falls ill after conclusion of the employment contract but before commencement of work on the first working day, the employer is not obliged to continue payment of remuneration.⁵

Illness but no inability to work

The question of what illness hinders the employee from rendering his/her services depends on the type of work⁶. An opera singer with a slightly sore throat will be unable to work but a bookkeeper will not. It depends on whether the employee is able to do the work he/she actually owes under the employment relationship and whether such work would cause a deterioration of the condition. Since the exact diagnosis is subject to the physician's professional duty to maintain secrecy, it is often difficult for the employer to prove his case. In the case of well-founded doubts about the inability to work the employer may ask for a special check by the health insurance carrier but has no legal claim thereto.⁷

Undue delay in presenting the sick report

The employee must inform the employer without undue delay and without request about the fact that he/she is temporarily unable to work; otherwise he/she will lose his/her entitlement to continued payment of remuneration for the period of the delay. Without undue delay means as soon as the employee is able to inform the employer in whatever form by phone, email, text message, through relatives, etc.

No medical certificate despite request

If the employee fails to hand in a medical certificate within a reasonable period of time although he/she was asked by the employer to do so, he/she will lose his/her entitlement

⁴ Section 8(1) Austrian Employees Act [*Angestelltengesetz/AngG*], Section 2(1) Austrian Act on Continued Payment of Remuneration [*Entgeltfortzahlungsgesetz/EFZG*]

⁵ Austrian Supreme Court [*OGH*] 21 January 1999, 8 Ob A 4/99t

⁶ *OGH* 26 August 2014, 9ObA64/14y

⁷ Regional Health Insurance Fund of Upper Austria [*OÖ GKK*], Employer Information No. 152/2001, March 2001

to continued payment of remuneration for the period of the delay. The employer must ask for presentation of the medical certificate in each case. A general provision on the duty to present a certificate laid down in the employment contract or in a plant agreement alone is not sufficient.⁸

Behaviour delaying recovery

The employee must observe the instructions given by the physician. In the absence of medical instructions he/she must not behave in a way that will delay his/her recovery according to general experience. Behaviour that delays recovery during sick leave leads to a loss of the entitlement to continued payment of remuneration and may also constitute a cause for summary dismissal.

Continued payment of remuneration and claim for reimbursement by third parties

If an employee's inability to work has been caused by a third party, e.g. by a manufacturer through a production defect⁹, a driver by a traffic accident caused by culpable conduct, a terror of the slopes, a violent criminal and the like, the employer will have a claim vis-à-vis that third party to reimbursement of the continued remuneration paid and the employer's share of contributions to social security¹⁰. However, reimbursement of the employer contribution, surcharge on the employer contribution and municipal tax may not be claimed.¹¹ An action may also be brought against the third party and his/her third-party liability insurer jointly.



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⁸ OGH 15 June 1988, 9ObA122/88

⁹ OGH 17 February 2005, 8Ob118/04t

¹⁰ OGH 24 March 1994, 2Ob21/94

¹¹ OGH 8 February 1996, 2Ob8/96; OGH 25 November 1997, 1Ob212/97a

Outlook & Miscellaneous

NEW provisions for staff system (the next balance sheet date will be soon)

Our next P&O Newsletter will provide you with information about the changed valuation provisions applicable to balance sheet dates from 31 December 2015 (based on the AFRAC Opinion of June 2015).

However, we would like to let you know already at this point that PwC also offer actuarial calculation of your provisions for staff. We would be pleased to inform you about our range of services and our fees in this field.



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Event tip - June 2016 People & Organisation Network Breakfast in Linz and Vienna

Brief updates on current subjects

We are pleased to invite you to our People & Organisation Network Breakfast in Linz and Vienna.

In addition to the usual brief updates on current subjects there will be an interesting workshop for all attendees.

We would be happy to welcome you there.

Programme

8 - 8:30 a.m.
Check-in and breakfast

8:30 - 9:30 a.m.
Brief presentations

- ***"Human Resources Service" is going to become "People & Organisation"***
- ***Austrian Statute Amending Labour and Employment Law***
[Arbeitsrechts-Änderungsgesetz]
New all-in contracts, new non-competition clause. We will summarise the changes for you in a comprehensible and practice-oriented manner.
- ***Round the world experience report on the subject of housing***
Which is better: making cash payments to staff or providing housing? Does the law allow employers to treat housing as part of the minimum remuneration under the aspect of wage dumping and social dumping? Make use of the tax reliefs available in Austria and abroad.

9:30 - 10:00 a.m.

Workshop

Together we will work on presentation and taxation of typical assignment benefits (COLA, housing, company car) in the (split) payroll.

10:00 a.m.
Conclusion

For more detailed information and registration please see the following link:
P&O Network Breakfast in Linz & Vienna

Linde Campus: Seminar tip - Recent developments and changes in payroll accounting

A labour law, social security law and payroll tax law update in only one day

Several dates in 2016 - 2017 between Bregenz and Vienna

Main topics

- New provisions on wage dumping and social dumping from 1 January 2017
- Childcare allowance - the new account model
- News from (inter)national payroll accounting
- Recent court decisions (labour and employment law, contribution law and tax law)
- **YOUR BONUS:** As an attendee you will also receive the updated papers as amended in February 2017 after the seminar series.

For more detailed information and registration please see the following link:

Linde Campus

Our TaxInformation 2016 for you

Our knowledge for planning your secondments

TaxInformation 2016

Does your undertaking regularly second staff to other countries or employ foreign staff in Austria?

FAQ in this context are:

- What are the countries with which Double Taxation Treaties (DTT) exist?
- How are the 183 days counted in accordance with the different DTTs?
- What method is to be used: the tax credit method or the exemption method?
- What is the period for establishing a construction/assembly plant?
- What are the countries with which a social security convention or agreement exists?

In addition, the foreign staff will ask you:

- How much tax do I pay in Austria?
- What can I deduct from tax?
- What is the amount of my social security contributions?
- What is the amount of my family allowance in Austria?

For you to be well-prepared for those questions we have compiled the most important facts for you in our "TaxInformation Austria 2016" brochure. For the brochure please follow the link: *TaxInformation 2016*

If you have any questions on secondments, we will be happy to help you. Please contact us by phone or email.

We are here to help.

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Editorial board

Do you have any questions, remarks or comments on the newsletter? Our contact on the editorial board will be happy to assist you.

We look forward to your feedback.

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