

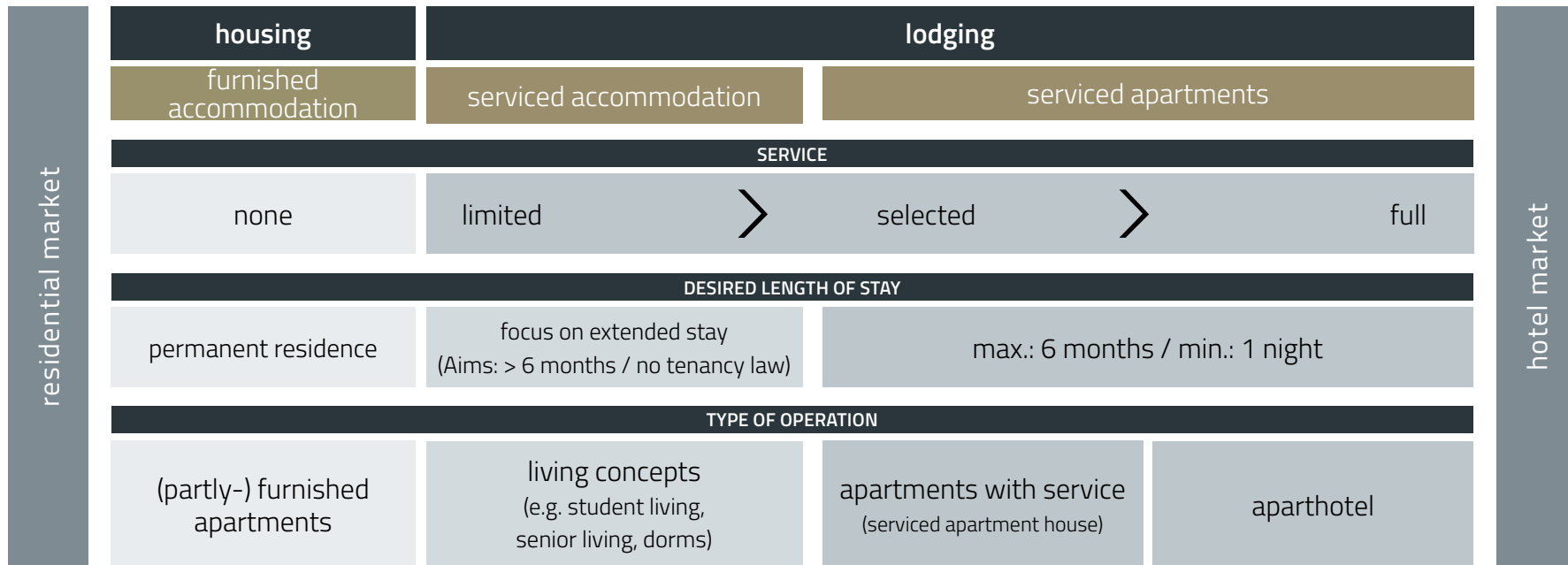
Temporary Housing Charta

(Austria)

Temporary Housing Charta

Terminology

(Austria)



Note: Please take into consideration that there is no consistent version of all Austrian states regarding building laws, building regulations and regional planning.

The demarcation between residential use and lodging cannot be displayed schematically as the allocation is done by authorities on a case-by-case basis as part of a review of numerous factors such as zoning, size, equipment, presence of community / general areas, average length of stay / rental period, type and scope of services and the statutory requirements of the states. The graphic above is therefore limited to a general allocation briefly presenting the direction and meaning of single demarcation criteria.

The charta is provided on an „as is“ basis without warranty to the correctness or completeness of its content.

Nothing in this publication constitutes legal advice. Please note that you cannot draw conclusions from this presentation for individual issues. The request of legal, tax and business advice for each individual case is indispensable.

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
 © Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019

Temporary Housing Charta
Demarcation between housing and lodging
 (Austria)

	housing	lodging	
	furnished accommodation	serviced accommodation	serviced apartments
PARAMETER	SERVICE		
legal basis	tenancy law, civil code, consumer protection act, dedication	civil code*, trade order**; consumer protection act, dedication	civil code, trade order, consumer protection act, zoning/land use
	MAXIMAL LENGTH OF STAY		
periods	unlimited or limited [°]	depending on the concept. But, commonly longer than 6 months and limited ^{° °}	max. 6 months
	TYPE OF OPERATION		
Operation mode	wealth management / asset management	lodging establishment	
type of contract owner - operator	lease, rental agreement, management contract	lease, rental agreement, management contract, servicing agreement	
type of contract with final user	tenancy agreement	hosting agreement or contract of utilization	hosting agreement

* if the exceptional circumstances of § 1 Abs 2 Z 1 tenancy law (dt. MRG) are fulfilled and the applicability of the tenancy law (dt. MRG) is excluded
 ** if the prerequisites for their application are fulfilled; if applicable for student living or senior living concepts: student dormitory laws, residential and nursing dormitory laws and/or regulations of the states
 ° if temporary: to be concluded for at least 3 years; or indefinitely as main residence, less than 6 months as secondary residence
 °° to avoid the applicability of the tenancy law (dt. MRG) max 6 months

The charta is provided on an „as is“ basis without warranty to the correctness or completeness of its content.

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
 © Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019



Demarcation between housing and lodging

(Austria)

housing	lodging	
furnished accommodation	serviced accommodation	serviced apartments
REPORTING OBLIGATION		
<p>Applies to any relocation, both primary and secondary residence. Registration within three days after moving into the apartment. The registration is carried out personally at the local authority / municipal authorities.</p>	<p>The arrival of a guest at an accommodation (check-in) must be reported. The registration is carried out through the entry in the so-called guest directory in the lodging establishment. °</p>	
CITY TAX (LODGING ESTABLISHMENT)		
<ul style="list-style-type: none">▪ Regulated in the relevant tourism or municipal tax laws.▪ Collected from all external guest (not local), viz. everyone without a primary or permanent residence respectively providing accommodation gainst payment, commercial or private.▪ Settlement and collection normally by the host: owner, lessor or lodging operator.▪ The tourism levy or visitor tax is charged per person and night and varies depending on the individual states / municipalities.▪ The application of such levies is affiliated with the guest check-in (registration in the guest directory).		

° Owners of accommodation establishments must keep a guest directory as defined in § 19 of the Registration Act Implementing Ordinance; each guest must be registered by entry in the guest directory within 24 hours of arrival at the latest and deregistered on departure; guests who have been staying in the accommodation establishment for more than two months must also register with the registration authority using a registration form.

The charta is provided on an „as is“ basis without warranty to the correctness or completeness of its content.

Definitions of temporary living concepts

(Austria)

Furnished Accommodation is the generic term for units that are only partially furnished and do not offer any services. An apartment is a closed structurally part of a building that serves people for accommodation and housekeeping. Designed for permanent residence.

Serviced Accommodation are furnished apartments with a lower service level, significantly designed for an average extend-stay length of stay. Living concepts such as Student Living, Senior Living, and Dorms (Attention: separate statutory provisions must be observed).

Serviced Apartments is the generic term for commercial units in the form of **apartments with service** (serviced apartment house) or **aparthotels**. Serviced apartments or aparthotels are furnished units that always have cooking facilities. The equipment of the units is designed for longer stays. Relating thereto are typical hotel services, whereby the service level varies according to the concept.

Serviced apartment house offers a limited serviced range compared to aparthotels. Self-sufficiency of guest is paramount.

Aparthotels usually offer a 24/7 reception service plus hotel typical services like gastronomy, conference facilities, fitness and wellness.

Temporary Housing Charta
Trade legal assignment
 (Austria)

typical equipment indications, whereby decisive is the overall appearance			
	housing	lodging	
un-serviced rooms	☆ independent management possible	services supplied by the operator / external	
wine cellar	cleaning detergents provided/final cleaning	☆	daily to weekly room cleaning / laundry
fitness area solely for residents	kitchen / cooking facility	cooking facility	
	washing machine / dryer	laundry / service areas	
common area	individual management of households	one main operator / management	
	time limited reception / concierge	from time limited reception/concierge to 24/7 reception	
	property management typical services	☆	breakfast / breakfast buffet
Conversion of old building or new construction: min. size 30 m ² (WrBO: Vienna building regulations)		„minimum size regulations“ [°]	
		wellness area / fitness (both internal and external users)	
	monthly billing	daily, weekly and monthly billing	
☆	permanent residence instead of preliminary home	☆	operating permit

Note: This graphic describes which criteria is commonly used for evaluating the allocation to housing or lodging and provides only a very rough indication of categorisation.

[°] Wiener Mindestausstattungsverordnung 1996 (Vienna Minimum Equipment Ordinance); appropriate regulations of states to be taken into account.

☆ describes the most noticeable and significant key distinctions (indicators).

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
 © Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019

Construction law and building regulations

(Austria)

■ **State Legislation:** In Austria there are nine different building codes as they are amenable to state legislation.

■ **Spatial planning:** City/Spatial planning consists of different planning legislations, regional planning acts and [supra-]regional development concepts. Local planning is located within the scope of responsibility of municipality. The surface dedication plan and the development plan may be consulted online or personally the local authority. Zoning itself is similar in part, but yet completely different.

The statues on land use contain partially authorisations granted to municipalities to determine purpose-used specifications eg. in the course of the zoning/building plan [like residential zones in Vienna, largescale projects zones, shopping streets] or to restrict uses. So called „special allocations“ can also be found in the planning legislation: a regional planning specific licence is possible, in general there is no legal claim on an exemption clause.

■ **Austrian Institute for Construction Technology (OIB) Directive:** Building regulations have been amended in most states in order to provide a harmonisation of technical regulations. Technical regulations are based on the OIB-Guidelines 1 to 6. Austrian states have declared OIB Guidelines as mandatory, single clauses of the relevant provisions may diverge from the OIB Guidelines.

■ **Land register:** If applicable, dedications appearing in the land register are not relevant/binding.

Note: This presentation serves as orientation without warranty to the correctness or completeness of its content.

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
© Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019

Temporary Housing Charta

Tax classification

(Austria)

■ **Value added tax:** In both categories (residential / lodging) sales are subject to VAT. Accommodation always 10%, necessary services 20%, separately settled furniture rent 20%.

■ **Profit tax:** The profits of limited companies are subject to corporation tax regardless of the type of letting. In the case of natural persons, a distinction is made between income from letting and leasing and income from commercial letting, whereby commercial letting can always be assumed for operator-oriented concepts.

For the management of only a few units there are various examples in the income tax guidelines.

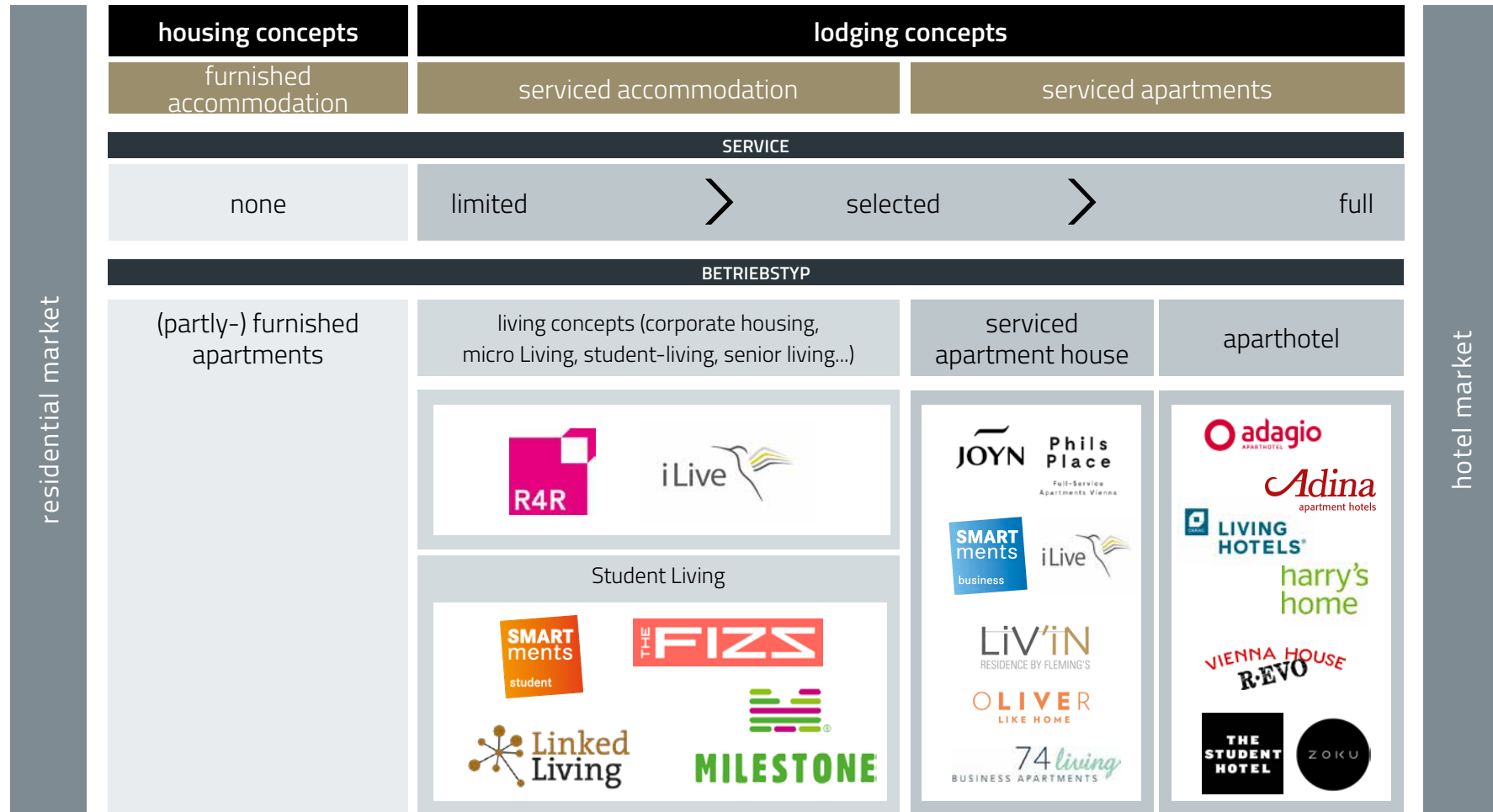
Only income from commercial letting is subject to social insurance and losses can be carried forward.

■ **Commercial Housing:** Is a term from Germany that is not used in Austria. The legal tenets in the VAT Act only differentiate between housing and lodging and in the profit tax law between operation and use of assets. In the case of mixed use (mixed forms), each individual letting must always be assigned to one category for tax purposes (whereby different activities can also take place in one building).

Note: This presentation serves as orientation without warranty to the correctness or completeness of its content. The tax classification depends on the actual operating and management concepts.

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
© Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019

Temporary Housing Charta
 Exemplary assignment of trademarks
 (Austria)



Note: This presentation serves as orientation without warranty to the correctness or completeness of its content. It is limited to a generalization of the direction of action and significance of individual demarcation functions

The temporary housing charta was developed in cooperation with various legal experts, some apartment brands operating in Austria and members of the expert group serviced apartments as well as members of the regional group Austria of the „Arbeitskreis Hotelimmobilien“, under direction of Julie Lenz, ZLC Solutions.
 © Creator of the charta and the hotel real estate working group („Arbeitskreis Hotelimmobilien“), print date: May 08th 2019

Temporary Housing Charta

Serviced Apartments

(Austria)

The temporary housing charta for Austria has been developed in cooperation with leading companies in their industries as well as the Austrian members of the hotel real estate working group („Arbeitskreis Hotelimmobilien“) under the direction of Julie Lenz, deputy head of the expert group serviced apartments.

■ **The members of the expert group serviced apartments and the regional group Austria are:**

Julie-Christine Lenz, MBA, ZLC Solutions
Roman Kopacek, Michaeler & Partner
Christian Walter, PKF hotelexperts
Simone Kittinger, Harry's Home Hotels
Kristin Oberweger, PhilsPlace
Roland Paar, Soravia / SoReal
Karl-Heinz Daurer, GBI-Projektentwicklung

■ **Involved in the development as external experts::**

Dr. Erik Steger LL.M., MRICS, WOLF THEISS
Dr. Johannes Aehrenthal, LL.M., CHSH Rechtsanwälte
Mag. Mark Krenn, CHSH Rechtsanwälte
Dr. Robert Weik, Weik Rechtsanwälte
Mag. Julia Lechner, Weik Rechtsanwälte
Mag. Hans Minarik, TPA Steuerberatung
Peter Fischer, PwC Österreich

Temporary Housing Charta

(Austria)

In case of queries please contact:

Deputy head of the expert group serviced apartments of the „Arbeitskreis Hotelimmobilien“
Julie-Christine Lenz, MBA
ZLC Solutions
Tel. +43 (0)664 123 7393, j.lenz@zlc.at

or

Head of the regional group Austria of the „Arbeitskreis Hotelimmobilien“

Roman Kopacek
Michaeler & Partner

Tel. +43 (0)664 966 7134, roman.kopacek@michaeler-partner.com

Christian Walter
PKF hotelexperts

Tel. +43 (0)664 609 69105, christian.walter@pkfhotels.com