

Austria

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1. Types of tax

1.1 Inheritance and gift tax

The Austrian Constitutional Court abolished the basic provisions of the inheritance tax on 31 July 2008.

Gift Registration Act

Austria introduced the Gift Registration Act (*Schenkungsmitteilgesetz*), applicable as of 1 August 2008. The Gift Registration Act introduced a new information system for gifts. This information system is, in general, an instrument to monitor asset transfers without taxing those transfers.

General

The Gift Registration Act requires notifying certain transfers of assets arising from gifts, where one of the parties is a resident in Austria. The gift registration requirement (by filing form) applies for securities, cash, shares in companies, and tangible and intangible assets transferred as of 1 August 2008.



1.2 Real estate transfer tax

A real estate transfer tax (RETT) is levied on real estate assets and the transfer of property to the successor. The non-paid transfer of real estate (by gift or heritage) is subject to a real estate transfer tax of 0.5% for the initial €250,000, 2% for the next €150,000 and 3.5% for all subsequent amounts. Since 1 January 2016, the RETT on real estate transfers between close relatives without consideration is based on the assessed value of the real estate.

Two simplified methods for the assessment of the respective value are applicable. Both methods should deliver a tax base lower than the actual fair market value of the property. However, in any case an assessment of the fair market value through expert opinion is available and will be accepted instead of the value derived from the (less favorable) simplified methods.

Additionally, an intabulation fee of 1.1% of the fair market value (FMV) of the property applies. However, for real estate transfers to related parties, three times the assessed value or a maximum of 30% of the FMV is the basis of the fee.

1.3 Endowment tax

Austrian inheritance and gift taxes were abolished as of 1 August 2008. However, a new endowment tax was introduced, which can apply for donations to trusts and foundations.

1.4 Transfer duty

There is no transfer duty in Austria.

1.5 Net wealth tax

There is no net wealth tax in Austria.

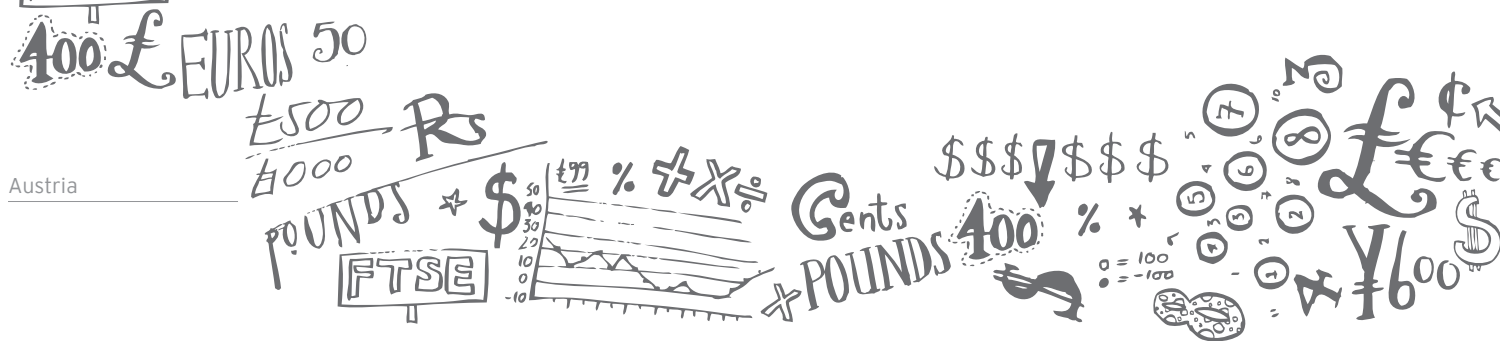
2. Who is liable?

2.1 Residency and domicile

Individuals are considered ordinary residents in Austria if:

- They live in Austria for more than six months during the year (habitual place of abode).
- Or
- They have a residence available in Austria.

The Austrian authorities consider residence to be “accommodations” available to the individual that the individual actually uses. The use of the accommodation does not need to be uninterrupted, although it is understood that it is sufficient to use it for a number of weeks in a year.



As it is only necessary to meet one of the aforementioned requirements, it is possible under Austrian domestic law to be an Austrian resident by having a residence available for use despite Austria being the principal place of residence (i.e., by spending less than six months in Austria).

3. Rates

4. Exemptions and reliefs

- ▶ Transfers between close relatives up to an FMV of €50,000 per year are exempt. Relatives include spouses, children, parents, grandparents, sisters, brothers, cousins and also common-law partners. Where a person receives several gifts within a year, the aggregate value is used in determining whether the threshold has been exceeded. All gift transactions within that year have to be registered (by filing a form).
- ▶ For transfers between non-relatives, the threshold is €15,000 for transfers within five years.
- ▶ The exemption limit for everyday gifts is up to €1,000 per asset.

5. Filing procedures



However, the reduced tax rate of 2.5% is only granted on transfers if all required documents (foundation constitution) are filed with tax authorities at the time when the endowment tax becomes due. Otherwise, it is not the reduced rate but the general rate of 25% that applies. For the endowment of Austrian real estate, a real estate transfer tax of 3.5% of the assessed value of the real estate applies. Additionally, there is an endowment tax of 2.5% of the same tax base. In addition, an intabulation fee of 1.1% of the FMV applies. The endowment of foreign real estate is no longer subject to Austrian endowment tax.

International trusts

Donations to non-transparent international trusts, foundations and comparable legal estates by Austrian residents might be subject to endowment tax at either the reduced rate of 2.5% or at the general rate of 25%.

The reduced rate of 2.5% applies on endowments to international trusts and other legal estates, provided they are comparable to Austrian private foundations. The comparability test is crucial and mainly refers to certain characteristics of the Austrian private foundations regime. Otherwise, the general rate of 25% applies. This is also true for non-paid transfers of assets to a trust that is established in countries with which Austria has no agreement on full legal and administrative cooperation.

An Austrian endowment tax would not arise on an endowment to a trust if the trust is transparent for Austrian tax purposes. If the trust is transparent, there is no transfer for tax purposes, as the assets continue to be attributable to the founder.

Whether a trust is transparent for Austrian tax purposes depends on a number of criteria.

8. Grants

This is not applicable in Austria.

9. Life insurance

This is not applicable in Austria.

10. Civil law on succession

This is not applicable in Austria.

10.1 Estate planning

This is not applicable in Austria.

10.2 Succession

This is not applicable in Austria.

10.3 Forced heirship

In Austria, spouses and children have automatic inheritance rights regardless of the provisions in a will. A child, grandchild or spouse has the right to receive half of the share of the deceased person's estate that he or she would have received in the case of an intestate succession (see Section 10.5). These persons who are entitled to an obligatory share in the estate will have a monetary claim against the testamentary heirs, if such provision has not been made for them.



