

# Austria

## Contacts

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## 1. Types of tax

### 1.1 Inheritance and gift tax

The Austrian Supreme Court of Constitution 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, but 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 EUR 250.000, 2% for the next EUR 150.000 and 3.5% for all subsequent amounts. Beginning 1 January 2016, the RETT on real estate transfers between close relatives without consideration will be 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 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 fair market value 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.



Furthermore, for Austrian residency purposes, a married couple is seen as one unit; therefore, if one spouse is resident in Austria, the other is also deemed a resident in Austria, regardless of the second spouse's movements or ownership of property.

As Austria does not have an inheritance tax on death, this is not applicable.

Certain transfers are exempt from notification:

- Inheritances do not need to be registered with the tax authority.

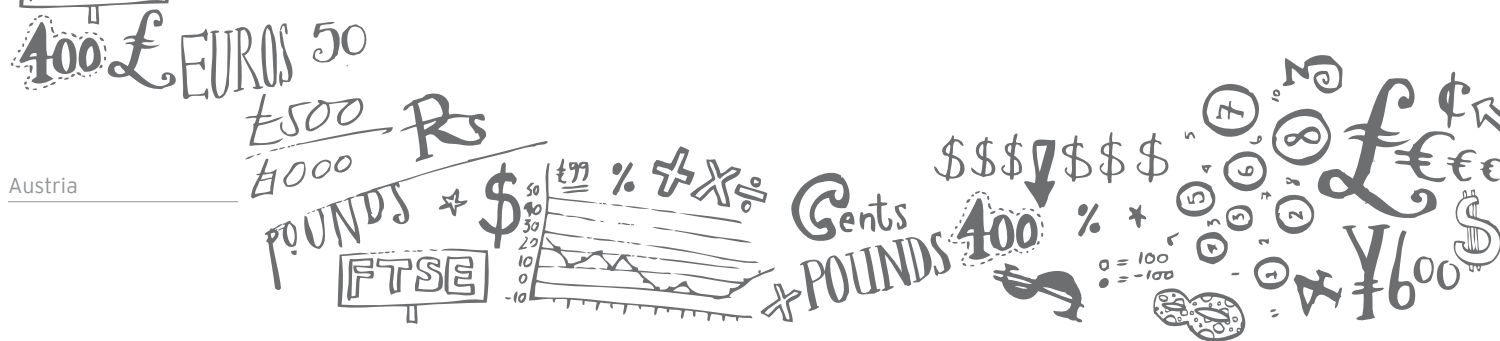
Non-paid transfers of real estate need not be reported to the tax authorities. This is due to the fact that such transfers will go in the land register.

As Austria does not have an inheritance tax on death, this is not applicable.

When inheritance and gift taxes were abolished, an endowment tax was introduced that applies for non-paid transfers and inheritances to trusts and foundations. The endowment tax can apply to the transfer of assets by an Austrian resident to a trust (regardless of whether the trust is Austrian and the property being transferred is an Austrian property) and by a non-Austrian resident to an Austrian foundation. The applicable rates are either 2.5% (reduced rate) or 25%.

In general, the reduced rate of 2.5% applies for endowments to Austrian foundations (*Privatstiftungen*) regardless of who is contributing; for example, the founder or any third party (i.e., another person or legal entity).





## 10.4 Matrimonial regimes and civil partnerships

## 10.5 Intestacy

A will can be revoked or replaced by a new one at any time.

If there is no valid will, the rules of intestate succession will apply. Subject to the caveat made below where there is a surviving spouse, Austria has the following intestacy rules for the remaining part of the estate as follows:

If the deceased person has children, they are entitled to inherit the entire estate. All children receive an equal share. Where children are still alive, the grandchildren do not inherit, but if a child has died before the deceased person, his or her children (grandchildren) inherit their share of the estate. This process continues until there are no more descendants.

Parents and their descendants will inherit if the deceased person has neither children nor grandchildren. If both parents are still living, they receive equal shares. If only one parent is living, the descendants of the deceased parent inherit the share attributed to this parent. If both parents are deceased, their children or grandchildren (sisters, brothers, nieces and nephews of the deceased person) receive the inheritance of their parents.

If the parents died without leaving any descendants, the grandparents and their descendants receive the inheritance. The deceased estate is divided equally among the father's parents and his descendants and the mother's parents and her descendants. So, each grandparent receives one-quarter of the deceased person's estate. If the grandparents are deceased, their descendants inherit their part.

If there are no grandparents and no descendants of the grandparents, the great-grandparents are entitled to inherit.

The spouse is entitled to inherit one-third of the estate, and where there are surviving children or their descendants, the children inherit two-thirds. Where there are no children or their descendants, but parents, grandparents and their descendants survive, they receive one-third and the spouse is entitled to inherit two-thirds of the intestate succession. If there are no children, parents or grandparents with descendants, the spouse receives the entire inheritance. In the overall division of the estate, assets that the spouse received under any contractual succession pact will be taken into account.

If there are no heirs at all, the Republic of Austria is entitled to inherit the estate of the deceased.



## 10.6 Probate

This is not applicable in Austria.

# 11. Estate tax treaties

## Double-taxation issues

Potential double-taxation issues may arise in certain cases, such as:

- ▶ Non-paid transfer of assets by a non-Austrian founder (non-Austrian resident) to an Austrian private foundation
- ▶ Non-paid transfer of assets by an Austrian founder (Austrian resident) to an international trust
- ▶ Non-paid transfer of foreign assets (i.e., foreign real estate) to an Austrian private foundation to an international trust by an Austrian founder

In any of those cases, double taxation may arise if the foreign state (i.e., the residence state of the founder) imposes tax on such transfer of assets (by donation or inheritance).

## 11.1 Unilateral rules

This is not applicable in Austria.

## 11.2 Double-taxation treaties

Austria has concluded estate tax treaties with the following countries listed below. However, potential double-taxation issues on endowment tax should be examined as part of endowment tax planning in each specific case.

## Inheritance tax treaties

Austria maintains inheritance tax treaties with the following countries: Czech Republic, France, Hungary, Liechtenstein, the Netherlands, Sweden, Switzerland and the United States.

## Gift tax treaties

Austria maintains gift tax treaties with the following countries: Czech Republic, France, the Netherlands and the United States.