

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. Since then, there is no inheritance and gift tax in Austria.

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. In general, this information system is an instrument to monitor asset transfers without taxing those transfers.



General

The Gift Registration Act requires notification of certain transfers of assets arising from gifts, where one of the parties is a resident in Austria. The gift registration requirement (to file the appropriate electronic form) applies for securities, cash, shares in companies, businesses, 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 EUR250,000, 2% for the next EUR150,000 and 3.5% for all subsequent amounts of the calculated value of the real estate. Since 1 January 2016, the RETT on real estate transfers without consideration between close relatives is based on a calculated 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, if the fair market value through expert opinion is lower than the value derived from the simplified methods, this lower value will be accepted.

Additionally, an in-tabulation fee (registration fee for the entry in the Austrian land register) of 1.1% of the fair market value (FMV) of the property applies. However, for real estate transfers between 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 define residence as an “accommodation” that is available to the individual for actual use. The use of the accommodation does not need to be uninterrupted, as 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 without having Austria as the principal place of residence (i.e., by spending less than six months in Austria).

Furthermore, for Austrian residency purposes, a married couple is seen as one unit by the Austrian tax authorities; therefore, if one spouse is a resident in Austria, the other is also deemed a resident in Austria, regardless of the second spouse's movements or ownership of property. The proof of a different tax residency of the second spouse is very difficult and requires extensive documentation.

3. Rates

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

4. Exemptions and reliefs

Certain transfers are exempt from notification:

- Transfers between close relatives up to an FMV of EUR50,000 per year are exempt. Relatives include among others 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 EUR15,000 for transfers within five years.
- The exemption limit for everyday gifts is up to EUR1,000 per asset.

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

5. Filing procedures

Registration needs to be made electronically with the relevant tax authority within three months after the transfer. Both the donor and the donee are obliged to register, as well as lawyers and notaries if they have contributed to the transfer (i.e., by setting up the contract).

In cases where the registration is not made within three months, the tax authorities may impose a penalty of up to 10% of the net gift value, although a voluntary report is possible (only within one year as from the end of the registration period).

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.

6. Assessments and valuations

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

7. Trust, foundations and private purpose funds

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 a tax resident in Austria 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% (general rate) or 25% (increased rate).

Austrian foundations

In general, the 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).

However, the general tax rate of 2.5% is only granted on transfers if all required documents (deed of foundation – *Stiftungserklärung*) are filed with tax authorities no later than when the endowment tax becomes due. Otherwise, the increased rate of 25% applies. For the endowment of Austrian real estate, a real estate transfer tax of 0.5% for the initial EUR250,000, 2% for the next EUR150,000 and 3.5% for all subsequent amounts of the calculated value of the real estate applies. Additionally, there is an endowment tax (*Stiftungseingangssteueräquivalent*) of 2.5% of the same tax base. In addition, an in-tabulation 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 nontransparent international trusts, foundations and comparable legal estates by Austrian residents might be subject to endowment tax at either the general rate of 2.5% or at the increased rate of 25%.

The general 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 increased 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. The increased rate is also applicable if the foreign trust has no obligation to report the beneficiaries to the foreign tax authorities or is not registered in a foreign public register (including the submission of the deed of foundation – *Stiftungsurkunde*).

An Austrian endowment tax does 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

Grants to individuals (e.g., for maintenance) can be subject to Austrian income tax. Specific tax exemptions can apply.

9. Life insurance

Income from life insurance is, under certain conditions, exempt from Austrian income tax.

10. Civil law on succession

10.1 Estate planning

Austria does not have an inheritance or gift tax. The transfer of real estate by inheritance or gift is subject to real estate transfer tax (see Section 1.2).

10.2 Succession

Details of the Austrian law of succession can be found in the following sections.

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.

10.4 Matrimonial regimes and civil partnerships

A husband and wife may enter into a contractual succession pact. They may agree to leave up to three-quarters (75%) of their property in their spouse's favor. One-quarter (25%) of the property must remain freely disposable by the deceased person (free quarter). Once made, such a contract cannot be withdrawn by one spouse and must be notarized. Besides this, the spouse has the right of intestate inheritance if there is no will or an existing will is deemed invalid. If there is a valid will, as noted above, the spouse is entitled to an obligatory share in the estate (half of the intestate inheritance).

10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. If it is handwritten, witnesses are not necessary, but in other cases three witnesses are needed to a written will. For oral wills, which are possible only in certain cases, there are special regulations concerning the witnesses.

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

The four lines of intestacy

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:

1. First line: children and their descendants
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.
2. Second line: parents and their 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.
3. Third line: grandparents and their descendants
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.
4. Fourth line: great-grandparents (without descendants)
If there are no grandparents and no descendants of the grandparents, the great-grandparents are entitled to inherit.

Intestate succession of the spouse

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.

No heirs

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

10.6 Probate

General inheritance tax law is applicable.

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 or 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, Poland, 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.