

Austria

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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 (*Schenkungsmitteilungsgesetz*), 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 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 2% (between close relatives) or 3.5% (between non-relatives). The most important exemption is regarding transfers of real estate used in a business upon the donation of such business: an allowance of €365,000 is granted when the donor is no longer capable to work or is 55 years of age or older.

In July 2012, the Austrian Supreme Court examined the assessed value as basis for the taxation of real estate transfers and abolished the current rule beginning 31 May 2014. Beginning 1 June 2014, the real estate transfer tax (RETT) on real estate transfers between close relatives without consideration will be based on three times the assessed value of the real estate, limited to 30% of the real estate's fair market value (FMV). The RETT on transfers of real estate between non-relatives without consideration will be assessed from the real estate's FMV, beginning 1 June 2014.

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.

As it is only necessary to meet one of the above 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).



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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.

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 a FMV of €50,000 per year. 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.

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

5. Registration formalities

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 lawyers and notaries (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.

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. Endowment tax – trusts

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%.

Austrian foundations

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).



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% applies. Additionally, an endowment tax of 2.5% of three times the assessed value. In addition, an intabulation fee of 1.1% of the fair market value 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

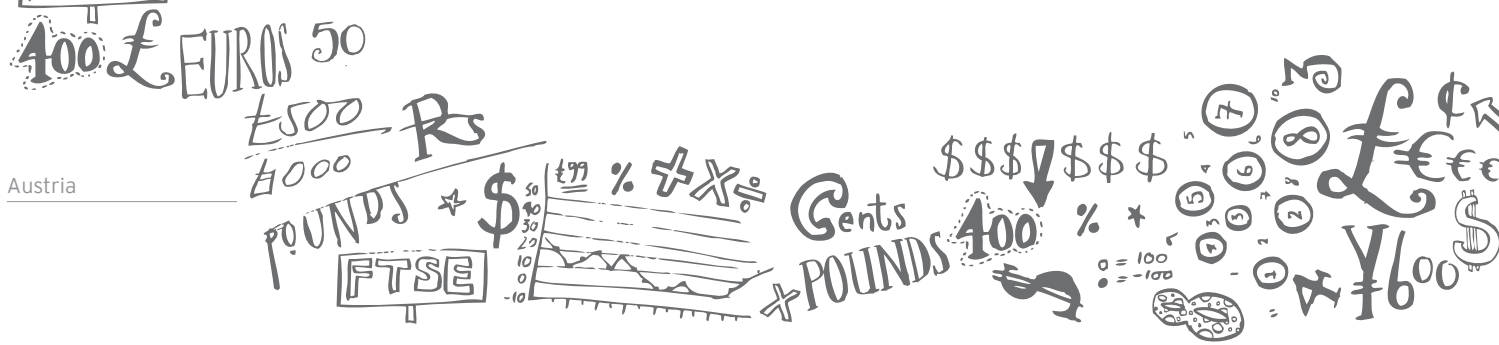
This is not applicable in Austria.

10.2 Succession

This is not applicable in Austria.

10.3 Forced heirship

In Austria, spouses, children or, if there are no children, the parents, 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 below). The parents only receive one-third of the estate. 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.





10.6 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

Czech Republic, France, Hungary, Liechtenstein, the Netherlands, Sweden, Switzerland, US.

Gift tax treaties

Czech Republic, France, the Netherlands, US.