

# 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 (*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 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.

Beginning 1 June 2014, the 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).



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. 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 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. 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 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).



## International trusts

## 8. Grants

## 9. Life insurance

## 10. Civil law on succession

## 10.1 Estate planning

## 10.2 Succession

### 10.3 Forced heirship



