

Private Client

Contributing editors

Anthony Thompson and Sara Walter



2018

**GETTING THE
DEAL THROUGH** 

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Contributing editors

Anthony Thompson and Sara Walter

Forsters LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

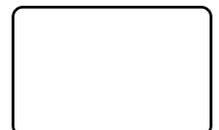


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Austria

Paul Doralt, Katharina Binder, Elmar Drabek and Siegfried Prewett

Dorda Rechtsanwälte

Tax

1 How does an individual become taxable in your jurisdiction?

Austrian resident individuals are subject to national federal income tax. There are no local income taxes. Any individual having a permanent home or his or her habitual abode in Austria is deemed to be an Austrian resident. Exemptions apply for individuals with holiday homes if they do not use them for more than two months a year.

Austrian resident individuals are taxable on their worldwide income, whether received in cash or in kind. Non-resident individuals pay tax on their Austrian-sourced income.

There is no concept of domicile in Austria.

2 What, if any, taxes apply to an individual's income?

Austrian income tax is levied on an individual's income from seven sources:

- agriculture and forestry;
- self-employment;
- trade and business;
- employment;
- investment;
- rent, lease payments and royalties; and
- other specified income such as certain annuities and capital gains upon the disposal of certain privately held assets, in particular real property.

Income not covered by the above categories is not taxable.

Austria generally taxes income at a progressive tax rate, ranging from 25 per cent to 50 per cent (55 per cent for income exceeding €1 million in the calendar years 2016 to 2020). Investment income drawn in Austria is generally subject to a special flat rate tax of 27.5 per cent; interest from savings accounts and current accounts is taxed at 25 per cent. Income from a sale of private real property is subject to 30 per cent property gains tax.

3 What, if any, taxes apply to an individual's capital gains?

An individual's capital gains are subject to income tax, which is levied as a final 27.5 per cent withholding tax in case of Austrian deposit accounts. If such income is derived in foreign bank accounts, it must be included in the individual's tax return and is subject to a flat and final income tax rate of 27.5 per cent.

4 What, if any, taxes apply if an individual makes lifetime gifts?

Austria currently does not levy gift tax. There are, however, notification obligations for certain gifts if the donor or the donee has their permanent home or habitual abode in Austria. Gratuitous transfers of Austrian real property are subject to real estate transfer tax and land register fees (see question 6).

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

Austria currently does not levy inheritance tax. Transfers mortis causa of Austrian real property are subject to real estate transfer tax and land register fees (see question 6).

6 What, if any, taxes apply to an individual's real property?

Property tax

Owners of Austrian real property are subject to property tax based on the property's historically-assessed uniform value, which is generally substantially below its actual fair value. The property tax is levied at a basic federal rate of 0.2 per cent multiplied by a municipal coefficient of up to 500 per cent.

Real estate transfer tax

Real estate transfer tax is levied on:

- transfers of real property located in Austria; and
- transfers of, or the consolidation of, a substantial shareholding (at least 95 per cent) in a company owning real property in Austria.

Real estate transfer tax is generally charged based on the consideration. For gratuitous transfers, transfers mortis causa, lifetime transfers between family members, transfers of, or the consolidation of substantial shareholdings in a property-owning company and any case where the consideration cannot be determined, the property's land value serves as the tax basis. It is the lowest of:

- three times the value of the land as assessed under the Austrian Land Valuation Regulation plus the value of the building;
- the property's standardised value based on average property values published by Statistics Austria; or
- the property's fair market value.

Transfers of real property located in Austria are taxed at 3.5 per cent of the consideration. Gratuitous transfers of Austrian real property are taxed in tiers: the first €250,000 of the land value are taxed at 0.5 per cent, the subsequent €150,000 at 2 per cent and any exceeding land value at 3.5 per cent. Special provisions apply for only partially gratuitous transfers.

In addition, a 1.1 per cent fee falls due for the registration of a new owner in the Austrian land register.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Customs duty, excise duty or import value added tax (VAT) may generally be payable when goods are brought to Austria from outside the European Union. Certain exemptions apply to goods for private use and enjoyment brought into Austria by the individual traveller in his or her personal luggage. Austrian law further provides for certain reliefs from import duties (eg, if the individual moves his or her primary residence to Austria). Exports from Austria to non-EU countries are generally tax-free.

Upon first registration of cars and motorcycles in Austria, car registration tax of up to 20 per cent for motorcycles, and up to 32 per cent for cars, falls due. It is based on the motorcycle's cubic capacity or the car's CO₂ emission values. Electric cars are exempt.

8 What, if any, other taxes may be particularly relevant to an individual?

There is no wealth tax in Austria. The standard VAT rate is 20 per cent. A reduced rate of 10 per cent applies in particular to food, books and

newspapers, as well as rent and lease payments for residential purposes, while VAT of 13 per cent is levied on deliveries, private consumption and imports of inter alia art and antiquities.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts are generally not recognised in Austria. The comparable Austrian asset-holding vehicle is the private foundation (see question 12). Whether foreign trusts qualify as transparent or opaque for Austrian tax purposes is determined on a case-by-case basis.

10 How are charities taxed in your jurisdiction?

Austrian law provides various tax benefits for corporations pursuing charitable purposes; in particular, in relation to VAT and income tax, provided that the charity, based on its statutes and its actual management, exclusively and directly pursues non-profit, charitable, or religious objectives.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

There are no trusts under Austrian law. Austria has neither ratified the HCCH Hague Convention on the Law Applicable to Trusts and on their Recognition (Hague Trust Convention).

12 Does your jurisdiction recognise private foundations?

An Austrian private foundation is a legal entity designed as managed property without an owner or a shareholder. It may be set up for charitable or private purposes but it may not pursue commercial activities. The founders can be individuals or legal entities; the minimum capital is €70,000. A private foundation's beneficiaries are not on public record but must be disclosed to the tax authorities. It is possible for the founder to be a beneficiary. A management board, consisting of at least three members, of whom two must have their habitual abode in the European Economic Area (EEA), is the governing body of the private foundation. Neither beneficiaries nor their close family members or personal advisors may be part of the managing board. The private foundation's annual accounts are not publicly disclosed but must be audited by a certified public accountant.

Contributions to Austrian private foundations and comparable foreign entities are subject to 2.5 per cent foundation entry tax on the fair market value of the assets contributed. If all required information is not disclosed to the tax authorities or certain other conditions are not met, the tax rate is increased to 25 per cent. Contributions of Austrian real property are subject to real estate transfer tax (see question 6) plus a 2.5 per cent foundation entry tax equivalent land register fees of 1.1 per cent based on the property's land value.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Austrian law recognises same-sex civil partnerships. It provides equal rights in labour, immigration, pension, tax, and civil law to same-sex couples as marriage does to opposite-sex couples. It also allows same-sex partners to change their surname to match their partner's and take a family surname. Same-sex civil partnerships, like civil marriages, are formed at the municipal civil registration office. Austrian law allows joint adoption by same-sex couples. For succession rights of same-sex civil partners please see below.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Austria recognises no form of legal relationship for opposite-sex couples other than marriage.

Succession

15 What property constitutes an individual's estate for succession purposes?

Under Austrian law, an individual's estate for succession comprises all property he or she owns, whether in his or her sole name or in a co-ownership.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Under Austrian law, the principle of testamentary freedom applies and an individual is generally not restricted in his or her disposition over his or her estate during their lifetime.

17 To what extent do individuals have freedom of disposition over their estate on death?

Under Austrian law, testamentary freedom is restricted by forced heirship rules. Under these rules, the individual's children, spouse and registered civil partner are entitled to a forced heirship claim amounting to half of their statutory share in the estate (see question 18). In addition, if a married couple enters into a testamentary contract or if an individual makes a gift on death, one quarter of the individual's estate must by law remain clear of any such dispositions as well as claims of forced heirship.

A person entitled to a forced heirship generally has a cash claim against the testamentary heirs, which is calculated on the basis of the total fair value of the deceased's assets and due one year after the individual's death. Gifts made by the individual to family members entitled to claims of forced heirship prior to his or her death are taken into account for the calculation of forced heirship claims and may also result in clawbacks of lifetime gifts.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Under Austrian inheritance law, family members of the deceased individual share the estate based on a modified per capita system. Under these rules, the spouse or registered civil partner is entitled to one-third of the estate's value, while all of the individual's children share two-thirds of the estate's value. In the case that the deceased leaves no children behind, the spouse or registered civil partner is entitled to two thirds of the estate if the parents of the deceased individual are still alive. In the case that one or both parents are already deceased at the time of the individual's death, their share in the remaining third of the estate is also passed to the spouse or registered civil partner.

If the individual leaves neither valid instructions for the disposition of his or her estate nor statutory heirs, the estate passes to the individual's life companion, provided that the life companion lived with the deceased in a shared household for the last three years prior to the deceased individual's death.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Under Austrian law, illegitimate and adoptive children have the same statutory inheritance rights to their adoptive parents' estates as natural legitimate children. In addition, adoptive children keep their statutory inheritance rights to the estates of their natural parents. Adoptive children, however, have no statutory inheritance rights to the estate of other members of their adoptive family.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Austria implemented the EU Succession Regulation, Regulation (EU) No. 650/2012. Under these rules, the distribution of an individual's estate is generally governed by the law of the country, where the individual had his or her last habitual abode, regardless of whether it is an EU country or not. An individual may also validly opt for the application of the inheritance regime of his or her nationality in his or her last will. The respectively applicable law governs the distribution of moveable and immoveable property.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

Under Austrian law, an individual may make a valid will either in writing, orally or publicly. A valid will in writing can either be entirely handwritten and signed or a printed document, where he or she, in front of three independent and simultaneously present witnesses, adds a handwritten solemn declaration that the document contains his or her last will and testament. The witnesses must then also add their

Update and trends

A proposal for an amendment of the law on private foundations was put forward in the current legislative period. It provides, inter alia, for a possible reduction of the minimum number of management board members to one, provided that the foundation has a supervisory body. The position of such supervisory body shall further be fostered and, in the interest of increased transparency, additional disclosure requirements shall be implemented. At the time of writing, Austrian national elections are one month away and it is to be seen to what extent the new government will adopt the proposed changes.

handwritten signatures indicating their personal details and position as witnesses. An oral will can be validly made only in life-threatening situations. It requires two independent witnesses and is valid for three months. A public will is made valid in front of a court or an Austrian public notary. Individuals between 14 and 18 years of age may only make public wills.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Austria adopted the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention). Under its rules, a will is valid and therefore recognised in Austria if its form complies with the internal law as follows:

- of the place where the testator made it;
- of a nationality possessed by the testator, either at the time when he or she made the disposition, or at the time of his or her death;
- of a place in which the testator had his or her permanent home either at the time when he or she made the disposition, or at the time of his or her death; or
- so far as immovables are concerned, of the place where they are situated.

23 Who has the right to administer an estate?

Under Austrian law, the estate is generally administered by all heirs jointly. It is possible to appoint a special administrator or executor for the estate, generally either based on the testator's will or a respective joint application of the heirs.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Under Austrian law, the deceased assets generally pass to the heirs and successors by universal succession and to the legatees by singular succession based on a respective decree issued by the probate court after the probate proceeding has been completed by the notary public. An heir may accept his or her share in the estate either unconditionally, assuming liability for the deceased's debts regardless of the value of his or her inherited share in the estate, or conditionally, assuming liability for the deceased's debts only up to the value of his or her inherited share in the estate based on an appraisal and inventory.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Austria does not recognise after-death variations. Heirs and beneficiaries may challenge the validity of a will. Any claims of family members entitled to a forced heirship are addressed against the heirs and not against the estate.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

Under Austrian law, minors hold their property themselves. A minor's property is generally managed by his or her parents or legal custodians on the minor's behalf. They must invest the minor's assets in guilt-edged securities only. Contracts of substantial economic impact require approval by the family court.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

Under Austrian law, individuals who attain the age of 14 may freely dispose over their employment income and assets left at their disposal, as long as it does not threaten satisfaction of their life needs. On an individual's 18th birthday, he or she becomes of age and attains the legal capacity to manage his or her property themselves.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If someone loses the capacity to manage their affairs, Austrian law favours representation by a close family member over a court-appointed guardian. The individual may choose his or her representative by issuing the respective power of attorney. Representation by a close family member or a guardian must be registered in the Austrian Central Representation Registry. Family representatives and guardians can be appointed for all of the individual's affairs or for particular areas. They must render account on a regular basis.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

EU, EEA and Swiss nationals generally do not require a visa to enter and stay in (visit) Austria for up to three months. Nor do they require a residence permit or settlement to reside, work and study in Austria for longer than three months. In such cases, they do, however, require certain documentation that simply confirms that a person's residence status derives from EU law.

Foreign nationals who are not EU, EEA or Swiss nationals generally do require a visa or residence permit to enter and visit Austria. Certain third-country nationals (eg, United States nationals) may enter and stay in Austria visa-free (see question 30).

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A visitors' visa (Schengen visa) enables a foreign national to enter and stay in Austria (or in any other country of the Schengen area) for a total of 90 days in a 180-day period.

Foreign nationals can also apply for visas or temporary stay permits. These are valid for six months and are limited to a specific purpose, such as education or training, temporary self-employment, temporary employment, humanitarian reasons or highly-qualified jobseekers.

31 Is there a visa programme targeted specifically at high net worth individuals?

Austrian residence permits generally require persons to demonstrate they possess sufficient funds or will earn an income in order not to have recourse to public funds. A minimum level of funds or income is prescribed by regulation.

In the case of residence permits for 'financially independent people', the foreign national must demonstrate possession of double the minimum amount required for other residence permits. In 2017, the annual amount required was approximately €21,000 for individuals. This residence permit does not grant access to the Austrian labour market, is quota-restricted and valid for one year. With certain exceptions, such as possession of a bachelor's degree, a requirement to learn German may also apply.

High net worth individuals may also decide to invest as key self-employed persons in Austria. This requires an investment capital of at least €100,000 in a business that brings macro-economic benefit to the relevant Austria region.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Family members of persons who possess a 'financially independent' visa can also obtain a 'financially independent' visa. In this case, the minimum amount of funds or income required increases. In 2017, the annual amount required was approximately €32,000 for married couples and approximately €3,300 per minor child. This residence permit does not grant access to the Austrian labour market, is quota-restricted

and valid for one year. With certain exceptions, such as possession of a bachelor's degree, a requirement to learn German may also apply.

Family members of self-employed investors can obtain a quota-free, one-year residence permit that grants free access to the Austria labour market.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Visas for persons who are financially independent and visas for self-employed investors are issued for one year, with an extension of one year and then a following extension of three years. After five years of residence in Austria, the person can apply for permanent residence, provided they have intermediate knowledge of German and have sufficient funds or income.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

There are two routes to obtaining citizenship in Austria. The first is a privileged route that enables a person to obtain citizenship after six years of residence in Austria. The second is citizenship after 10 years of residence in Austria. The former can be obtained, for example, where a foreign national has upper-intermediate knowledge of German.

In the case of both routes, it is a general requirement that the person has earned sufficient income for at least six months prior to filing the application and 36 months in total in the last six years. In addition, a person must have spent no more than 20 per cent of the preceding period outside Austria and must pass a nationality test.

D O R D A

**Paul Doralt
Katharina Binder
Elmar Drabek
Siegfried Prewett**

**paul.doralt@dorda.at
katharina.binder@dorda.at
elmar.drabek@dorda.at
siegfried.prewett@dorda.at**

Universitätsring 10
1010 Vienna
Austria

Tel: +431 533 47 950
Fax: +431 533 47 97
www.dorda.at

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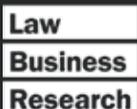
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