

# QUICK OVERVIEW OF AUSTRIAN REAL ESTATE

## Rental income and capital gains of Austrian real estate

Taxpayer	Basis of tax	Tax levied	Tax rates (2023)
Resident company	<i>Rental income</i>	Corporate income tax	24%
	Capital gains	Corporate income tax	24%
Non-Resident company	<i>Rental income</i>	Corporate income tax	24%
	Capital gains	Corporate income tax	24%
Resident individual	<i>Rental income</i>	Individual income tax	0 – 55%
	Capital gains	Real estate gains tax	30%
Non-resident individual	<i>Rental income</i>	Individual income tax	0 – 55%
	Capital gains	Real estate gains tax	30%

## Rental income

### Companies

#### Introduction

Rental income is taxed as business income.

#### Liability to tax

Rental income earned by companies is subject to corporate income tax as business income.

#### Basis to tax

Business income is subject to a flat corporate income tax of 24% in 2023. The corporate tax rate will be further reduced to 23% from 2024.

### Individuals

#### Introduction

Rental income is taxed as part of the taxpayer's annual income.

#### Liability to tax

Rental income received by individuals is subject to individual income tax.

#### Basis to tax

Generally, expenses can be deducted from rental income. Special rules may apply to depreciation of fixed assets and to renovation and maintenance costs. The taxable result is taxed together with all taxable income at the individual tax rate.

## Capital gains

### Companies

#### Introduction

Real estate capital gains are taxed as business income.

### *Liability to tax*

Real estate capital gains realised by companies are subject to corporate income tax as business income.

### *Basis to tax*

Business income, including all capital gains, is subject to a flat corporate income tax of 24%. The corporate tax rate will be reduced to 23% from 2024.

## **Individuals**

### *Introduction*

Real estate capital gains realised by individuals are taxed at a special tax rate, unlike rental income.

### *Liability to tax*

Real estate capital gains realised by individuals are subject to a special real estate gains tax of 30%. However, it is also possible to opt out of this tax and have the capital gains taxed at the standard personal income tax rate.

### *Basis of tax*

The difference between the acquisition cost and the sale price is taxed at a flat rate of 30%. Alternatively, if the property was purchased before 31 March 2002, the tax may be calculated on the basis of 14% of the sale price, resulting in an effective tax rate of 4.2% of the sale proceeds.

## **Austrian VAT & transfer taxes**

Taxpayer	Basis of tax	Tax levied	Tax rates (2023)
Resident company	<i>Rental income</i>	Value-Added Tax	0% / 10% / 20%
	Transfer of real estate	Value-Added Tax	0% / 20%
	Transfer of real estate	RETT	0.5% – 3.5%
	Transfer of real estate	Registration Fee	1.1%
Non-Resident company	<i>Rental income</i>	Value-Added Tax	0% / 10% / 20%
	Transfer of real estate	Value-Added Tax	0% / 20%
	Transfer of real estate	RETT	0.5% – 3.5%
	Transfer of real estate	Registration Fee	1.1%
Resident individual	<i>Rental income</i>	Value-Added Tax	0% / 10% / 20%
	Transfer of real estate	Value-Added Tax	0% / 20%
	Transfer of real estate	RETT	0.5% – 3.5%
	Transfer of real estate	Registration Fee	1.1%
Non-resident individual	<i>Rental income</i>	Value-Added Tax	0% / 10% / 20%
	Transfer of real estate	Value-Added Tax	0% / 20%
	Transfer of real estate	RETT	0.5% – 3.5%
	Transfer of real estate	Registration Fee	1.1%

## Value Added Tax – Rental income

### Companies

#### *Introduction*

Value added tax (VAT) is a tax based on the added value of a product or service at each stage of the supply chain.

#### *Liability to tax*

Rental income is subject to Austrian VAT if the rented object is located in Austria.

#### *Basis of tax*

As a general rule, business rentals are exempt from VAT. However, it is possible to opt out of this exemption under certain conditions, in which case the VAT rate is 20%.

Residential lettings are always subject to 10% VAT.

### Individuals

The same rules apply as for companies.

## Value Added Tax – Transfer of real estate

### Companies

#### *Introduction*

The sale of property is generally a VATable transaction if the property is located in Austria.

#### *Liability to tax*

The sale of real estate is generally exempt from VAT. However, it is possible to opt out of this exemption, in which case the VAT rate is 20%.

### Individuals

The same rules apply as for companies.

## Real Estate Transfer Tax

### Companies

The acquisition of Austrian real estate is subject to real estate transfer tax. The rate varies from 0.5% (e.g. contribution of real estate) to 3.5%. The transfer tax is normally payable by the purchaser. The transfer tax is not directly deductible as a business expense. However, it does form part of the acquisition costs.

There is also a registration fee of 1.1%.

A transfer of shares is not normally subject to transfer tax. However, if at least 95% of the shares of a company that owns real estate are transferred to new shareholders, the acquisition is subject to real estate transfer tax. The basis of assessment for the transfer tax is the market value of the immovable property (*Grundstückswert* as defined in the Real Estate Transfer Tax Act) at a rate of 0.5%.

## Individuals

Individuals acquiring real estate in Austria are subject to real estate transfer tax. The basis of assessment for the transfer tax is the market value of the property (*Grundstückswert* as defined in the Real Estate Transfer Tax Act) or the value of the consideration for the property (usually the purchase price of the property). The tax rate varies from 0.5% to 3.5%, depending on the relationship between the parties involved and whether or not the transfer is a gift.

There is also a registration fee of 1.1%.

If at least 95% of the shares of a company that owns real estate are transferred to new shareholders, the acquisition is subject to real estate transfer tax. The basis of assessment for the transfer tax is the market value of the immovable property (*Grundstückswert* as defined in the Real Estate Transfer Tax Act). The tax rate on the transfer of shares in a company holding real estate is 0.5%.

## Austrian local taxes

Taxpayer	Basis of tax	Tax levied	Tax rates
Resident company	Unit value*	Property tax	Dependent on the municipality
Non-Resident company	Unit value	Property tax	Dependent on the municipality
Resident individual	Unit value	Property tax	Dependent on the municipality
Non-resident individual	Unit value	Property tax	Dependent on the municipality

\* This is a certain value for tax purposes which is determined by the tax authorities.

### Introduction

Every municipality levies an annual property tax on Austrian properties. This annual municipal tax is deductible from rental income.

### Liability to tax

Every owner of a residential or commercial property in Austria is liable to pay local property tax.

### Basis of tax

Property tax is based on the rateable value. This is a specific value for tax purposes set by the local authorities. In general, the tax rate is between 0.1% and 0.2% per annum. However, municipalities are allowed to increase the property tax by up to 500%, resulting in a maximum tax rate of 1.0%.

## Austrian net wealth/worth taxes

There is no wealth tax for individuals or companies owning property in Austria.

## Ownership structures for Austrian real estate

### Commonly used ownership structures for Austrian real estate

#### *Limited*

A 'GmbH' (in German: *Gesellschaft mit beschränkter Haftung*) is the Austrian version of a limited liability company and is the most common form of property ownership in Austria. The amount of the contribution determines the share (*Stammeinlage*) of the shareholder. The shareholders of a GmbH are not personally liable for the debts of the company.

Individuals who hold shares in an Austrian company receive capital income which is taxed at 27.5%. Profits earned by the GmbH itself are subject to corporate income tax at a flat rate of 24% (to be reduced to 23% from 2024).

#### *Partnership & joint ventures*

Investments in real estate are also often made on a collective basis by several legal entities and/or individuals. For Austrian tax purposes, there is no distinction between the taxation of partnerships and joint ventures.

#### *Limited partnerships*

A typical limited partnership is the KG (in German: *Kommanditgesellschaft*). A KG has at least one managing partner and one limited partner. The managing partner has unlimited liability, while the limited partner's liability is limited to the amount of his or her contribution. If all but one partner leave the KG, the company ceases to exist. The KG is treated as transparent for tax purposes and is therefore not subject to income tax. Individual partners in a KG are subject to personal income tax, which ranges from 0% to 55% (see above); partner companies are subject to corporate income tax.

#### *General partnerships*

A typical general partnership is the OG (in German: *Offene Gesellschaft*). The OG has at least two managing partners (individuals/companies) who are fully liable. Liability cannot be limited. The OG is treated as transparent for tax purposes and is therefore not subject to income tax. Individual partners of an OG are subject to personal income tax, which ranges from 0% to 55%, while partner companies are subject to corporate income tax.

#### *Trusts*

Trusts are legal instruments which are not known as such in Austrian law and are therefore not specifically recognised in Austrian tax law. In order to qualify a foreign trust as a transparent or non-transparent entity for Austrian income tax purposes, the Austrian tax authorities will generally ask which persons have the legal and effective right to dispose of the trust's assets and who is able to make the relevant arrangements. If such rights or powers are vested in a beneficiary or other related person, it is likely that the income generated by the trust will be directly attributable to that person and the trust will qualify as a transparent trust.

#### *Private foundation (Privatstiftung)*

The Austrian Private Foundation has no shareholders, only beneficiaries. It is treated as non-transparent for tax purposes. Free contributions to the private foundation are taxed at a flat rate of generally 2.5% (*Eingangssteuer*). Interest from bank deposits, interest from bonds, income from capital gains and derivatives, and income from the private sale of real estate are taxed at 24% *Zwischensteuer* (to be reduced to 23% from 2024). Rental income and capital gains from the sale of real estate that are business assets are taxed at 24% (to be reduced to 23% from 2024). Contributions to beneficiaries are taxed at 27.5% capital gains tax.

There is a credit for the *Zwischensteuer* when contributions are made to beneficiaries, resulting in a total tax liability of 27.5% of the income generated and distributed to beneficiaries.

#### *Foreign partnership*

The residence of a partnership is determined by the place where important business decisions are usually made. Generally, this will be the place where all the partners meet regularly.

If a foreign partnership has a permanent establishment in Austria, the partners are subject to Austrian income tax as business income. Austrian real estate will usually give rise to a permanent establishment in Austria, but this is not the only possibility.

### Specific real estate vehicles for Austrian real estate

#### *Real Estate Investment Trusts*

Real Estate Investment Trusts are regulated by the Real Estate Investment Trust Act (*Immobilien-Investmentfonds-Gesetz*), which governs the determination of profits and taxation. An investment company holds the assets of the real estate investment trust as trustee for the investors. A Real Estate Investment Trust is treated as transparent for tax purposes. Therefore, the beneficiaries of the trust are subject to capital gains tax at a rate of 27.5%. If the beneficiary is a corporation, the corporate income tax is 24% (to be reduced to 23% from 2024). The Real Estate Investment Trust can be used for a wide range of public investors (open trust) or for a limited number of beneficiaries (closed trust).