



## HAUS AND HOME

Klaus Pfeiffer introduces the tax and legal implications of buying and selling real estate in Austria

### KEY POINTS

#### WHAT IS THE ISSUE?

Real estate in Austria may be a solid investment, but purchasers need to be aware of statutory restrictions on acquisitions and use, as well as taxes and fees.

#### WHAT DOES IT MEAN FOR ME?

Transactions must be planned carefully from a legal and tax perspective in order to avoid undesirable outcomes.

#### WHAT CAN I TAKE AWAY?

STEP members may come across clients from inside or outside the EU, including trusts interested in acquiring real estate as an investment. Purchasers typically have to pay land transfer tax and a registration fee, seller's capital gains tax and, if applicable, value-added tax.

Austria has introduced progressive land register systems to facilitate real estate sale proceedings. Save for minor exceptions, transactional documents must be uploaded to online archives, and applications to the land register must be filed electronically. Any person can rely on the completeness and correctness of the Austrian land register, and documents can be downloaded instantly. Problems such as an interrupted chain of transfer deeds, the non-reliability of the land register, and the taking out of title insurance are generally unknown in Austria.

Prospective purchasers can acquire and register ownership, co-ownership or condominium ownership as full rights in the land register. From an investment and tax perspective, it could be wiser to agree only on a lease (*Miete*) or leasehold (*Pacht*), both of which can be registered, as well as providing additional security against early termination by the landlord. Under certain

conditions, it is possible to separate ownership of building and land.

#### LAND TRANSFER

Austria is a federal republic with legislation at federal and regional levels. All nine regional land transfer acts cover the question of acquisition of real estate and agricultural land by foreigners, and attach certain conditions.

EU citizens (including those from the UK, at least until Brexit) are treated as equal to Austrians, according to the freedoms of the European market. The acquisition of real estate by members of third countries (individuals and companies) may be subject to approval, depending on the type of contract, and the rights and obligations involved. Most of the regional acts include trusts in their list of acquirers obliged to obtain approval.

Clearance from the land transfer authorities usually takes between

eight and ten weeks. It is not possible to apply for registration without approval (if applicable).

### SECOND HOMES

Some of the nine Austrian regions have restrictions on the creation of second homes. Though the regions in the east (Vienna, Lower Austria and Burgenland) are generally more liberal, the Alpine regions (in particular Vorarlberg, Tyrol and Salzburg) are more restrictive of acquisition processes. In Tyrol, for instance, the creation of second homes is generally forbidden to foreigners and Austrians alike. Exceptions apply to properties already registered on the list of second homes.

### VALUE-ADDED TAX

Though the sale of real estate is exempt from value-added tax (VAT), the seller has the right to make an opt-in, and VAT (20 per cent across Austria) subsequently becomes due. The seller is obliged to issue an invoice in accordance with the requirements set out in s11 of the VAT Act (*Umsatzsteuergesetz*).

In general, the seller opts in if they have already paid reclaimable VAT and the purchaser does not acquire the property for their own use, but for letting – which, again, is subject to VAT of 10 or 20 per cent, depending on the use of the property. In such cases, the purchaser can reclaim VAT from the tax authorities by providing an estimation of income and expenses. In case the seller initially acquired the property with the VAT reclaimed, but sells it without, they must repay a proportionate amount of the VAT initially reclaimed.

### REAL ESTATE TRANSFER TAX

The transfer of real estate – with or without considerations including inheritance or gifts – is subject to a tax of 3.5 per cent, based on the consideration of the transaction or the value of the real estate (whichever is higher). Lower percentages may apply. In case of a purchase agreement, it is assumed that the purchase price sufficiently reflects the value of the real estate. The tax is solely triggered by the execution of the agreement and does not depend on the domicile or residence of either party. The tax thus applies to Austrians and foreigners alike. Payment of the tax is a condition of registration in the land register.

Though Austrian law does not allocate the burden to pay this tax to either purchaser or seller, it is customary for the purchaser to pay. Lawyers and notaries are allowed to calculate the amount of the real estate transfer tax, make the respective declarations and applications to the tax authorities electronically, and send payment. These proceedings do not require any additional step by the tax authorities, and the application to the land register can be filed immediately (save for other conditions stipulated between the parties). Alternatively, the parties may choose to make the applications to the tax authorities themselves – though clearance regularly takes three to four months.

### REGISTRATION FEE

The registration of ownership triggers a fee of 1.1 per cent of the market value of the real estate. Again, in cases of purchase agreements, it is assumed that the purchase price reflects the market value sufficiently. Should a mortgage need to be registered, an additional fee of 1.2 per cent of the secured amount becomes due.

Lawyers and notaries usually calculate the registration fee together with the real estate transfer tax in a combined electronic filing. In case the registration fee was not calculated in this way, the court will issue a decree on the fee upon registration.

Other rights, such as leases or leasehold agreements, do not trigger registration fees.

### CAPITAL GAINS TAX

Since 1 April 2012, capital gains realised by the sale of real estate were subject to capital gains tax (CGT) of 25 per cent. Since 1 January 2016, CGT has risen to 30 per cent. The tax only applies to sales of property, not to gifts or inheritances.

The tax does not apply to companies and certain trusts as sellers, as they are already subject to a corporate tax of 25 per cent. In general, CGT applies to all owners of real estate, regardless of their nationality. Any further treatment depends on whether or not a double-taxation agreement is in place.

As a general rule, CGT is calculated based on the amount resulting from the current purchase price minus the initial purchase price (including ancillary costs, such as real estate transfer tax, the registration fee and real estate

agency fees). Additional investments; the type, size and zoning<sup>1</sup> of the property; and other elements may also need to be considered.

There are exemptions, with the most important applying if the seller has personally used the property either in the previous two years (all the time), or for at least five years in the previous ten.

It is standard for lawyers to calculate all three charges: real estate transfer tax, registration fee and CGT. Though it is customary for the purchaser to pay the first two, it is the seller who pays the third.

### INHERITANCE AND GIFT TAX

The Austrian Constitutional Court (*Verfassungsgerichtshof*) set this tax aside and, thus, since 1 August 2008, no Austrian inheritance and gift tax applies to transfers of assets (movable or immovable properties alike). In case of a transfer of real estate by means of inheritance or gift, the standard real estate transfer tax and registration fees apply (see above).

### LETTING OF REAL ESTATE

Leases are subject to a stamp duty of 1 per cent, based on the total rent (including service charge and VAT), with a cap of three years applying to leases for indefinite terms. The Austrian Parliament abolished stamp duty for residential leases in its session on 13 October 2017. Several cases on the amount of stamp duty due for commercial buildings are currently pending before the Austrian Administrative Court.

Tenant protection is comparatively strong in Austria and limits the parties' rights to agree on certain clauses in the lease. Under the *Tenancy Act* (*Mietrechtsgesetz*), leases for definite terms must be made in writing, and legal termination by the landlord is limited to certain reasons. Investors and landlords are well advised to seek legal assistance before signing the lease.

<sup>1</sup> Different regimes apply according to how the land is used – for example, for construction or as 'green' land. It is not important where the property is located, but how it is dedicated



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