

GUIDE TO BUYING PROPERTY IN AUSTRIA

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PROCEDURE FOR PURCHASING PROPERTY*

Buying property in Austria should be relatively straightforward, but we would always recommend that you engage the services of a reputable agent who can assist with understanding the Austrian tax and legal structure, finding a suitable financial institution and eventually managing your property investment.

This document has been compiled as a guide for potential purchasers of property in Austria. It does not seek to provide or replace legal advice which you should obtain, nor is it intended to have any contractual effect.

**As of January 2016*

PROPERTY AND USAGE RIGHTS

Are individuals allowed to acquire ownership of real estate?

Generally yes. However, acquisition of farmland is restricted in most of Austria's nine provinces. Some provinces (Bundesländer) prohibit the purchase of real estate in certain zones when the property will not serve as the owner's permanent residence.

Do restrictions exist for foreigners in the acquisition and use of property or other real estate rights?

Citizens of EU member states are entitled to acquire property without restrictions.

Certain corporate structures may allow for acquisition without the need for special permission.

**Aquisition by non-EU Citizens - see page 4*

Can various sections of a building have different owners?

Yes. There are two ways for different owners to acquire various sections of a building:

- a) The co-ownership without exclusive ownership of an exact part of the building
- b) Exclusive ownership as a condominium (Wohnungseigentum) of a defined part of the building

Apart from real estate ownership, what other interests and usage rights are commonly created in real estate?

Apart from real estate ownership, other arrangements are common, such as simple tenancy agreements and property leasing, legal concepts for dividing the property into landed real estate and built property (Superädifikat), as well as building leases, (Baurecht).

Furthermore, servitudes (easements) can be created in real estate. A distinction needs to be made between land servitudes and personal servitudes, including but not limited to, the right of use and the right of residence, usufruct.



ACQUISITION OF REAL ESTATE IN AUSTRIA BY NON-EU CITIZENS

Are non-EU citizens allowed to acquire real estate in Austria?

Generally, non-EU citizens are allowed to acquire real estate if they apply for a special permit at the Land Transfer Authorities beforehand. The requirements for obtaining a special permit can be found in the nine provincial land transfer laws.

*Establishing a company - see page 5

What are the requirements for a special permit?

According to all nine provincial land transfer laws, non-EU citizens, being non-EC member states’ citizens, are entitled to acquire real estate in Austria when the province where the real estate is located has (i) social, (ii) economic or (iii) cultural interest in the acquisition of real estate by a non-EU citizen. While the economic (e.g. establishment or take-over of a big company, creation of jobs) or cultural interest (e.g. famous singers, artists etc.)

can be proven only in special situations, the term “social interest” is interpreted broadly by the land transfer authorities. For example, according to the Vienna and Lower Austrian land transfer laws, the provincial government always has a social interest in the acquisition of real estate by non-EU citizens, if the persons have residence permits in Austria. However, the interpretation of the term “social interest” can vary from province to province.

Are there any different rules in the case of non-EU citizens who have residence permits in an EU or EEA member state?

Non-EU citizens who are legal residents in an EU or EEA member state and transfer the purchase price for the real estate from the country of their residence do not have to establish the social interest, but will automatically be granted a special permit for the acquisition.

ACQUISITION OF REAL ESTATE IN AUSTRIA BY LEGAL ENTITIES

Can an Austrian legal entity, the majority of whose shares are held by non-EU citizens, acquire real estate in Austria?

In general, Austrian legal entities can acquire real estate in Austria. However, if the majority (more than 50%) of the legal entity’s shares are held by non-EU citizens, the legal entity qualifies as a foreign company and must apply for a special permit in order to be able to acquire real estate in Austria. Exceptions apply for a so called “two-tiered structure”. In some provinces (Bundesländer) of Austria (e.g. Vienna), an Austrian legal entity (LE1), which is fully held by another Austrian legal entity (LE2), is not qualified as a foreign company, even if the LE2 is 100% held by non-EU citizens. In this case, the LE1 does not have to obtain a special permit for the acquisition of real estate in Austria.

Are there any exceptions for legal entities registered in the EU or EEA?

Legal entities registered in the EU or EEA are not qualified as foreign companies and can acquire real estate in Austria. The shareholder structure of these legal entities has no relevance.



FINANCING

Is it possible to mortgage the real estate for financing the purchase?

Yes, especially as the Austrian real estate market has proven very stable over the last six decades, with low volatility and constant growth rates; banks are interested in financing real estate acquisitions.

In order to become legally enforceable, mortgages on real estate as well as on buildings on third-party land and building leases may be registered in the land register on the basis of a written and notarised mortgage deed.

Real estate transactions are usually handled by an attorney or a notary public. The financing bank will provide the fiduciary with the purchase sum upon signature of the mortgage deed. The attorney/notary will disburse the money upon receipt of the documents needed to register the mortgage and the buyer's ownership.

Are banks and other lenders prepared to finance the purchase of any type of acquired right? What percentage of the purchase price is usually regarded as the maximum that may be financed? What are the major terms and other conditions?

In general, banks and lenders accept mortgages as collateral. Banks will, in addition to the purchase of real estate, also finance the acquisition of property rights in buildings on third-party land or in building leases.

The percentage of financing varies with the type of property:

- ◆ For residential properties, banks will finance up to 80%
- ◆ For commercial properties, banks will finance up to 60%

Banks and other lenders usually offer long-term loans:

- ◆ 20+ years for residential properties
- ◆ 12+ years for commercial properties

Do banks impose special financing conditions for non-resident investors?

The financing conditions for non-resident investors depend on their general rating and creditworthiness. In general, conditions will be the same as for resident investors.

What are the costs of entering into and registering a mortgage loan?

- ◆ Bank fee of approx. 1% of the loan amount, subject to negotiation with the bank
- ◆ Court registration fee 1.2% of loan amount
- ◆ Notary fee between €100 and €500

TAXES

Are purchases subject to taxation?
What is the tax rate?

VAT: Real estate purchases are generally not subject to VAT, especially if the property is the buyer’s main private residence.

Under certain circumstances the buyer may opt for VAT, for example if the buyer wishes to rent out the property. In this case, the VAT is fully refundable.

Capital gains: Since 2012, the sale of real estate has been subject to a new tax on capital gains from real estate transactions (Immobilienenertragsteuer). The sale of real estate is subject to taxation, whereby a 30% tax rate on the profit is generally applicable.

Several exemptions from this tax exist, for example, if the owner used the property as a main residence (Hauptwohnsitz) for at least two consecutive years, any capital gains would be tax exempt.

Real Estate Transfer Tax (RETT): Each transfer of real estate is subject to 3.5% RETT (Grunderwerbsteuer) on the purchase price (if parties are spouses, registered partners, siblings, children, grandchildren or descendants): 0.5% on the first €250,000, 2% on the next €150,000 and 3.5% on the excess.

Land registration fee: The fee for the registration in the land register is 1.1% of the purchase price.

Is the tax also applicable where a real estate company is purchased, instead of a real estate right?

There is no RETT or land register fee if shares in a real estate company are transferred or acquired, as long as not all of the company shares are owned by one shareholder. Therefore any share deal where there is more than one shareholder is not subject to RETT.

In case of a property sale by foreign investors, is the profit subject to tax?

The profit derived from a real estate transaction by an individual person is subject to 30% taxation.

The profit derived from a real estate transaction by a foreign legal entity is taxed on the basis of the corporate income tax rate of 30% (exceptions may apply). This, however, only applies if Austria has tax jurisdiction, which has to be determined according to the circumstances of the case and the relevant double taxation treaties. For example, profits derived from the sale of shares can be fully exempt from tax, depending on the seat of the foreign entity.

Do foreign investors have to pay taxes on rental income in Austria?

Yes, the investor must pay income tax (or corporate tax if a company) and file a tax form on a yearly basis. Double taxation treaties apply.

In general, the effective taxation of rental income is very low, as only the profit of the rental income is taxed.

For example: An investor may expect from a residential property a 3% yield on an investment of €1million. This would result in a yearly net rental income of €30,000 p.a. From this income, the investor may deduct a depreciation of at least 1.5% of the building’s value as well as the interest paid on the mortgage (let us assume another 1%).

Sample calculation:	
Income	€30,000
Tax free amount	€15,000
Bank Interest paid	€10,000
= Taxable profit	€5,000
25% Tax	€1,250

As seen in the example above, the possibilities of reducing the taxable profit and the respective income tax from rental revenue may result in a tax burden of less than 5% of the income.

Is the ownership or usage of real estate subject to local property taxes?

Yes, a local land tax applies depending on the kind of property; it is based on an assessed tax value (Einheitswert). These taxes and fees are approximately 0.1% per annum of the market value.



DUE DILIGENCE INCOME TAXATION

Can prospective buyers inspect the relevant documents at the land registry in order to check the property title and any encumbrances?

Yes, the land registry is open to the public; the current status of the register and historic entries are available. Furthermore, each document on which an entry is based, may be obtained. Courts, law firms and notaries have electronic access to the land register and the associated document archives.

Can prospective buyers ask the relevant planning and building authorities for permission to inspect the documents showing if, and under which conditions, a building permit was granted?

It is possible to access the relevant planning and building regulations. The supervising or regulatory authority is the municipality where the real estate in question is located.

To receive the required information, however, prospective purchasers need the current owner's permission in writing.

Are there any other issues or conditions related to a property that should be analysed and where can these be checked?

It is important, especially for foreign investors, to evaluate the applicable regulations regarding real estate acquisitions by foreigners and the purchase of farmland in general. The district authorities are knowledgeable in these matters.

Furthermore, the applicable designations in the zoning plan (Flächenwidmungsplan) should be reviewed at the respective municipality.

In general, there are two kinds of tax liability in Austria: limited tax liability and unlimited tax liability. The main difference between these two kinds of tax liability is that under the unlimited tax liability system, persons are liable for tax on their worldwide income. In the case of limited tax liability, persons only have to pay tax on income created in Austria. However, in both cases a double taxation avoidance agreement (DTAA) needs to be considered.

Please take into account that tax questions can vary depending on the person's individual situation. Therefore professional tax advice is recommended.

When are non-EU citizens subject to unlimited taxation in Austria?

If they either have their main registration in Austria and are more than 90 days physically present in Austria, or if they do not have their main registration in Austria but live in Austria for more than 180 days per year.

Please note: Residence permits or registration in Austria are not relevant criteria, they are only indicators.

Are there any exceptions to this general rule?

According to the provisions of a DTAA, an Austrian resident, for instance, may not have to pay Austrian taxes on income earned in non-EU countries.

For example: Mr. A is a non-EU citizen and tax resident in Austria. He has to pay taxes on his worldwide income in Austria. Mr. A has an apartment in a non-EU country which yields a rent there. According to the provisions of the DTAA, Mr. A would pay taxes on his rental income in the non-EU country, because the apartment is located there. Austrian tax authorities are not allowed to levy income tax on this kind of income.

Applicability of controlled foreign company rules (CFCR) and DTAA in respect to Austrian companies.

According to a DTAA, the profit of a company based in Austria may only be taxed in Austria, unless the company is running a business in a non-EU country through a permanent establishment. The fixed corporate tax rate in Austria amounts to 25%.

Please note: in Austria more or less all costs in connection with the holding and managing of the property are deductible (e.g. loan interest, depreciation etc). Therefore the effective tax on profits deriving from Austrian real estate is very low (in most cases less than 10%).

According to the CFCR, tax-residents of a non-EU country also have to pay income tax on the retained profit of the foreign company under their control.

However, the income tax to be paid in the non-EU country, according to the CFCR, shall be reduced by the capital gains tax paid in Austria.





PROTECTION OF THE BUYER

What legal formalities have to be fulfilled for the transfer of title in real estate rights or in hereditary building rights?

The transfer of a property requires two steps – disposition and execution.

The title may be either a notarised purchase contract or an official document, for example, a court order in the case of inheritance.

The necessary procedure is the registration with the land registry.

Is it possible for buyers to ensure the acquisition at an early stage (e.g. by entering into a provisional contract before a due diligence report is prepared)?

Yes, this is possible by signing a provisional contract and registering a priority notice (Rangordnungsbeschluss) with the land registry. Generally speaking, for a period of one year after issuance of the order, only the holder of this order is entitled to register changes with the land registry.

PROTECTION OF THE SELLER

How can sellers safeguard their real estate rights before full payment of the purchase price is received?

Usually, a notary or an attorney is appointed as fiduciary to handle the transaction. Property ownership for the purchaser will be registered with the land registry only when the payment has been transferred to the fiduciary.

To what extent can sellers protect themselves from being held liable for deficiencies in the sold property?

Usually, the seller warrants for the property to be free of liens and encumbrances, but is not liable for any of its special conditions or characteristics.

The seller's liability may be waived in the purchase agreement to the extent permissible under mandatory law. This, however, depends on the circumstances of the case, and whether or not one or both parties to the purchase agreement are entrepreneurs.

ATTORNEY, NOTARY, TRANSACTION

Is a notary required for a real estate transaction?

When doing business in Austria, foreign buyers should always be aware, that although purchase agreements for real estate may be concluded orally, a written and notarised document has to be filed with the land registry at the respective court in order to duly register the contract.

However, the role of the notary (who can be chosen freely) may be limited to the notarisation of the signatures. The transaction itself can be handled by an attorney or a notary.

Who processes the transaction?

In Austria the entire transaction of transferring property ownership - from preparing a due diligence report, drafting the contract, issuing transfer tax declarations, to handling the escrow account including fiduciary services for the banks involved, and registering the property - is done either by an attorney or a notary. In Vienna, both professions are highly regulated; regarding the safety of escrow amounts, both professions have mandatory insurance.

For attorneys-at-law, the transaction has to be executed according to the escrow statute of the Viennese Bar Association (“Elektronisch Anwaltliches Treuhandbuches der Rechtsanwaltskammer Wien”) where the escrow amount is insured against fraud.

What are the costs of a transaction?

The fees depend on the purchase price and on the services provided by the attorney/notary in connection with the real estate transaction. Those services range from notarisation of the signatures and/or drawing up of the contract, to acting as fiduciary. Notary/attorney fees are prescribed by law, but are negotiable - usually being 2-3% of the purchase price plus 20% VAT for drawing up of the contract.

Who pays the costs of the transaction?

The parties to the contract need to agree on this. In most cases, however, the buyer pays the applicable costs, fees and taxes.



LAND REGISTER

What is contained in the land register?

The land register, which is an official electronic database, contains three sections for each real estate listed:

Section A: Register of real estate lots and registration numbers;

Section B: Register of owners of these real estate lots;

Section C: Register of mortgages and other encumbrances;

Section A describes the property, its covered area and the permitted use under public law, as well as the postal address. It also states restrictions under public law and rights in rem the owner of the property has towards the owners of other lots.

Section B holds information on the owner(s) of the real estate.

Section C contains information on mortgages and other encumbrances inherent to the respective real estate.

In addition to these three sections, all documents, on which a registration was based, are collected by the land registry and open to the public.

Can buyers rely on the contents in the land register?

Yes, the land register entries are deemed to be legally correct.

COURT

Is the court involved in the acquisition of real estate rights?

Yes. The land register is maintained by the district court with jurisdiction over the property in question. Transactions in real estate property can only be implemented through application to the respective district court.

If yes, what would the court fee be?

The applicable court fee amounts to 1.1% of the purchase price. In addition, a flat fee of €45 is to be paid for each application.

REAL ESTATE AGENT

What is the function of an agent in a real estate transaction?

The function of an Austrian agent is to establish contact between the seller and the (prospective) buyer and to mediate between them. The agent supports the negotiations and provides the buyer with the necessary information on the property and conditions of the purchase.

What is the usual commission rate for real estate agents? What must be observed before the commission becomes due?

The usual commission fees are:

- ♦ Seller - up to 3% of the purchase price plus 20% VAT
- ♦ Buyer - 3% of the purchase price plus 20% VAT

The commission fee is generally due upon signing of the purchase agreement.

LEASE CONTRACTS

Is it legally possible to conclude long-term lease contracts securing a return of investment (e.g. 15 years)?

Yes, this is possible. Long-term lease contracts are common in Austria.

Are long-term lease contracts safe? Under what conditions may the lessee terminate a long-term lease contract?

The conditions under which the lessee may terminate a long-term lease contract (such as notice period, termination date and/or waiver of termination right), should be stipulated in the lease contract. Otherwise, the following legal stipulations apply:

- ♦ For office and commercial leases, three months' notice period with a termination date at the end of the quarter
- ♦ For residential leases, three months' notice period with a termination date at the end of the month

In special cases (e.g. non-performance, or if the leased property is destroyed or essentially damaged) the contract may be terminated immediately. For residential leases, special rules protecting tenants generally apply.

Are there any specific formal requirements that have to be observed for long-term lease contracts, to make them enforceable (e.g. by registration)?

There are no specific formal requirements. Long-term lease contracts do not have to be registered with the land registry.

By purchase of a real estate property, does the buyer accede to the seller's existing lease contract(s) of said property?

Yes, lease agreements are not terminated through change in the ownership of a property.

Can lease agreements be registered with the land registry and thereby be protected from third party intervention?

Yes – the following types of lease agreement may be registered: agreements for a fixed period, lifetime lease agreements and lease agreements for an indefinite period (where the right to termination is waived).

Do lessees have any pre-emptive purchase rights when a property is sold?

Lessees have no pre-emptive rights when a property is sold.

Is it possible to agree on such preemptive rights by contract?

Yes, for example, pre-emption rights may be agreed upon and registered with the land registry.

How long does it take to evict a lessee if they default on the rent?

Depending on the contract, it generally takes between six months and a year to evict a lessee.

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