Austria

International Estate Planning Guide

IBA Private Client Tax Committee

Contact:

Niklas Schmidt

Wolf Theiss, Vienna

niklas.schmidt@wolftheiss.com

Iris Erlacher

Wolf Theiss, Vienna

iris.erlacher@wolftheiss.com

Updated 1/2026

Table of Contents

I. Wills and disability planning documents 3
A. Will formalities and enforceability of foreign wills 3
B. Will substitutes (revocable trusts or entities) 4
C. Powers of attorney, directives and similar disability documents 4

II. Estate administration 4
A. Overview of administration procedures 4
B. Intestate succession and forced heirship 5
C. Marital property 6
D. Tenancies, survivorship accounts and payable on death accounts 6

III. Trusts, foundations and other planning structures 7
A. Legal concept 7
B. Fiduciary duties 7
C. Establishment and incorporation 7
D. Dissolution 8
E. Treatment of foreign trusts and foundations 9

IV. Tax issues 9
A. Inheritance and gift tax 9
B. Real estate transfer tax 9
C. Land register fees 10
D. Foundation transfer tax 10
E. Gift notification obligation 12
F. Exit tax 12
G. Double taxation treaties 13

I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

A will must meet certain requirements, which are set out in the Austrian General Civil Code (Allgemeines bürgerliches Gesetzbuch). If it does not meet these requirements (or if no will has been made), then the intestacy rules apply. Austrian law distinguishes between several types of wills:

- Holographic wills (*eigenhändige Testamente*) must be handwritten and signed by the testator without the necessity of witnesses. This is the most uncomplicated type of will. Although it is not necessary to add the place and date of establishment to the will, it is advisable to do so.
- Non-holographic wills (*fremdhändige Testamente*) are normally written or typed by a third person and must be signed by the testator and three witnesses. The testator must, by their own hand, confirm that this is their will. The three witnesses have to be present at the same time, their identity must be mentioned in the will and they, by their own hand, must confirm that the testator declared that the signed document represents the testator's will (*nuncupatio*) and that they are acting as witnesses (*Zeugenzusatz*). Close relatives (eg*,* spouses, children, parents and siblings), cohabitees, heirs mentioned in the will and minors are prohibited by law from acting as witnesses.
- Apart from these two types of private wills, public forms of wills also exist. These are drawn up in court or before a notary public.

A will can optionally be registered in the Central Register of Wills of the Austrian Chamber of Notaries (Zentrales Testamentsregister der österreichischen Notariatskammer) or in the Register of Wills of Austrian Lawyers (Testamentsregister der österreichischen Rechtsanwälte) to ensure that it will be found at the time of death; such registration is, however, not a requirement for validity. Moreover, the Central Register of Wills can be used to access other European registers of wills as well.

In international cases (eg, a non-Austrian citizen dying in Austria or an Austrian citizen dying outside of Austria), the law applicable to succession has to be determined. Cross-border succession is governed by the European Union Succession Regulation, which is applicable in all EU Member States, except for Ireland and Denmark. Pursuant to the EU Succession Regulation, generally, the laws of the jurisdiction apply in which the deceased had their habitual abode at the time of death; it is, however, also possible to opt for the laws of the jurisdiction of which the testator is a citizen.

Pursuant to the EU Succession Regulation, a foreign will is valid as regards form, if its form complies with the law:

1. of the state in which the disposition was made;
2. of a state whose nationality the testator possessed either at the time when the disposition was made or at the time of death;
3. of a state in which the testator had their domicile either at the time when the disposition was made or at the time of death;
4. of the state in which the testator had their habitual residence either at the time when the disposition was made or at the time of death; or
5. insofar as immovable property is concerned, of the state in which that property is located.

These rules essentially implement the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

B. *Will substitutes (revocable trusts or entities)*

Austrian law does not provide for trusts. Instead, so-called private foundations (*Privatstiftungen*) exist, which serve similar purposes, but have an entirely different legal structure. Private foundations are sometimes used as will substitutes; they are explained in more detail below. The use of other legal entities is not at all common.

C. *Powers of attorney, directives and similar disability documents*

If a person loses legal capacity, the competent court must appoint a custodian, who has the legal authority (and the corresponding duty) to take care of such a person's interests. The custodian is subject to supervision by the court.

In order to prevent the appointment by the court of any third person as a custodian, Austrian law offers the possibility to grant a special power of attorney (*Vorsorgevollmacht*) whereby a person can decide for themself by whom they want to be represented in case of loss of legal capacity. The special power of attorney must specify the affairs for which the special power of attorney is granted (eg, representation before public authorities). General authorisations are inadmissible. The special power of attorney only becomes effective on the person's loss of capacity. It must be signed in person before a notary public, an attorney-at-law or an adult protection agency (*Erwachsenenschutzverein*) and must be registered in a central register. The special power of attorney can be revoked at any time (ie*,* even after the loss of decision-making capacity).

II. Estate administration

A. *Overview of administration procedures*

Probate proceedings are initiated ex officio by the competent court as soon as the death of an individual becomes known, provided that Austria has jurisdiction to conduct probate proceedings. The competent court is the court in whose district the deceased had their habitual residency. If such a place cannot be established in Austria, the competent court is the court in whose district the major part of the deceased's inherited property is located; otherwise, the district court competent for the Inner City of Vienna.

After a person dies, the estate does not pass directly to their heirs; rather, the assets as well as the liabilities of the deceased transfer by law to the estate (*Verlassenschaft*), this being a legal entity. Only upon formal resolution of the probate court (*Einantwortungsbeschluss*) will the assets then transfer to the heirs.

During the probate proceedings, a notary public is appointed as a representative of the court (*Gerichtskommissär*). The notary public has to invite the heirs to make declarations of acceptance of the inheritance. An heir can make: (1) an unconditional declaration of inheritance, in which case the heir assumes all assets and liabilities of the deceased (even if the value of the debts exceeds the value of the assets); or (2) a conditional declaration of inheritance (in which case an inventory is drawn up and the heir becomes liable for the deceased's debts only up to the value of assets they have received).

During probate, the heirs named in the will are entitled to joint administration of the estate. This means that the heirs must normally decide unanimously on a proposed course of action. For extraordinary transactions, the heirs additionally need the consent of the probate court. The deceased may also appoint an executor (*Testamentsvollstrecker*) to supervise the carrying out of the will's provisions, but this is of little practical relevance since the heirs are

not bound by such an appointment and may consequently dismiss the executor at any time. The only possibility for a testator to force their heirs to accept an executor would be to specify in the will that they will lose all rights to the inheritance if they do not accept the appointed executor.

B. Intestate succession and forced heirship

If an individual dies: (1) without having set up a valid will; (2) having set up a will that only disposes over part of the estate; or (3) having set up a will but the designated heirs do not, or cannot, accept the inheritance, then the intestacy rules of the Austrian General Civil Code apply. Pursuant to these provisions, the closest relatives of the deceased are to inherit the estate. A system of succession *per stirpes* applies. Four such groups of heirs exist and they are applied in the following order:

- first, the descendants of the deceased (children, grandchildren etc) – also adopted descendants;
- second, the parents of the deceased and their descendants (siblings, nephew, nieces etc);
- third, the grandparents of the deceased and their descendants (uncles, aunts, cousins etc); and
- fourth, the great-grandparents, but without their descendants.

The spouse (or registered partner) of the deceased receives:

1. besides members of the first group: one-third of the estate;
2. besides the parents of the deceased: two-thirds of the estate;
3. besides one parent of the deceased: five-sixths of the estate; and
4. in all other cases: the whole estate.

In addition, the spouse (or registered partner) receives the right to live in the marital home and to take possession of the moveable property within it.

Cohabitees do not have the same legal status as spouses (or registered partners). For example, they have no statutory right of intestate succession; however, if a deceased person has not set up a will and there is no heir under intestate succession law, then a cohabitee of the deceased may exceptionally inherit. Also, a cohabitee may for one year after the death of the deceased use the marital home and the moveable property contained therein (*Vorausvermächtnis*).

Under the Austrian forced heirship regime, the testator has to leave their spouse (or registered partner) and their descendants a certain part of the estate, namely half of the amount that they would have received under the intestacy rules. If the testator does not provide for these persons in their will, these persons can demand the respective payment in cash from the heirs. For example, if a husband dies leaving a wife and three children, under the intestacy rules, the widow would receive one-third of the estate and each of the three children would receive one-third of the remaining two-thirds (ie, two-ninths each) of the estate. Should the deceased have drawn up a will leaving his entire estate to a third person, then the widow would receive half of one-third (ie, one-sixth) and each child would receive half of two-ninths (ie, one-ninth) of the value of the estate from such an heir.

The forced heirship rules are mandatory and certain rules exist limiting the possibility to reduce the forced heirship portion through gifts during a person's lifetime: the value of all gifts made by the deceased in the two years before their death needs to be taken into account for purposes of calculating the forced heirship portion. If a gift was made to an individual who is also entitled to a forced heirship portion, the value of such a gift is to be included, even

without any time limit applying. If the assets of the net estate are not sufficient to cover the forced heirship portion, the recipients of gifts must pay compensation (in equal parts) or return the gifts received. Besides, when transferring assets to private foundations, if the founder had revocation rights or comprehensive amendment rights up to two years prior to their death, these assets will be added to the estate and thus increase the value for the persons who are entitled to a compulsory portion (*Vermögensopfertheorie*).

C. Marital property

The statutory matrimonial property regime in Austria is the separation of property: spouses stay the sole owners of the assets that they bring into the marriage and that they acquire during the marriage. A married couple is, however, free to agree on any other matrimonial property regime, such as:

- community of property during their lifetime (the spouses acquire co-ownership in the community property);
- community of property on death only (property remains separated until the death of one spouse); and
- community of surplus (property remains separated, but gains on property are shared between the spouses equally).

Any such matrimonial property agreement must be notarised. As such agreements can be entered in the land register, when concerning real estate, they can also be effective against third parties. Further, a spouse is generally not liable for debts entered into by the other spouse.

Despite the general principle of separation of matrimonial property, in the case of divorce, all assets the spouses have acquired together during their marriage will be divided between them. The assets to be divided consist of the so-called ‘marital assets’ and ‘marital savings’:

- The ‘marital assets’ comprise all movable or immovable property that served the use of both spouses during their marriage; this includes household goods and the marital dwelling.
- ‘Marital savings’ are all savings the spouses have accumulated during their marriage.

Some assets are generally excluded from division, for example:

- assets that one spouse has obtained by way of inheritance or a gift from a third party;
- assets that serve the personal use of one spouse;
- assets that serve the exercise of the profession of one spouse;
- assets that belong to a company; and
- shares in a company.

However, such generally excluded assets must nevertheless be divided if they have been (explicitly or implicitly) dedicated as marital assets or marital savings. A different handling of the process of dividing up assets is generally possible based on a contractual agreement (although the courts might deviate therefrom if the contractual agreement is ‘unfairly discriminating’ against one of the two parties).

D. Tenancies, survivorship accounts and payable on death accounts

Upon a person’s death, due to universal succession (*Gesamtrechtsnachfolge*), all assets, liabilities, rights and obligations of the deceased pass on to the heirs. Thus, also tenancies pass on to the heirs. Special rules apply to tenancies subject to the Austrian Tenancy Act

(*Mietrechtgesetz*): provided they do not object within two weeks following the lessee's death, a spouse, a cohabitee and children of the lessee automatically enter the agreement as the new lessees (thereby excluding any heirs), provided that they have already used the home together with the deceased and provided further that they urgently need such accommodation.

Banks typically freeze bank accounts as soon as they become aware of the death of the account holder. This does not apply to so-called 'and/or' accounts, which have been established for more than one person.

III. Trusts, foundations and other planning structures

A. Legal concept

Austria is a civil law jurisdiction and has not signed the Hague Trust Convention. As already mentioned above, Austria does not know the concept of a common law trust. Rather, private foundations are used.

A private foundation is a body corporate, similar to a limited liability company, but does not have any shareholders or members. It is set up by one or more founders through a deed of foundation, and is endowed by the founder with assets, which are managed by a board of directors consisting of at least three individuals. The deed of foundation defines the purpose of the foundation, which may be charitable or non-charitable.

A private foundation may essentially serve any permissible purpose. However, it may neither carry out a commercial activity exceeding a mere ancillary activity nor be a shareholder with unlimited liability of a partnership. In practice, most private foundations are non-charitable and are used as private wealth vehicles for holding liquid assets, real estate or shares in a family business; in such a case, the beneficiaries of the private foundation are typically the founder and/or family members of the founder.

A private foundation has full legal ownership over its assets; the beneficiaries of a legal foundation have no ownership or other in rem rights over these assets. Austrian private foundations can be established *inter vivos* or upon the founder's death. If an Austrian private foundation is established upon the founder's death, the foundation declaration must meet the requirements for a will that are set out in the Austrian General Civil Code and must also be set up in the form of a notarial deed.

B. Fiduciary duties

As a rule, the board of directors represents the private foundation. However, in legal transactions between the private foundation and a member of the board of directors, the private foundation is represented by the supervisory board, if any; should there exist no supervisory board, both the court and the other members of the board of directors have to approve such a transaction. The board of directors has to perform its duties in an economical manner, in accordance with the deed of foundation and in line with the purpose of the private foundation. The members of the board of directors are liable for fault vis-à-vis the private foundation, including cases of slight negligence.

C. Establishment and incorporation

The founders of a private foundation can be individuals or legal entities. They have to sign a deed of foundation in the form of a notarial deed. This has to contain:

1. the assets to be endowed to the private foundation (at least €70,000);
2. the purpose of the private foundation;
3. the body that determines the beneficiaries (eg, the board of directors);
4. the name of the private foundation (which must contain the wording '*Privatstiftung*');
5. the legal seat of the private foundation (which must be in Austria);
6. the names, postal addresses and dates of birth (in the case of individuals) or registration numbers (in the case of legal entities) of the founders; and
7. the term of the private foundation (which may be limited or unlimited).

Certain rights of the founder have to be contained in the deed of foundation in order to be valid, such as the right to amend the deed of foundation, the right to revoke the private foundation and the admissibility of setting up a supplementary deed of foundation.

In practice, the founder of a private foundation will always reserve the right to set up a supplementary deed of foundation. Since the latter does not need to be disclosed to the commercial register, details of a more private nature are usually contained therein. Typically, it will contain: (1) detailed provisions regarding the determination of the beneficiaries and the distributions to them; and (2) further endowments to be made by the founder to the private foundation exceeding the minimum endowment of €70,000. The supplementary deed also has to be set up in the form of a notarial deed.

As mentioned above, assets with a value amounting to at least €70,000 must be endowed by the founder to the private foundation. In case there are several founders, it is not necessary that every founder contributes the same amount. Often, when a private foundation is set up, minors contribute a nominal amount (eg, €1,000) in order for them to acquire the status of a founder, which enables them to exercise the rights associated therewith. In practice, it does not make sense to set up a private foundation with assets of less than €5m. Assets endowed may consist of cash or be in kind. In the latter case, an audit will be necessary to determine the value. After the establishment of a private foundation, subsequent endowments by the founder are still possible. Also, it is possible for non-founders to make endowments; however, this does not result in these persons thus becoming founders.

Once the deed of foundation and the supplementary deed of foundation, if any, have been signed, the first board of directors must apply for registration of the private foundation in the commercial register.

D. Dissolution

A private foundation is dissolved in the following cases:

1. expiry of the term of the private foundation pursuant to the declaration of the foundation;
2. initiation of insolvency proceedings;
3. dissolution order of the court; and
4. unanimous resolution on the dissolution of the private foundation by the board of directors.

The board of directors unanimously has to resolve on the dissolution of the private foundation in the following cases:

1. the founder has validly revoked the private foundation;
2. the purpose of the foundation has been achieved (or is not achievable anymore);
3. a non-charitable private foundation, the main purpose of which is the financial support of individuals, has been in existence for 100 years (after expiry of the first 100-year

term, all ultimate beneficiaries can unanimously resolve on the continuation of the private foundation for another specified term, at most 100 years); and
4. other reasons for dissolution as mentioned in the declaration of foundation have occurred.

All assets of the dissolved private foundation remaining after the settlement of creditors' claims have to be transferred to the last beneficiary. After the private foundation has been deregistered from the commercial register, its books and records have to be securely stored in a place determined by the court for a period of seven years.

E. Treatment of foreign trusts and foundations

Granting the status as a beneficiary in a foreign trust or foundation may discharge a forced heirship obligation.

IV. Tax issues

A. Inheritance and gift tax

Austria currently does not levy inheritance and gift tax. Such taxes were repealed by the Austrian Constitutional Court (Verfassungsgerichtshof) as of 1 August 2008 due to inconsistent tax bases for various assets. There have been ongoing political discussions regarding the reintroduction of these taxes, but these have led nowhere.

B. Real estate transfer tax

Gratuitous transfers of Austrian real estate, whether through inheritance or through a gift, trigger real estate transfer tax (*Grunderwerbsteuer*). The tax basis of real estate transfer tax is the so-called property value (*Grundstückswert*). The property value can be calculated using one of two methods:

- *Lump-sum value method*: The property value is calculated as the sum of the land value (this is based on historical assessments) and the building value (this is based on the number of square meters times a construction cost coefficient).
- *Real estate price index method*: The property value is calculated based on the real estate price index as annually published by *Statistik Austria,* using a discount of 28.75 per cent.

The taxpayer can freely choose the method, and this also per economic unit.

Alternatively, instead of using the property value, if proof is given that the fair market value of the real estate is lower than the property value, then the lower fair market value may be used.

The following rates apply:

Property value	**Tax rate (%)**
€0 up to and including €250,000	0.5
From €250,000 up to and including €400,000	2

Over €400,000	3.5

In case real estate is transferred to (Austrian or foreign) private law foundations and comparable legal estates such as trusts, the tax rate is increased by 3.5 per cent of the property value (*Stiftungseingangssteueräquivalent*).

Real estate transfer tax is triggered not only upon the direct transfer of Austrian real estate, but also in the case of certain indirect transfers, namely if:

- at least 75 per cent of the shares/interest in a company/partnership holding Austrian real estate are transferred to one acquirer, unified in the hands of one acquirer or to a group of acquirers; or
- at least 75 per cent of the shares/interest in company/partnership holding Austrian real estate are transferred to new shareholders/partners within a time period of seven years.

The tax is 3.5 per cent of the fair market value in the case of real estate companies and 0.5 per cent of the property value in all other cases. Real estate companies are companies whose primary business involves the sale, rental or management of properties, with little or no other commercial activity. The classification as a real estate company is determined based on the company's assets or the income it generates. Properties used for the company's own commercial purposes are excluded.

C. Land register fees

The registration of ownership of real estate in the Austrian land register (*Grundbuch*) triggers a 1.1 per cent land register fee (*Eintragungsgebühr*). Generally, the basis of this fee is the purchase price that would be attained in the case of disposal in the normal course of business. All circumstances that influence the price are to be taken into account. Unusual or personal circumstances are, however, not to be taken into account. The applicant before the land register has to mention the fee basis in the application.

Notwithstanding the aforementioned, a preferential fee basis applies to real estate transfers to the following parties:

- spouses or registered partners during an existing marriage or registered partnership;
- cohabitants, provided that they have or had a common primary residence (*Hauptwohnsitz*);
- relatives or in-laws in the direct line;
- stepchildren, adopted children, foster children or their children, spouses or registered partners; or
- siblings, nieces or nephews of the transferor.

In all of these cases, the basis of the land register fee is equal to three times the tax value (*Einheitswert*), capped at a maximum of 30 per cent of the purchase price that would be attained in the case of disposal in the normal course of business. The tax value is in no relation to the fair market value since it is, in general, artificially low (in most cases somewhere between 0.1 per cent and ten per cent of the fair market value).

D. Foundation transfer tax

Gratuitous transfers of assets (*inter vivos* and *mortis causa*) to (Austrian or foreign) private law foundations and comparable legal estates such as trusts are subject to a foundation

transfer tax (*Stiftungseingangssteuer*). Not only are transfers in the course of the establishment of such an entity covered, but also later transfers, both by the founder/settlor or a third person. In this context, the civil law point of view is not decisive, but rather the attribution of assets for tax purposes. Therefore, the scope of application is limited to transfers to non-transparent entities. Transfers to tax-transparent entities on the other hand do not lead to a change in the attribution of the assets, and no foundation transfer tax is triggered.

Foundation transfer tax is only triggered if there is a certain territorial nexus to Austria. This is the case if the transferor and/or the transferee, at the point in time of the transfer, have a domicile (*Wohnsitz*), their habitual abode (*gewöhnlicher Aufenthalt*), their legal seat (*Sitz*) and/or their place of management (*Ort der Geschäftsleitung*) in Austria. Thus, no tax falls due in the case of neither the transferor nor the transferee having a nexus to Austria. The four terms just mentioned are defined as follows:

- A domicile is maintained where a taxpayer has a dwelling place under circumstances that permit the conclusion that the taxpayer intends to keep and use it. A special regime applies to secondary residences: In the case of taxpayers whose centre of vital interests is outside Austria for more than five calendar years, an Austrian dwelling place qualifies as a domicile only in such years in which the dwelling place is used (alone or together with other Austrian dwelling places) for more than 70 calendar days.
- A habitual abode is maintained where a taxpayer stays under circumstances that permit the conclusion that the taxpayer intends to dwell there not only temporarily; staying in Austria for more than six months irrefutably leads to a habitual abode, retroactively for the first six months.
- The legal seat is the place designated as such in the constitutional documents (eg, articles of association, memorandum and trust deed) of an entity or in the applicable statute. If no legal seat is defined, then the place of management (see immediately below) is deemed to be the legal seat.
- The place of management is the place where the management decisions of an entity are passed.

The tax basis under the Foundation Transfer Tax Act is the fair market value of the assets transferred minus any debts (eg, mortgages or consideration), calculated at the time of transfer.

The tax rate generally is 3.5 per cent. A higher rate of 25 per cent applies if one (or more) of the following alternatives is fulfilled:

- the private law foundation or comparable legal estate is not comparable to an Austrian private foundation (*Privatstiftung;* note that trusts are not seen as comparable to an Austrian private foundation);
- the documents, as amended, concerning the internal organisation, the administration of assets and the usage of assets have not (entirely) been disclosed to the competent Austrian tax office at the latest at the point in time when Austrian foundation transfer tax falls due;
- there exists no comprehensive treaty concerning administrative assistance and the enforcement of foreign judgments between Austria and the state of residence of the private law foundation or comparable legal estate;
- there exists no obligation to disclose the identities of beneficiaries to the tax authorities in the state of residence of the private law foundation or comparable legal estate; or

- there exists no register in the state of residence of the private law foundation or comparable legal estate in which it is registered.

Deviating from this, in the case of transfers of assets (by persons having a territorial nexus to Austria) to Liechtenstein foundations, rates between five per cent and ten per cent apply.

The law provides for certain exemptions, in particular for:

- transfers *mortis causa* of certain financial assets (eg, bank deposits and publicly placed bonds); and
- transfers of real estate (regarding real estate transfer tax, see above).

The tax liability occurs at the point in time of the transfer. The debtor of the foundation transfer tax is, in general, the transferee; notwithstanding, in the case of transfers *inter vivos* where the transferee has neither its legal seat nor its place of management in Austria, the transferor is liable to tax. In both cases, the respective other party can be held secondarily liable for non-payment of foundation transfer tax. The debtor of the foundation transfer tax has to file a tax return (in principle, electronically), has to self-assess the tax and has to pay it until the 15th day of the second month following the triggering of foundation transfer tax.

E. Gift notification obligation

There is a special notification obligation for gifts of money, receivables, shares in corporations, participations in partnerships, businesses, movable tangible assets and intangibles. The notification obligation only applies if the decedent (donor) and/or the heir (donee) have a domicile, their habitual abode, their legal seat and/or their place of management in Austria. Both the donor and donee are obliged to electronically effect the gift notification within three months from the donation. The obligation is fulfilled for both the donor and donee if only one of them complies with the notification obligation. Intentional violation of the notification obligation may trigger fines of up to ten per cent of the fair market value of the gifts. Impunity is only attainable in case a voluntary self-disclosure is filed at the latest within one year after the gift notification period has expired.

Not all gifts are covered by the notification obligation. In the case of gifts to related parties, a threshold of €50,000 per year applies; in all other cases, notification is obligatory if the value of the gifts exceeds €15,000 during a period of five years. Related parties are:

- spouses (even after the marriage has ended);
- relatives in the direct line and relatives in the second, third and fourth degree in the collateral line;
- in-laws in the direct line and in-laws in the second degree in the collateral line (this applies *mutatis mutandis* to registered partners);
- foster parents and foster children;
- cohabitants, as well as children and grandchildren of one of these persons in relation to the other person; and
- registered partners (even after the registered partnership has ended).

Another exemption from the notification obligation applies to gratuitous transfers subject to foundation transfer tax (see above).

F. Exit tax

Any circumstances resulting in the loss of Austria's right to tax certain taxable capital gains are generally subject to tax at a flat rate of 27.5 per cent (eg, if an individual dies and Austria

thereby loses its taxing rights because the heirs are non-Austrian tax residents). Double taxation treaties on income and capital generally allocate the right of taxation to the country of residence.

A deferral of taxation (ie, non-imposition at the time of exit) until the actual sale can be requested in the tax return if an asset is transferred gratuitously to another individual who is a resident of an EU or European Economic Area (EEA) state. For all other restrictions on Austria's right of taxation in relation to EU/EEA states, a request to pay the tax liability in instalments may be made in the tax return. This applies, for example, to gratuitous transfers to foundations. If assets are transferred to persons in non-EU/EEA countries, exit tax becomes immediately due; no deferral of taxation or payment in instalments are available.

G. Double taxation treaties

Although there is currently no inheritance and gift tax in Austria, double taxation treaties covering inheritance, and partly also gift tax, are in force with nine countries and may be used to reduce taxation. Treaties with the Czech Republic, France, the Netherlands and the United States cover both inheritance and gift taxes, while treaties with Hungary, Liechtenstein, Poland, Sweden and Switzerland cover only inheritance taxes.

For the substantive scope of the double taxation treaties, it should be noted that not only do inheritance and gift tax (which has in the meantime been repealed) fall within the substantive scope, but also any identical or substantially similar taxes that are imposed by Austria after the date of signature in addition to, or in place of, such previously existing tax.

The Austrian Ministry of Finance (Bundesministerium für Finanzen) has published several public letter rulings regarding specific issues related to double taxation treaties concerning inheritance and gift tax. In these, it has repeatedly been stated that the (current) foundation transfer tax and the (previous) inheritance tax are to be seen as substantially similar taxes, so that a double taxation treaty may apply.