



ISSUES IN OWNERSHIP OF REAL ESTATE

AUSTRIA

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Austrian law does not know the common law concept of Fee Simple ownership, but basically provides for one single and autonomous form of full ownership in real property.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

The acquisition of ownership in real estate requires (i) a valid title on the transfer of real estate (e.g. purchase agreement), and (ii) its registration with the land register as appropriate modus. The validity of a real estate transfer agreement itself is not subject to formal requirements, yet its registration with the land register requires the legalisation of the signatures on a written real estate transfer agreement containing specific and utmost strict documentation language. The registration of the title constitutes the property as right in rem, i.e. with effect against third parties.

Austrian law follows the Roman principle of *superficies solo cedit*, so that, in principal, the owner/acquirer of land also owns/acquires buildings and constructions thereon.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The land register mentioned under 2. above covers the virtually entire surface of Austria and is operated by the Austrian district courts (Bezirksgerichte), each responsible for the area of its local jurisdiction. The land register is public and may be accessed via www-websites by inter alia other courts, notaries public and attorneys; in particular, excerpt of the land register may be drawn at low costs.

Registration with the land register, in particular its constitutive effect and the connected "rule of confidence", entails the only minor importance of title search, title documentation and related title insurance or title opinion with regard to Austrian real estate: an up-to-date excerpt of the land register proves the current legal title with only remote exposure risk. The district court administering the land register of its area also keeps title documents with respect to each plot of land. At the respective court such documents may be reviewed by anyone and may inform in particular on rights and obligations agreed on between the parties to former transfers.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Title insurances or title opinions are not customary for (ordinary) Austrian real estate transactions (see above under 3.).

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

Depending on various criteria such as investment purpose, investment size or tax considerations, a limited liability company (Gesellschaft mit beschränkter Haftung, GmbH), a stock corporation (Aktiengesellschaft, AG) or a private foundation (Privatstiftung) may be the most common investment vehicles.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Austrian law does not provide for specific regulations on real estate investment trusts (REIT). Such laws recently being introduced in a growing number of (continental) European countries, including Germany, the introduction of such laws in Austria is discussed. However, already based on the current Austrian legislation, investment vehicles similar to REITs may be established, e.g. through (nominal) profit participation rights (Nominal-Genussrecht).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

A direct transfer of ownership in real estate is subject to a real estate transfer tax at a rate of 3.5% calculated on the transfer (purchase) price.

The registration of ownership with the land register is subject to a registration fee amounting to 1% of the purchase price.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In case of the acquisition of all shares in a company holding real estate the real estate transfer tax of 3.5% mentioned above under 7. is also triggered. However, such tax can lawfully be avoided by having a minimum share of the target company acquired by a third party (e.g. another company) who may openly act as trustee on behalf of the principal acquiring entity.

In case of a share deal by which the legal entity acquired owns real property the land register registration fee mentioned above under 7. is not triggered.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

Regarding real estate transfer tax and registration fee see above under 7. and 8.

Real estate is subject to numerous state laws, distinct in each of the nine Austrian federal states (Bundesländer), regarding the regulation of inter alia foreign and agricultural real estate acquisition control, regional planning and zoning as well as construction permits. In each of these subjects the nine laws follow the same principles, yet may substantially differ in detail.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

Pursuant to some of the state laws on foreign real estate acquisition control (see above under 9.) the ultimate beneficial owner must be disclosed for assessment as to in how far the acquirer is to be considered "foreigner" in the meaning of the law. However, the mentioned laws often provide for unclear wording as to the degree to which authorities must actually trace identity of ownership up a holding structure; respective Austrian administrative practice is often arbitrary.