



# LEGAL NEWS

We create clarity.

## HOLIDAY PROPERTIES - TAXES & INHERITANCE: AUSTRIA, FRANCE & GERMANY

### I. INTRODUCTION

From dream to real estate: Holiday properties have always been attractive, especially during times when holidays are becoming increasingly popular away from conventional hotel stays. However, it is important to keep an eye on costs despite all the enthusiasm. This begins with the incidental costs of the actual acquisition and can extend up to inheritance tax in case of inheritance.

In the following, we examine the costs that need to be taken into account for Austria, France and Germany, which may arise in case of acquisition of a property, on-going operations, for a sale, in case of a gift or in the event of inheritance.

### II. AUSTRIA

#### 1. WHAT COSTS DO YOU INCUR WHEN PURCHASING A HOLIDAY PROPERTY?

First, the buyer of a property must bear the fee for entry in the Austrian land register (registration fee). This amounts to 1.1% of the purchase price. In addition, there is an additional 3.5% of the purchase price in real estate transfer tax, so that in any case 4.6% of the purchase price in fixed costs are incurred, regardless of whether it is a holiday property or not. Although the real estate transfer tax is to be paid by the buyer, both the buyer and the seller are liable for its timely payment under the law. For transfers between family members, lower tax rates or assessment bases apply in connection with the land transfer tax. Furthermore, there are exceptions (in the sense of other assess-

ment bases or tax rates) for forestry and agricultural land.

In addition, there are solicitor or notary costs for the creation of the purchase contract, the costs for the notarial certification of the purchase contract documents and any broker commission. General statements about the amount of these costs cannot be made, since these can vary from individual case to individual case. As a general guide, when acquiring a property in Austria, one must expect at least ancillary costs in the amount of 10% of the purchase price.

#### 2. WHAT OPERATING COSTS NEED TO BE PAID BY THE OWNER OF A HOLIDAY PROPERTY?

Especially in the case of a holiday property, on-going costs in the form of a secondary residence or tourism tax can be incurred. In this case, the legal situation varies depending on the federal state. Depending on the federal state (and partly also depending on the respective municipality), the amount of this levy ranges from a few EUR 100 per year up to EUR 2,200 per year (for example in Tyrol).

In addition, the current costs that each property owner incurs must also be taken into account: operating costs, property tax, insurance, etc.

#### 3. WHAT COSTS ARE INCURRED WHEN SELLING A HOLIDAY PROPERTY?

In the case of the sale of a holiday property in Austria, the seller may have to pay real estate gains tax. This is fundamentally 30%, calculated on the seller's profit on the sale of the prop-



erty (sale of properties acquired before 31/03/2002 are subject to an effective tax burden in the amount of 4.2% of the sales proceeds). There are some exceptions to the real estate income tax, e.g. if the property was used as the main residence for a certain number of years (thus not in the case of mere second or leisure residences) or the building itself was built by the owner (which is subject to tax on the sale of land and property in the latter case). It should also be noted that in the event of the sale, a valid energy certificate must be handed over to the buyer by the seller.

#### 4. WHAT COSTS APPLY WHEN MAKING A LIFETIME GIFT?

There is no gift tax in Austria (currently). Nevertheless, the 1.1% registration fee (calculated based on the market value or in the "expanded family circle") and the land transfer tax is also due here for entry in the land register. In the case of donations up to a value of EUR 250,000, the latter is 0.5%, for the following EUR 150,000 2% and in addition the regular tax rate of 3.5% (level tariff). The assessment basis for the real estate transfer tax in the case of gifts is the property value, which can be determined in three different ways (flat-rate value method, real estate price comparison list or expert opinion).

The variable costs for the solicitor and/or the notary are of course also incurred in the case of donations.

#### 5. WHAT COSTS ARE INCURRED IN THE EVENT OF INHERITANCE?

Since 2008, there has been no inheritance tax in Austria any more. Since the acquisition due to death is a free acquisition, the land acquisition tax is also to be calculated here based on the tiered tariff and based on the property value (see item 4 above). The 1.1% registration fee for the land register entry is also incurred.

In addition, in the context of the estate procedure, there are still costs such as the fee for the notary as a court commissioner, 5 percent of the court fee on the pure estate assets and any costs of an expert valuation.

### III. FRANCE

#### 1. WHAT COSTS DO YOU INCUR WHEN PURCHASING A HOLIDAY PROPERTY?

In addition to the purchase price, fees and taxes are due for the acquisition of real estate in France.

First of all, the notary fees must be mentioned. There are fee tables for the amount that the notary receives as remuneration for his services. The fees amount to approximately 1% of the purchase price. If the notary provides additional services in addition to the certification, he can demand additional fees.

In addition, there is the land acquisition and cadastral tax. The purchase of the property is taxed with the land transfer tax ("*droit de mutation*"), and the costs of the land register entry are covered with the cadastral tax ("*taxe de publicité foncière*"). The total amount of taxes and fees is currently approx. 7 to 8% for used properties, and approx. 2 to 3% of the purchase price for new properties. In principle, they must be borne by the buyer.

Finally, it must be pointed out that when purchasing new real estate, value added tax ("*taxe sur la valeur ajoutée*") in the amount of 20% is due. However, this is often already included in the purchase price.

#### 2. WHAT OPERATING COSTS NEED TO BE PAID BY THE OWNER OF A HOLIDAY PROPERTY?

If you live in the property you have purchased yourself, the following fees and taxes will be charged:

The property tax ("*taxe foncière sur les propriétés bâties*") must be paid annually by the person who is the owner, leaseholder or usufructuary on 1 January of the respective year. If the property is sold after 1 January, the property tax for this year has already been paid. However, it can be agreed in the preliminary contract that the buyer must bear part of what is common practice.



Since 2023, housing tax ("*taxe d'habitation*") has been abolished.

In addition, there are other on-going costs associated with real estate ownership.

### 3. WHAT COSTS ARE INCURRED WHEN SELLING A HOLIDAY PROPERTY?

In the event of the sale of a property that is not the seller's main residence, a value increase tax (so-called "*plus-value immobilière*") is generally incurred in France. What is decisive here is the profit that has arisen since the acquisition of the property. This profit tax is due upon notarisation of the sale and is to be borne by the seller. Special features apply to commercial real estate traders or companies subject to corporate tax, which are not discussed below.

The tax essentially consists of three components:

- Income tax share ("*impôt sur le revenu*") in the amount of 19%;
- Social security contributions ("*prélèvement sociaux*") in the amount of 17.2% and 7.5% respectively for persons who are subject to social security obligations in an EU country or Switzerland (so-called 'Solidarity Discount', "*prélèvement de solidarité*");
- If necessary, additional levy ("*taxe additionnelle*") of 2 to 6% with an increase in value of more than EUR 50,000.

The legal regulatory environment for calculating the tax is complex and individual. In principle, the taxable increase in value (using discounts in relation to the holding period) must first be determined in advance, taking into account any tax exemptions. For example, for the income tax portion, there are discounts from the sixth year of the holding period of the property (6% for a holding period between 6 and 21 years and 4% in the 22nd holding year); with a holding period of more than 22 years, the income tax portion is omitted. Social security contributions are not applicable for a holding period of 30 years or more.

In addition, there are special exemption circumstances, for example:

- If a seller has initially been resident and subject to unlimited taxation in France before moving his main residence to Germany and selling his French residential property within the year in which he abandoned his French residence;
- the application of an exempt amount of EUR 150,000 if the seller had in the past lived in France for at least two years and sold his France property within 10 years after relinquishment of his French residence.

In the case of the aforementioned alternatives, it is important that the seller has neither leased their property temporarily nor otherwise transferred it to third parties for use.

In practice, the notary acts as an extended arm of the tax office and must ensure on a fiduciary basis that the tax is paid to the French tax authorities after receipt of the purchase price in his notary escrow account.

### 4. WHAT COSTS APPLY WHEN MAKING A LIFETIME GIFT?

After the double taxation agreement applicable between France and Germany, which is applicable to all cases of inheritance and donations from 3 April 2009, a property located in France is (also) always taxable there (so-called principle of occupancy). The tax rate is designed in such a way that the global assets (including such goods outside France) must be taken into account for its determination; this increases the tax rate. In France, however, only the value item that – like the French property – may be taxed based on the DTA in France.

Otherwise, the scope of the taxation depends on the place of residence of the testator and the heir. For example, if one of the heirs is resident in France, the heir must also tax his inheritance share in France, taking into account any tax paid in Germany.

If the inheritance case occurred outside France, the French inheritance tax return plus inheritance tax payment must be submitted within 12 months or the tax must be paid; the tax office in Noisy Le Grand ("*Recette des non-résidents*", 10 rue du Centre, 93465 Noisy Le Grand Cedex ) is centrally responsible for



foreign inheritance cases. If the testator died in France, the deadline is even as short as only six months. It should be noted that in the event of an inactive exceedance of the aforementioned deadlines, interest on arrears and penalties are threatened. Due to the numerous case combinations and the deadlines to be observed, it is strongly recommended to seek legal advice in a cross-border context.

## **5. WHAT COSTS ARE INCURRED IN THE EVENT OF INHERITANCE?**

See above.

## **IV. GERMANY**

### **1. WHAT COSTS DO YOU INCUR WHEN PURCHASING A HOLIDAY PROPERTY?**

The buyer of a property must initially bear the notary costs for the notarisation and execution of the property purchase contract. In addition, there are fees for the land register entries. Both the notary costs and the fees for the land register entries are based on the amount of the purchase price. For example, the notary costs amount to EUR 5,070.00, plus 19% VAT, and the land register costs EUR 7,600.00 for a purchase amounting to EUR 1.5 million. In the event that encumbrances must be replaced over the course of the property acquisition, further notary costs and land register fees will be incurred.

In addition to these costs, the buyer must pay the land transfer tax, which varies between 3.5% (Bavaria) and 6.5% (Schleswig-Holstein) depending on the federal state.

The notary costs, land register fees and the property transfer tax are incurred irrespective of whether it is a holiday property or any another property. The use as a private property or commercial property also does not play a role in the costs or the property transfer tax.

Although the land acquisition tax must regularly be borne by the buyer according to the property purchase contract, both the buyer and the seller are liable for payment as joint debtors according to the law.

In the event that a lawyer is commissioned to create a property purchase contract, the costs for his employment are also added. In Germany, however, the appointment of a lawyer to create a contract is rather unusual. The purchase contract is usually created by the notary and this activity is compensated by the notary costs. If a broker is commissioned with the brokerage, brokerage costs are added as further expenses. The brokerage costs generally amount to between 3.5 and 5.5% of the purchase price. As a general guide, when acquiring a property in Germany, depending on whether a broker is involved, incidental costs in the amount of 5 to 10% of the purchase price must be expected.

### **2. WHAT OPERATING COSTS NEED TO BE PAID BY THE OWNER OF A HOLIDAY PROPERTY?**

Especially in the case of a holiday property, second flat tax is incurred as current costs, in different amounts and depending on the federal state.

In addition, the current costs that each property owner incurs must be taken into account: The general operating costs for gas, water, electricity, waste, waste water, property tax, insurance, etc. must be mentioned here; if it is a condominium, the costs of property management must also be taken into account. Additional costs depend on whether the property is rented to holiday guests for short stays, for example. If this is the case, recurring renovation costs must be expected at shorter intervals.

### **3. WHAT COSTS ARE INCURRED WHEN SELLING A HOLIDAY PROPERTY?**

Which taxes are incurred by the seller in the sale of a holiday property in Germany initially depends on whether the holiday property concerns private assets or business assets and also on whether the seller holds the property as a private person or via a property-holding company. If the property is held in private assets, the sale is generally tax-exempt if there is no speculative transaction involved. Such a transaction must be assumed if the acquisition and sale take place within a period of 10 years. Then the difference between the acquisition





costs and the sales price must be subjected to personal income tax. The tax rate depends on the specific personal circumstances of the seller.

If the seller holds the property in the business assets or if he acquires and sells more than three properties within a certain period of time, so that the tax authorities assume commercial property trading, the difference between acquisition costs and sales proceeds is always subject to personal income tax without a holding period being decisive.

It should also be noted that the seller is obliged to hand over a valid energy certificate to the buyer. A breach of this obligation is sanctioned with a fine.

#### 4. WHAT COSTS APPLY WHEN MAKING A LIFETIME GIFT?

In Germany, the amount of the gift tax is based on the degree of kinship between the donor and the recipient. The closer the relationship is, the lower the tax rates will be. There is an exemption of EUR 500,000.00 between spouses; the exemption between parent and child amounts to EUR 400,000.00 each. The allowances are newly granted every 10 years, which opens up potential for structuring the transaction.

In the case of real estate donations, notary costs and land register fees must be taken into account in addition to the gift tax. A notarial gift agreement is mandatory. The costs are based on the value of the property transferred by donation. With a value of EUR 1.5 million, the notary costs and land register fees are the same as with a sale.

#### 5. WHAT COSTS ARE INCURRED IN THE EVENT OF INHERITANCE?

With regard to the gift or inheritance tax, it doesn't matter whether a property in Germany is given as a gift or inherited by way of anticipated succession plays a role. Both the tax rates and the allowances apply to the same extent regardless of whether they are given as gifts or inherited.

An example should show design options at this point:

If the spouses F and M acquired a holiday property ideally for half of EUR 2 million each in 2020, have two children, K1 and K2 and the F 2023 dies without a testamentary disposition, i.e. the statutory succession applies, the following applies:

Estate of EUR 1 million M inherits EUR 500,000.00 minus exemption amount of EUR 500,000.00, ErbSt (inheritance tax) = 0; K1 and K2 inherit EUR 250,000 minus exemption amount of EUR 400,000.00, ErbSt = 0.

If the F had acquired the property as sole property, the following tax burden would result:

Estate of EUR 2 million M inherits EUR 1 million minus the allowance of EUR 500,000.00 remaining EUR 500,000.00 x 15% = EUR 75,000.00 for M. K1 and K2 each inherit EUR 500,000.00 less the allowance of 400,000.00 each remaining for K1 and K2 100,000.00 x 11% = EUR 11,000.00 each, i.e. there is a total tax burden of EUR 97,000.00. The example should clarify that with regard to the avoidance/minimisation of the gift, there is considerable room for manoeuvre for the inheritance tax burden. In this case, possible tax consequences in the event of inheritance should have been considered even at the time of acquisition.

## CONTACT

### Austria:

*Oskar Takacs*

*O.Takacs@scwp.com*

### France:

*Maurice Hartmann*

*Maurice.Hartmann@schindhelm.com*

### Germany:

*Axel Berninger*

*Axel.Berninger@schindhelm.com*