

Jurisdiction's name:	AUSTRIA
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Information on Residency for tax purposes
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Section I – Criteria for Individuals to be considered a tax resident

The following legal provisions determine whether an Individual is to be considered a tax resident of Austria:

Sec. 1 of the Income Tax Act (ITA, “Einkommensteuergesetz”):

<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40104899&ResultFunctionToken=a2ebb9be-4590-4078-8c34-c5c58dfa4828&Position=1&Kundmachungsorgan=&Index=&Titel=estg&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=1&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=09.02.2016&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=>

Sec. 26 of the Federal Fiscal Code (FFC, “Bundesabgabenordnung”):

<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12043723&ResultFunctionToken=9aa8a745-eb66-463e-a147-11682c496581&Position=1&Kundmachungsorgan=&Index=&Titel=BAO&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=26&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=09.02.2016&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=>

Accordinging sec. 1 ITA individuals that have their domicile or habitual abode in Austria are subject to unlimited tax liability and therefore have to be regarded as residents for tax purposes.

“Domicile” is defined as the place where an individual holds a dwelling under circumstances that show that s/he will keep and use the dwelling (sec. 26 para. 1 FFC).

“Habitual abode” means the place where an individual is present under circumstances that show that s/he does not merely stay at that place or in that country temporarily. However, unlimited tax liability due to a habitual abode is only applicable where the individual stays in Austria for more than six months. In this case tax liability is extended to the first six months. The Federal Ministry of Finance is enabled to refrain from the application of this provision where the stay in Austria does not extend one year and the individual neither has a business in Austria nor exercises another profession (sec. 26 para. 2 FFC).

Section II – Criteria for Entities to be considered a tax resident

The following legal provisions determine whether an Individual is to be considered a tax resident of Austria:

Sec. 1 of the Corporate Tax Act (CTA, “Körperschaftsteuergesetz”):

<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40137576&ResultFunctionToken=8c4d5108-e772-4316-8f51-ed073008b021&Position=1&Kundmachungsorgan=&Index=&Titel=kstg&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=1&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnu>

<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12043798&ResultFunctionToken=efb412ad-82f8-4b68-ab3c-b663eb40b008&Position=1&Kundmachungsorgan=&Index=&Titel=bao&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=27&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=10.02.2016&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=>

Sec. 27 of the Federal Fiscal Code (FFC, “Bundesabgabenordnung”):

<https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12043798&ResultFunctionToken=efb412ad-82f8-4b68-ab3c-b663eb40b008&Position=1&Kundmachungsorgan=&Index=&Titel=bao&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=27&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=10.02.2016&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=>

According to sec. 1 CTA corporations with their seat or place of management are subject to unlimited tax liability. “Seat” is defined as the place determined by, inter alia, law, a contract, statutes or deed of foundation (sec. 27 para. 1 FFC). “Place of management” means the place of the centre of the business management (sec. 27 para. 2 FFC).

Section III – Entity types that are as a rule not considered tax residents

Austrian partnerships are to be regarded as fiscally transparent. Whether a foreign partnership is to be regarded as fiscally transparent depends on whether it is more similar to an Austrian partnership or an Austrian corporation (“comparison of legal types”).

Austrian investment funds are to be regarded as fiscally transparent, special tax rules are applicable. These rules are also applicable in relation to the following foreign investment entities:

- Undertakings for collective investment in transferable securities (UCITS)
- Alternative investment funds (AIF)
- Any other undertaking governed by foreign law whose assets are invested according to the principle of pooling of risks when the undertaking fulfils one of the following prerequisites:
 - The undertaking is not subject to a tax comparable to Austrian corporate tax.
 - the undertaking’s profits are subject to a tax comparable to Austrian corporate tax and the tax rate is more than 10 percentage points lower than the Austrian corporate tax (i.e. 25%).
 - the undertaking is subject to a tax exemption in the foreign jurisdiction.

Different rules are applicable for investment entities for immovable property.

Section IV – Contact point for further information

Contact information for further questions can be found here:

<https://www.bmf.gv.at/kontakt.html?2>

