

**AGREEMENT BETWEEN  
THE REPUBLIC OF AUSTRIA AND  
THE STATES OF GUERNSEY  
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX  
MATTERS**

WHEREAS the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with Austria;

WHEREAS the Parties have entered into a political commitment to the OECD's principles of effective exchange of information;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

## Article 1

### **Object and Scope of the Agreement**

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

## Article 2

### **Jurisdiction**

A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

## Article 3

### **Taxes Covered**

- (1) The taxes which are the subject of this Agreement are:
  - a) in Austria:
    - (i) the income tax (die Einkommensteuer);
    - (ii) the corporation tax (die Körperschaftsteuer);
  - b) in Guernsey:
    - (i) income tax;
    - (ii) dwellings profits tax.

(2) This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### Article 4

#### **Definitions**

- (1) For the purposes of this Agreement, unless otherwise defined:
- a) the term "Austria" means the Republic of Austria;
  - b) the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
  - c) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the term "competent authority" means:
    - (i) in Austria: the Federal Minister of Finance or his authorised representative;
    - (ii) in Guernsey: the Director of Income Tax or his delegate;

- f) the term "information" means any fact, statement, document or record in any form whatever;
- g) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the information requested;
- h) the term "Parties" means Austria or Guernsey as the context requires;
- i) the term "person" includes an individual, a company and any other body or group of persons;
- j) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- k) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- l) the term "recognised stock exchange" means the Channel Islands Stock Exchange, the Wiener Börse AG or any other stock exchange agreed upon by the competent authorities of the Parties;
- m) the term "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- n) the term "requesting Party" means the Party to this Agreement submitting a request for or having received information from a requested Party;

o) the term "tax" means any tax covered by this Agreement.

(2) As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### Article 5

#### **Exchange of Information Upon Request**

(1) The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

(2) If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

(3) If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each Party shall ensure that it has the authority, subject to the terms of Article 1 and within the constraints of Article 2, to obtain and provide, through its competent authority and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b)
  - (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations, "Anstalten" and other persons, including information on all persons in an ownership chain;
  - (ii) in the case of trusts, information on settlors, trustees and beneficiaries;
  - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

(5) This Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

(6) Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is required;
- c) the nature of the information sought including the form in which the requesting Party would prefer to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting

Party, with respect to the person identified in subparagraph (a) of this paragraph;

- f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(7) The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall

immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

(8) It is understood that the exchange of information provided in this Agreement does not include measures aimed only at the random collection of pieces of evidence in order to commence an examination or investigation ("fishing expeditions").

#### Article 6

#### **Tax Examinations Abroad**

(1) With reasonable notice a Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party for the purposes mentioned in paragraph 2.

(2) At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the territory of the second-mentioned Party.

(3) If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

#### Article 7

#### **Possibility of Declining a Request**

- (1) The competent authority of the requested Party may decline to assist:
- a) where the request is not made in conformity with this Agreement;



- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) where the disclosure of the information requested would be contrary to public policy.

(2) The requested Party shall not be required to obtain or provide information which, if the information requested was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

(3) This Agreement shall not impose on a Party any obligation to supply items subject to legal privilege or any trade, business, industrial, commercial or professional secret or any information relating to any trade process provided that information described in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.

(4) A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

(5) The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

#### Article 8

#### **Confidentiality**

(1) All information provided and received by the competent authorities of the Parties under this Agreement shall be treated as confidential.

(2) Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the purposes

specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

(3) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

(4) Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

(5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.

#### Article 9

##### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties.

#### Article 10

##### **Mutual Agreement Procedure**

(1) Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

(2) In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

(3) The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

(4) The Parties may also agree on other forms of dispute resolution.

## Article 11

### **Interpretation**

The competent authorities shall take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organisation for Economic Co-Operation and Development ("OECD Model Agreement") when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

## Article 12

### **Entry into Force**

The Parties shall notify each other in writing, through appropriate channels, of the completion of the procedures required by their laws for the bringing into force of this Agreement. The Agreement shall enter into force on the thirtieth day from the date of the later of these notifications and its provisions shall have effect in respect of taxes for any fiscal year beginning after December 31 in the calendar year in which the Agreement enters into force.

## Article 13

### **Termination**

(1) This Agreement shall remain in force until terminated by either Party.

(2) Either Party may terminate the Agreement, through appropriate channels, by giving written notice of termination after the expiration of two years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect in respect of taxes for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given.

(3) If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed this Agreement.

DONE IN DUPLICATE at London, on 14 May 2014, in the German and English languages, each text being equally authentic.

For the Republic of Austria:

Emil Brix m.p.

For the Bailiwick of Guernsey:

Kevin Stewart m.p.