GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

AUSTRIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Austria 2011

PHASE 1

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(reflecting the legal and regulatory framework as at June 2011)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency*.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in Austria. The international standard laid down in the terms of reference of the Global Forum for monitoring and reviewing progress towards transparency and exchange of information, considers the availability of relevant information within a given jurisdiction, the ability of the competent authority to access it swiftly, and whether the information may be exchanged effectively with its partners in information exchange.

2. Since its commitment to the international standards of transparency and exchange of information, in March 2009, Austria has negotiated several exchange of information mechanisms that incorporate the full text of Article 26 of the *OECD Model Tax Convention* or comparable provisions. 27 of the 90 agreements signed by Austria now provide for the exchange of bank information, 23 of which have been ratified by Austria and 17 are already in force. Nine of the treaties in force meet the standard, four others to the standard awaiting ratification by Austria's counterparts.

3. In 12 cases, however – Belgium; Bosnia and Herzegovina; Bulgaria; Hong Kong, China; Luxembourg; Mexico; Qatar; San Marino; Serbia; Singapore and Switzerland and Tajikistan – the obligations stipulated in the recently negotiated protocols have been found not to be fully in line with the standard because of an issue concerning the obligations for an EOI partner to provide certain identity information in their EOI requests. Austria should ensure that all the mechanisms concluded with its partners will lead to effective exchange of information in accordance with the standard.

4. In order to give effect to these mechanisms, the Austrian competent authority for international exchange of information in tax matters, the Federal Ministry of Finance, has broad powers to access ownership and accounting information from legal and natural persons. Austria also recently introduced specific legislation governing access to information of a banking nature. This legislation expressly lifts bank secrecy when the request is made under an EOI mechanism including a provision equivalent to paragraph 5 of Article 26 of the *OECD Model Tax Convention*. This access to bank information is

allowed under the condition that the person concerned by the request is first notified that the information is being obtained by the competent authority in order to respond to an international request for information. Austria should however ensure that this process allows for exceptions as required by the international standard. The scope of the Austrian professional secrecy rules, which includes not only information acquired by attorneys, accountants and notaries when they act as legal representatives may also hamper the access to information for EOI purposes.

5. Though Austrian law generally guarantees the availability of information on the owners of companies and partnerships, there are insufficient mechanisms to ensure the availability of information on holders of bearer shares issued by joint-stock corporations and European companies in all circumstances. Therefore, element A.1 is assessed as not being in place. All companies and partnerships must register with the business register and the revenue authorities. To this extent detailed ownership information must be provided by partnerships and limited liability companies. While joint-stock companies and co-operatives are not subject to such requirements, these two types of companies must maintain a register of all registered shares or a register of members.

6. Ownership information on foundations, whether public or private, is available due to the multiple requirements these entities are subject. While Austria does not recognise trusts, ownership information relating to these arrangements is available under the anti-money laundering requirements applying to trust service providers. The situation is the same for *Treuhand* (Austrian fiduciary relationship) where these requirements are also supplemented by a partial registration system. Austrian legislation also guarantees the availability of accounting information for companies, partnerships and foundations due to the requirements provided for by commercial laws and tax legislation. Professional trustees and *Treuhänder* must keep accounting records except in some specific situations. Comprehensive anti-money laundering requirements make detailed bank information available in Austria.

7. The Phase 2 Peer Review, scheduled for the second half of 2012, will consider the practical application by the competent authorities of the legal framework governing transparency and information exchange. In the meantime, a follow up report on the steps undertaken by Austria to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Austria

8. The assessment of the legal and regulatory framework of Austria was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at June 2011, Austria's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant sources.

9. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Austria's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

10. The assessment was conducted by a team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Advocate Hilary Pullum, Legislative Counsel of Guernsey; Mr Jesper Vestergaard Senior Legal Adviser in the Danish Ministry of Taxation; and Mr. Rémi Verneau from the Secretariat to the Global Forum.

Overview of Austria

11. Located in central Europe, Austria is a country with a land area of 84 000 km² and 8.4 million inhabitants. Austria is surrounded by eight countries: Germany and the Czech Republic to the north, the Slovak Republic and Hungary to the east, Italy and Slovenia to the south, and Switzerland and Liechtenstein to the west. The capital of Austria is Vienna, with about the quarter of the Austrian population. German is Austria's national language while Croatian, Hungarian and Slovenian are official languages at a local level. Since 1999, the Austrian currency has been the Euro.

12. Austria is an advanced developed country where in 2010 services accounted for 69% of the GDP, industry 29% and agriculture 2%.[1] Austria's main economic sectors are production of goods for exports, tourism and financial services. European Union members represent more than 70% of Austrian international trade, with Germany, Italy, and Switzerland being its main trading partners. Austria is one of the most developed countries in the world with a GDP per capita of USD 44 000 (EUR 29 589[2]) in 2010.

13. Austria has been a member of the United Nations since 1955, is a founding member of the Organisation for Economic Co-operation and Development (OECD) and joined the European Union (EU) in 1995. Austria is member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

General information on legal system and the taxation system

Legal system

14. Austria is a parliamentary democratic republic established as a federal State comprising nine *Länder* (states). These *Länder* exercise all of the rights which have not been assigned to the Federation (Bund). The Federation's Legislative power is exercised by the Parliament which is constituted of two chambers, the *Nationalrat* (Chamber of Representatives) and the *Bundersrat* (Chamber of States). All *Nationalrat* members are directly elected on a proportional basis for a five year term. The *Nationalrat* takes precedence over the *Bundesrat* except when the rights of the *Länder* are concerned. Each *Land* also has its own parliament which exercises the legislative powers within its own domestic competence, the *Landtag.*

15. The Bund's Executive power belongs to the government led by the *Bundeskanzler* (Federal Chancellor). The *Bundeskanzler* is appointed by the

1. Information available on the Statistik Austria website, *www.statistik.at/web_en/.*
2. Using 2 May 2011 exchange rates.

Bundespräsident (President of the Federation) elected for a six years term by direct universal suffrage. The *Bundespräsident* is the head of the State, head of army and represents Austria abroad. The *Bundeskanzler* exercises all functions that are not assigned to the *Bundespräsident* by the Constitution.

16. The Austrian legal system is founded on Roman law, also known as civil law. The hierarchy of sources is ordered as follows: the Federal Constitution of 1920 as amended, international treaties with constitutional rank (*e.g.* the European Convention on Human Rights), laws and, in turn, regulations. According to the Austrian Constitution, Federal law and *Länder* law have the same status. Nevertheless, the civil, entrepreneurial, criminal and financial law (including tax and anti-money laundering legislation) are part of the Bund legislation and apply throughout Austria.

17. International treaties are a source of law under Article 50 of the Austrian Constitution. They are concluded by the Federal President acting on the proposal of the Federal Government. If their character is political, or if they change or supplement statutory law, the approval of the National Council is required. The Council may decide that the treaty is non-self-executing, *i.e.* needs to be implemented by additional legislation. However, all tax treaties signed by Austria are considered to be self-executing. This means that the provisions of a tax treaty are directly incorporated into the domestic law. Even though tax treaties, after incorporation into domestic law, are formally at the level of ordinary statutory law, they are regarded as "*lex specialis*" and consequently have supremacy over ordinary statutory law.

18. Judges are independent in the exercise of their functions. They are appointed by the *Bundespräsident*. Within the judicial system, a distinction is drawn between:

- Private law tribunals have jurisdiction to hear all civil and criminal matters and organised on local and regional levels (district courts – *Bezirksgerichte* – and state courts – *Landes-gerichte*) with four Court of Appeal acting as a second instance court; and
- Independent administrative tribunals have jurisdiction to review the legality of decisions and the exercise of powers by the administrative authorities. This includes all cases relating to tax matters.
- The Supreme Court and the Administrative Supreme Court are respectively the highest judicial instances in Austria for civil and criminal matters, and administrative cases. Finally the Constitutional Court examines the conformity of statutes with the constitution and can annul unconstitutional laws, and at the request of the Bund or Länder, the Court can rule on the extent of their executive or legislative powers, which ruling has binding effect.

Taxation system

19. The power to legislate in tax matters comes at the Federal level. Tax matters are regulated by the Federal Fiscal Code (hereafter *BAO*) which addresses procedural aspects, and by special laws such as the Income Tax Act (*EStG*), the Corporation Tax Act (*KStG*) and the Value-Added Tax Act (*UStG*). In Austria, income is subject to two main taxes: income tax for individuals and corporate tax for companies.

20. According to the *EStG* individuals are subject to unlimited tax liability when they have their residence in Austria and are liable to tax on their worldwide income. Individuals that are not deemed to be residents of Austria for tax purposes are taxed on income from Austrian sources only. Income such as salaries or income from capital is subject to a withholding tax while other income is subject to a taxation scale comprising four rates, from 0% (income up to EUR 11 000) to 50% (income over EUR 60 000).

21. All legal entities organised under private law (*e.g.* joint stock companies, limited liability companies, foundations, and co-operatives) as well as public entities carrying on commercial activity are subject to corporation tax. When these entities are resident in Austria for tax purposes, *i.e.* when they have their seat or place of effective management in Austria, they are liable to tax on their worldwide income while when the entities are not tax resident in Austria their Austrian tax liability is limited to income from Austrian source. The corporate tax is levied at the nominal rate of 25% with a minimum tax of EUR 3 500 for joint stock companies and EUR 1 750 for limited liability companies.

22. As a member of the European Union, Austria is a member of the European common value-added tax (VAT) system. The normal rate of VAT is 20% and the reduced rate 10%.

23. In 2009 (last data available):

- VAT total revenue was EUR 22.5 billion and 35% of Austria total tax revenues;
- Individuals' income tax total revenue was EUR 22.5 billion and 35% of Austria total tax revenues; and
- corporate tax total revenue was EUR 4 billion, 6.5% of Austria total tax revenues.

24. Austria's network of mechanisms allowing for international exchange of information (EOI) in tax matters currently covers 90 jurisdictions, 86 by way of double tax conventions (DTCs) and 4 by way of tax information exchange agreements (TIEAs). Since March 2009 and its commitment to the international standards for transparency and exchange of information in tax matters, Austria has only concluded EOI agreements incorporating the full text of

Article 26 of the *OECD Model Tax Convention*, in particular as regards information held by banks and financial institutions. 27 EOI arrangements allowing for the exchange of bank information have been signed so far by Austria.

25. As an EU Member State, Austria also exchanges information in the field of direct taxation under the scope of the *EU Mutual Assistance Directive 77/799/EEC in the Field of Direct Taxation and Insurance Premiums*.[3] A new Mutual Assistance Directive has recently been adopted by the EU Council.

Overview of commercial laws and other relevant factors for exchange of information

Overview of financial sector and relevant professions

26. At the end of 2010, Austria had a developed and diversified financial sector contributing to 5.6% of national GDP. At that date, the Austrian financial sector comprised, 843 banks[4], 99 investment firms, 163 investment service providers, 29 investment funds management companies and 2 158 domestic investment funds, amongst other entities.

27. The financial sector is regulated by the Federal Banking Act (*Bankwesengesetz*) No 532/1993 adopted in 1993 as amended. This sector is under the supervision and regulation of the Financial Market Authority (FMA), an independent body under public law placed under direct parliamentary control. The FMA's functions include issuing regulations, granting licenses to financial professionals as well as supervising and enforcing prudential and AML/CFT requirement. Domestic financial institution carrying on limited specialised financial business and insurance intermediaries are directly supervised by the local district authorities. Since 2008, the Austrian National Bank has the sole responsibility for conducting offsite monitoring and onsite examinations of banks.

28. In Austria, civil law notaries (500), lawyers (more than 5 000), and accountants (more than 10 000 businesses) are considered to be designated non-financial businesses and professions under the scope of the anti-money laundering legislation and are accordingly required to perform customer due diligence (CDD). All these professionals are under the supervision of professional supervisory authorities.

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3. *http://europa.eu/legislation_summaries/taxation/l33029_en.htm*, accessed 2 May 2011.
4. Of which, 539 were rural credit co-operatives providing limited services, while there were 47 joint-stock and private banks, 54 saving banks and 67 industrial credit banks.

Anti money laundering/combating financing of terrorism legislation

29. Anti money laundering/combating financing of terrorism (AML/CFT) legislation in Austria is primarily based on the relevant EU law in particular the *third EU Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*.[5] This legislation was transposed in Austrian law with effect as of 1 January 2008.

30. An assessment of the Austrian AML/CFT legal and regulatory framework was conducted by the IMF (International Monetary Fund) and the FATF (Financial Action Task Force) in 2008.[6] The report published in 2009 shows that Austrian authorities have implemented a comprehensive AML/CFT system supported by well developed federal administrative and supervisory bodies. Further, the report noted that the Austrian registration system is well developed though access to information on some entities is sometimes missing. According to the report, CDD is usually in line with the FATF Recommendations even if exceptions to these requirements are in some circumstances too broad, while record keeping requirements set out by the Austrian law meet the international standard. The Austrian AML/CFT system was strengthened since the last evaluation performed by the FATF. In particular, the Banking Act was amended in July 2010 following the conclusions of the IMF/FATF report as regards savings deposit accounts with a balance lower than EUR 15 000.

Recent developments

31. Since its commitment to the international standards in March 2009 and the withdrawal of its reservation on Article 26 of the *OECD Model Tax Convention*, Austria has signed 27 treaties providing for the international exchange of information, including bank information.

32. To comply with this commitment, an Administrative Assistance Implementation Act was adopted in 2009 and published on 8 September 2009. This new legislation stets out the requirements and procedure for the gathering of bank information.

33. A new *EU administrative co-operation Directive* was adopted by the European Council on 15 February 2011 and will come into force on 1 January 2013. This multilateral tool will allow for exchange of information to the standard with 19 more jurisdictions.

5. *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF*, accessed 2 May 2011.
6. *www.fatf-gafi.org/document/48/0,3746,en_32250379_32236982_44145136_1_1_1_1,00.html*, accessed 2 May 2011.

Compliance with the Standards

A. Availability of information

Overview

34. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Austria's legal and regulatory framework on availability of information.

35. Austria has a sound legal and regulatory framework which ensures that information concerning the identity of owners and shareholders in companies and partnerships is usually available to the authorities. All such entities have to be registered by the local competent court in the *Firmenbuch*, the Austrian register of businesses. For registration, partnerships and limited liability companies must provide information on the identity of all their shareholders and partners and the Austrian legislation required this information be updated without delay if there is any change.

36. As a result of mechanisms, such as the obligation on the entities to maintain share registers, all information concerning registered shareholders in joint stock companies and members of co-operatives is available. However, it is possible for joint stock companies and European companies to issue

bearer shares and there are no mechanisms in Austria ensuring the availability of information on the identity of persons holding bearer shares in all circumstances.

37. All these obligations are supplemented by comprehensive tax requirements, including registration and provision of any facts and circumstances relevant for tax purposes, as well as the annual submission of a tax return.

38. While trusts, a common law concept, are not recognised in Austria, information on the settlors and beneficiaries is available due in particular to the implementation AML/CFT requirements. The situation is the same as regards *Treuhand*, an Austrian fiduciary relationship, and is supplemented, for those arrangements, by a partial registration system when lawyers and civil law notaries are acting as *Treuhänder* (trustees).

39. All relevant companies, partnerships and foundations are required to keep comprehensive accounting records and supporting documents for a seven-year period, in particular as a result of obligations set out in the Fiscal Code and the obligation to back the annual tax return with supporting documentation. Professional trustees and *Treuhänder* are subject to the same requirements except in some specific situations.

40. Banks and financial institutions are required to perform customer due diligence (CDD), to identify and verify the identity of their customers and to hold CDD and customers' transaction records for a period of at least five years pursuant to anti-money laundering legislation.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Austrian registers

41. The business register (*Firmenbuch*) is maintained in Austria by each local court of justice. All businesses, whatever their legal form and activities, must be registered (s. 2 Austrian Commercial Register Act; *FBG*).

42. Although the register is managed at the local level, the *Firmenbuch* is operated as a central electronic database (ss. 28 and 29 *FBG*) and there is a single register for the whole Austrian territory. This means that all entries in the register are available on a national basis. This register is open for public inspection and all information maintained can be accessed by the Austrian revenue authorities (ss. 33, 34 and 35). Austrian law also provides that all

documents held by registration authorities, such as deeds of incorporation, can also be accessed for EOI purposes.

43. In addition to this register, all entities and arrangements relevant for tax purposes must be registered with the revenue authorities for tax purposes (s. 119 and 120 Fiscal Code) and must, in particular, disclose all facts that are of relevance for tax purposes to the tax administration.

Companies (ToR[7] A.1.1)

44. Austrian law provides for four types of companies:

- ***Aktiengesellschaft (AG)*** **–** joint stock company (Stock Corporation Act adopted in 1998). Joint stock companies have a minimum capital of at least EUR 70 000, determined in advance, divided into smaller amounts (shares). Shareholders' liability is limited to the amount of their contributions and they are not personally liable for the company's liabilities. A notarial deed is required for the incorporation of an *AG*. There were 1 640 *AGs* incorporated in Austria on 31 December 2009;
- ***The European Company (SE)*** is a company with a European dimension, and does not strictly fall under the territorial scope of the legislation relating to domestic companies in force in the country where it has been incorporated. European companies are regulated by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). Pursuant to Article 10 of the EU Regulation, the laws that apply to SEs are those that apply to public limited companies (*AGs*). 16 SEs were registered in Austria at 31 December 2010. All rules hereafter described for *AGs* apply to European companies;
- ***Gesellschaft mit beschränkter Haftung (GmbH)*** **–** limited liability company (GmbH Act of 6 March 1906). The minimum capital of a *GmbH* is EUR 35 000, the liability of each participant is limited to a certain amount and they are not personally liable for the company's debts. The articles of incorporation of a *GmbH* must be notarised. Most foreign-owned businesses operate in Austria under this legal form. There were more than 120 000 registered *GmbHs* in the *Firmenbuch* at the end of 2010; and
- ***Genossenschaft*** – co-operatives – regulated by the Co-operative Act of 9 April 1873 as amended. A co-operative is a company without a fixed number of members. It should not aim to make profits but rather

7. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

to assist its members. A co-operative can be founded with limited (which is the norm) or unlimited (which is rare) liability. The legal capability is not limited. The deed of incorporation must be notarised. There were 1 863 co-operatives registered in the *Firmenbuch* on 31 December 2010.

Registration requirements

45. According to the Austrian Commercial Register Act (*FBG*), all companies must be registered in the *Firmenbuch*. Unless they are registered, companies cannot come into existence. This obligation also covers other entities (see other sections of this report). The *FBG* does not provide for a timeframe to go to the local court for registration. However while the company is not registered it cannot operate, as registration in the *Firmenbuch* is a prerequisite to carry on any activity.

46. Information maintained in this register includes (s. 3 *FBG*): commercial register number, corporate name, legal form, registered office, name and date of birth of the company representative(s). There are different requirements for registering shareholder details, subject to the type of company: (i) for a *GmbH,* the identity of all the shareholders must be disclosed to the registration authorities (s. 5 of the *FBG*); (ii) for an *AG* and SE where there is only one shareholder, the identity of this shareholder must be mentioned in the *Firmenbuch* (s. 5) but if there is more than one shareholder their details are not entered into the *Firmenbuch; (iii)* for a *Genossenschaft* there is no requirement to disclose the identity of the members.

47. In addition, the *GmbH* law specifically states that the identity and date of birth of all shareholders must be disclosed to the *Firmenbuch* (s. 11 *GmbH* Act) and that all transfers of shares must be disclosed without delay to the local court of justice (s. 26(1)). All such transfers must also be effected by notarial deed (s. 76 *GmbH* Act).

48. All entries in the *Firmenbuch* are published in the Official Gazette of the *Wiener Zeitung* (s. 10 Entrepreneurial Code). This publication contains the full text of the entry in the register.

49. Pursuant to section 30 of the Entrepreneurial Code, any change to the corporate name or the company's owners and any change of the registered office must be reported to the registration authorities. Amendments to the registered facts must also be immediately and without delay filed with the court (s. 34 of the same code and s. 10 *FBG*) and the local court amends the entry in the *Firmenbuch* accordingly. This means that the identity of all *GmbH*s' shareholders is continuously kept updated in this register

50. All companies are obliged to keep records for seven years (s. 212 of the Entrepreneurial Code). In the event of liquidation, all *AGs* books and papers must be deposited in a safe place, accessible by the court, for a period of seven years after the company has been liquidated. Any shareholder or creditor is allowed to inspect these books and papers upon application by the court (s. 214 Austrian Stock Corporation Act). The same rules apply for *GmbH* (s. 93 of the Limited Liability Company Act) and *Genossenschaften* (s. 51 Co-operatives Act).

Information held by companies

51. Pursuant to section 61 of the Austrian Stock Corporation Act, an *AG* must keep a share register. This register must contain the following information:

- identity and address of the shareholders and in the case of a natural person the date of birth, in the case of legal entities, the register and number under which the legal entity is registered (included, when such company is registered abroad); and
- number of shares held.

52. If registered shares are transferred to another party, cancellation and new registration in the share register will take place upon notification and evidence.

53. *Genossenschaften* are subject to the same requirement (s. 14 Co-operatives Act) and must maintain a register indicating for all co-operative members, their full names, marital status, date of joining and leaving and number of shares held. This register is open for inspection.

Tax requirements

54. Pursuant to sections 119 and 120 of the Fiscal Code (*BAO*), taxpayers must:

- disclose circumstances which are relevant to the existence and the scope of any tax liability (s. 119 (1)). The disclosure should in particular be achieved by way of tax returns, registrations, notifications and provision of other information (s. 119(2)); and
- notify to their tax offices all circumstances which justify, change or end their personal tax obligations in respect of income tax, corporate tax, VAT and taxes on capital (s. 120).

55. Considering the legal requirements set out in ss. 119 (1) and 120, all business activities and all other relevant changes which have an effect on the Austrian tax liability must be disclosed to the Austrian revenue authorities.

This includes in particular the start and termination of any activity. There is however no obligation to provide detailed ownership information as it has no direct effect on the tax liability of companies in Austria.

56. The application for registration or the notification of any change must be file within one month of the event requiring the notification of the tax office (s. 121 of the BAO).

57. In addition, pursuant to sections 133 and 134 of the *BAO* companies must submit an annual corporate tax return by the end of the month of April following the assessment period. This return does not however contain any information on the companies' shareholders.

Disclosure of major shareholdings

58. EU Directive 2004/109/EC of 15 December 2004 was transposed into Austrian legislation through section 91 of the Austrian Stock Exchange Act. That law calls for the publication of major shareholdings in issuing bodies whose shares are eligible for trading on a regulated stock exchange (primarily *AG* and European companies).

59. Pursuant to the same section, any natural person or legal entity that directly or indirectly acquires securities conferring on it voting rights of 5% or more must so advise the issuer, the Austrian Financial Market Authority, and the stock exchange company within two working days. Such notification is also required when the number of voting rights reaches or exceeds 10, 15, 20, 25, 30, 35, 40, 45, 50, 75 or 90% of the company's shares, including bearer shares.

60. The effect of this obligation is that all shareholdings in excess of 5% in listed Austria companies are publicly known.

Foreign companies

61. When a limited liability company or a joint stock company with its registered office abroad maintains a branch in Austria, it must be registered in the *Firmenbuch* (s. 12 Entrepreneurial Code, s. 107 Limited liability Company Act). When such company does not have its seat of effective management in an EU Member State or in a State party to the Agreement on the European Economic Area, this company must appoint at least one person resident in Austria responsible to represent the company in Austria.

62. In such case, the applicant must provide, for registration, a copy of the company's article of association and, if such articles are not written in German, a certified translation of these articles (s. 107 Limited Liability Company Act). However, there is no requirement to provide any details of shareholders as there is for domestic companies.

63. When a company registered abroad has its seat of effective management in Austria:

- when the company is registered in another EU country, this company must be registered as a branch in the *Firmenbuch*. In such cases the information to be provided upon registration is the same as described above;
- in other cases, s. 10 of the Austrian law on international private law is applicable. The law that applies to these companies is the law of the country where they have their seat of effective management. In Austria, these companies, in any cases, are considered as partnerships under civil law. In that case, registration in the *Firmenbuch* is only required when the annual turnover is over EUR 700 000 (s. 189 of the Entrepreneurial Code). When they go to the local court for registration, these companies must chose the legal form under which they want to be registered[8] and provide the level of information corresponding to that legal form (see paragraphs 45 et seq). Austrian authorities have advised that in practice the unlimited liability of foreign companies' shareholders makes the number of foreign companies with their seat of management in Austria very limited. Foreign companies usually prefer to set up a subsidiary in Austria.

64. Finally, foreign companies must also disclose all facts and circumstances that are relevant for tax purposes (ss. 119 and 120 *BAO*). However, for tax purposes these companies are not always considered as partnerships under civil law. If they are comparable to companies according to Austrian law they are treated as companies for Austrian tax purposes. According to the Corporation Tax Act (s. 1), companies, even those incorporated abroad, having their place of effective management in Austria are taxable on an unlimited basis. To thisextent, they must register with revenue authorities and provide the same level of information as similar Austrian domestic companies have to provide, in particular all facts that are relevant for tax purposes. For companies, there is however no obligation to provide detailed ownership information as it has no direct effect on the tax liability of companies in Austria (in the situation where such foreign companies would be registered for tax purposes as partnerships such information would be available due to the filing obligations concerning partnerships). Branches of foreign companies also have to be registered with revenue authorities even if their tax liability is limited to Austrian source income.

8. *GesbR* cannot be registered as *GesbR* in the Firmenbuch in Austria. Foreign companies must then chose one of the legal form that can be registered in the *Firmenbuch*. This can be the form of a joint stock company, limited liability company, co-operative, limited partnership or general partnership.

Ownership information held by service providers

Anti-money laundering requirements

65. In Austria, anti-money laundering provisions are set out in legislation implementing *EU Directive 2005/60/EC*. This legislation has been developed in the laws regulating professionals subject to AML requirements. The following entities and professionals are, amongst others, covered by AML obligations:

- credit and financial institutions, and investment companies under the Austrian Federal Banking Act (*BWG*);
- lawyers under the Solicitor-Advocates' Code (*RAO*);
- civil law notaries under the Civil Law Notaries' Code (*NO*);
- auditors under the Austrian Accountancy Act (*BibuG*);
- tax consultants and auditors under the under the Professional Chartered Accountant Act (*WTBG*); and
- trusts, Treuhänder or company service providers when providing certain services to third parties[9] (see s. 365m Austrian Industrial Code *GewO*).

66. Pursuant to sections 40 of the *BWG*, 8b of the *RAO*, 36b of the *NO*, 98b of the *WTBG*, 79a of the *BibuG,* and 365m of the *GewO*, these entities and professionals are required to perform customer due diligence (CDD) and therefore identify their customers and clients when:

- establishing a continuous business relationship. This must also be done for existing customers on a risk assessment basis;
- carrying out occasional transactions amounting to EUR 15 000 or more, whether the operation is carried out in a single operation or in several operation which appear to have ties;
- there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold; or
- there are doubts about the veracity or adequacy of data identifying the contracting party or beneficial owner.

67. Pursuant to the same article, the identification and verification of the identity of the customer must be ascertained by the personal presentation of an official photo identification document issued by a government authority. Where the customer is a company or other entity, the identity must be

9. This includes when creating a legal person, acting as director of a legal person, or providing a registered office or a business office to legal persons.

ascertained on the basis of a meaningful supporting document which is available under the usual legal standards of the country in which the legal person is incorporated. In addition, the identity of the natural person competent to represent this legal entity is ascertained by the presentation of an official photo identification document.

68. In addition, persons and entities covered by the CDD requirements must identify all beneficial owners (s. 40 *BWG*, s. 8d *RAO*, s. 36d *NO*, s. 98b *WTBG*, s. 79b *BibuG,* s. 365o *GewO).* 'Beneficial owner' is defined in each applicable law according to the definition included in the *Third EU Anti-money Laundering Directive*.[10] Such entities must store CDD and accounting material for no less than five years after the relationship has ceased and if the entity ceased activity or is dissolved, the last acting management must ensure that this information is stored in accordance with the terms of the Law.

69. To ensure the implementation of this legislation, public authorities, and in particular the Financial Market Authority (FMA) are in charge of monitoring professionals subject to CDD requirements. See section A.1.6 below with respect to sanctions for non-compliance with these obligations.

Nominees

70. Nominee ownership is regulated by the rules on the fight against anti-money laundering. According to section 365m of the *GewO*, both natural and legal entities and registered general partnerships, particularly corporate consultants acting in the role of a nominee shareholder for another person, are subject to AML requirements. They must, as a consequence, perform CDD, identifying the person for whose benefit the shares are held. Thus, when someone is acting as a nominee, it is possible to obtain the identity of the beneficial owners of the shares.

10. *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.* With respect to companies that Directive defines 'beneficial owner' (s. 6) to mean "the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted." It goes on to indicate that "the beneficial owner shall at least include: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet his criterion; (ii) the natural person(s) who otherwise exercises control over the management of a legal entity."

Conclusion

71. Considering legal obligations imposed by the various legislation in force in Austria, *FBG*, Entrepreneurial Code, laws regulating each type of company, and tax requirements:

- an *AG* is required to provide the identity of its shareholder to the registration authorities where such a company has a single shareholder. In all cases, *AGs* must maintain up-to-date share registers in which the identity of all holders of registered shares must be indicated. In addition, the identity of any shareholder owning more than 5% of an *AG* listed on a stock exchange must be disclosed to the company, to the Financial Market Authority, and to the stock exchange company;
- *Genossenschaften* are required to maintain up-to-date registers of their members;
- the identities of all *GmbH* shareholders must be disclosed to the registration authorities upon registration and updates must be provided;
- branches of foreign companies are also required to be registered in the *Firmenbuch*. Foreign companies having their registered seat in an European Union country and their place of effective management in Austria must be registered in the *Firmenbuch* as branches. In other cases, when these companies have their seat of effective management in Austria, they are registered in the Firmenbuch when their annual turnover is beyond EUR 700 000; and
- all these entities are subject to further tax requirements. They must be registered with the revenue authorities. Any changes of relevance for taxation must also be notified to revenue authorities within one month of the event. There is however no clear requirement to provide the identity of shareholders or members in companies upon registration.

Bearer shares *(ToR A.1.2)*

72. Pursuant to section 10 of the *Stock Corporation Act*, *AGs* (as well as *SEs*) may choose to issue their shares either in nominative or bearer form. It has not been possible to get any information regarding the number of Austrian companies that have issued bearer shares. Under Austrian legislation, a joint-stock company is not required *per se* to identify bearer share holders in all circumstances.

73. Nevertheless, there are two mechanisms ensuring information on bearer share holders' identities is available under certain circumstances:

- an *AG* must provide the identity of its shareholder where such company has a single shareholder;
- for publicly-listed joint-stock companies, as described above, a duty of notification exists for shareholders who own 5, 10, 15, 20, 25, 30, 50, 75, or 90% of the company's shares, including bearer shares (section 91 *Austrian Stock Exchange Act*. Pursuant to the same legal provision, a company in this situation is obliged to provide without delay (less than two trading days later) this information to the Austrian Financial Market Authority (FMA), the stock exchange company and the issuer; and
- financial institutions and certain non-financial businesses and professions are subject to the obligations in the *AML/CFT Act*, and must, therefore, identify customers, including those who open securities portfolios.

74. Therefore, while there is no general requirement in Austria to identify holders of bearer shares, there are mechanisms ensuring this information is available in some circumstances. These mechanisms are nevertheless not comprehensive enough to ensure the availability of information about bearer share holders in all situations.

75. During the course of its assessment Austria has indicated that on 9 February 2010 the Council of Ministers resolved that the issue of bearer shares should be restricted to companies listed on a stock exchange. This amendment to the Austrian Company law (Company Law Amendment Act 2011) has been adopted by the Chamber of Representatives on 7 July 2011 but cannot be taken into account for this assessment.

Partnerships *(ToR A.1.3)*

76. There are three main forms of partnerships that can be set up in Austria:

- ***Offene Gesellschaft – OG – general partnership*** (ss. 105 to 188 Entrepreneurial Code (*UGB*)) An *OG* is a partnership formed by at least two partners who are jointly and severally liable for all its commitments. No minimum capital is required to form an *OG*. The partnership may be formed by notarial or private deed. There were 17 000 *OGs* registered in the *Firmenbuch* on 31 December 2010;
- ***Kommandit Gesellschaft – KG – limited partnership*** (ss. 105 to 188 *UGB).* A *KG* is a partnership formed by one or several partners who are jointly and severally liable (the active or general partners), and one or more limited partners (the dormant partners) whose liability is limited to the level of their contribution. Limited partners cannot

engage in management activity, even through a power of attorney. No minimum capital is required to form such a partnership and the articles of incorporation can be under a notarised or private format. There were 42 000 *KGs* incorporated in Austria at the end of 2010.

- ***Gesellschaft bürgerlichen Rechts – GesbR*** ("Civil Law Partnership"), an association of at least two natural persons who wish to combine their knowledge or property in a particular field. This partnership under civil law is not a legal entity and each partner is jointly and individually liable to the debts of the partnership. A partnership under civil law is established by written, oral, or implied agreement between the partners, who may act in their own name or on behalf of the partnership. While not having legal status, a *GesbR* is a relevant entity for tax purposes in Austria. The calculation of the partnership profit is made at the partnership level and further split between the partners. There are 11 000 *GesbR* registered in Austria.

77. Austrian legislation also allows for the creation of a **stille Gesellschaft** (silent partnership). Under a *stille Gesellschaft*, a person makes an equity contribution into another person's business. This arrangement can be characterised as a contract, and like a contract, its existence is not disclosed to the public. These partnerships do not have any legal capacity and personality. Therefore, they cannot act as entities separated from their partners and cannot hold real estate or assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore these arrangements are not under the scope of the Terms of Reference.

Registration requirements

78. According to the Austrian Commercial Register Act (*FBG*) legal entities must be registered in the *Firmenbuch*. This obligation also covers *OGs* and *KGs* (s. 2) and unless they are registered, these two types of partnerships cannot come into existence. The *FBG* does not provide for a timeframe to go to the local court for registration. However, while the partnership is not registered it cannot operate as the registration in the *Firmenbuch* is a prerequisite to carry on any activity.

79. The information maintained in the *Firmenbuch* includes (s. 4 *FBG*): commercial register number, corporate name, legal form, registered office, name and date of birth of the partnership's representative. In addition, the identity and date of birth of all partners with limited and unlimited liability must be entered in the business register, making *OGs'* and *KG*s' ownership information available upon registration.

80. Any entry in the *Firmenbuch* is published in the Official Gazette of the *Wiener Zeitung* (s. 10 Entrepreneurial Code). This publication contains the full text of the entry in the register.

81. Pursuant to section 30 of the Entrepreneurial Code, any change to the corporate name or the registered office must be reported to the registration authorities. Amendments to the registered facts, such as identities of limited and unlimited liability partners, must also be immediately filed with the court (s. 10 *FBG*). This means that the identity of all partners of *OGs* and *KG*s must be kept up-to-date in the *Firmenbuch*.

82. *GesbR* are not required by law to be registered either in the *Firmenbuch* or in any other public register.

Information held by partnerships

83. There is no obligation under Austrian legislation for *OGs, KGs* and *GesbR* to maintain registers of partners.

Tax requirements

84. Pursuant to sections 119 and 120 of the Fiscal Code (*BAO*), taxpayers must:

- disclose circumstances which are relevant to the existence and the scope of a tax liability (s. 119(1)). The disclosure should in particular be achieved by tax returns, registrations, notifications and provision of other information (s. 119(2)); and
- notify to their tax offices information concerning all circumstances which justify, change or end their personal tax obligations in respect of income tax, corporate tax, VAT and any other taxes.

85. For registration by the revenue authorities, all partnerships must file a "Verf 16" form. This obligation covers *OG*, *KG* and *GesbR*. As indicated on this registration form, a copy of the articles of association/partnership statutes must be provided to the revenue authorities[11]. In addition, the identity of any partners must be disclosed. The identification information includes the name of the investor, his/her date of birth, address and the percentage of capital held.

11. Where no written articles of association exist (for instance in the case of a *GesbR*), the main content of the oral agreement must also be disclosed pursuant to ss. 119 and 120 of the *BAO*.

86. The application for registration or the notification of any change must be filed within one month of the event requiring the notification of the tax office, as mentioned on the form to be filed (form "Verf 60" in that case).

87. In addition, while being transparent entities for tax purposes, pursuant to sections 133 and 134 of the *BAO*, partnerships (*OG*, *KG* or *GesbR*) must submit an annual declaration of income (form E6) by the end of April following the assessment period including details on the partners' identity. This information is of high importance to ensure the taxation of the partnership profits within the hands of each partners according to the percentage of capital held.

88. As all partnerships carrying on business in Austria or receiving income from Austrian sources are relevant entities for tax purposes, this means that these partnerships, whether incorporated in Austria or in a foreign jurisdiction, are subject to all tax requirements set out in s. 119(1) and 119(2) of the BAO.

Ownership information held by service providers

89. The obligations on service providers, described previously in section A.1.1. of this report, are equally relevant for partnerships. Lawyers, civil law notaries, as well as all professionals deemed to be company service providers, fall specifically within the scope of application of the AML/CFT requirements when they establish a business relationship with their clients and when they assist clients in the preparation or conduct of transactions. These service providers must identify their clients and retain for five years information on the identity of their clients and those beneficial owners who own/control at least a 25% interest in a client[12], as well as all information regarding transactions conducted.

Conclusion

90. Information that *OG* and *KG* in Austria must provide upon registration includes the identity of their partners and this must be updated in the *Firmenbuch*. *OG*, *KG* but also *GesbR* are also relevant entities for tax purposes. Thus, revenue authorities receive information on partners in a partnership on an annual basis, through the compulsory declarations that partnerships must file. Any change in the facts that are of significance for tax purposes must also be disclosed within one month of the event to revenue authorities. This includes partnership ownership information as partnership profits are taxed within the hands of the partners. These different avenues ensure partnerships' ownership information is available in all circumstances.

12. For the definition of beneficial owner see footnote 9.

Trusts (ToR A.1.4) and Treuhand

91. Austria, as a civil law jurisdiction, does not have the concept of trusts. Its law does not recognise this concept and Austria has not signed the *Convention on the Law Applicable to Trusts and on their Recognition* (1 July 1985, The Hague).[13] There are, however, no obstacles to prevent an Austrian citizen or service provider from acting as a trustee of a foreign trust or preventing a foreign trust from owning assets in Austria.

92. It is also possible in Austria to set up *Treuhand*. The *Treuhand* is a civil contract which is not regulated in law, but is based on the general principle of the autonomy of the contracting parties (*i.e.* the ability of any person to enter into any contract which whomsoever they chose) and delimited by jurisprudence and doctrine. A Treuhand does not have any legal status. It is created when a person, the *Treuhänder*, is authorised to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the *Treugeber*. There are two main types of *Treuhand*; the *Fiducia* and the *Ermächtigungstreuhand*. With the *Fiducia* most of the rights connected to the assets are transferred to the Treuhänder, whereas the *Ermächtigungstreuhand* only entails a transfer of certain rights connected to the assets such as the right to manage them. The *Treuhand* can exist without any written record. It can be concluded between any two persons who have the necessary legal capacity to conclude to a contract. The *Treugeber* and the *Treuhänder* may chose to inform third parties of the legal arrangement between them (*offene Treuhand* or open *Treuhand*) or not (*verdeckte Treuhand* or hidden *Treuhand*).

Registration requirements

93. As regards the availability of information regarding settlors, trustees and beneficiaries of trusts, Austrian legislation does not require registration or disclosure of this information to government authorities because Austrian legislation does not recognise trusts. Further, Austrian legislation does not contain any provisions detailing what information trustees resident in Austria have to maintain on the foreign law trusts they administer, which will remain subject to the requirements imposed by the law under which they were created.

94. For *Treuhand*, there is a partial registration system in place in Austria, which only applies where the *Treuhänder* is a lawyer or civil law notary and which is also subject to, the nature of the property, and, in the case of funds, their amount:

13. *www.hcch.net/index_en.php?act=conventions.text&cid=59*, accessed 2 May 2011.

- according to s. 10a *RAO*, lawyers must register every *Treuhand* of more than EUR 40 000 at the Register of Escrows of the competent Bar Association. 23 000 Treuhänder are registered in this register; and
- pursuant to the *Treuhandregister-Richtlinien* (guidelines for the registration of *Treuhand*), civil law notaries should register every *Treuhand* of more than EUR 10 000 in the digital Register of Escrows maintained by the Austrian Chamber of Civil-Law Civil law notaries. 25 000 Treuhänder are registered in this register.

Tax requirements

95. Section 24 of the *BAO* provides that under a *Treuhand* relationship assets are to be attributed to the *Treugeber*. Consequently, if a person states that assets are held in a fiduciary relationship, then this person has to provide evidence of the existence of such a relationship in order to avoid the assets or any income derived therefrom to be attributed to him or her for tax purposes. The same rule applies similarly to trusts and settlors.

96. As economic owner of the assets (the legal owner being the *Treuhänder*), the *Treugeber* must report to the tax authorities all earnings deriving from the Treuhand. In particular, a *Treugeber* is obliged to report to the tax authorities about all facts relevant for his taxation (ss. 119 and 120 of the *BAO*) and to file a tax return (s. 134). Similarly, the same rules apply to the settlor of a trust.

97. Trustees or *Treuhänder* resident in Austria may also be taxpayers subject to the provisions of Austrian tax law, and in particular sections 119 and 120 of the *BAO* stating that any persons must disclose to the revenue authorities facts and circumstances that are significant for taxation and all information needed to determine the tax liability of these persons can be requested by the revenue authorities (see in particular sections 143 and 161 to 165 of the *BAO* further described in section B.1 of this report). Further, these powers can also be used to answer incoming requests for information. This means that a trustee or a *Treuhänder* resident in Austria may, if requested by the Austrian tax authorities, be in a position to provide all information on settlors and beneficiaries of trusts and *Treuhand* administered in Austria.

Information held by service providers

98. Auditors, lawyers, civil law notaries legal and tax advisers are also entities with AML/CFT reporting obligations under Austrian legislation (see above, section A.1.1) and must perform CDD in any circumstances. In addition, both natural and legal entities and registered general partnerships, in particular when being corporate consultants and exercising the role of a trustee under a trust or similar legal arrangement or enabling another person

to perform the aforementioned roles are subject to AML/CFT requirement (see in particular s. 365m of the *GewO*).

99. Pursuant to the AML/CFT legislation, when a professional is required to perform CDD, identification of its clients and beneficial owners is required. Beneficial owner is defined as the natural person(s) who ultimately own or control at least 25% of the contracting party, or the natural person on whose behalf a transaction or activity is being conducted (s. 365 of *GewO*).

Conclusion

100. While there are no general registration requirements for trusts to be registered, a partial obligation exists for *Treuhand* where it is administered by a lawyer or civil law notary. Further, the obligations set out in the *BAO* require anyone to disclose all facts and circumstances that are relevant for taxation in Austria and this may include information on settlors and beneficiaries of trusts and *Treuhand*. Finally, under the *AML/CFT* requirements, trust service providers are obliged to maintain ownership and identity information regarding their clients and those beneficial owners who have at least a 25% interest in a trust or foundation.[14]

Foundations *(ToR A.1.5)*

101. Austrian law recognises the concept of foundations. A foundation (*Stiftung*) is an organisation intended to promote on a long-term (indefinite) basis a particular purpose (designated by the founder) through assets dedicated to that purpose. Austrian law allows for the creation of:

- public benefit foundations under the Federal Foundations and Funds Act (*BStFG*). These foundations can only be set up for charitable purposes. They may carry on a minor commercial activity to the extent that this activity supports the main purpose of the foundation; and

14. *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.* With respect to legal entities such as foundations or legal arrangements such as trusts, that Directive, as implemented in Austria defines 'beneficial owner' to mean "(i) where the future beneficiaries have already been determined, the natural person(s) who are beneficiary of 25% or more of the property of a legal entity; (ii) where the individual that benefit from the legal entity have yet to be determined, the class of persons in whose main interest the entity is set up or operates; (iii) the natural person or persons who exercise control over 25 % or more of the property of a legal entity."

- private foundations under the Private Foundations Act (*PSG*). In such foundations, the founder dedicates property for private purposes devoid of any self-interest. There is a legal prohibition which prevents foundations from carrying on any commercial activity.

Public foundations

Information held by government agencies

102. Within the meaning of the *BStFG*, foundations are "assets with legal personality which have been permanently earmarked by the direction of the founder, the proceeds of which are intended for charitable or benevolent purposes" (s. 2). The purpose of a public foundation must be to assist the needy if it is for benevolent purposes or, if it is for charitable purposes, the purpose must be for the common good and can benefit everyone or a specific class of people. The law deems the 'common good' to include benefit in respect of; intellectual, cultural, moral, sporting or material matters (s. 2(2)).

103. The deed of foundation, required to be notarised, must contain the following (s. 4 *BStFG*):

- the founder's declaration of his intent to dedicate a particular asset to the establishment of a foundation;
- detail of the assets dedicated to the foundation;
- details of the charitable purpose; and
- a proposal for the appointment of the foundation protector.

104. Once the deed of foundation is established, it must be provided by the founder to the Foundations Authority, which decides whether a permission to establish the foundation is granted or not. This permission grants legal personality to the public foundation and the establishment of the foundation is published in the Official Gazette of the Wiener Zeitung (s. 6 *BStFG*). Further, the Foundation Authority appoints the foundation protector.

105. In the six months following its appointment, the foundation protector must submit the foundation Charter where the following information must, amongst other things, be mentioned (s. 10 *BStFG*):

- the name and the seat of the foundation;
- details of the purpose of the foundation;
- details of the class of persons who are the beneficiaries; and
- designation of the foundation's administrative and representative bodies.

106. The foundation Charter must be approved by the Foundations Authority and the foundation cannot commence its activities until the Charter has been approved (s. 10 *BStFG).*

107. All public foundations are registered in the single foundation register maintained by the Ministry of Interior (s. 40 *BStFG*). The register contains the name, seat and address of the foundation, details on the purpose of the foundation and the group of beneficiaries, and the names and addresses of the representatives and executives of the foundation. This register is open to any person for inspection (s. 40). Information in this register is kept permanently (s. 40(5)).

Information available with service providers

108. Financial institutions, civil law notaries, lawyers, accountants (including when they carry out transactions involving foundations) are service providers with obligations under Austria's *AML/CFT* legal framework (see also above, Section A.1.1). Under these pieces of legislation, service providers are obliged to maintain ownership and identity information regarding their clients and the beneficial owners with at least a 25% interest in a client (see above conclusion under A.1.4).

Conclusion

109. The Austrian legal and regulatory framework ensures the availability of ownership information on public foundations: (i) the name of the founder is available in the deed of foundation; and (ii) designation of the foundation's administrative and representative bodies and details on the class of beneficiaries must be disclosed in the foundation's Charter which must be provided to the Foundations Authority.

Private foundations

Information held by government agencies

110. A private foundation can be established by a natural or legal person(s) by drawing up a foundation deed. The foundation deed must be established or authenticated by a civil law notary (s. 10 *PSG*) and must contain, amongst others, the following information (s. 9):

- the purpose to which the assets are dedicated;
- the purpose of the foundation;
- the name and address of the founder;

- the names of the members of the board of directors; and
- the names of the members of the supervisory board;

111. Beneficiaries "are the parties designated as such in the foundation deed" (s. 5 *PSG*). When the foundation deed does not expressly stipulate the name of the beneficiaries, it may be that the group of beneficiaries is detailed in the deed while the identity of the beneficiaries themselves is mentioned in an appendix, alternatively there may be no details of the foundation's beneficiaries in the deed.

112. Where the foundation benefits to a class of persons, there is no obligation to designate the name of each beneficiary, and this group of beneficiaries can directly be known from the purpose followed by the foundation.

113. Private foundations must be registered by the local court where they have their registered office (s. 13 *PSG* and s. 2 *FBG*). The information maintained in the *Firmenbuch* includes (s. 3 *FBG*): commercial register number, foundation name, legal form, registered office, name and date of birth of the foundation representative(s). In addition, and pursuant to section 13(3) of the *PSG,* information on the purpose of the foundation, the date of the deed and of any amendments to that deed and the name and date of birth of the members of the supervisory board must be provided.

114. Any amendment to the information entered in the *Firmenbuch* must be updated without delay (s. 10 *FBG*).

Tax requirements

115. Pursuant to sections 119 and 120 of the Fiscal Code (*BAO*):

- taxpayers must disclose circumstances which are of relevance to the existence and the scope of any tax liability (s. 119(1)). The disclosure should in particular be achieved by tax returns, registrations, notifications and provision of other information (s. 119(2)); and
- taxpayers must notify to their tax offices information concerning all circumstances which justify, change or end their personal tax obligation in respect of income tax, corporate tax, VAT and taxes on capital.

116. For registration by the revenue authorities, all foundations must file a "Verf 15b" form. As indicated on this registration form, a copy of the deed of foundation must be provided to the revenue authorities. As a result of the requirements of the Corporate Income Tax Act 2010, foundations should disclose any appendix to the foundation deed to the tax authorities, together with a copy of any Treuhand used by the founder. If these documents are altered, the changes must be notified to the tax authority. In addition, since April 2011

the identity of any beneficiaries not named in the deed must be disclosed to the revenue authorities as provided for in section 5 of the *PSG*. For foundations set up before 1 April 2011, the name of all such beneficiaries must be disclosed to the revenue authorities on or before 30 June 2011.

117. The application for registration or the notification of any change to registered information must be file within one month of the event requiring the notification, as detailed on the form to be filed.

Information available with service providers

118. Financial institutions, civil law notaries, lawyers and accountants (including when they carry out transactions involving foundations) are service providers with obligations under Austria's *AML/CFT* legal framework (see also above, section A.1.1). Under these pieces of legislation, service providers are obliged to maintain ownership and identity information regarding their clients and those beneficial owners who have at least a 25% interest in a client (see above conclusion under A.1.4).

Conclusion

119. The Austrian legal and regulatory framework ensures the availability of ownership information for private foundations:

- the name of the founder, of the board of directors, and the supervisory board is indicated in the deed of foundation on a mandatory basis. The deed must be established by a civil law notary who is a professional with CDD obligations;
- private foundations must be registered in the *Firmenbuch*; and
- for registration by the revenue authorities, foundations must provide the foundation deed and the identities of their beneficiaries.

Enforcement provisions to ensure availability of information (ToR A.1.6)

Registration requirement

120. Pursuant to section 24 of the *FBG*, the court can, by way of a fine of up to EUR 3 600, enforce the obligations set down in the act, including the obligations to file an application and to submit all necessary documents for inclusion in the *Firmenbuch*. For non-compliance with this obligation within two months, an additional fine of up to EUR 3 600 may be imposed.

121. In addition, the Austrian commercial law states that until registration by the local court of justice and entry in the *Firmenbuch*, companies do not exist as such and any person acting on behalf of a non-registered company is severally liable to the debt of the company (s. 34 Austrian Stock Corporation Act, s. 2 Limited Liability Company Act, s. 8 Co-operatives Act, ss. 123 and 161 *UBG*).

Obligation for any entity to maintain ownership information

122. Austrian commercial legislation does not include any specific sanctions for *AGs* if they do not maintain share registers or do not have their registers properly kept. However, *AGs'* shareholders that are not entered on the register are precluded from exercising any of their rights vis-à-vis the company (s. 61 para 2 *AktG*). If the board of directors of an *AG* does not keep the share register, its members may be liable for any damages (s. 84 of the law), could be dismissed by the supervisory board (s. 75 para 4 of the law) and may face criminal sanctions (when the obligation to maintain a share register is breached and this breach leads to a financial loss the sanction can be imprisonment of up to 10 years. See s. 153 of the penal code).

123. When the board of a Genossenschaft does not keep the register of members, a fine up to EUR 3 500 is applied by the *Firmenbuch*. *Genossenschaften's* members also face in that situation criminal sanctions up to one year imprisonment.

Tax requirements

124. All obligations deriving from the *BAO* are supported by sanctions to respect tax requirements, including the provision of information to the authorities. In particular section 111 of the *BAO* sates that the Fiscal Authority is authorised to compel compliance with the fiscal legal obligations by imposition of a fine not exceeding EUR 5 000. For late submission of tax returns, a 10 % surcharge may be applied.

125. The Fiscal Offences Act also sets out a range of sanctions where tax obligations are not fulfilled:

- whoever intentionally reduces his taxation by violating a duty of notification, disclosure or truthfulness under the *BAO* is deemed guilty of tax evasion (s. 33). In that case, tax evasion is punishable by a fine of up to the double of the amount of tax avoided. In addition to this fine, the court may impose a custodial sentence of up to two years;
- where a person fails to self-assess taxes (when required to do so), an administrative fine of half the amount of taxes to be paid may be imposed (s. 49);

- a person who does not retain books and record as required by the *BAO* may be punishable by a fine of up to EUR 5 000 (s. 51).

126. Section 42 of the *PSG* states that whoever does not or does not fully comply with the obligation to provide the name of a private foundations' beneficiaries to the revenue authorities may be punished by a fine of up to EUR 20 000 for each beneficiary whose identity is not disclosed.

Disclosure of major shareholding

127. According to s. 48 para. 1 No. 5 of the Austrian Stock Exchange Act, non-compliance with the disclosure requirements for major holdings is to be sanctioned with a fine up to EUR 30 000, unless the offence constitutes a crime within the competence of criminal courts.

AML/CFT legislation

128. All requirements coming from the AML/CFT framework are supported by administrative sanctions, unless the offence constitutes a crime. For example:

- fines up to EUR 75 000 or a term of imprisonment of up to six weeks for banks and financial institutions in case of non compliance;
- fines up to EUR 45 000 and disciplinary sanctions (debarring up to one year, removal from the list of lawyers) for lawyers who do not comply with AML/CFT obligations;
- fines up to EUR 36 000 and disciplinary sanctions (suspensions up to one year, debarring from office) for non-compliance by civil law notaries; and
- fines up to EUR 20 000 for non-compliance by companies and trusts service providers, and nominees.

129. Any person involved in money laundering, when the amount involved is over EUR 50 000 is punishable with a term of imprisonment from one to ten years (s. 165 (4) of the criminal code).

Conclusion

130. Austrian legislation usually provides for sanctions in situations where the information required by law is not kept. The effectiveness of these measures for ensuring the availability of information will be examined during Phase 2.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Austria authorises the issuance of bearer shares by joint stock companies and European companies without having in place mechanisms for identifying the holders of those shares in all circumstances.	Austria should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares.
Information regarding the ownership of foreign companies incorporated outside the EU and that are resident for tax purposes in Austria may, under certain circumstances, not be available.	In such cases, Austria should ensure that ownership and identity information is available.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1)

131. The obligations to keep accounting records arise in Austria from both Entrepreneurial Code (*UGB*) and Tax Code (*BAO*). The same obligations also apply to foreign companies resident in Austria, as well as to branches of foreign companies, for the activities they carry on in Austria.

132. According to section 190 of the *UGB*, businesses are required to keep books and records in order to retrace their transactions and to enable their financial position to be established. These accounting records must permit reconstruction of the individual business transactions. The entries in accounting books should be made chronologically should be complete and made in a correct and timely fashion. No entry may be altered in a manner which no longer permits the original content to be ascertained (paragraphs 3 and 4 of s. 190).

133. The requirements set out in the *UGB* apply to:

- joint stock companies, limited liability companies and partnerships where no general partner with unlimited liability is a natural person, whatever their turnover; and
- any other businesses whose turnover is above EUR 700 000 a year.

134. Section 124 of the *BAO* states that whoever bears an obligation under the *UGB* or other provisions of law to keep and retain books and records must also keep this information for tax purposes.

135. In addition, pursuant to section 125 of the *BAO*, all agricultural, forestry and commercial businesses must keep books and records:

- they have a turnover exceeding EUR 400 000 for two successive calendar years; or
- their value[15] exceeds EUR 150 000 as of 1 January of any year.

136. These obligations relate to any type of entity whatever its legal form. Books and records to be kept must ensure the preparation of financial statements and the annual inventories (s. 125 *BAO*). These records must be kept in such a manner that they are capable of providing a general view of the business transactions and enable reconstruction of the individual business transactions from their origins to their execution.

137. Finally, and pursuant to section 126 of the *BAO*, taxpayers who bear an obligation to submit tax returns must keep such records necessary for recording facts and circumstances relating to their tax liability. In particular, when such taxpayers are not required to keep books and records according to sections 124 and 125 of the *BAO*, they nevertheless have an obligation to record all their business receipts and disbursements and prepare their annual accounts at the end of each year for purposes of income and profit tax collection.

138. Given that tax returns must be filed by all companies and partnerships (see ss. 133 and 134 BAO), together with comprehensive tables showing a clear picture of the company or partnership financial situation (including a balance sheet, a profits and losses account and an inventory), it follows that, as a result of section 126 of the BAO, comprehensive obligations to keep accounting records are imposed on company and partnerships not already covered either by the provisions of the *UGB* or sections 124 and 125 of the BAO.

139. As regards trustees, Treuhänder and any other fiduciary relationships, the main obligations in Austria to keep accounting records come from the Austrian Civil Code (s. 1012) requiring persons acting on behalf on another one to, in particular, "present all accounts where demanded". The obligation to keep records and receipts does not depend on any obligations under tax law. It has not been possible to determine the extent to which this may be considered

15. "Value" should be understood as at the amount of the unitary value increased by the value of commercial tenancies as a lessee and decreased by the value of commercial leases as a lessor (at the most recent determinative amount thereof).

as a full requirement to keep accounting records or how many arrangements are in this situation.

140. However, professional trustees and *Treuhänder* are also subject to the record keeping requirements set out in the *BAO* in their professional capacity and to the extent that there is an obligation to pay taxes in Austria *i.e.* when (i) income from Austrian source is derived from a trust or a *Treuhand* or (ii) assets located in Austria are held through a fiduciary relationship. As persons liable to tax on the income derived from a trust or *Treuhand* (s. 24 of the *BAO*), settlors and *Treugeber* when (i) they are resident for tax purposes in Austria or (ii) income from Austrian source is received through a fiduciary relationship, are also required to keep accounting records explaining the income received as well as enabling them to fill out their financial statements.

141. When the *Treugeber* or settlor is not resident in Austria and all assets held through the fiduciary relationship are located outside Austria, there are no record keeping requirements provided for by the Austrian tax legislation. However, any obligation under foreign provisions of law, that applies to a specific Treuhand/trust in Austria under the rules of international private law, will also trigger the obligation to keep accounts under Austrian tax law (Art. 124 BAO).

142. Section 32 of the Public Foundations and Funds Act imposes the obligation on any foundation to invest assets or funds in line with the purpose of the foundation. To this extent, evidence of the investment must be furnished to the Foundations Authority. All legal transactions relating to funds, assets and real property also need the prior approval of the supervisory authority. Paragraph 3 of section 32 also states that public foundations are subject to accounting rules and must submit, pursuant to section 14 of the same act, a balance sheet showing all assets and liabilities within six months after the end of the accounting period.

143. Private foundations are subject to the general accounting requirements deriving from *UGB* and must therefore keep books and records (s. 18 Private Foundations Act). Private foundations are also taxable entities according to the *BAO* and are further subject to the record keeping requirements set out in this code.

Conclusion

144. Except in some specific situations relating to trusts and Treuhänder, the obligations in the accounting and tax legislation, ensures the availability of accounting records from which it is possible to accurately review all transactions, to assess the financial position of all entities, and to prepare financial statements.

Underlying documentation *(ToR A.2.2)*

145. Pursuant to section 212 of the *UGB*, all businesses required to keep accounting records must keep books, inventories, financial statements with the consolidated management reports, copies of received and sent business correspondence and all evidence underlying ledger entries in the books.

146. Section 131 of the *BAO* also imposes comprehensive obligations on any person or entity required to keep accounting records, to retain all underlying documentation needed to explain all transactions. In particular all records must be associated with receipts and business papers. It is also mentioned in this section of the *BAO* that all receipts and evidence associated with the books and records should be kept in a manner organised to enable the verification, at all time possible of the entries.

147. Further, since Austria is an EU member and thus party to the intra-community VAT system, its businesses are subject to special requirements regarding evidence of transactions carried out. In particular, it is necessary to keep all documents that can be used to review intra-community flows of goods and services, including invoices issued and received, goods delivery notes, or the contracts under which purchases and sales have been conducted (see s. 18 Austrian Value Added Tax Act).

148. These various requirements ensure that when any entity is required under Austrian legislation to keep accounting records, those records are backed by the necessary documentation on the transactions performed and which allow for assessment of the financial position and preparation of financial statements for all relevant entities and arrangements.

5-year retention standard *(ToR A.2.3)*

149. All businesses covered by the record keeping requirements set out by the *UGB* must keep their accounting records for a seven year period, this period starting form the end of the calendar year for which the last entry in the books was made (s. 212 *UGB*).

150. Pursuant to section 132 of the *BAO*, all books and records that must be kept in accordance with this code must also be retained for a seven year period. The same requirements apply to all accompanying documentation.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place	
Factors underlying recommendations	**Recommendations**
In the case of fiduciary relationship, there are some uncertainties as regards the detailed obligations to keep accounting records where the *Treugeber* or settlor is not resident in Austria and assets held through the fiduciary relationship are located abroad.	Austria should make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

151. Legal obligations to keep bank information are contained in the Austrian Federal Banking Act (*BWG*).

152. The BWG explicitly prohibits any form of anonymous accounts (s. 40d(2)). Section 40(1) of the *BWG* requires that financial institutions and a wide range of additional financial businesses and professions have knowledge of their customers. This section states that all credit institutions and financial institutions must ascertain and verify the identity of the customer in the following cases:

- before initiating a permanent business relationship; this must also be done to existing customers on a risk assessment basis;
- before executing any transactions which are not conducted in connection with a permanent business relationship and which involve an amount of at least EUR 15 000 or more, whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection;
- when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold; and

- when there are doubts about the veracity or adequacy of previously obtained customer identification data.

153. Pursuant to the same section, the identification and verification of the identity of the customer and its beneficial owners must be ascertained by the personal presentation of an official photo identification document issued by a government authority. Where the customer is a company or entity, the identity must be ascertained on the basis of a meaningful supporting document which is available under the usual legal standards of the country in which the legal person is incorporated. In addition, the identity of the natural person competent to represent this legal entity is ascertained by the presentation of an official photo identification document.

154. The *BWG* (s. 40(3)) also requires that undertakings and persons covered by the AML/CFT obligations store: (i) documents serving the purpose of identification for at least five years after the termination of the business relationship with the customer; and (ii) all documentation and records of all transactions for a period of at least five years after their execution.

155. Banks and financial institutions that do not comply, even if only negligently, with the requirements set out in section 40 of the *BWG* are guilty of an administrative offence punishable with a term of imprisonment of up to six weeks or a fine of up to EUR 75 000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts. Banks and financial institutions could also be charged with committing or participating in money laundering and therefore be subject to criminal sanctions according to s. 165 of the Penal Code. Any person involved in money laundering, when the amount involved is over EUR 50 000 is punishable with a term of imprisonment from one to ten years (s. 165(4) of the Penal Code).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

156. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities. This section of the report examines whether the Austria's legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

157. Following its commitment to the international standards in March 2009, Austria enacted on 8 September 2009 new legislation expressly stating that all domestic investigation and information gathering measures can also be used for the purpose of answering incoming international requests for exchange of information in tax matters (EOI requests). Further, this legislation also allows for the access by revenue authorities to bank information when the request is made under a treaty which includes provisions allowing for the exchange of bank information, whether these provisions are contained in Double Taxation Conventions or Tax Information Exchange Agreements. Austria now has 27 treaties which allow for exchange of bank information but must ensure that access to bank information is available to all its treaty and relevant partners.

158. This new legislation also provides for the prior notification of the taxpayer concerned when a request is received for bank information. This notification is a mandatory prerequisite to the favourable examination of the incoming request by the Austrian competent authorities. As such, the implementation of a notification procedure complies with the standard. However, the notification procedure should also allow for exceptions in urgent cases or when the notification is likely to undermine the provision of the requested information.

159. Access to ownership and accounting information, as well as any other type of information, is ensured on the basis of the domestic information gathering powers of the revenue authorities. These powers ensure access to information either held by the person concerned by the request or any third party and through multiple avenues, such as questionnaires, provisions of any books, records and documents of relevance, or testimonies. All of this information can be exchanged with treaty partners.

160. To ensure the provision of the requested information, Austrian authorities can rely on sanctions taking the form of fines, the use of search and seizure powers being restricted to criminal cases. Further scrutiny will be given to these powers to compel the provision of information during the course of the phase 2 review to ensure that there is an adequacy between these sanctions and the effectiveness of access to information.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

161. The competent authority for Austria in respect of EOI is the Federal Ministry of Finance. Austria's powers to access information for EOI purposes vary depending on whether the EOI agreement in question was signed before or after Austria's commitment to the international standards. EOI agreements signed before March 2009 allow for the exchange of ownership and accounting information, as well as bank information provided that criminal proceedings concerning tax fraud are already pending in the requesting state. EOI mechanisms signed since that date, which include wording akin to Article 26(5) of the *OECD Model Tax Convention*, also allow for the exchange of bank information in all criminal tax matters and in civil tax matters.

162. To reflect this change and its commitment to the standards, Austria brought into effect new legislation on 8 September 2009, the purpose of which is to implement rules regarding the collection of information for EOI purposes. Although particularly adopted to allow an access to bank information in civil tax matters, the Administrative Assistance Implementation Act (*ADG*) applies to all cases where administrative assistance is requested by a treaty partner. Thus, whether the request relates to ownership, accounting, or bank information, the *ADG* is the core legal framework under which EOI takes place. In particular, section 2(1) clearly states that "in connection with the applicable provision of law, the investigative action necessary to deal with a foreign

request for administrative assistance shall be conducted in the same manner as if the foreign taxes were domestic taxes".

163. In all cases, the *ADG* provides for checking of the incoming request by the Austrian competent authority to ascertain whether or not this request meets the prerequisites to grant administrative assistance under the provisions of the applicable EOI mechanisms (s. 2(3) *ADG*).

Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

164. Where the incoming request received from a foreign counterpart relates to the provision of ownership and accounting information, the *ADG* states that the information will be gathered using access to information powers provided for by the Austrian Federal Fiscal Code (*BAO*). These powers can be used whether the request is made under an EOI mechanism meeting the international standard or not.

165. According to section 143(1) of the *BAO*, the Austrian tax authorities are authorised to request information about all the facts that are relevant to explain the imposition of taxes. The obligation to provide such information applies to all persons, including where the personal tax obligations of the person required to provide this information are not the subject of the enquiry. This information must be provided to the best of the knowledge of this person and includes the obligation to provide any type of certificates or written documents. This obligation also includes the possibility for the tax authorities to inspect such documents (s. 143(2) *BAO*).

166. When tax returns have already been filed, the tax authorities are permitted in the course of their duties of assessing and auditing tax liabilities to review these tax returns and when necessary to require the provision of supplementary information (s. 161 *BAO*). These powers can also be used in the course of answering incoming EOI requests.

167. Section 164 of the *BAO* provide for the possibility to ask taxpayers to submit all types of books, records and business papers, allows the Austrian authorities to access and use for EOI purposes any type of accounting records and ownership information that must be kept under Austrian legislation. Pursuant to section 165 of the *BAO*, third parties can also be asked to provide such information when negotiations with the taxpayer are not likely to lead to the provision of information or have no prospect of doing so. Austrian authorities have advised that tax authorities have a wide margin in evaluating whether a request to the taxpayer is likely to lead to the provision of information. In this evaluation the following aspects should be taken into consideration: the taxpayer's interest in confidentiality, the interests of third parties and the tax administration's economy and convenience.

168. Ultimately, if some conditions are met, revenue authorities may also use further investigation powers and in particular summons third parties to testify as a witness (s. 169 *BAO*). Some persons cannot be required to provide information in this way (persons with restricted cognitive abilities, clerics and organs of the State or other regional administrative body; see s. 170) while others can refuse to be summoned (relatives of the defendant and persons who have legal obligation of secrecy such as lawyers or civil law notaries; see s. 171).

169. Pursuant to section 172, anyone required to testify as a witness can also, upon request of the fiscal authorities, be required to submit documents, deeds and business records relating to specifically designated facts for inspection. Section 173 of the BAO finally states that these testimonies may also be provided in writing.

170. Considering these broad powers and the various avenues enabling the revenue authorities to gather information, any type of ownership or accounting information can be collected in Austria from taxpayers or any third parties and can be exchanged upon request with counterparts.

Bank information *(ToR B.1.1)*

171. When a request for bank information is made under a treaty including provisions specifically providing for the exchange of bank information, then the credit institution must provide this information when so requested by the Austrian tax authorities.

172. Section 3 of the *ADG* states that "where a request is submitted … for the provision of information from a credit institution and such information is covered by banking secrecy law, then the credit institution which holds that information shall bear an obligation to provide the information and to permit inspection of and to surrender documents and files. The authority competent to handle the request for administrative assistance in Austria shall demand this information to be provided without delay, setting a reasonable deadline". Austrian authorities have advised that the provisions of the *ADG* and the *BAO* should be read together. While section, 3 of the *ADG* specifically states that banks are required to provide information upon request of the revenue authorities, the procedure to collect this information derives from the *BAO,* and in particular from section 143. According to that section, all third parties can be required to answer any request received from the revenue authorities and bank secrecy can be lifted.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

173. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

174. The *ADG* clearly states that the investigative actions necessary to deal with a foreign request for administrative assistance are conducted in the same manner as if the foreign taxes were Austrian domestic taxes. Therefore, all domestic gathering measures described above in B.1.1 and B.1.2 can be used whether there is a domestic interest in the matter or not.

Enforcement provisions to compel production and access to information (ToR B.1.4)

175. The Austrian authorities have search and seizure powers, though these powers can only be use in criminal cases. However the Austrian authorities have advised that this does not hinder the access to information in civil cases.

176. Non-compliance with the obligation to provide information on request of the tax administration can lead to administrative fines of up to EUR 5 000 (s. 111(3) *BAO*). This sanction may apply regardless of whether the request relates to ownership, accounting, or bank information.

177. In criminal procedures the refusal to comply with an order to provide bank information can lead to criminal sanctions of up to EUR 10 000 or in important cases to imprisonment of up to six weeks. Additionally a search warrant or a confiscation order could be issued and executed, if necessary, by using coercive measures (s. 93(4) *StPO*).

178. The assessment team will investigate during the course of the phase 2 review whether or not these enforcement provisions ensure the provision of the requested information in all instances.

Secrecy provisions (ToR B.1.5)

Bank secrecy

179. The legal basis for bank secrecy in Austria is provided for by section 38 of the Austrian Federal Banking Act (*BWG*). The provision of bank secrecy may only be amended by the *Nationalrat* (Chamber of Representatives) with at least one half of the representatives present and a two third majority of the votes cast. According to section 38(1) of the *BWG,* "credit institutions, their members, members of their governing bodies, their employees as well as

any other persons acting on behalf of credit institutions must not divulge or exploit secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers, or on the basis of section 75(3)" (reports on large value credits). If the employees of authorities as well as the Oesterreichische National Bank acquire knowledge subject to bank secrecy requirements in the course of performing their duties, then they must maintain bank secrecy as official secrecy; these employees may only be relieved of this obligation in limited circumstances such as with respect to AML. The obligation to maintain secrecy applies for an indefinite period of time.

180. Bank secrecy is lifted where information is required for the purposes of an EOI request made under agreements specifically incorporating the international standard on transparency and exchange of information. This follows from the fact that:

- these agreements expressly include a provision that the contracting parties may not decline to exchange bank information solely because the information is held by a bank or other financial institution notwithstanding any contrary domestic legislation; and
- the Administrative Assistance Implementation Act was specifically enacted by Austria in 2009 and allows revenue authorities to access bank information for EOI purposes when the request is made under a treaty which includes provisions allowing for the exchange of bank information.

181. Therefore, where information is sought under an EOI mechanism allowing for the exchange of bank information, the Austrian authorities may issue a request directly to the bank that holds the information. For access to information for the purposes of EOI under Austria's other agreements, which up to now do not follow the OECD standard, bank secrecy cannot be lifted – except in criminal cases subject to special requirements as those agreements do not include an express provision equivalent to Article 26(5) of the OECD *Model Tax Convention*. This concerns 63 of Austria's partners.

Professional secrecy rules

182. Professional secrecy is protected in accordance with the legislation governing the professions of lawyers (s. 9 *RAO*), civil law notaries (s. 37 *NO*), tax consultants and auditors (s. 91 *WTBG*) and accountants (s. 76 *BibuG*).

183. These provisions provide for confidentiality with respect to all matters entrusted to these professionals. This duty also extends to personal circumstances and trade or business secrets that come to their knowledge in the performance of an engagement given to them. Austrian authorities maintain that professional secrecy rules do not relieve any person from the obligation

to disclose information according to the provisions of the *BAO*. In addition, these rules do not cover matters relating to the tax records of these professionals (their records can be audited by the Austrian revenue authorities).

184. Austrian authorities have also advised that according to the case law developed by the Austrian Supreme administrative court, when information is covered by professional secrecy rules, taxpayers have increased obligation to cooperate with revenue authorities. In addition, all information necessary for tax purposes may primarily be required from the taxpayer by the Austrian revenue authorities (see in particular s. 143 of the *BAO*).

185. Pursuant to the Terms of Reference, communications between attorneys and their clients can be protected, however it appears that secrecy provisions contained in Austrian legislation also encompass other professions, in particular accountants and notaries. In addition, it is not clear whether attorneys or notaries acting as financial intermediaries, trustee or Treuhänder, are allowed under Austrian legislation to disclose to the revenue authorities all information acquired in those capacities. Finally, from both tax and professional secrecy rules, the extent to which information held by lawyers, accountants or civil law notaries can be accessed for the purpose of international exchanges of information is not clear.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Restrictions on access to bank information provided for by Austria's domestic legislation is currently overridden in respect of only 27 of the 90 signed agreements.	Austria should ensure that its competent authority has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements.
Regarding the scope of application of Austrian professional secrecy rules there are some uncertainties as to whether the existing rules may unduly limit access to information acquired by attorneys, accountants and notaries.	Austria's professional secrecy rules should be clarified to ensure that they are only able to act as a bar to EOI when lawyers, notaries and accountants act in their capacity as attorneys or legal representatives.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

186. For the agreements signed since 2009, the Administrative Assistance Implementation Act (*ADG*) published on 8 September 2009 sets out the rights and safeguards of persons concerned by a request for information made by a requesting jurisdiction.

187. For the collection of bank information, the *ADG* provides for pre-requisites to handle an incoming request, in particular, a prior notification procedure. This procedure comprises the following steps:

- where the information sought relates to bank information, the Federal Ministry of Finance must without delay notify the individual concerned by the request that there has been an international request for administrative assistance and what information has been requested, simultaneously providing notice to the credit institution (s. 4(1) *ADG*);
- in response to a well-founded application by the persons to whom the foreign request for administrative assistance relates, the Federal Ministry of Finance will rule on whether the material prerequisites[16] for pre-empting banking secrecy have been met (s. 4(2) *ADG*). The purpose of this pre-analysis of the request is to ensure that the incoming request is foreseeably relevant and therefore that administrative assistance can be granted by Austria;
- the individual concerned can send to the Federal Ministry of Finance an application for an administrative notice containing a determination of the material prerequisites. This must be sent on or before the end of two weeks following notification of the affected persons. That authority must, in that case, issue a decision of first and last instance (s. 4(2) *ADG*);
- following expiry of the application period or, in the event of an application for a determination by administrative notice, upon expiry of a six-week period from the date the notice was served, the Federal Ministry of Finance will comply without delay with the foreign request for administrative assistance (s. 4(3) of the *ADG*); and

16. *I.e.* in particular that the identity of the person under examination as well as, in 11 DTCs, to the extent known the name and the address of any person believed to be in possession of the requested information or, in 12 DTCS, the name and the address of this person have been provided.

- in the event that an appeal is filed against that administrative notice, upon application of the appellant, to grant suspensory effect the authority must await the decision of the Constitutional Court or Administrative Court before responding to the EOI request. If the court refuses to grant suspensory effect the competent authority may immediately after that decision submit the requested information to the requesting state without awaiting the final decision of the court (s. 4(3)).

188. It is noted that the prior notification procedure implemented by Austria with the *ADG* has a scope restricted to access to bank information. Access to ownership and accounting information is not affected by this procedure. However, while restricted in its scope, this procedure does not allow any exception as the law clearly states that "the authority competent to handle the administrative assistance proceedings … must without delay notify the individuals".

189. The Global Forum's Terms of Reference clearly state that "notification rules should permit exceptions from prior notification (*e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction)". These exceptions are not allowed in the Austrian legislation.

Determination and factors underlying recommendations

Phase 1 determination	
The element is place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendation	**Recommendation**
The Administrative Assistance Implementation Act of 2009 requires the prior notification of the individual concerned when there is a request for bank information and this prior notification procedure does not allow for any exception.	It is recommended that certain exceptions from prior notification be permitted (*e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

C. Exchanging Information

Overview

190. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Austria, the legal authority to exchange information is derived from double tax conventions (DTCs) and tax information exchange agreements (TIEAs) once they become part of Austria's domestic law. This section of the report examines whether Austria has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

191. Austria's international exchange of information (EOI) mechanisms cover 90 partner jurisdictions, 86 of them being covered by double taxation conventions (DTCs), 4 by taxation information exchange agreements (TIEAs). Where not updated since March 2009 following Austria's commitment to the standard, these agreements do not allow for exchange of information in compliance with the standard. Austria can also exchange information with its EU counterparts under the scope of the *EU Council Directive 77/799/EEC* of 19 December 1977[17] concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums.

192. Since its commitment to the international standards for transparency and exchange of information for tax purposes in March 2009, Austria has signed 8 DTCs, 15 protocols and 4 TIEAs allowing for the exchange of information, including bank information. The four TIEAs signed by Austria strictly respect the wording of the *OECD Model TIEA*. All protocols and DTCs include the full wording of Article 26 of the *OECD Model Tax Convention*, including paragraphs 4 and 5, supplemented by additional rules listing the type of information to be provided by the requesting jurisdictions in its

17. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. It has been amended since that time.

request for information. 12 of these agreements, with Belgium; Bosnia and Herzegovina; Bulgaria; Hong Kong, China; Luxembourg; Mexico; Qatar; San Marino; Serbia; Singapore; Switzerland; and Tajikistan, include provisions requiring the requesting party to provide the "name and address" of the holder of information when making an EOI request. These requirements are unduly restrictive and inconsistent with the standard (see Article 5(5) of the *OECD Model TIEA* and its Commentary).

193. Of the 27 agreements signed since 2009, 23 have been ratified by Austria and are already in force.[18] Six others are awaiting completion of the ratification process by Austria's counterparts.[19] In addition, to give these treaties effect, a new procedure ensuring revenue authorities have access to information held by financial institutions has been enacted (see above, part B of the report).

194. The 27 EOI agreements allowing for exchange of bank information, of which 15 are to the standard, cover some of Austria's main trading partners and neighbor countries, in particular Germany and Switzerland. In addition, Austria is party to the new EU Administrative Cooperation Directive which will enter into force on 1 January 2013 and will cover 19 new partners. In the meantime, Austrian authorities are strongly encouraged to continue to bring the Austrian EOI network to the standard as 75 counterparts are still not covered by an EOI mechanism to the standard. In addition, two of Austria's partners, India and Guernsey, have mentioned having met difficulties in trying to negotiate an updated EOI mechanism with Austria. Austria should also enter into negotiations with all relevant partners, meaning those partners who are interested in entering into an exchange of information arrangement with Austria.

195. Each of Austria's agreements includes a confidentiality provision and in addition Austria has a strong domestic confidentiality regime applicable to persons who in the course of their public duties have access to tax information. The rights and safeguards protected under Austria's EOI agreements are consistent with the standard.

196. Although Austria has made progresses in a short period of time, having signed EOI agreements with 27 jurisdictions since its March 2009 commitment to the international standards, 12 of these new agreements have fallen short of the standard in the detail of some of their provisions. It is noted that Austria is currently trying to find solutions to bring these agreements to the standard.

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18. Andorra; Bahrain; Bulgaria; Denmark; Gibraltar; Hong Kong, China; Ireland; Luxembourg; Mexico; Monaco; the Netherlands; San Marino; Serbia; Sweden; Switzerland; Singapore; and the United Kingdom.
19. Belgium, Bosnia and Herzegovina, Finland, Germany, Norway; and Saint Vincent and the Grenadines.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

197. Austria has an extensive network of EOI arrangements covering 90 jurisdictions. Since March 2009, 8 DTCs, 15 protocols amending DTCs and 4 TIEAs have been signed. All these mechanisms allow for the exchange of bank information.

198. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member which also applies *Council Directive 77/799/EEC* – the problem of overlap is generally addressed within the instruments themselves.[20] There are no domestic rules in Austria requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate.

199. Beyond EOI upon request in the field of direct taxation, Austria, as an EU member, is party to the EU VAT common system and, as a consequence, to exchanges of information upon request in the field of VAT taking place under the *EU Regulation (EC) 1798/2003*.

Foreseeably relevant standard *(ToR C.1.1)*

200. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions," *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the *OECD Model Taxation Convention* set out below:

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

20. See in particular Article 27 of the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters and Article 11 of the 1977 EC Directive "Applicability of wider-ranging provisions of assistance."

201. Of the 90 treaties signed by Austria, 23 DTCs refer to Article 26(1) and make reference to the foreseeable relevance standard as set out in the international standard, and the 4 TIEAs signed by Austria also include such a reference.

202. All protocols or DTCs signed since 2009 include the full wording of Article 26 of the *OECD Model Tax Convention*, including paragraphs 4 and 5. This article is supplemented by a list of additional information that should be provided by the requesting jurisdiction when sending a request. These provisions are based on article 5 (5) of the *OECD TIEA Model*. In 11 of these treaties (Bahrain; Denmark; Finland; France; Germany; Ireland; Libya; the Netherlands; Norway; Sweden; the United Kingdom), the provision is the same as article 5 (5) of the *TIEA Model*, in 12 of them (Belgium; Bosnia and Herzegovina; Bulgaria; Hong Kong, China; Luxembourg; Mexico; Qatar; San Marino; Serbia; Singapore; Switzerland and Tajikistan), the provision requires that the name and address of the person in possession of the requested information in Austria must be provided in the incoming request. These restrictions do not conform to the standard.

203. It is also noted that these restrictions apply regardless of the information sought. In particular, it is necessary to provide the name and the address of the person in possession of the requested information in Austria even in cases where the information sought relates to ownership or accounting information. For 6 of these 12 jurisdictions (Belgium, Bulgaria, Luxembourg, Singapore, Switzerland, and Tajikistan), this is a new development; it was not a requirement under the EOI provisions of the former treaties in place with Austria.

204. All other agreements signed by Austria and not yet updated to meet the international standard refer to the exchange of information where it is 'necessary', referring to both application of the treaty and domestic laws. The phrase 'as is necessary' is recognised in the commentary to Article 26 of the *OECD Model Tax Convention* to allow for the same scope of information exchange as does the term 'foreseeably relevant'

In respect of all persons *(ToR C.1.2)*

205. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standards for exchange of information for tax purposes envisages that exchange of information (EOI) mechanisms will provide for exchange of information in respect of all persons.

206. None of the treaties signed by Austria since its commitment to the international standards are restricted, for EOI purposes, by the persons covered

by the agreement. Of the 63 treaties that have not been updated since 2009, 32 of them explicitly indicate that the exchange of information is not restricted by article 1 of the convention.

Exchange of all types of information *(ToR C.1.3)*

207. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD *Model Tax Convention* and the *OECD Model TIEA*, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

208. The 15 protocols amending DTCs, the 8 DTCs and the 4 TIEAs signed by Austria since its commitment to the standards contain provisions similar to paragraph 5 of Article 26 of the *OECD Model Tax Convention*. These are the treaties signed with: Andorra; Bahrain; Belgium; Bosnia and Herzegovina; Bulgaria; Denmark; Finland; France, Germany; Gibraltar; Hong Kong, China; Ireland; Libya; Luxembourg; Mexico; Monaco; the Netherlands; Norway; Qatar; Saint Vincent and the Grenadines; San Marino; Serbia; Singapore; Sweden; Switzerland; Tajikistan; and the United Kingdom.

209. Austria cannot however exchange bank information under the 63 DTCs that have not been updated since 2009.

Absence of domestic tax interest *(ToR C.1.4)*

210. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

211. All EOI mechanisms signed by Austria since 2009 include the wording of Article 26(4) of the *OECD Model Tax Convention*. However two of the oldest DTCs signed by Austria, with Japan (1961) and Hungary (1976), also state that the competent authorities of both contracting states will not supply information which is not available in the normal course of the administration. Nevertheless exchange of information with Hungary can also take place

under the EU Mutual Assistance Directive 77/799/EEC where no such restrictions apply.

212. The 63 other DTCs do not contain any reference to the 'domestic tax interest' concept but as previously mentioned, there is no domestic tax interest requirement in Austria and the Austrian authorities can access all types of information, whether this information is needed for domestic or exchange of information purposes. Austria is able to exchange information, including in cases where the information is not publicly available or where it is not already in possession of the government authorities.

213. A domestic tax interest requirement may exist in some of Austria's partner jurisdictions. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement. It is recommended that Austria continues its program of renegotiation of DTCs including in order to incorporate wording in line with Article 26(4) of the *OECD Model Tax Convention*.

Absence of dual criminality principles (ToR C.1.5)

214. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

215. None of Austria DTCs or TIEAs specifically includes a dual criminality principle to restrict exchange of information. Austria does not have any domestic legislation resulting in application of such a principle.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

216. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

217. All agreements signed by Austria, whether signed before its commitment to the international standards or not, allow for exchange of information in both civil and criminal tax matters with the exception of banking information in old agreements where exchanges can only take place in some criminal tax matters.

Provide information in specific form requested *(ToR C.1.7)*

218. There are no restrictions in Austria's tax treaties or TIEAs that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Agreements provide that the information must be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

219. In particular, sections 169 to 173 of the *BAO* allow the Austrian revenue authorities to summon someone to testify in writing or orally.

In force *(ToR C.1.8)*

220. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

221. In Austria, all EOI mechanisms, are, according to article 50 of the Constitution, part of the international law and must be incorporated into Austrian domestic law. To become effective, all EOI mechanisms, either DTCs or TIEAs, must be ratified by both Chambers of the Parliament (art.50(1)(1) Constitutional Law with respect to approval by the Chamber of Representatives; art.50(2)(2) for approval by the Chamber of States).

222. Of the 27 treaties signed by Austria since 2009, 23 have been ratified by Austria in about one year and 17 are already in force.[21] Of the treaties in force, nine meet the standard.

Be given effect through domestic law *(ToR C.1.9)*

223. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement.

224. Austrian authorities have broad powers to access any type information except banking information. To give effect to the agreements signed since March 2009 and its commitment to the international standard of transparency, Austria enacted in September 2009 the Administrative Assistance

21. Andorra; Bahrain; Bulgaria; Denmark; Gibraltar; Hong Kong, China; Ireland; Luxembourg; Mexico; Monaco; the Netherlands; San Marino; Serbia; Sweden; Switzerland; Singapore; and the United Kingdom. Belgium; Bosnia and Herzegovina; Finland; Germany; Norway; and Saint Vincent and the Grenadines are pending.

Implementation Act, granting access to bank information for international EOI matters to the Federal Ministry of Finance. Where the agreement contains wording akin to Article 26(5) of the *OECD Model Tax Convention* (as detailed in part B.1 of this report) Austria's Federal Ministry of Finance can access bank information to respond to requests for information made under such arrangements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
As a result of domestic law limitations with respect to access to information for EOI purposes generally and access to bank in particular, only 15 of Austria's 90 signed agreements provide for effective exchange of information to the standard. Of these 15 agreements, 9 are in force.	Austria should ensure that all its agreements provide for exchange of information to the standard.
Of the 27 agreements signed by Austria since its commitment to the standard, 12 establish identification requirements for the holder of information in Austria which are inconsistent with the international standard.	In line with its commitment to the international standard, Austria should ensure that the identification requirements in all of its new EOI mechanisms conform with the international standard.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

225. The standards require that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

226. Since its commitment to the international standards, Austria has only concluded DTCs that contain text akin to a full version of Article 26 of the *OECD Model Tax Convention* (including paragraphs 4 and 5). Austria has also signed four TIEAs which are in line with the *OECD Model TIEA*.

227. Austria has an extensive network of EOI mechanisms covering 90 jurisdictions, 27 of them allowing for the exchange of banking information, even though only 15 are in line with the international standard.[22] As previously noted, 23 of these agreements have already been ratified by Austria and 17 are in force (9 of which are in line with the international standard). The network of signed agreements allowing for the exchange of bank information covers to date:

- 13 OECD members[23];
- 11 of Austria's EU partners[24];
- 4 of the G20 members[25];
- 22 of the Global Forum member jurisdictions[26]; and
- 2 of Austria's main trading partners (Switzerland and Germany)[27].

228. Furthermore, Austria is party to the new *EU Administrative Co-operation Directive* adopted on 15 February 2011. From the entry into force of this agreement, Austria will have relationships consistent with the standard with the 19 EU Member States currently not covered by an EOI mechanism in accordance with the standard. This will bring the number of bilateral relationships conforming to the standard to 34 as from 1 January 2013 at the latest.

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22. Andorra; Bahrain; Denmark; Finland; France; Germany; Gibraltar; Ireland; Libya; Monaco; the Netherlands; Norway; Saint Vincent and the Grenadines; Sweden; and the United Kingdom.
23. Belgium; Denmark; Finland; France; Germany; Ireland; Luxembourg; Mexico; the Netherlands; Norway; Sweden; Switzerland and the United Kingdom. 18 other OECD members are covered by a DTC not meeting the standard.
24. Belgium; Bulgaria; Denmark; Finland; France; Germany; Ireland; Luxembourg; the Netherlands; Sweden; and the United Kingdom. All other EU members are covered by a DTC not meeting the standard.
25. France; Germany; Mexico and the United Kingdom. All other G20 members but Argentina, are covered by a DTC not meeting the standard.
26. Andorra; Bahrain; Belgium; Denmark; Finland; France; Germany; Gibraltar; Hong Kong, China; Ireland; Luxembourg; Mexico; Monaco; the Netherlands; Norway; Qatar; Saint Vincent and the Grenadines; San Marino; Singapore; Sweden; Switzerland and the United Kingdom.
27. Italy is covered by an agreement which do not meet the international standard.

229. In addition to the treaties already ratified, Austria, has mentioned that pending negotiations to update the existing DTCs are underway with Australia; Brazil; Canada; China; Croatia; Cyprus[28]; the Czech Republic; Greece; India; Indonesia; Italy; South Korea; Malaysia; New Zealand; Poland; Portugal; Romania; the Russian Federation; Saudi Arabia; the Slovak Republic; Spain; South Africa; Turkey; Ukraine; and Vietnam. A protocol amending the DTC with Georgia is ready for signature.

230. Austria is actively working to further expand its network of agreements. New DTCs are also being negotiated with Argentina; Chile; Egypt; Iceland; Israel; Liechtenstein; Oman and Sri Lanka and TIEAs are being negotiated with The Bahamas; Cayman Islands; Guernsey; Jersey and Liberia.

231. Ultimately, the international standard requires that a jurisdiction exchange information with all relevant partners, meaning those partners who are interested in entering into an information agreement. India approached Austria in 2009 indicating its interest in entering into negotiations to update the existing DTC. While a meeting took place in April 2010, it appears that since then, and despite a number of reminders sent by India, Austria has not been able to fruitfully progress this negotiation. Guernsey has also mentioned having approached Austria to conclude a TIEA. In response to this request, Austria provided Guernsey with a draft TIEA in August 2009. While a response was immediately provided by Guernsey, no substantial response seems to have been received from Austria since June 2010, despite subsequent reminders.

232. Austria authorities have advised that, with India, there may be certain misunderstandings on the contents of the Austrian proposal which led to delay progress of the negotiations. In the meantime discussions have been reopened with India and Austria hopes to finalise them soon. As regards Guernsey, a meeting in September 2011 in Vienna has been agreed in order to clarify the open questions.

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28. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

2. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Of the 90 EOI mechanisms concluded by Austria, only 15 meet the international standard.	Austria should continue to develop its EOI network to the standard with all relevant partners.
Austria has not on all occasions successfully progressed negotiations to establish EOI arrangements when requested to do so.	Austria should actively work to progress negotiations and establish exchange of information agreements with all partners who are interested in entering into an information exchange arrangement with it.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards *(ToR C.3.1)*

233. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries generally impose strict confidentiality requirements on information collected for tax purposes.

234. All treaties recently signed by Austria contain a confidentiality provision in line with Article 26(2) of the *OECD Model Tax Convention*.

> *Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrate bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or*

> *the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.*

235. Austria's 1981 DTC with the (former) Union of Soviet Socialist Republics, which still applies with respect to Tajikistan and Turkmenistan, contains no provisions to ensure the confidentiality of information received. It is recommended that Austria continues ensuring that appropriate confidentiality of information is maintained in exchanges of information with Tajikistan and Turkmenistan. A treaty with Tajikistan has already been signed on 7 June 2011 which follows those confidentiality requirements

236. In addition, Austrian domestic tax law contains provisions to ensure the confidentiality of information exchanged namely a professional secrecy provision applicable to tax officers, and provisions to protect both the public and private interests in maintaining confidentiality of tax information. Section 48a of the *BAO* provides for strict secrecy obligations for public officials and other persons involved in tax proceedings. This ensures confidentiality covers disclosure of taxpayers' related information, disclosure of the contents of files as well as disclosure of the details of tax proceedings.

237. When the confidentiality obligations are not fulfilled by a civil servant, section 251 of the Fiscal Offence Act foresees the application of the sanctions provided for by section 310 of the Austrian Criminal Code; imprisonment for up to three years.

All other information exchanged *(ToR C.3.2)*

238. The confidentiality provisions in Austria's agreements use the standard language of Article 26(2) of the *OECD Model Tax Convention* and Article 8 of the OECD *TIEA Model* and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

239. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

240. All of the agreements concluded by Austria since 2009 incorporate wording modeled on Article 26(2) of the *OECD Model Tax Convention* or Article 8 of the OECD *Model TIEA* providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

241. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

242. A review of the practical ability of Austria's competent authority to respond to requests in a timely manner will be conducted in the course of its Phase 2 Review

Organisational process and resources (ToR C.5.2)

243. The Federal Ministry of Finance is the competent authority for EOI in the field of direct taxation. EOI mechanisms are negotiated by Division for international tax law of this Ministry. A review of Austria's organisational process and resources in practice will be conducted in the context of its Phase 2 Review.

Unreasonable, disproportionate or unduly restriction conditions for EOI (ToR C.5.3)

244. There are no aspects of Austria's agreements or its laws that appear to impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is not in place	Austria authorises the issuance of bearer shares by joint stock companies and European companies without having in place mechanisms for identifying the holders of those shares in all circumstances.	Austria should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares.
	Information regarding the ownership of foreign companies incorporated outside the EU and that are resident for tax purposes in Austria may, under certain circumstances, not be available	In such cases, Austria should ensure that ownership and identity information is available.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.	In the case of fiduciary relationship, there there are some uncertainties as regards the detailed obligations to keep accounting records where the *Treugeber* or settlor is not resident in Austria and assets held through the fiduciary are located abroad.	Austria should make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Restrictions on access to bank information provided for by Austria's domestic legislation is currently overridden in respect of only 27 of the 90 signed agreements.	Austria should ensure that its competent authority has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements.
	Regarding the scope of application of Austrian professional secrecy rules there are some uncertainties as to whether the existing rules may unduly limit access to information acquired by attorneys, accountants and notaries.	Austria's professional secrecy rules should be clarified to ensure that they are only able to act as a bar to EOI when lawyers, notaries and accountants act in their capacity as attorneys or legal representatives.
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The Administrative Assistance Implementation Act of 2009 requires the prior notification of the individual concerned when there is a request for bank information and this prior notification procedure does not allow for any exception.	It is recommended that certain exceptions from prior notification be permitted (*e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	As a result of domestic law limitations with respect to access to information for EOI purposes generally and access to bank in particular, only 15 of Austria's 90 signed agreements provide for effective exchange of information to the standard. Of these 15 agreements, 9 are in force.	Austria should ensure that all its agreements provide for exchange of information to the standard.
	Of the 27 agreements signed by Austria since its commitment to the standard, 12 establish identification requirements for the holder of information in Austria which are inconsistent with the international standard.	In line with its commitment to the international standard, Austria should ensure that the identification requirements in all of its new EOI mechanisms conform with the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Of the 90 EOI mechanisms concluded by Austria, only 15 meet the international standard.	Austria should continue to develop its EOI network to the standard with all relevant partners.
	Austria has not on all occasions successfully progressed negotiations to establish EOI arrangements when requested to do so.	Austria should actively work to progress negotiations and establish exchange of information agreements with all partners who are interested in entering into an information exchange arrangement with it.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[29]

Austria highly appreciates the excellent work that has been carried out by the assessment team for evaluating the legal and regulatory framework in Austria. Austria will continue the on-going process of re-negotiating its complete tax treaty network in order to adapt it completely to the current standard of transparency and exchange of information. Austria will thoroughly consider the recommendations included in the final report with a view to adapt them in a proper manner thereby considering the principles of equal treatment of all jurisdictions concerned.

Concerning bearer shares (ToR A.1) the GesRÄG ("Gesellschaftsrechtsänderungsgesetz") 2011 was adopted on July 7th and July 21st by the two chambers of the national assembly. It will enter into force on August 1st 2011. It contains the following changes:

- The right to select between bearer shares and nominal shares only exists for companies listed (or planning to be listed) on a regulated stock exchange and companies whose shares shall be admitted to a stock exchange according to Art. 3 of the Austrian Stock Corporation Act (Aktiengesetz – AktG).
- Otherwise, only nominal shares can be issued. The company has to keep a register for its shares, containing information on the shareholders' identity, on the shareholders' bank account (if the company is not listed at a stock exchange) and – if applicable – information on the person holding the shares for the shareholders (except if the shareholder is a bank). This new provision shall also be applicable for companies that already have issued bearer shares so that these shares have to be converted into nominal shares. Shares have to be converted by December 31st 2013 at the latest (see s. 262 Para 25, 27 and 28 AktG).

29. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

These changes ensure the identification of the shareholders:

- The provisions on disclosure of major share holdings (Art. 91 ff BörseG) apply (see paras. 58 to 60 of the report).
- The shares have to be issued in a global share that has to be deposited at the central securities (Art. 1 para. 3 Depotgesetz/Deposit Act, *i.e.* the Oesterreichische Kontrollbank). That means that shares can only be held and transferred through bank accounts. Shareholders can be identified through their bank deposits and accounts, since the respective banking regulations allow and ensure the identification of the holder of a deposit and bank account.

As far as the recommendation for ToR B.2 is concerned Austria would like to emphasise that the exceptions from prior notification are in principle already foreseen in s. 116 StPO ("Strafprozessordnung"). However, this rule could only be invoked in court proceedings and might therefore be of relevance only in criminal proceedings concerning tax matters if either criminal proceedings can be initiated in Austria or if a request is made to Austria on the basis of a MLAT.

Referring to ToR C.1 Austria acknowledges the PRG's opinion that some of the agreements signed are not in line with the standard regarding the identification criteria of the person who is the holder of the requested information. Therefore Austria has already contacted all jurisdictions concerned thereby offering them either to renegotiate the agreement or, alternatively, to enter into a mutual agreement clarifying that both parties will interpret this provision in a sense that fully corresponds to the international standard. Up to now mutual agreements were concluded with Luxembourg and San Marino. Other jurisdictions have already signalled their readiness to conclude such mutual agreements with Austria.

It should be borne in mind that these 12 tax treaties which were identified as not being in line with the standard meet in principle the requirements for exchanging information in cases where bank information and identity of ownership information is requested already now. According to the expected outcome of the pending negotiations all 27 treaties concluded so far should be fully compliant with the standard.

Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
1	Albania	DTC	14 Dec 2007	1 Sep 2008
2	Algeria	DTC	17 Jun 2003	1 Dec 2006
3	**Andorra**[30]	TIEA	17 Sep 2009	10 Dec 2010
4	Armenia	DTC	27 Feb 2002	1 Mar 2004
5	Australia	DTC	8 Jul 1986	1 Sept 1988
6	Azerbaijan	DTC	4 Jul 2000	23 Feb 2001
7	**Bahrain**	DTC	2 Jul 2009	1 Feb 2011
8	Barbados	DTC	27 Feb 2006	1 Apr 2007
9	Belarus	DTC	16 May 2001	9 March 2002
10	**Belgium**	DTC	29 Dec 1971	28 June 1973
		Protocol	09 Oct 2009	Pending
11	Belize	DTC	8 May 2002	1 Dec 2003
12	**Bosnia and Herzegovina**	DTC	16 Dec 2010	pending
13	Brazil	DTC	24 May 1975	1 Jul 1976
14	**Bulgaria**	DTC	20 July 2010	3 Feb 2011
15	Canada	DTC	9 Dec 1976	17 Feb 1981
16	China	DTC	10 April 1991	1 Nov 1992
17	Croatia	DTC	21 Sep 2000	27 Jun 2001
18	Cuba	DTC	26 Jun 2003	12 Sept 2006

30. All agreements in bold are agreements allowing for exchange of bank information.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
19	Cyprus[31]	DTC	20 Mar 1990	1 Jan 1991
20	Czech Republic	DTC	8 Jun 2006	22 Mar 2007
21	**Denmark**	DTC	25 May 2007	28 March 2008
		Protocol	16 Sep 2009	01 May 2011
22	Egypt	DTC	16 Oct 1962	28 Oct 1963
23	Estonia	DTC	5 Apr 2001	12 Nov 2002
24	**Finland**	DTC	26 Jul 2000	1 Apr 2001
		Protocol	04 Mar 11	Pending
25	**France**	DTC	26 Mar 1993	1 Sep 1994
		Protocol	23 May 2011	Pending
26	FYROM[32]	DTC	10 Sep 2007	20 Jan 2008
27	Georgia	DTC	11 Apr 2005	1 Mar 2006
28	**Germany**	DTC	24 Aug 2000	18 Aug 2002
		Protocol	29 Dec 2010	Pending
29	**Gibraltar**	TIEA	17 Sep 2009	1 May 2010
30	Greece	DTC	18 Jul 2007	1 Apr 2009
31	**Hong Kong, China**	DTC	25 May 2010	1 Jan 2011
32	Hungary	DTC	25 Feb 1975	9 Feb 1976
33	India	DTC	8 Nov 1999	5 Sep 2001
34	Indonesia	DTC	24 Jul 1986	1 Oct 1988
35	Iran	DTC	11 Mar 2002	11 Jul 2004
36	**Ireland**	DTC	24 May 1966	5 Jan 1968
		Protocol	16 Dec 2009	01 May 2011

31. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

    2. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus."

32. Former Yugoslav Republic of Macedonia.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
37	Israel	DTC	29 Jan 1970	26 Jan 1971
38	Italy	DTC	29 Jun 1981	6 Apr 1985
39	Japan	DTC	20 Dec 1961	4 Apr 1963
40	Kazakhstan	DTC	10 Sep 2004	1 Mar 2006
41	Kyrgyzstan	DTC	18 Sep 2001	1 May 2003
42	Kuwait	DTC	13 Jun 2002	1 Mar 2004
43	Latvia	DTC	14 Dec 2005	16 May 2007
44	**Libya**	DTC	16 Sep 2010	Pending
45	Liechtenstein	DTC	5 Nov 1969	7 Dec 1970
46	Lithuania	DTC	6 Apr 2005	17 Nov 2005
47	**Luxembourg**	DTC	18 Dec 1962	7 Feb 1964
		Protocol	07 Jul 2009	1 sep 2010
48	Malaysia	DTC	20 Sep 1989	1 Dec 1990
49	Malta	DTC	29 May 1978	13 July 1979
50	**Mexico**	DTC	13 Apr 2004	1 Jan 2005
		Protocol	18 Sep 2009	01 Jul 2010
51	Moldova	DTC	29 Apr 2004	1 Jan 2005
52	**Monaco**	TIEA	15 Sep 2009	1 Aug 2010
53	Mongolia	DTC	3 Jul 2003	1 Oct 2004
54	Morocco	DTC	27 Feb 2002	12 Nov 2006
55	Nepal	DTC	15 Dec 2000	1 Jan 2002
56	**Netherlands**	DTC	1 Sep 1970	21 Apr 1971
		Protocol	9 Aug 2009	01 Jul 2010
57	New Zealand	DTC	21 Sep 2006	1 Dec 2007
58	**Norway**	DTC	28 Nov 1995	1 Dec 1996
		Protocol	16 Sep 2009	Pending
59	**Qatar**	DTC	30 Dec 2010	Pending
60	Pakistan	DTC	4 Aug 2005	1 Jun 2007
61	Philippines	DTC	9 Apr 1981	1 Apr 1982
62	Poland	DTC	13 Jan 2004	1 Apr 2005
63	Portugal	DTC	29 Dec 1970	27 Feb 1972
64	Romania	DTC	30 Mar 2005	1 Feb 2006

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
65	Russia	DTC	13 Apr 2000	30 Dec 2002
66	**St Vincent and the Grenadines**	TIEA	14 Sep 2009	pending
67	**San Marino**	DTC	24 Nov 2004	1 Dec 2005
		Protocol	18 Sep 2009	1 Jun 2010
68	Saudi Arabia	DTC	19 Mar 2006	1 Jun 2007
69	**Serbia**	DTC	7 May 2010	17 Dec 2010
70	**Singapore**	DTC	30 Nov 2001	22 Oct 2002
		Protocol	15 sep 2009	1 Jun 2010
71	Slovakia	DTC	7 Mar 1978	12 Feb 1979
72	Slovenia	DTC	1 Oct 1997	1 Feb 1999
73	South Africa	DTC	4 Mar 1996	6 Feb 1997
74	South Korea	DTC	8 Oct 1985	1 Dec 1987
75	Spain	DTC	20 Dec 1966	1 Jan 1968
76	**Sweden**	DTC	14 May 1959	29 Dec 1959
		Protocol	17 Dec 2009	10 Jun 2010
77	**Switzerland**	DTC	30 Jan 1974	4 Dec 1974
		Protocol	3 Sep 2009	1 Mar 2011
78	Syria	DTC	3 Mar 2009	pending
79	**Tajikistan**	DTC	10 Apr 1981	1 Oct 1982
		DTC	7 June 2011	pending
80	Thailand	DTC	8 May 1985	1 Jul 1986
81	Tunisia	DTC	23 Jun 1977	4 Sep 1978
82	Turkey	DTC	28 Mar 2008	1 Oct 2009
83	Turkmenistan	DTC	10 Apr 1981	1 Oct 1982
84	Ukraine	DTC	16 Oct 1997	20 May 1999
85	United Arab Emirates	DTC	22 Sep 2003	1 Sep 2004
86	**United Kingdom**	DTC	30 Apr 1969	13 Nov 1970
		Protocol	11 Sep 2009	19 Nov 2010
87	USA	DTC	31 May 1996	1 Feb 1998
89	Uzbekistan	DTC	14 Jun 2000	1 Aug 2001
89	Venezuela	DTC	12 May 2006	17 Mar 2007
90	Vietnam	DTC	2 Jun 2008	1 Jan 2010

Annex 3: List of all Laws, Regulations and Other Relevant Material

Federal Constitution Act

Corporate Laws

Commercial register Act

Entrepreneurial Code

Stock Corporation Act

Limited liability Companies Act

Co-operative Act.

Federal public foundations and founds Act

Private foundations Act

European Economic Interest Grouping Act

Regulatory Laws

Federal Banking Act

Financial Market Authority Act

Stock Exchange Act

Insurance Supervision Act

Federal Act regarding the Supervision of Investment Services

Taxation Laws

Fiscal Code

Income tax Act

Value added tax Act

Fiscal Administration Organisation Act

Fiscal Offences Act

Non-Contentious Proceedings Act

Information Exchange for Tax Purposes Laws

Administrative Assistance Implementation Act with explanatory remarks

DTCs and TIEAs signed by Austria since March 2009

Other Laws

Civil law notaries' Code

Accountancy Act

Solicitor-Advocates' Code

Chartered Accountant Professionals Act

Disciplinary Statute for Solicitor-Advocates and Trainee Solicitor-Advocates

Criminal Code

Criminal procedure Code

Act of 3 May 1868 governing procedures for the giving of oaths in court

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: AUSTRIA

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

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