

PROTOCOL
BETWEEN
THE REPUBLIC OF AUSTRIA
AND
THE REPUBLIC OF SLOVENIA
AND ADDITIONAL PROTOCOL
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED IN LJUBLJANA
ON 1 OCTOBER 1997 AS AMENDED BY THE PROTOCOL SIGNED IN LJUBLJANA
ON 26 SEPTEMBER 2006

The Republic of Austria and the Republic of Slovenia desiring to conclude a Protocol and Additional Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital, signed in Ljubljana on 1 October 1997 as amended by the Protocol signed in Ljubljana on 26 September 2006 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Article 27 of the Convention shall be replaced by the following:

“ARTICLE 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of 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 of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. 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 administrative 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 2

The Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the receipt of the later of the notifications referred to above. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Ljubljana, on 28 September 2011, in the German, Slovenian and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the Republic
of Austria:

Andreas Schieder m.p.

For the Republic
of Slovenia:

Mateja Vraničar m.p.

ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed in Ljubljana on 1 October 1997 as amended by the Protocol signed in Ljubljana on 26 September 2006, this day concluded between the Republic of Austria and the Republic of Slovenia, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

Ad Article 27:

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 27 does not include measures which constitute “fishing expeditions”.

3. It is understood that paragraph 5 of Article 27 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that – in addition to the above mentioned principles – for the interpretation of Article 27 the principles established in the OECD Commentaries including the technical note prepared by the OECD Secretariat, which is added as an Annex to this Additional Protocol, shall be considered as well.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Additional Protocol.

DONE in duplicate at Ljubljana, on 28 September 2011, in the German, Slovenian and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the Republic
of Austria:

Andreas Schieder m.p.

For the Republic
of Slovenia:

Mateja Vraničar m.p.

Annex

Technical note on paragraph 5 of Article 26 of the OECD Model Tax Convention

Paragraph 5 of Article 26 of the OECD Model Tax Convention provides that bank secrecy cannot be an obstacle to exchange of information for tax purposes. Article 26 also provides for important safeguards in order to protect the confidentiality of taxpayers' information.

The standard requires information exchange on request only. Where information is requested, it must be exchanged only where it is "foreseeably relevant" to the administration or enforcement of the domestic laws of the treaty partner. Countries are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, competent authorities should demonstrate the foreseeable relevance of the requested information. It would, for instance, not be possible for a State to request information randomly on bank accounts held by its residents in banks located in the other State. Also, even when auditing a taxpayer, a tax administration would not request information on a specific taxpayer when no transaction or indication of possible transactions has been identified as involving an nexus with the other state. On the other hand, for example, when a tax administration assesses the tax liability of a specific taxpayer and suspects that this taxpayer has a bank account in the other State, then the competent authority may request information on this specific taxpayer. This could also be the case where a number of taxpayers have been identified, for example, as holding offshore credit cards from banks located in the other state. The requesting State should, however, have pursued all domestic means to access the requested information. For further details, you may wish to consult the commentaries to the Article 26 of the OECD Model Tax Convention and Article 5 of the Model Agreement on Exchange of Information.

Where information is exchanged it is subject to strict confidentiality rules. It is expressly provided in Article 26 that information communicated shall be treated as secret. It can only be used for the purposes provided for in the convention. Sanctions for the violation of such secrecy are governed by administrative and penal laws in all states. Typically, unauthorised disclosure of tax related information received from another country is a criminal offence punishable by a jail sentence.

As you can see from these explanations, which you can find in the OECD Model Tax Convention commentary, as well as in the OECD Manual on Information exchange, bank secrecy is not incompatible with effective exchange of information for tax purposes. All countries have bank secrecy or confidentiality rules. Meeting the internationally agreed standard on exchange of information requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy.