

BANKING SECRECY DEPOSIT PROTECTION INVESTOR COMPENSATION

in Austria

Banking Secrecy

Austria has banking secrecy, which has constitutional status and which protects all data and information arising from the relationship between the credit institution and the customer.

If the public authorities acquire knowledge subject to banking secrecy requirements in the course of performing their duties, then they must maintain banking secrecy as official secrecy.

Credit institutions are relieved from banking secrecy only in specific cases. As regards national affairs, no obligation to maintain banking secrecy exists in connection with criminal court proceedings and tax authority proceedings (in the event of tax evasion) as well as towards the anti-money laundering authorities.

However, in civil court proceedings banks have a right to refuse disclosure.

But, under pressure from the OECD and the G20, Austria has had to loosen banking secrecy in regard to intergovernmental affairs. In order to maintain, unchanged, banking secrecy for Austrian citizens, a separate legal basis for breaking up banking secrecy as regards disclosure at the international level was required. Now, the Administrative Assistance Implementing Act (*Amtshilfe-Durchführungsgesetz, ADG*) adopted for this purpose provides for the intergovernmental exchange of information on request. This requires, for example, a bilateral agreement for such an exchange of information pursuant to the model of Article 26 of the OECD Model Tax Convention.

For an effective exchange of information to be possible, such information must be of foreseeable relevance for tax assessment in the requesting state. In addition, detailed information about the identity of the taxpayer and the underlying facts are to be indicated in the request. If a request meets the specified prerequisites, the competent domestic authority will simultaneously notify both the taxpayer affected and the credit institution. The taxpayer then has the option of using legal remedies against the pending exchange of information. A series of double taxation treaties, including those with Luxembourg, Germany, Switzerland and Liechtenstein, have already been amended. The treaty with Liechtenstein is currently being negotiated. Depending on the effective date of the relevant treaties, exchange of information may have been possible as early as 2011.

The EU Savings Directive is applied in Austria with a 35% withholding tax deduction. On principle, no notices are sent to the investor's country of residence. Through a tax certificate issued by the tax office in the country of residence, it is possible to avoid withholding tax in Austria – regardless of the existing tax liability for income in the country of residence.

Deposit Protection and Investor Compensation

In Austria, both deposits and receivables from securities services (investor compensation) are legally protected.

Investor compensation includes credit balances resulting directly from the receipt of income, disposals and other settlements in securities transactions – the compensation amount is limited to EUR 20,000 for natural persons.

Since 1.1.2010, deposits by natural persons are secured up to an amount of EUR 100,000 without a deductible. This is to be paid out by the bank-financed deposit guarantee schemes.

In the event of legal entities, deposit protection depends on the size of the company. Deposits of small corporations and partnerships (criteria defined in Section 221 of the Austrian Business Code (*Unternehmensgesetzbuch, UGB*)) have been secured up to a maximum amount of EUR 100,000 since 1.1.2011. Large corporations are excluded from deposit protection.

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Banking secrecy	national	x
	international exchange of information with Austria on request	N/A
	automatic exchange of information ²⁾	
EU taxation of savings income	automatic exchange of information ³⁾	
	EU withholding tax (35% at present)	x
	exchange of information at the request of the customer	x ¹⁾
Deposit protection	guaranteed by the state	x
	bank financed	x
	Maximum amount per customer	EUR 100,000 ²⁾

1) Voluntary disclosure of interest income by presenting a so-called certificate

2) Up to EUR 50,000 guaranteed by the protection scheme of the banking association; difference between EUR 50,000 and EUR 100,000 guaranteed by the state. (Article 103h of the Austrian Banking Act, BWG)

Legal Disclaimer

The disclosure of this information is subject to our consent. The information was compiled to the best of our knowledge and using the utmost care. However, we cannot assume any liability for the correctness of the legal explanations. If necessary, these explanations should be reviewed by a local consultant. This opinion can in no way discuss all details of the legal issues presented; accordingly each individual case needs to be assessed separately. We also point out that persons subject to unrestricted tax liability are liable to pay taxes on their entire global income – including foreign investment income – in the country of residence. Tax regulations and the interpretations of tax offices based thereon may be subject to changes that are not foreseeable in advance. No investment decision can be made on this information.