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Information: Accounts register, capital flow reports and automatic information exchange with foreign tax authorities

As part of the 2015/2016 tax reform, the following new laws and amendments to existing laws have been implemented:

- Austrian Accounts Register and Account Inspection Act (*Kontenregister- und Konteneinschaugesetz, KontRegG*) (operation of a central register for all bank accounts and securities accounts in Austria)
- Capital Outflow Reporting Act (*Kapitalabfluss-Meldegesetz*) (obligation to report specific capital outflows and inflows)
- Common Reporting Standards Act (*Gemeinsames Meldestandard-Gesetz, GMSG*) - generally concerns only persons with tax residency outside of Austria (natural persons and legal entities who have their place of residence/registered office or head office abroad)
- Amendment to the Austrian Banking Act (*Bankwesengesetz, BWG*) (which created broad exemptions from banking secrecy)

In addition, the Tax Reform Act 2015/2016 amended the Fiscal Offences Act (*Finanzstrafgesetz, FinStrG*), likewise creating exemptions from banking secrecy.

According to the latest information, the National Council will be adopting an amendment to the Accounts Register and Account Inspection Act (KontRegG) in January 2021. The requirements for exemption from banking secrecy set forth in sec. 38(2) Banking Act (BWG), which have been in force since 2016, will not be affected by this amendment to the Accounts Register and Account Inspection Act (KontRegG).

Accounts Register and Account Inspection Act (KontRegG)

- **The accounts register**

The Accounts Register and Account Inspection Act stipulates the maintenance of a central accounts register. Banks have been obliged to continuously update the central accounts register since October 2016 (retroactively as per 1 March 2015).

As of the 1st quarter of 2021, banks will be required to report not only accounts in current account and deposit business as well as securities accounts but also safe-deposit boxes. Such reports will have to be made for all safe-deposit boxes existing as per 1 January 2021, or opened anytime after this date, and include the required details (see below).

The following information is recorded in the accounts register:

1. deposit accounts (including passbooks),

2. current accounts,
3. home savings accounts,
4. loan and credit accounts if these accounts are payment accounts identified by an international account number (IBAN) in accordance with SEPA Regulation (EU) No 260/2012,
5. payment accounts for the provision of payment services if these accounts are payment accounts identified by an international account number (IBAN) in accordance with SEPA Regulation (EU) No 260/2012,
6. securities accounts in the securities account business of credit institutions and
7. safe-deposit boxes hosted by credit institutions and by commercial safe-deposit box providers that are financial institutions.

Safe-deposit boxes within the meaning of the Accounts Register and Account Inspection Act (KontRegG) are safe-deposit boxes subject to high security standards as ensured by access restrictions and leased out by credit institutions or commercial safe-deposit box providers for the purpose of safekeeping valuables for a period of indefinite duration or of at least one week on the basis of contracts or lease agreements. Safe-deposit boxes used exclusively for the safekeeping of passbooks will not be subject to the reporting obligation.

A report must include the following details:

- For natural persons, the encrypted area-specific personal code for taxes and duties (*verschlüsselte bereichsspezifische Personenkennzeichen für Steuern und Abgaben, vbPK SA*); if this code cannot be determined: first name, surname, date of birth, address and country of residence
- For legal entities, the company's source PIN (company register number, registration number of association) or, as the case may be, a sort key from the Austrian E-Government Act (*E-Government-Gesetz*); if the sort key cannot be determined: name, address, country of residence
- Persons authorised to represent in matters concerning the account or, as the case may be, securities account (authorised signatories, for example), trustors and ultimate beneficial owners, including start and end of such capacity
- Where the lessee of the safe-deposit box is a legal entity, persons authorised to represent the legal entity in dealings with the credit institution (individuals acting as authorised statutory representatives who approached the credit institution) and ultimate beneficial owners
- Account number or, as the case may be, securities account number and a unique number in the case of safe-deposit boxes
- Date on which the bank account or, as the case may be, the securities account was opened and closed
- Type of account (for example, whether the account is a current account, deposit account, securities account or safe-deposit box)
- Name of the reporting institution
- In the case of safe-deposit boxes, commencement and term of lease

However, internal account data, including account balances, account movements, exact transaction data or the value of deposited valuables, are not included in the report to the accounts register.

A first-time submission must include the data available as per 1 March 2015 as well as all changes up to the point in time at which the accounts register began to operate (October 2016), i.e. the accounts register provides retroactive information on persons who have held an account since 1 March 2015 or at any time during this period, or, as the case may be, on any person having acted as a trustor, ultimate beneficial owner or authorised representative for an account since 1 March 2015 or at any time during this period. Ever since the accounts register began to operate in October 2016, the data has had to be updated regularly.

According to the latest information, any safe-deposit boxes existing as per 1 January 2021 will also have to be reported to the accounts register as of the 1st quarter of 2021. Such reports will have to be made for all safe-deposit boxes existing as per 1 January 2021, or opened anytime after this date, and include the required details (see above).

- **Inspection of the accounts register**

The right to inspect accounts register is granted in the following cases:

1. for the purpose of criminal proceedings for public prosecutors and penal courts
2. for the purpose of fiscal law proceedings for fiscal offence prosecution authorities and the Federal Fiscal Court
3. where appropriate and proportionate in the interest of tax collection, for fiscal law purposes for fiscal authorities of the Federal Government and the Federal Fiscal Court
4. for the purpose of preventing and controlling money laundering and related predicate offences as well as terrorist financing for the Financial Intelligence Unit and the Office for the Protection of the Constitution and Counterterrorism (BVT)
5. for the purpose of preventing money laundering and terrorist financing for the Financial Market Authority
6. for the purpose of preventing, uncovering, investigating or prosecuting criminal offences within the meaning of Annex I to the Europol Regulation (EU) No 2016/794 for the Federal Criminal Police Office, the Federal Bureau of Anti-Corruption and the Office for the Protection of the Constitution and Counterterrorism
7. for criminal sanctions purposes for Oesterreichische Nationalbank and the Ministry of the Interior.

- **Account examination directly at the credit institution (account opening)**

Inspection of the accounts register needs to be distinguished from the direct examination of an account.

An account examination allows the fiscal authorities to obtain further asset information (bank accounts, securities accounts, safe-deposit boxes) not available in the accounts register subject to the following conditions:

- There are reasonable doubts as to the accuracy of the information provided by the taxable person (=necessity) or, in the event that the taxable person has not provided any data or provides no data, there is reason to believe that the taxable person would need to provide data in order to disclose the existence and extent of their tax liability.
- The information is expected to be appropriate to remove the doubts (= expediency) and
- the intrusion into the legitimate secrecy interests of the credit institution's customers, occurring on account of the information disclosure, is not expected to be disproportionate to the purpose of the investigative measure (= proportionality).

A request for information must be addressed to the credit institution in writing. It must include a justification and be signed by the management of the fiscal authority or, as the case may be, the head of the specialised division (Fachbereich). All information requests from fiscal offence prosecution authorities require prior approval by a judge (Federal Fiscal Court).

Capital Outflow Reporting Act (obligation to report capital outflows)

- **Obligation to report capital outflows (concerns 'private individuals')**

Outflows of EUR 50,000 or more from current and deposit accounts and securities accounts held by natural persons and certain asset-managing partnerships must be reported to the Federal Minister of Finance (BMF). The EUR 50,000 limit has been replaced by an aggregation rule according to which the amounts of capital outflows below this limit also need to be reported if they clearly relate to connected operations and, in their turn, add up to a total outflow of at least EUR 50,000.

Business accounts held by companies and fiduciary accounts held by lawyers, notaries or public accountants are exempt from this reporting obligation.

Which types of capital outflows are subject to these requirements?

- Payouts and transfers of deposits repayable on demand, fixed-term deposits and savings deposits,
- payouts and transfers within the scope of payment services or in connection with the sale of treasury bills,
- the transfer of securities ownership as a gift in Austria and
- the transfer of securities to foreign securities accounts.

Does the obligation to report lapse if capital gains tax (KESt) has been paid for the transfer of securities to a foreign securities account?

No, reports must be made regardless of any requirement to pay capital gains tax (KESt).

Since when do accounts have to be reported?

The report

- for capital outflows in the period from 1 March 2015 to 31 December 2015 had to be submitted by 31 October 2016 and
- for capital outflows in the period from 1 January 2016 to 31 December 2016 by 31 January 2017.

Since February 2017, monthly reports must be made for any capital outflows that have occurred in the previous month (e.g., in February 2017 for the period from 1 January 2017 to 31 January 2017).

Certain capital inflows from Switzerland and Liechtenstein occurring in the period from 1 July 2011 to 31 December 2012 and from 1 January 2012 to 31 December 2013 also had to be reported. This report had to be made by 31 December 2016.

Common Reporting Standards Act (GMSG)

This law governs the automatic exchange of information on persons with foreign tax residency.

The data is reported to the Austrian Finance Administration, which forwards the data to the responsible foreign tax authorities. The law applies to both natural persons and legal entities.

Information that must be reported includes:

- name of the account holder (for certain legal entities, further data on the ultimate beneficial owner requiring notification)
- address
- country/countries of residence
- tax identification number(s)
- date/place of birth (for natural persons)
- bank account/securities account number(s) - deposit, current account and securities account transactions
- account balances/values at year-end or on closure of the account
- capital gains, other income from assets in the account and proceeds from sales.

When it comes to compliance with the obligations to exercise due care, GMSG distinguishes between "existing accounts" and "new accounts", on the one hand and "natural persons" and "legal entities" on the other.

The effective date used to distinguish between **existing accounts/new accounts** is 30 September 2016/1 October 2016.

Deadlines/dates:

A bank must submit the account information for the previous year by no later than 31 July of a given year; the Federal Ministry of Finance (BMF) is then obliged to forward this information to the competent authorities of the participating countries by no later than 30 September.

- With respect to **new accounts** held by natural persons and legal entities after 1 January 2017: information must be reported to the Federal Ministry of Finance (BMF) by **31 July of the following year**;
- **Existing** accounts held by **natural persons** with a high value (*in excess of USD 1,000,000*) as per 30 September 2016 must be identified by **31 December 2017** and reported for the first time by **31 July 2018** (regarding account information from 2017) and thereafter once annually by 31 July of the following year;
- **Existing** accounts held by **natural persons** with a low value (*no more than USD 1,000,000*) as per 30 September 2016 must be identified by **31 December 2018** and reported for the first time by **31 July 2019** (regarding account information from 2018) and thereafter once annually by 31 July of the following year;
- **Existing** accounts held by **legal entities** with a high value (*in excess of USD 250,000*) as per 30 September 2016 must be identified by **31 December 2018** and reported for the first time by **31 July 2019** (regarding account information from 2018) and thereafter once annually by 31 July of the following year;
- **Existing** accounts held by **legal entities** with a small value (*no more than USD 250,000*) as per 30 September 2016 are not subject to the reporting obligation (limit).

Notes and disclaimer:

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