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**Austria
and
United States of America**

Agreement between the Republic of Austria and the United States of America for cooperation to facilitate the implementation of FATCA (with annexes and memorandum of understanding). Vienna, 29 April 2014

Entry into force: *9 December 2014 by notification, in accordance with article 10*

Authentic texts: *English and German*

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**Autriche
et
États-Unis d'Amérique**

Accord entre la République d'Autriche et les États-Unis d'Amérique pour la coopération en vue de faciliter la mise en œuvre du FATCA (avec annexes et mémorandum d'accord). Vienne, 29 avril 2014

Entrée en vigueur : *9 décembre 2014 par notification, conformément à l'article 10*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between the Republic of Austria and the United States of America for
Cooperation to Facilitate the Implementation of FATCA**

Whereas, the Republic of Austria and the United States of America (each, a “Party,” and together, the “Parties”) seek to build on their existing relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve their cooperation in combating international tax evasion;

Whereas, Article 25 of the Convention between the Republic of Austria and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed May 31, 1996 (the “Convention”), as it may be amended, authorizes the exchange of information for tax purposes;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Republic of Austria is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that Austrian financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, intergovernmental cooperation to facilitate FATCA implementation would address these issues and reduce burdens for Austrian financial institutions;

Whereas, the Parties desire to conclude an agreement to provide for cooperation to facilitate the implementation of FATCA based on direct reporting by Austrian financial institutions to the U.S. Internal Revenue Service, supplemented by the exchange of information upon request pursuant to the Convention, and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the Convention;

Now, therefore, the Parties have agreed as follows:

Article 1
Definitions

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:
 - a) The term “United States” means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a “State” of the United States includes the District of Columbia.

- b) The term **“U.S. Territory”** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
- c) The term **“IRS”** means the U.S. Internal Revenue Service.
- d) The term **“Austria”** means the Republic of Austria.
- e) The term **“Partner Jurisdiction”** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
- f) The term **“Competent Authority”** means:
 - 1) in the case of the United States, the Secretary of the Treasury or his delegate; and
 - 2) in the case of Austria, the Federal Minister of Finance or his delegate.
- g) The term **“Financial Institution”** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- h) The term **“Foreign Reportable Amount”** means, in accordance with relevant U.S. Treasury Regulations, a payment of fixed or determinable annual or periodical income that would be a withholdable payment if it were from sources within the United States.
- i) The term **“Custodial Institution”** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- j) The term **“Depository Institution”** means any Entity that accepts deposits in the ordinary course of a banking or similar business.
- k) The term **“Investment Entity”** means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
 - 1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - 2) individual and collective portfolio management; or

- 3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(k) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- l) The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
- m) The term “**Austrian Financial Institution**” means (i) any Financial Institution organized under the laws of Austria, but excluding any branch of such Financial Institution that is located outside Austria, and (ii) any branch of a Financial Institution not organized under the laws of Austria, if such branch is located in Austria.
- n) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- o) The term “**Reporting Austrian Financial Institution**” means any Austrian Financial Institution that is not a Non-Reporting Austrian Financial Institution.
- p) The term “**Non-Reporting Austrian Financial Institution**” means any Austrian Financial Institution, or other Entity resident in Austria, that is described in Annex II as a Non-Reporting Austrian Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.
- q) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include an Austrian Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 4 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- r) The term “**New Account**” means a Financial Account opened by a Reporting Austrian Financial Institution on or after July 1, 2014.

- s) The term **“U.S. Account”** means a Financial Account maintained by a Reporting Austrian Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Account if such account is not identified as a U.S. Account after application of the due diligence procedures in Annex I.
- t) The term **“Non-Consenting U.S. Account”** means a Financial Account maintained by a Reporting Austrian Financial Institution as of June 30, 2014, with respect to which (i) the Reporting Austrian Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures in Annex I, (ii) the laws of Austria prohibit the reporting required under an FFI Agreement absent consent of the Account Holder, (iii) the Reporting Austrian Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder’s U.S. TIN; and (iv) the Reporting Austrian Financial Institution has reported, or was required to report, aggregate account information to the IRS as prescribed under sections 1471 to 1474 of the U.S. Internal Revenue Code and relevant U.S. Treasury Regulations.
- u) The term **“Financial Account”** has the meaning set forth in relevant U.S. Treasury Regulations, but does not include any account that is excluded from the definition of Financial Account in Annex II.
- v) The term **“FFI Agreement”** means an agreement that sets forth the requirements, consistent with this Agreement, for the Reporting Austrian Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code.
- w) The term **“Account Holder”** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term **“Financial Institution”** does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- x) The terms **“Cash Value Insurance Contract”** and **“Annuity Contract”** have the meanings set forth in relevant U.S. Treasury Regulations.