

AGREEMENT
IN THE FORM OF AN EXCHANGE OF LETTERS
ON THE TAXATION OF SAVINGS INCOME

A. Letter from the Republic of Austria

Sir,

I refer to the text of the proposed model “Convention between the Government of the Republic of Austria and the Government of Anguilla concerning the Automatic Exchange of Information about Savings Income in the form of Interest Payments” that was approved by the High Level Working Party (Taxation of Savings) of the Council of Ministers of the European Union on 22 June 2004.

In view of the above mentioned text, I have the honour

- to propose to you the Agreement on the taxation of savings income at Appendix 1 to this letter;
- to propose that the said arrangements may come into effect on the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which date shall be subject to the conditions set out in Article 17(2) of the Directive, subject to the notification to each other that the internal constitutional formalities for the coming into effect of these arrangements are completed;
- to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the arrangements between Austria and Anguilla.

Please accept, Sir, the assurance of our highest consideration,

For the Government of the Republic of Austria

Ursula Plassnik

Done at Vienna, 3rd December 2004

in the German and English languages in three copies

B. Reply from the Government of Anguilla

Sir,

I have the honour to acknowledge receipt of your letter of 3rd December 2004 , which reads as follows:

“Sir,

I refer to the text of the proposed model “Convention between the Government of the Republic of Austria and the Government of Anguilla concerning the Automatic Exchange of Information about Savings Income in the form of Interest Payments” that was approved by the High Level Working Party (Taxation of Savings) of the Council of Ministers of the European Union on 22 June 2004.

In view of the above mentioned text, I have the honour

- to propose to you the Agreement on the taxation of savings income at Appendix 1 to this letter;
- to propose that the said arrangements may come into effect on the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which date shall be subject to the conditions set out in Article 17(2) of the Directive, subject to the notification to each other that the internal constitutional formalities for the coming into effect of these arrangements are completed;
- to propose our mutual commitment to comply at the earliest date with our said internal constitutional formalities and to notify each other without delay through the formal channels when such formalities are completed.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation shall together constitute our mutual acceptance and making of the arrangements between Austria and Anguilla.

Please accept, Sir, the assurance of our highest consideration”

I am able to confirm that the Government of Anguilla is in agreement with the contents of your letter

dated 3rd December 2004 .

Please accept, Sir, the assurance of my highest consideration,

For the Government of Anguilla

Victor Banks

Done at Anguilla 3rd February in the German and English languages, in three copies

C. Text of Model Convention

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF ANGUILLA CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION ABOUT SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

The Government of the Republic of Austria and the Government of Anguilla, desiring to conclude a Convention which enables savings income in the form of interest payments made in one of the Contracting Parties to beneficial owners who are individuals resident in the other Contracting Party, to be made subject to effective taxation in accordance with the laws of the latter Contracting Party in conformity with Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to interest paid by a paying agent established within the territory of one of the Contracting Parties with a view to enable savings income in the form of interest payments made in one Contracting Party to beneficial owners who are individuals resident for tax purposes in the other Contracting Party to be made subject to effective taxation in accordance with the laws of the latter Contracting Party.
2. The scope of this Convention shall be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, inter alia, of the issues relating to the taxation of pension and insurance benefits.

Article 2

Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a. The term “a Contracting Party” and “the other Contracting Party” mean Austria or Anguilla, as the context requires;
 - b. The term “Directive” means the Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;
 - c. the term “beneficial owner” means the beneficial owner according to article 2 of the Directive;
 - d. the term “paying agent” means the paying agent according to article 4 of the Directive;

- e. the term “competent authority” means
 - i) in the case of Anguilla: the Comptroller of Inland Revenue;
 - ii) in the case of Austria: the competent authority of that State according to article 5 of the Directive.
- f. the term “interest payment” means the interest payment according to article 6, due account being taken of article 15, of the Directive.
- g. any term not otherwise defined herein shall have the meaning given to it in the Directive.

2. For the purposes of this Convention, in the provisions of the Directives to which this Convention refers, instead of “Member States” has to be read: Contracting Parties.

Article 3

Identity and residence of beneficial owners

Each Contracting Party shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purpose of Articles 4 to 6. These procedures shall comply with the minimum standards established in Article 3, paragraphs 2 and 3 of the Directive, with the proviso that, with respect to Anguilla and in relation to subparagraph (a) of each of these paragraphs, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of legislation in force in Anguilla on prevention of the use of the financial system for the purpose of money laundering.

Article 4

Automatic exchange of information

1. The competent authority of the Contracting Party where the paying agent is established, shall communicate the information referred to in Article 8 of the Directive to the competent authority of the other Contracting Party of residence of the beneficial owner.
2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting Party of the paying agent, for all interest payments made during that year.
3. Information exchange under this Convention shall be treated by the Contracting Parties in a manner consistent with the provisions of Article 7 of Directive 77/799/EEC.

Article 5

Transitional provisions

1. During the transitional period referred to in Article 10 of the Directive, where the beneficial owner is resident in Anguilla and the paying agent is resident in Austria, Austria shall levy a withholding tax at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter. During this period, Austria shall not be required to apply the provisions of Article 4. It shall, however, receive information from Anguilla in accordance with that Article.
2. The paying agent shall levy the withholding tax as described in article 11, paragraphs 2 and 3 of the Directive.
3. The imposition of withholding tax by Austria shall not preclude Anguilla from taxing the income in accordance with its national law.
4. During the transitional period, Austria may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4, paragraph 2, of the Directive, established in Anguilla, shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of that paragraph.
5. At the end of the transitional period, Austria shall be required to apply the provisions of Article 4 and shall cease to apply the withholding tax and the revenue sharing provided for in this provision and in Article 6. If, during the transitional period, Austria elects to apply the provisions of Article 4, it shall no longer apply the withholding tax and the revenue sharing provided for in this provision and in Article 6.

Article 6

Revenue sharing

1. Austria shall retain 25% of the revenue of the withholding tax mentioned in Article 5, paragraph 1, and transfer 75% of the revenue to Anguilla.
2. If Austria levies withholding tax in accordance with article 5, paragraph 4, Austria shall retain 25% of the revenue and transfer 75% to Anguilla of the revenue of the withholding tax levied on interest payments made to entities referred to in Article 4, paragraph 2, of the Directive, established in Anguilla.
3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of Austria.
4. Austria shall take the necessary measures to ensure the proper functioning of this revenue-sharing system.

Article 7

Exceptions to the withholding procedure

1. Austria shall provide for one or both of the procedures of article 13, paragraph 1, of the Directive in order to ensure that the beneficial owners may request that no tax be withheld.
2. At the request of the beneficial owner, the competent authority of his Contracting Party of residence for tax purposes shall issue a certificate in accordance with Article 13, paragraph 2, of the Directive.

Article 8

Elimination of double taxation

Anguilla shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 5, in accordance with the provisions of Article 14, paragraph 2 and 3 of the Directive or will provide a refund of the withholding tax.

Article 9

Other withholding taxes

The Convention shall not preclude the Contracting Parties from levying other types of withholding tax than that referred to in Article 5 in accordance with their national laws or double-taxation conventions.

Article 10

Transposition

Before 1 January 2005 the Contracting Parties shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

Article 11

Annex

The text of the Directive and of Article 7 of the Directive 77/799/EEC of the Council of the European Union of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as applicable at the date of signing this Convention,

and to which this Convention refers, are appended as an Annex to, and form an integral part of, this Convention. The text of Article 7 of Directive 77/799/EEC in this annex shall be replaced by the text of the said Article in the revised Directive 77/799/EEC if this revised Directive enters into force before the date from which the provisions of this Convention shall take effect.

Article 12

Entry into Force

1. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to Article 17, paragraph 2 and 3, of the Directive.
2. Articles 4 to 7 of this Agreement shall not have effect in Austria in the absence of direct taxation in Anguilla.

Article 13

Termination

This Convention shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect for periods beginning after the end of the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

Done in the German and English languages all texts being equally authentic.

For the **Government of the Republic of Austria**

Ursula Plassnik

For the **Government of Anguilla**

Victor Banks

/Annex: text of Article 7 of Directive 77/799/EEC

Annex

Text of Article 7 of Directive 77/799/EEC

“Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its national legislation. In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,
- may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection,
- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

In addition, Member States may provide for the information referred to in the first subparagraph to be used for assessment of other levies, duties and taxes covered by Article 2 of Directive 76/308/EEC¹.

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practices lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.
3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.
4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.”

¹ OJ L 73, 19.3.1976, p. 18.