Austria – (still) open for shady money

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Foreword

On the 1st of July, Austria takes over the six month rotating Presidency of the EU Council and it will steer the European Union towards the last phases of this legislative term.

Over the last four years, one of the main political issues in Brussels has become the fight against tax avoidance of multinational companies, tax evasion of rich individuals as well as the campaign against money laundering.

We welcome that the Austrian Presidency states in its programme that efficient, fair and transparent tax systems are essential for the sustainability of public finances, and that we have to protect our public budgets against harmful tax competition, tax fraud and tax evasion and to modernise tax rules in view of globalisation and new technologies. However, actions speak louder than words.

Austria has been known in the past as a country with one of the strongest banking secrecy regimes and with a great appeal as an onshore tax haven. Austria was one of the fiercest opponents of tax cooperation in the European Union.

A short study of cases issued by the Greens/EFA shows that although Austria has made considerable progress towards ending its secrecy-banking regime as well as its tax haven status, it remains attractive for laundering money and avoiding taxes. It shows Austria is improving in areas, which attract international attention, but it is reluctant to change in areas, which are less visible. Austria remains open to shady money

We highlight the problem of Austria attracting business investment through harmful tax incentives such as very favourable group taxation rules, loopholes in its network of double taxation agreements with countries such as Brazil or Cyprus, which can lead to double non-taxation, or recent proposals for a tax cut for undistributed earnings. Austria has a long history as a country between Western and Eastern Europe. In particular, the loophole in the double taxation agreement with Cyprus constitutes a risky invitation for dirty money from Russia and Post-Soviet states.

Furthermore, we show the problem of selling Austrian passports or reluctant activity in investigation and prosecution of money laundering. The fact that Austria allows Austrians to maintain anonymous accounts in Liechtenstein against the spirit of the global move towards global tax transparency is highly doubtful. The exemption of real estate agents from some anti-money laundering duties does not give the impression of a Presidency that is a credible driver for fair and transparent tax systems in Europe.

These cases also show exactly why Europe needs political action in areas where the programme of the Austrian Presidency on taxation remains unambitious, vague or silent. It is particularly worrying that the program of Austrian Presidency drops two key files - the Public Country-By-Country Reporting and the Common Consolidated Corporate Tax Base (CCCTB). While Austria wants to continue working on a common tax base the consolidation of the tax based is dropped in the presidency programme. Without the consolidation of corporate tax base many loopholes will remain, but also the reduction of red tape in applying tax law for cross border business cannot materialise. The Austrian Presidency seems able to name the problem, but it fails to deliver on real solutions for corporate tax transparency and fair taxation.

We urgently need the adoption of the Public Country-by-Country Reporting that will force big corporations like Apple, Amazon or Ikea to publish their profits and tax payments on a country-by-country basis. We need a reform of the global tax system towards a Common Consolidated Corporate Tax Base. We need to ensure full and effective implementation of the 4^{th} and the 5^{th} Anti-Money Laundering Directive and we need European law that will ensure that European passports (Golden Visas) are not sold to kleptocrats and tax evaders.

These should be among the priorities of the Austrian Presidency. Austria can demonstrate now during its Presidency of the EU whether it wants to be part of the solution or of the problem in the fight against shady business around the world.

Executive Summary

With reluctance and under strong external pressure Austria has made considerable progress towards ending one of the strongest bank secrecy regimes. In the last few years, Austria has moved from allowing anonymous accounts whose ownership was not even accessible to employees of the bank to a comprehensive central account register and international automatic information sharing. Likewise, limits to the tax benefits of the Privatstiftung (private foundations) and other reforms have reduced Austria's appeal as a tax haven. However, Austria remains an attractive destination for laundering money and avoiding tax for various reasons.

Austria is actively attracting business investment through harmful tax incentives such as very favourable group taxation rules and loopholes in its network of double taxation agreements with countries such as Brazil or Cyprus, which can lead to double non-taxation, or the recent proposals for tax cut for undistributed earnings.

The long list of reservations made when implementing the OECD BEPS cement these issues for the future and the new government seems intent on continuing the global race to the bottom on company taxation and regulation. Instead, Austria should focus on investments in infrastructure and education to improve its global competitiveness as a business location and make sure that all companies make a fair contribution.

Austria has the necessary legal provisions and the institutional framework to investigate and prosecute money laundering, and has made further improvements following strong pressure from the Financial Action Task Force (FATF) in 2016. However, despite high risks it continues to apply the rules with low effectiveness with regards to convicting and sanctioning money-launderers and confiscating the proceeds. Austria needs to start investigating and prosecuting complex cases of money-laundering and to improve the oversight of Austrian facilitators such as real estate agents or company service providers.

It should make sure that Austrian banks implement the new group-wide compliance standards introduced by the 4th Anti-Money Laundering Directive (AMLD) and sanction any violations. Allowing Austrians to maintain anonymous accounts and legal structures in Liechtenstein, while Liechtenstein shares the ownership information with all other EU countries creates unnecessary opacity.

The Austrian passport is one of the most coveted passports for sale in the world. After recent scandals, the criteria for awarding citizenship for extraordinary services has been clarified and transparency has increased slightly. Programmes that award citizenship in exchange for investment are morally doubtful and prone to misuse. Austria should address this risk by publishing the full list of names and the reasons for the awards and specify due diligence requirements.

During its presidency of the EU, Austria will have many chances to prove whether it wants to be part of the solution or the problem in the fight against shady tax practices around the world. It should:

- Ensure the full and effective implementation of the 4th and the 5th AMLD;

- Force big corporations like Apple, Amazon or Ikea to publish their profits and tax payments on a country-by-country basis;

- Make sure that European passports (Golden Visas) are not sold to kleptocrats or tax evaders;

- Move forward on a reform of the global tax system towards a common consolidated corporate tax base.

Open for dirty money

Austria has the legal provisions and the institutional framework to investigate and prosecute money laundering effectively, but does not make use of it despite high risks. A Financial Action Task Force (FATF) evaluation in 2016 did not find any investigations of complex or professional money laundering cases or with connection to foreign offences. Consequently, confiscations and fines are very low.

Austria's anti-money laundering efforts have been evaluated by the Financial Action Task Force (FATF) to be low or moderately effective in 7 out of the 11 areas analysed[1] and Austria was nearly put on the organisation's grey list.[2] Despite some technical improvements until the follow-up at the end of 2017, Austria continues to be under enhanced monitoring.[3] Out of the 50 countries evaluated by FATF since 2013, only 23 have been rated with low effectiveness at investigating and prosecuting money-laundering offences – including, countries like Ukraine, Bangladesh, the Isle of Man and Zimbabwe.[4]

High-risk business with Ukraine

The example of Ukraine demonstrates both the risks and potential problems: shortly before the Ukrainian government resigned in February 2014 amidst heavy protests and strong allegations of personal financial gain, the then prime minister of Ukraine, Mykola Azarov, stepped down and travelled to Austria. There, his son and his wife allegedly disposed of prime real estate and were linked to several companies set up with the help of an Austrian lawyer and his company's services in Liechtenstein.[1] A few weeks later, following EU sanctions, Austria allegedly froze 18 accounts linked to Ukrainian politicians and public officials.[2] In 2016, Azarov was removed from the EU sanctions list – again with the help of an Austrian lawyer.[3] No further details on actions taken with regard to the frozen accounts have ever been published.

1 https://www.trend.at/politik/spezial-ukraine/millionen-gruesse-kiew-372187 (in German); according to the Panama Papers he is beneficiary of another 26 companies in the British Virgin Islands, see: https://offshoreleaks.icij.org/nodes/13001034
2 https://www.tagblatt.ch/international/konten-von-ukrainern-auf-wiener-banken-eingefroren-ld.697386 (in German)
3 http://www.lansky.at/de/newsroom/legal-updates-cases/urteil-in-der-causa-azarov/# (in German)

This is especially problematic for two reasons. First, according to the FATF's evaluation, Austria's "profile as an international financial centre" and the fact that its banks "play a systemic role in the CESEE [Central Eastern and South Eastern Europe] countries" creates comparatively high risks. Second, unlike many of the other countries with low effectiveness, "Austria has sound legal provisions and a designated institutional framework that has the capacity to investigate and prosecute money-laundering. There are some elements of the legal framework, like the need to prove the predicate offence beyond reasonable doubt, that make prosecution more difficult and a wider definition of the predicate offense especially with regards to tax crimes might be useful considering the risk. But the main challenge in Austria seems to be the lack of will to implement the law vigorously.

The FATF did not find "any cases involving complex or stand-alone money laundering, professional money launderers, or foreign predicates [meaning crimes committed outside of Austria]". In 2015, only 61 people had been convicted of money-laundering; most, if not all, of them cases of simple money laundering, such as so-called money mules transferring proceeds of drug trafficking of a few thousand euros back home. Consequently, confiscations amounted to only EUR 421,858 and 19 credit institutions have been fined a total of EUR 24,950.[5] As a reaction to the criticism of the FATF, the Financial Market Authority of Austria has apparently strengthened its supervisory capacity[6] and the 2016 report of the Austrian financial intelligence unit recounts one case involving a foreign politically exposed person, who held EUR 4.5 million in his/her bank account.[7] Despite increasing numbers of suspicious transaction reports, the number of convictions for money laundering has remained low and only in 2018 did the Financial Market Authority of Austria (FMA) issue the first two sanctions against banks for inadequately identifying beneficial owners.[8]

	2012	2013	2014	2015	2016	2017
Suspicious transaction reports	1665	1490	1673	1793	2150	na
o/w credit institutions	*1457*	*1255*	*1507*	*1755*	*2002*	*na*
o/w real estate agents	*0*	*1*	*0*	*1*	*0*	*na*
Prosecutions	65	77	115	125	na	na
Convictions	23	15	49	61	37	55

Figure 1 – Comparison of convictions for money laundering with underlying prosecutions and suspicious transaction reports. Source: Gerichtliche Kriminalstatistik, FATF and annual report of the A-FIU

The FATF evaluation further found that real estate agents, dealers in high-value goods and company service providers were lacking adequate understanding of their money laundering and terrorist financing risks and that the local authorities charged with overseeing them failed to adequately monitor compliance with their tasks. Despite frequent news of possible money laundering in the Austrian real estate sector[9], between 2012 and 2016 there were only two cases in which a real estate agent reported a suspicious transaction. The lack of enforcement is worrying in the light of soaring real estate prices in attractive cities such as Vienna. Nevertheless, in May 2018, the Austrian government issued a proposal to exempt real estate agents from the duty to document their risk analyses[10] that was introduced just a few months earlier with the transposition of the 4th Anti-Money Laundering Directive into Austrian law and justified this with their understanding of the risks of money laundering.[11]

The role of Austrian banks

The establishment of a central bank account register in 2016 and the looming start of international automatic exchange of account information in 2018 have largely put an end to traditional banking secrecy, at least for the 93 countries that have signed agreements with Austria so far.[12] This change has come about after long resistance – Austria is the only EU member state that opted for implementation in 2018 instead of 2017[13] - and only through intense pressure by US initiatives such as Foreign Account Tax Compliance Act (FATCA) and investigation by German tax authorities based on data leaks and voluntary declarations by individual taxpayers[14]. The change can be observed for example in the two villages of Mittelberg (Kleinwalsertal) and Junghaus that became famous for German tax evaders but both the branch offices of German banks (such as the publically owned Sparkasse Allgäu[15]) and some of the Austrian banks have closed recently.[16] However, elsewhere shady business continues, just further afield.

Austrian banks have a strong presence in high-risk countries in Central Eastern and South Eastern Europe such as Ukraine, Russia or Bosnia and Herzegovina, and many Austrian banks maintain accounts with high-risk of money laundering. Nevertheless, in 2016 the FATF criticized that 83% of the Austrian banks had not filed any suspicious transaction reports in the year preceding the evaluation. The FATF evaluation also pointed out that there was no requirement to have a business wide compliance function that would apply to their branches and subsidiaries. The "Finanzmarkt-Geldwäschegesetz" (Financial Market Money Laundering Act) that entered into force on 1st of January 2017 and implements the EU's 4th AMLD for the first time contains some group-wide duties for anti-money laundering processes.[17] Their success has yet to be proven.

One instructive example for the role of Austrian banks is the Raiffeisen Bank, Austria. According to its website it is the biggest banking group in Austria, with nearly every second Austrian being a customer there, and 1.7 million Austrians being members. It was its subsidiary, in Junghaus, that offered the so-called gold finger accounts to guarantee absolute anonymity.[18] Its subsidiary in Kleinwalsertal – the Walser Privatbank AG – describes itself as "one of the first cooperative banks specialized in wealth management" and is one of the few and most elite banks remaining there. Nevertheless, its customer deposits shrank from EUR 865 million in 200819 to EUR 258 million in 2015, to a slight increase again in 2016.20 For the international arm of the group, Raiffeisen Bank International AG, Russia and Ukraine continue to be the countries with the biggest representations and money laundering risks are not mentioned anywhere in the annual report.[21] Yet, in March 2018, it received a fine of EUR 2.75 million – the biggest fine issued so far - for inadequately checking the identity of beneficial owners.[22]

Another bank that was repeatedly mentioned in connection with cases of money laundering is the Meinl Bank. For example, it was one of 16 Austrian banks linked to the Russian laundromat scandal by allegedly maintaining the bank account of a Cypriot shell company that received laundered money from Russia.[23] Meinl Bank also possibly helped to siphon-off assets worth nearly 800 million dollars from several Ukrainian banks that later went into receivership to accounts of offshore companies.[24]

EU member states should use systematic group requests and requests of legal assistance to find their tax evaders and trace the routes of the money after the introduction of international automatic information exchange. The cooperation with these requests will be a test case whether Austria is ready to help prosecuting financial criminals in partner countries.

The Liechtenstein connection

Liechtenstein is a German-speaking state between Austria and Switzerland with less than 40,000 inhabitants. Financial services make up more than 25% of its GDP and it attracts global and Austrian wealth through its flexible laws and high secrecy. With a secrecy score of 78 it is one of the most secretive countries in the 2018 Financial Secrecy Index of the Tax Justice Network.[25] Former finance minister Karl-Heinz Grasser was one of the most prominent users of these secrecy services but by far not the only Austrian.[26]

In 2013, Austria signed an agreement with Liechtenstein. Under this agreement, Liechtenstein collects a source tax from Austrians with accounts and other wealth there on behalf of Austria, allowing the Austrians concerned to remain anonymous and avoid punishment for tax evasion. [27] determination of the taxes is done by entrusted people from Liechtenstein and checked by an independent commission to which the Austrian tax office has no access. While a similar agreement with Switzerland was not extended, on 17th October 2016 Austria and Liechtenstein signed an amendment[28] that would allow both countries to maintain the arrangement for:

1. Accounts or deposits with a bank in Liechtenstein or trusts and other arrangements (including Stiftung, and Anstalt) under the control of the beneficiary ("transparent") if opened before 31st December 2016;
2. Trusts and other arrangements (including Stiftung and Anstalt) without direct control of the beneficiary ("not transparent") without a time limit;

The agreement is limited to beneficiaries with tax residence in Austria.

On 28 October 2015, the EU signed an agreement with Liechtenstein that regulates the automatic exchange of information. It contains a list of accounts that can be made exempt from the exchange including those that, among other conditions, present "a low risk of being used to evade tax" and "the status of such account as an Excluded Account does not frustrate the purposes of this Agreement".[29] The agreement between Austria and Liechtenstein refers to these exemptions. In reply to a parliamentary question, the Austrian government argues that its agreement with Liechtenstein goes further and works more effectively against tax evasion than the automatic exchange as it includes the collection of tax. The additional tax collected under the agreement reportedly amounted to EUR 51 million in 2016.[30]

Competing for lower corporate tax

The new Austrian government continues Austria's practice to attract foreign companies through tax and other incentives.

Invest in Austria – a state-owned company under the responsibility of the ministry for digitalization and business location ("Wirtschaftsstandort") – promotes Austria as the perfect location for company headquarters. It lists several tax advantages including group taxation and the private foundation.[31] In a recent statement, company representative Sebastian Kurz, Chancellor of Austria, further praised the progress his government has made in the fields of deregulation, lower taxation, promotion of research and development, and education.[32] Besides the exemption of real estate agents from some anti-money laundering duties as previously mentioned, current proposals include a tax cut for undistributed earnings that could cost up to EUR 4 billion.[33]

Figure 2 – Press conference with 100 CEOs from 14 countries on 25.06.2018

In 2005, in time for the EU enlargement, Austria had already reduced its corporate tax rate from 34 to 25%[34] and introduced the most favourable group taxation regime in Europe. This regime allows Austrian holding companies and their majority owned subsidiaries to form a tax group and pool their losses, which means that the Austrian holding company can use losses from other countries to offset its Austrian profits. While in Denmark and Italy groups claiming group taxation have to include all subsidiaries (all-in), in Austria it is possible to select the subsidiaries (usually the loss-making ones) to be included in the group. Austrian tax groups only have to exist for three years, compared to 10 years in Denmark and 5 years in Italy, further increasing the flexibility of the regime.[35] The Austrian finance ministry calculates the cost of this tax incentive at EUR 250 million per year.[36] In exchange, Austria seems to have managed to attract more than 300 regional headquarters, mainly from German companies, investing in

Southern and Eastern Europe such as BMW, Beiersdorf, Boehringer Ingelheim, Henkel, Liebherr, Metro, Bosch or Siemens.[37] Foreign direct investment through special purpose vehicles – companies with little or no physical presence or employment, potentially founded to profit from favourable regulation – currently amount to approximately EUR 80.5 billion or nearly 28% of Austria's foreign direct investment.[38]

The Brazil connection

Several of the older Double Taxation Agreements between Austria and economically less developed countries such as Brazil (1976), Indonesia (1988) and Thailand (1986) but also Malta (1979) and Cyprus (1990) contain a special clause that in some circumstances allow tax-free income in both countries and lead to double non-taxation. Under this clause, companies with Austrian tax residence can deduct "virtual" taxes irrespective of the actual rates paid in the source country from their Austrian tax dues. Several Brazilian companies such as Odebrecht or Vale allegedly profit from this loophole and have significant presence in Austria – including a subsidiary that rents oil-drilling ships to the Brazilian state-run oil company Petrobras.[39]

The Cyprus bonus

Another clause (§7) in the double taxation agreements with various countries determines that the taxation right for profits of partnerships ("Personengesellschaften") lies with the source country even though usually these partnerships are transparent for tax purposes. If that country decides not to tax partnerships with foreign partners – like Cyprus for example – the profits after corporate tax turn into tax-free income for people who are tax resident in Austria.[40] This constitutes a serious shortcoming as Austria is an attractive resident country of individuals from Russia and post-soviet countries who often structure shady business through Cyprus.

The multilateral instrument implementing the treaty related BEPS provisions covers Cyprus. But Austria has claimed various reservations, including a reservation against the entirety of Article 3[41] that covers hybrid mismatches resulting from transparent entities (such as the Austrian partnerships). A report by EURODAD, an NGO, finds that Austria has opted out of 7 of the 11 articles recommended by tax justice campaigners but opted in to those not recommended, such as secret arbitration. [42]

The definition of tax crimes

Regarding tax crime, in Austria, a distinction is made between tax evasion and tax fraud, as in Germany. Similar to Germany, there is a separate criminal tax law (in Germany Tax Code) which regulates both offences in separate articles. (In Spain, for example, taxes are regulated in the Codigo Penal, the normal penal code). The Austrian Tax Crime Act (art 53) stipulates that tax crime only applies from an amount of 100,000 euros. This means that only then must the tax office inform the public prosecutor's office. In Germany there is no such minimum limit (at least in law in the books). (120.000 Euro in Spain, none in Netherlands). I.e. tax evasion of 90,000 euros would be a tax crime in Germany and the Netherlands, but not in Austria and Spain. This lax definition of tax crimes limits also what is seen as a predicate offence for money laundering.

Citizenship for sale

The Austrian passport is the most coveted passport for sale in the world. After recent scandals, the criteria for awarding citizenship have been clarified and transparency has increased slightly but several issues remain.

"Austria is the gold standard of the second passport and citizenship by investment programs. If money is no object, this is the passport to buy." Premier Tax & Corporate Services, Inc.[43]

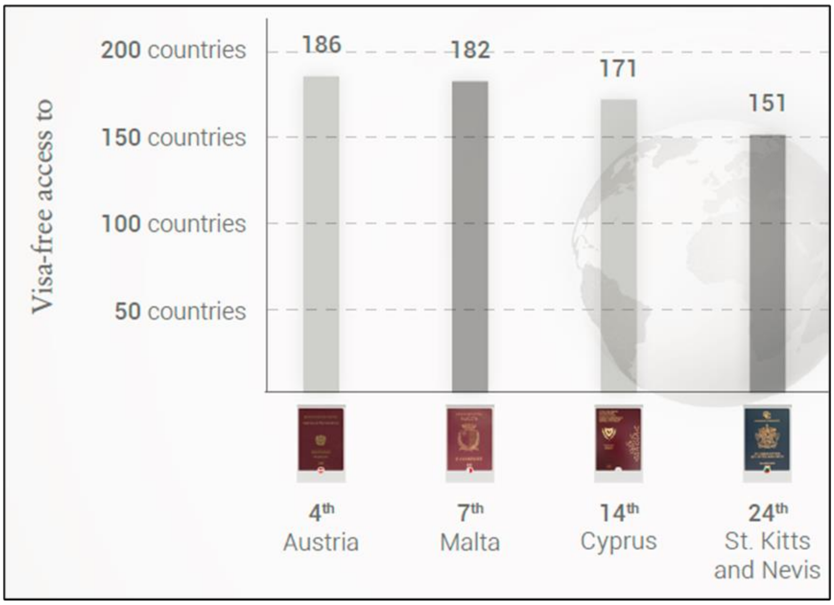

Figure 3 – Key Citizenship-by-Investment Programs, Source: Henley Passport Index, 2018

The Austrian passport allows for visa-free travel to 169 countries. For someone from Russia this increases the option by 53 including the EU, Australia, Japan, Singapore, Switzerland and the US. For a Syrian, this number goes up to 129 countries.[44]

Besides offering one of the most attractive passports, Austria is an important hub for global citizenship issues, hosting the International Center for Migration Policy Development[45] as well as promoters of passports for sale[46] such as Arton Group GmbH[47] and I.I.I. Immigrant Integration & Invest GmbH[48].

Since 1973, the Austrian citizenship law contains a clause that allows the government to award citizenship to people who have provided or promise to provide extraordinary service to the republic without the normal requirements of proof of residence or language proficiency and without the need to give up the old citizenship.[49] After several politicians were found to have abused this provision[50], no special citizenships were awarded in 2012 and 2013 and the criteria were clarified and formalized in 2014.

Yet, they continue to include investments and creation of jobs next to services in the areas of science, art and sports[51]. Applications have to be made to regional governments and are approved by the Council of Ministers who published some of its decisions in 2016[52] and 2017.[53] Nevertheless, a recent freedom of information request demonstrated that the government is not ready for full transparency yet, as some awards were excluded from that list due to "data protection and confidentiality"[54].

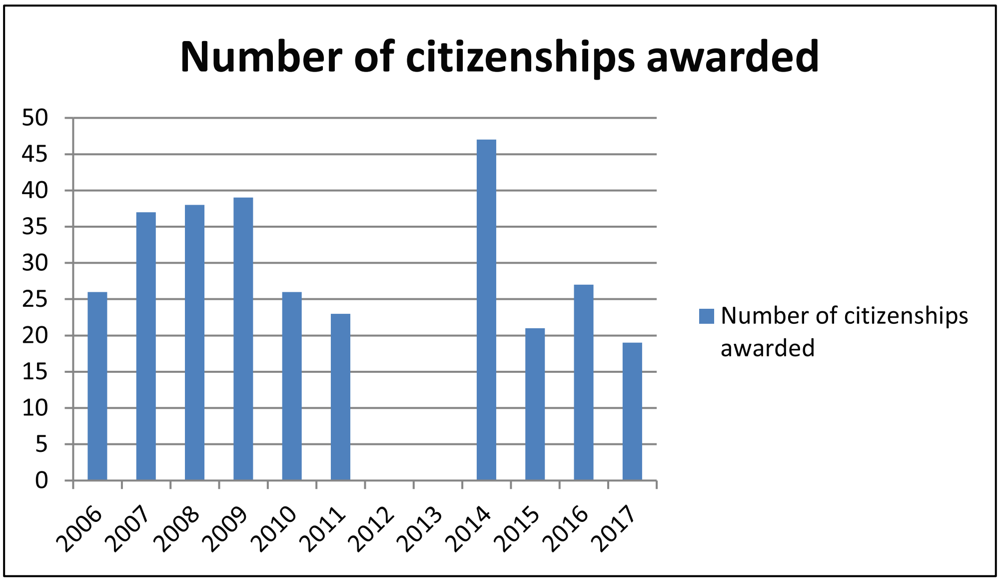

Figure 4 – Number of citizenships awarded by Austria. Source: Statistika, 2018

Between 2006 and 2017, more than 300 people were awarded citizenship for extraordinary services, including unsuspicious artists and athletes such as Andrés Orozco-Estrada (a conductor from Columbia) or Jolanta Ogar (a competitive sailor from Poland), but also Tatyana Yumasheva (daughter of former Russian President Boris Yeltsin) and her husband as well as Gulzhan Moldazhanova (CEO of Basic Element) who allegedly have close ties to Oleg Deripaska, a Russian oligarch on the US sanctions list (who himself apparently bought citizenship in Cyprus)[55].

As Austria participates in the automatic exchange of information and has rather high and comprehensive income taxes itself, Austrian citizenship does not carry any straightforward advantages from a tax perspective.[56] Nevertheless, a second passport can help to avoid sanctions and might be used to circumvent automatic exchange of bank account information under CRS. An Austrian tax residence is also a requirement for using some of the loopholes as described above.

Endnotes

Open for dirty money

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The Cyprus bonus

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Citizenship for sale

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