

Tax News

Automatic Exchange of Information regarding Financial Accounts

The legal provisions for the introduction of the automatic exchange of information (AEOI) about financial accounts in Switzerland have come into force as of 1 January 2017. In 2017, the reporting financial institutions in Switzerland and the partner countries will collect financial information from their customers for the first time. The national tax authorities will then begin exchanging this information with each other in 2018. This concerns not only physical persons but also legal entities and their controlling persons.

Global OECD Standard for the AEOI on Financial Accounts/Legal Bases

With the aim of combating tax evasion and tax fraud worldwide, the OECD adopted in 2014 a global standard for the automatic exchange of information (AEOI) regarding financial accounts. To date, 101 countries have committed to this global standard. Fifty-four countries plan to begin exchanging information with each other per the AEOI standard as early as 2017 ("early adopters"), and the remaining 47 countries (including Switzerland) beginning in 2018.

Under the AEOI, financial institutions transmit tax-relevant client and financial data routinely and annually (i.e., automatically) to the tax authorities in their country, which then forward this information to the tax authorities in the client's country of residence.

The transmitted information contains account number and tax identification number, as well as the client's name, address, and date of birth, all types of income and the account balance.

The global standard for the automatic exchange of information is provided in the "Common Reporting Standard" (CRS). At the international level, the AEOI is legally implemented based either on the Multilateral Competent Authority Agreement (MCAA), which must be activated in a separate agreement with each partner country (AEOI agreement), or on a separate bilateral or multilateral treaty (e.g., the AEOI agreement with the EU).

At the national level, the AEOI is implemented by means of the Federal Act on the International Automatic Exchange of Information (AEIA) and the Ordinance on the Automatic International Exchange of Information on Tax Matters (AEIV). As of 1 January 2017, the AEOI agreements with certain partner countries (see below) have come into effect as well as the pertinent national laws and ordinances (AEIA and AEIV).

Continuous Expansion of Partner Countries

Switzerland has signed a separate AEOI agreement with the 28 EU Member States and Gibraltar that has come into force on *1 January 2017*, (this agreement will remain in effect even after the Brexit vote for Great Britain until the latter actually withdraws from the EU). Switzerland has signed AEOI agreements with other partner countries that likewise have come into force on *1 January 2017*. This includes Australia, Iceland, Norway, Guernsey, Jersey, Isle of Man, Japan, Canada and South Korea.

Switzerland has subsequently signed AEOI agreements with the following countries, which are likely to come into force as of *1 January 2018*: Andorra, Argentina, Brazil, Chile, India, Israel, Mexico, Monaco, New Zealand, San Marino, Seychelles, South Africa and Uruguay. In addition, AEOI agreements exist with Bermuda, the British Virgin Islands, the Cayman Islands and Turks and Caicos Islands, under which only Switzerland will receive information unilaterally.

The introduction of the AEOI is planned for 2018 and 2019 with additional partner countries, particularly with the financial centres of Singapore and Hong Kong. Based on international trends, the network will continuously expand to further partner countries.

Negotiations have begun with the USA for the switch from FATCA Model 2 (exchange of information with customers' consent from Swiss banks to the USA) to FATCA Model 1 (automatic exchange of information between tax authorities in Switzerland and the USA).

Reporting Financial Institutions in Switzerland

Financial institutions include depository institutions (e.g., banks and savings banks), custodians (e.g., banks that hold securities, or trustees as legal entities), investment companies and specified insurance companies.

To identify the reportable account and persons, the reporting financial institutions must fulfil extensive reporting duties and duties of care. At the same time, the financial institutions must conduct a client identification process (due diligence). As part of the due diligence, clients' self-certification is important for purposes of determining their tax residence. Making a false self-certification and failing to report changes in relevant data are subject to criminal sanctions. The financial institutions, in turn, must confirm the plausibility of the self-certification.

If the financial institution finds evidence that the client has his tax residence in more than one partner country and this evidence is not rebutted by the client in due time, the financial institution issues a report in multiple partner countries at the same time.

The Broad Concept of Reportable Accounts and Persons

Reportable accounts include, first, financial accounts held by an accountholder in a reporting country (partner country). The accountholder may be either an individual or a legal entity (e.g., an operational company as holder of an account). Qualified listed corporations and their affiliates, governmental entities (e.g., cantons and municipalities), international organisations, central banks and financial institutions are not considered as reportable persons.

If the accountholder is a "passive Non-Financial Entity" (NFE) (e.g., a domiciliary company, trust, or foundation), the controlling persons of the passive NFE are likewise considered reportable persons. Moreover, information is transmitted to the controlling persons' country of residence. Under the OECD standard, the term "controlling person" is interpreted very broadly.

The controlling persons of an “active NFE” are not reported: Active NFEs especially include operational companies, qualified listed corporations and their affiliates, governmental entities, holding companies, start-up companies, etc.

Reporting Financial Institutions’ Duty of Disclosure in Switzerland/Legal Protection

The reporting financial institutions in Switzerland must notify the reportable persons of the information concerning them and of their rights no later than 31 January of the year in which the information is first transmitted to the relevant partner country (i.e., by 31 January 2018 for the first partner countries). Upon request, the financial institution must send the reportable persons a copy of the report to the Swiss Federal Tax Administration (FTA).

As regards the information to be transmitted, the reportable persons have limited rights provided under the Data Protection Act (DPA). Incorrect data that has been reported can only be amended in a separate civil proceedings directed against the reporting financial institution. With regard to the FTA the reportable persons may only claim the right to be informed and may only demand corrections to the data reported in the case of transmission errors. As a rule, the FTA will not issue appealable orders, and consequently there is no right of appeal to the Federal Administrative Court. The disclosure of information to a partner country can therefore virtually not be prevented in an administrative proceeding.

Information Transmitted from Abroad about Swiss Taxpayers

Under the AEI agreements, the exchange of information is reciprocal. The partner countries have the same obligations as Switzerland. Beginning in 2018, the FTA therefore will automatically receive information from foreign tax authorities regarding Swiss taxpayers holding financial accounts in the partner countries. The FTA will forward this information to the appropriate cantonal tax authorities.

Non-application of the Global Standard to AEI in Switzerland

The OECD standard for the AEI only governs the international exchange of information regarding financial accounts. Thus, the introduction of the AEI will not affect banking secrecy in Switzerland on a national level.

Tax Partner AG’s Assessment

An important point for Switzerland is that the new OECD standard for the AEI on financial accounts creates a level playing field worldwide and that all major financial centres will implement the AEI. Thus, Switzerland will not suffer any competitive disadvantage.

The key factors for financial institutions in Switzerland are the self-identification as reporting financial institutions, the fulfilment of reporting duties and duties of care as regards identifying reportable persons and accounts and finally the preparation of the relevant documentation. Reports must be correct in terms of their content and sufficiently documented to avoid any compensation claims on the part of clients.

For clients of the financial institutions, it is critical that the information about their tax residence is compiled accurately and that reports are not issued to multiple partner countries at the same time. Such multiple reporting can lead to cost-intensive tax proceedings in the partner countries and potentially to international double taxation.

Compiling data accurately and classifying the AEI status correctly is in the interests of the financial institutions and their clients alike. Classifying and reporting administrative structures (domiciliary companies, trusts and foundations) and their controlling persons accurately poses a particular difficulty.

The greatest challenge is arguably borne by the tax authorities. They must manage vast amounts of data and correctly evaluate them for purposes of the tax assessments.

Tax Partner AG

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Tax Partner AG, Taxand Switzerland

Tax Partner AG, Taxand Switzerland, is focused on Swiss and international tax law and is recognised as an important independent tax boutique. With currently 12 partners and a total of 38 professionals, the firm has been advising multi-national and national corporate clients as well as individuals since it was established in 1997.

Tax Partner offers the full range of tax advice thereby offering a unique in-depth service quality to its clients.

As a part of its growth and continuously expanding international relationships, Tax Partner co-founded Taxand in 2005. Taxand is the world's largest independent tax organisation delivering high quality integrated tax advice worldwide.

Tax Partner has repeatedly been nominated as a leading tax firm in Switzerland in several international rankings.

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