

Briefing January 2017

Automatic Exchange of Information (AEOI): Publication of final AEOI-Guideline

Yesterday, the Swiss Federal Tax Administration (SFTA) published the final version of the AEOI-Guideline in [German](#) as well as in [French](#) and [Italian](#). Since our last Briefing published in November 2016, Switzerland signed joint declarations on the introduction of the AEOI with 16 new partner states.

Final version of the AEOI-Guideline

The final version of the AEOI-Guideline in German, French and Italian is available at: <https://www.estv.admin.ch/estv/de/home/internationales-steuerrecht/fachinformationen/aia/publikationen/wegleitung.html>

Compared with the second draft of the AEOI-Guideline in German which was published in November 2016, only a few minor amendments were made. The SFTA may amend the AEOI-Guideline further at any time, if required. Therefore, Swiss Financial Institutions should follow the developments very closely and check on a regular basis if amendments were made.

Since the entry into force of the AEOI-Act on 1 January 2017, Swiss entities may claim a declaratory decision from the SFTA regarding their qualification as Financial Institution for AEOI-purposes. It is recommendable to every Swiss entity which has not yet certainty with regard to its AEOI-status to claim such a decision as soon as possible.

Update regarding Switzerland's Partner States

Since the end of November 2016, Switzerland has signed joint declarations on the introduction of the

AEOI with 16 new partner states (highlighted in bold in the table on page 3). As of today, Switzerland has 58 partner states (including all 28 EU member states). With 37 of them, Switzerland will start exchanging data in 2018, whereas with the remaining 21 states the data exchange will start in 2019. For further information, please refer to the table outlined on page 3.

As far as Switzerland's neighboring country Liechtenstein is concerned, there is currently no AEOI-agreement in place, although Liechtenstein will exchange data with the EU member states already in 2017. According to the latest news, Liechtenstein wants to enter into a tailor-made agreement with Switzerland instead of the normal AEOI-agreement, whereas Switzerland prefers to sign the normal AEOI-agreement with Liechtenstein. It remains to be seen what kind of AEOI-agreement, if any, both countries will enter into.

Voluntary Disclosure in Switzerland

As outlined in our Briefing in November 2016, persons with tax residency in Switzerland and undeclared movable property in one of Switzerland's Partner States (or future Partner States) have the possibility to file a voluntary disclosure with the competent Swiss cantonal tax authority. As a general rule, the

exemption from the penal punishment available for first-time disclosing taxpayers will only be granted in cases where the tax authority has no knowledge of the undeclared assets. As the AEOI will start in 2017 in Switzerland and the SFTA will for the first time receive data in autumn 2018, the crucial legal question is, in which cases the cantonal tax authorities consider the undeclared assets as 'known'.

The practices of the tax administrations with regard to this question differ widely from canton to canton. According to recent verbal announcements by the Zurich tax authorities, the Zurich Cantonal Tax Administration will treat the tax evasion as known only when the data from foreign tax authorities is received via the SFTA by the Zurich Cantonal Tax Administration itself which will not be the case before summer 2018. Thus, provided the other conditions are met, the possibility to benefit from a nonpunishable voluntary disclosure will – at least for taxpayers in the Canton of Zurich – remain open until summer 2018.

It is possible that other cantons consider the undeclared assets as 'known' already as of 1 January 2017 due to the coming into effect of the legal basis of the AEOI in Switzerland or at the time when the SFTA receives the data (in summer 2018). In this case, a voluntary disclosure might no longer be nonpunishable with the consequence that a fine has to be

paid in addition to the tax due for the past 10 years (including interest). However, if a taxpayer shows willingness to collaborate with the authorities, it may be expected that the fine could be at the lower end of the scale (ranging from 1/3 to three times of the amount of the evaded tax).

This shows that it depends significantly on the practice of the cantonal tax authority in charge, whether a voluntary disclosure will still count as a nonpunishable or not. Therefore it needs to be assessed on a case-by-case basis which actions to take in view of a regularization of undeclared assets. In order not to jeopardize the exemption from penal punishment, we recommend to submit the voluntary disclosure with the competent tax authority as soon as possible.

Our Support

We would be delighted to assist you should you have any questions with regard to the implementation of AEOI in Switzerland in general, the final AEOI-Guideline or also in the case when you are considering a voluntary disclosure. Furthermore, we would be pleased to provide support to Financial Institutions concerning their compliance with duties arising from the Swiss AEOI legislation or representing them in proceedings with the SFTA.

Partner State	Status of debate in parliament	Start of data collection	Start of data exchange
Australia	approved	2017	2018
EU	approved	2017	2018
Canada	approved	2017	2018
Guernsey	approved	2017	2018
Isle of Man	approved	2017	2018
Iceland	approved	2017	2018
Jersey	approved	2017	2018
Norway	approved	2017	2018
Japan	approved	2017	2018
South Korea	approved	2017	2018
Argentina	Consultation period until 15.03.17	2018	2019
Brazil	Consultation period until 15.03.17	2018	2019
Uruguay	Consultation period until 15.03.17	2018	2019
Mexico	Consultation period until 15.03.17	2018	2019
India	Consultation period until 15.03.17	2018	2019
Andorra	Consultation period until 15.03.17	2018	2019
Barbados	Consultation period until 15.03.17	2018	2019
Bermud	Consultation period until 15.03.17	2018	2019
British Virgin Islands	Consultation period until 15.03.17	2018	2019
Cayman Islands	Consultation period until 15.03.17	2018	2019
Chile	Consultation period until 15.03.17	2018	2019
Faroe Islands	Consultation period until 15.03.17	2018	2019
Greenland	Consultation period until 15.03.17	2018	2019
Israel	Consultation period until 15.03.17	2018	2019
Mauritius	Consultation period until 15.03.17	2018	2019
Monaco	Consultation period until 15.03.17	2018	2019
New Zealand	Consultation period until 15.03.17	2018	2019
San Marino	Consultation period until 15.03.17	2018	2019
Seychellen	Consultation period until 15.03.17	2018	2019
South Africa	Consultation period until 15.03.17	2018	2019
Turks and Caicos Islands	Consultation period until 15.03.17	2018	2019

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