

BRIEFING MAY 2024

EXTENSION OF AEOI TO CRYPTO ASSETS

On 15 May 2024, the Federal Council initiated a consultation procedure to expand the scope of international automatic exchange of information in tax matters ("AEOI") to include crypto assets.¹ To date, an AEOI has only taken place in relation to financial accounts. The corresponding changes are scheduled to enter into force on 1 January 2026, with data exchange taking place based on the amended regulations from 2027 onwards.

This briefing provides an overview of the planned extension of the AEOI to crypto assets and highlights its most important implications. For further information and specific recommendations for action, the authors are at your disposal.

AEOI in Switzerland: the AEOI on financial accounts entered into force in Switzerland on 1 January 2017. Data has been exchanged between Switzerland and its partner states since 2018. The legal basis for the AEOI is based on the reporting and due diligence standards for financial account information ("CRS") adopted by the Organisation for Economic Co-operation and Development ("OECD") in 2014. The aim of the AEOI is to achieve tax transparency on an international scale (so far for financial accounts). Switzerland has committed itself to implementing any further developments of the CRS.

INTRODUCTION

Since the implementation of the CRS through the multilateral AEOI agreement on financial accounts² and, on a national level, the AEOI act ("AEOIA")³ and the related ordinance ("AEOIO")⁴, which have been in force since 1 January 2017, Swiss financial institutions must identify clients domiciled in a partner state⁵ and report certain data about these clients⁶ to the FTA once a year. The FTA automatically forwards the data to the competent authorities in partner states in which the clients reside. At the same time, the FTA automatically receives similar information from the competent authorities of partner states regarding the financial accounts held in these states by persons residing in Switzerland.

The CRS have now been updated by the OECD for the first time and supplemented by the new crypto asset reporting framework ("CARF"). Accordingly, in addition to financial accounts, crypto assets will now also be covered by the AEOI. The OECD considers both the CRS and the CARF as binding AEOI standards which shall be implemented by partner states.

Several states have already announced the implementation of the CARF⁷, including Switzerland. The implementation of the CARF in Switzerland⁸ shall close gaps in the system of tax transparency and ensure equal treatment of crypto assets with traditional assets and financial institutions.

¹ In addition to extending the AEOI to crypto assets, the consultation draft contains a series of further amendments to be implemented by signing an addendum to the AEOI agreement on financial accounts and adjustments to the AEOIA and AEOIO. This briefing is limited to the planned extension of the AEOI to crypto assets.

² Multilateral agreement of the competent authority on the automatic exchange of financial account information (SR 0.653.1).

³ Federal act on the international automatic exchange of information in tax matters (AEOIA) of 18 December 2015 (SR 653.1).

⁴ Ordinance on the international automatic exchange of information in tax matters (AEOIO) of 23 November 2016 (SR 653.11).

⁵ The continuously updated list of partner states is available at: <https://www.sif.admin.ch/sif/en/home/multilateral-relations/exchange-information-tax-matters/automatic-exchange-information/financial-accounts.html>.

⁶ The account number, name, address, date of birth, tax identification number, interest, dividends, income from certain insurance contracts, account balance and proceeds from disposal of financial assets must be reported.

⁷ In the EU, the implementation will take place through an amendment of the directive on administrative cooperation (DAC 8) on 1 January 2026.

⁸ Specifically, the consultation procedure comprises the implementation of the CRS and the CARF by approving the addendum to the AEOI agreement on financial accounts and the AEOI agreement on crypto assets, as well as the amendment of the AEOIA and the AEOIO.

CHANGES

The most significant change to the AEOI is Switzerland's implementation of the CARF, as discussed in this briefing, and which extends the AEOI to include crypto assets⁹. For this purpose, the basis of international law and the AEOI agreement on crypto assets¹⁰ must be approved and the AEOIA and the AEOIO must be amended.

The AEOI on crypto assets should follow the same systematic approach as the AEOI on financial accounts. Information on transactions involving crypto assets should be exchanged automatically and at regular intervals between two partner states; the AEOI agreement on crypto assets sets forth the modalities for this exchange.

Specifically, providers of crypto services that have a relevant nexus¹¹ with Switzerland will have to register with the FTA proactively. Natural persons or legal entities that provide services for the execution of exchange transactions for crypto assets and *fiat*-currencies for or on behalf of clients, or that provide a trading platform for this purpose, qualify as providers of crypto services.

Providers of crypto services are obliged to collect certain information¹² about themselves, the reportable persons (i.e. the crypto asset users or customers of the providers) and transactions (transfers/exchanges) with crypto assets¹³. The information must then be transmitted annually within six months of the end of the calendar year to the FTA, which then forwards the data to the relevant partner states. The providers of crypto services also have information obligations towards reportable persons, which are structured similarly to the rules for reporting Swiss financial institutions under the existing AEOI. Accordingly, reportable persons must be informed of their rights once and made aware of them before the first transmission of information concerning them.

The extension of the AEOI to crypto assets only applies to partner states with whom bilateral agreements have been activated by notification. It does not automatically apply to all partner states involved in AEOI on financial accounts.

⁹ Defined as a "digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions". The definition does not include central digital bank currencies or crypto assets for which the reporting provider of crypto services has sufficiently established that they cannot be used for payment or investment purposes (see CARF, section IV).

NEXT STEPS

The consultation period lasts until 6 September 2024, after which the drafts and the dispatch will be submitted to parliament. The international legal basis, the addendum to the AEOI agreement on financial accounts and the AEOI agreement on crypto assets must be approved by the Federal Assembly and are subject to an optional referendum. The Federal Council is responsible for amending the AEOIO. The new regulations are scheduled to enter into force on 1 January 2026. The first exchange of information relating to crypto assets with partner states, with which the extension of the AEOI has been agreed, is scheduled to occur in 2027.

APPRECIATION

The extension of the AEOI to crypto assets shows their increasing importance and the associated effort to achieve international tax transparency in this area. In Switzerland, tax-free capital gains are generally achievable on the disposal of crypto assets from private assets (subject to certain restrictions, e.g., commercial trading). However, income generated from holding and lending of crypto assets (e.g., income from *staking*, including via *pools*, where applicable, or the use of DEFI Protocols as well as *airdrops*) may constitute taxable income. Additionally, crypto assets are subject to wealth tax in Switzerland.

Due to the decentralised nature of the crypto investments (e.g., use of different wallets) and the often non-obvious or unambiguous qualification of different categories of crypto assets or types of investments in crypto assets and the resulting income, a complete and correct declaration for income and wealth tax purposes can sometimes pose a challenge. Particularly with regard to valuation issues, dealing with practical difficulties (what information or documents are required for the declaration, how can they be made available and how can the declaration be handled if they are not available), the distinction between private asset management and commercial trading in crypto assets, and thus also the distinction between tax-exempt capital gains and taxable income, often raises challenging questions for which the consultation of a tax advisor can be useful. If the analysis reveals need for action,

¹⁰ The AEOI agreement on crypto assets contains the CARF as an attachment to be incorporated into Swiss law.

¹¹ Tax residence, establishment, administration or place of business in Switzerland.

¹² See CARF, section II regarding reporting duties.

¹³ Retail payment transactions above a threshold of USD 50,000 must be reported.

possible measures should be discussed, which can vary depending on the situation (e.g., obtaining information / tax rulings for planned circumstances, advise on tax structuring options for investments in crypto assets and possibly other assets, support with the declaration of crypto assets in the annual tax return). Necessary corrections concerning the past are generally possible through a subsequent declaration / rectificate for open tax periods and / or a voluntary self-disclosure (once exempt from a penalty) for tax periods that have already been definitively assessed. It should be noted that voluntary self-disclosure must be based on one's own initiative, i.e., the tax authorities must not yet be aware of the newly reported tax factors. The extension of the AEOL to crypto assets will accordingly limit the scope of application in this regard in the future.

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