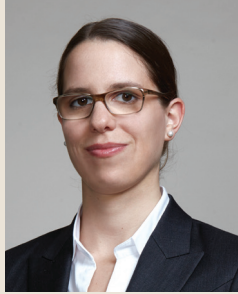


Compliance

BRIEFING:
Switzerland

Getting ready for Automatic Exchange of Information

Swiss companies need to clarify their status before the new global standard on Automatic Exchange of Information takes effect



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The OECD's new global standard on Automatic Exchange of Information (AEOI) is designed to reduce tax evasion. Switzerland, at present, is setting up a legal framework with a view to exchanging data from 2017 in 2018.

Legal framework

The basis for the AEOI is the OECD Common Reporting Standard (CRS), which is implemented in Switzerland by national legislation. The Federal Act on International Automatic Exchange of Information, approved by the Swiss parliament, will come into force on 1 January 2017. Further details and regulations can be found in the Ordinance on International Automatic Exchange of Information. This is scheduled to come into effect the same day, though to date, only a draft exists.

As the AEOI is rather complex, the Swiss Federal Tax Administration (SFTA) responsible for its execution has issued a draft guideline to specify the duties of Swiss financial institutions (FIs) and other affected parties. This guideline is extensive, covering aspects such as: the material, temporal and geographical scope of the legislation; criteria for institutions to qualify as FI in Switzerland and to be subject to reporting or non-reporting duties; financial accounts; reportable accounts; controlling persons; and non-financial entities. It outlines due diligence procedures and covers issues such as FI registration and sanctions. It also contains regulations on reporting and on informing the client. The guideline is expected to prove very helpful to FIs as they evaluate how to comply with AEOI requirements.

Treaties and agreements

The AEOI requires international treaties and agreements, the most important of which, from Switzerland's point of view, is with the European Union. The country has also signed treaties with Australia, Guernsey, the Isle of Man, Iceland, Japan, Jersey, Canada, Norway and South Korea, and is planning to conclude further treaties with other jurisdictions.

In practice

Many Swiss companies and individuals have international connections, in some cases with early adopters. As a result, some are already affected by the AEOI and need, for example, to fill in entity classification forms (e.g. for a foreign FI).

Countries implementing the CRS have found that its practical application can be very difficult, in spite of guidance from the OECD. For example, some entities are structured in ways that fail to match exactly the classifications outlined in the CRS.

As has been noted, some countries are early adopters and others are not. In addition, the AEOI presupposes the conclusion of treaties between jurisdictions – a time-consuming process that leads to the adoption of the CRS.

This can produce unwanted results and effort. Take, for example, so-called professionally managed investment entities. Based on the CRS, an FI must treat such an entity that is not in a participating jurisdiction as a 'passive non-financial entity' and must therefore report the controlling persons. If such jurisdiction qualifies as a participating jurisdiction by concluding a treaty later on, then the reporting of controlling persons of such entity is no longer necessary.

In the ordinance mentioned earlier, Switzerland addresses this issue with a 'white list' whereby countries that have not concluded a treaty regarding AEOI with Switzerland, but have committed to exchanging information under the CRS, are treated as participating jurisdictions.

The US is also classified as a participating jurisdiction in the white list. For the moment, it is not clear how long the list will be in force.

Other countries have drawn up similar lists, but Switzerland is so far the only one to include the US. The reason, according to the Swiss, is that the US already has a standard for international exchange in tax matters in the form of the Foreign Account Tax Compliance Act (Fatca). Theoretically, this could lead to a situation in which a controlling person is reported in neither Switzerland nor the US.

Conclusion

The AEOI legislation is due to come into force in Switzerland on 1 January 2017. Swiss companies need to clarify their status under the CRS in order to be ready for data collection.

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