



## Tax Newsletter – November 2017

### I. Country-by-Country Reporting

What is country-by-country reporting? In 2013, the Organisation for Economic Co-operation and Development ("OECD") and the G20 initiated the "Project Base Erosion and Profit Shifting" ("BEPS"). Thereby, the OECD and the G20 addressed a central issue within the international community: combating tax optimisation by multinational corporations ("MNCs"). The BEPS action plan, which was published in 2015, provides for 15 measures of which multiple are aimed at improving transparency regarding taxation of MNCs. Measure number 13, for example, deals with the verification of transfer pricing documentation. To this end, MNCs are required to generate country-by-country reports and to provide these to the competent tax authorities (Country-by-Country-Reporting, ("CbCR")). These country-by-country reports are then subject to an automatic exchange of information. CbCR constitutes a global minimum standard to which all OECD- and G20-member states (including Switzerland) have committed themselves.

What information does a country-by-country report contain? A country-by-country report *inter alia* contains information on the worldwide breakdown of revenues and paid taxes of MNCs as well as information on the most significant economic activities of all constitutive entities of a MNC.

Who is required to generate a country-by-country report? MNCs with a consolidated annual turnover exceeding EUR 750m are required to generate a country-by-country report. Applied to Switzerland this means that MNCs with consolidated annual turnovers exceeding CHF 900m are required to generate country-by-country reports. The OECD expects that these thresholds cover 10-15% of the MNCs worldwide; around 200 MNCs will be subject to reporting obligations in Switzerland.

What happens with the country-by-country reports? The country-by-country report is generated by the group parent company of a MNC and is transmitted to the tax authority competent for the territory in which the group parent company is domiciled. If this domicile is in Switzerland, the MNC is required to provide the report to the Swiss Federal Tax Administration ("SFTA"). Within the framework of automatic information exchange, the SFTA will give access to these reports to the tax authorities of the partner countries and the tax authorities of the affected cantons.

Submission deadline: The MNCs are obliged to generate a country-by-country report for the first time for financial years beginning on 1 January 2018 or thereafter. The first regular exchange will commence in the year 2020. MNCs may voluntarily submit country-by-country reports for the fiscal year 2016 and 2017; these are submitted by the SFTA to the tax authorities of partner countries as of 2017.

Swiss legal foundations: The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which was adopted by the Swiss Federal Assembly on 18 December 2015, forms the basis for the automatic exchange of country-by-country reports of MNCs. The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and the Federal Act on the International Automatic Exchange will enter into force on 1 December 2017. A list of partner countries with which Switzerland has concluded a CbCR-agreement is available on:

<https://www.news.admin.ch/news/message/attachments/49945.pdf> (the list includes the EU, USA and China). It is notable that the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports between Switzerland and another country only becomes applicable once that other country also lists Switzerland as a partner country.

## II. Automatic Exchange of Information on Financial Accounts Through Switzerland

In our tax newsletter of April 2017 we have informed on the spontaneous exchange of information of tax rulings. In contrast thereto, please find below important information on the automatic exchange of information of financial accounts:

What does automatic exchange of information mean? In July 2014, the OECD adopted a global standard for the automatic exchange of information for tax purposes ("AEOI") which is aimed at combatting global tax evasion. The AEOI provides for certain banks, collective investment instruments and insurers to collect their customer's data if the customers are subject to taxation in another country. The collected information concerns both natural and legal persons and includes the account number, tax identification number, name, address, date of birth, all sources of income and the account balance. Subsequently, this information is subject to automatic exchange of information with the partner countries.

How does the AEOI work? The abovementioned information is transmitted to the SFTA which then forwards it to the foreign tax authorities responsible for the customers. The AEOI is subject to the principles of speciality and reciprocity. Therefore, the exchanged data may only be used for tax purposes and the data is only forwarded to countries, which themselves transmit information to Switzerland.

Legal foundations: The legal foundations for the implementation of the AEI-standard were created by the adoption of the Convention on Mutual Administrative Assistance in Tax Matters, the MCAA and the Federal Act on the International Automatic Exchange for Tax Purposes. All of the above and the corresponding implementing regulation have entered into force on 1 January 2017.

Effect: Switzerland is collecting information on financial accounts since 1 January 2017, which will be subject to the AEOI as of 1 January 2018. Only few countries aside the EU member states participate in the AEOI beginning in 2017. However, 43 additional countries are envisaged to partake in the AEOI at the beginning of 2018.

We remain at your disposal for any queries regarding the above.



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