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Switzerland has taken the first steps towards implementing the Automatic Exchange of Information, but challenges remain



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FINANCIAL SERVICES

The free flow of data

Switzerland is on its way towards the Automatic Exchange of Information (AEOI). The AEOI will lead to the transmission of sets of data from a reporting financial institution (e.g. a bank) to the domestic tax authority. The domestic tax authority will have to exchange such data with the respective foreign tax authorities of participating countries, with which respective agreements have been made. The procedure itself is in accordance with the OECD Common Reporting Standard (CRS).

Switzerland is a major financial service centre and is therefore particularly affected by the challenges the AEOI creates. At present, the Swiss legislator is in the approval process of several agreements and collateral/accompanying legal acts in connection with the AEOI and the CRS.

Legislation process

On 15 October 2013, Switzerland signed the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the entering into force is envisaged for 1 January 2017). According to the convention, there are three possible ways of exchanging information: on request; spontaneously; and automatically. For the implementation of this convention in Switzerland, specific amendments have to be made with regard to the Federal Tax Administrative Assistance Act. Switzerland is also on its way to approving the Multilateral Competent Authority Agreement (MCAA), which also includes the CRS, and implementing a Federal Act on the International Automatic Exchange of Information in Tax Matters. The consultation process for all these acts has finished.

The Committee for Economic Affairs and Taxation of the Swiss National Council (WAK-NR) has already discussed the drafts and has issued a recommendation to approve the OECD/Council of Europe Convention and the respective amendments. With regard to the drafts of the MCAA and the Federal Act on AEOI, the WAK-NR suggests several amendments, such as the possibility to appeal to a court against the decision to exchange data, if such an exchange of data could lead to disadvantages for the reporting person that are not held reasonable due to lack of rule of law-based guarantees.

In the same context, the WAK-NR requires the Federal Council to carefully examine the standards of data protection in possible participating countries as well as the opportunities for regularisation.

The Federal Council made suggestions with regard to the Anti-Money Laundering Act (AMLA) concerning new risk-based duties for financial intermediaries of foreign clients of countries that do not participate in the AEOI. The WAK-NR suggested not to approve the latter. As the WAK-NR's suggestions are not binding,

the Swiss Parliament (National Council and Council of States) will have to decide (subject to a referendum). The discussions about the proposed changes began in the autumn of 2015. If there is a referendum, the Swiss people will vote, and even in this case, the legal requirements should come into force at the beginning of 2017 with the first automatic exchange of information expected for 2018.

Treaties and Agreements

With all the changes to the law and all the implementations mentioned above, the AEOI, will not be implemented automatically. The AEOI must be implemented with a specific country or specific countries either by bilateral treaties or multilateral agreements. Switzerland has already taken the first steps towards implementing AEOI with specific countries. Other countries will follow.

Switzerland has signed a joint declaration with Australia in this matter. The respective consultation has finished, but the results have not yet been published. The AEOI between Switzerland and Australia will be based on the MCAA and should be implemented in 2017 with the first automatic exchange of information expected in 2018. According to the draft Federal Decree, the Federal Council will be entitled to put Australia on its list of countries having automatic exchange of information according to the MCAA.

Furthermore, Switzerland and the member states of the European Union have signed a multilateral Agreement for Automatic Exchange of Information in Tax Matters. Here as well, the agreement should come into force in 2017 and an exchange of data will be expected in 2018. The consultation process is still ongoing.

Following that, this agreement will be discussed in the Swiss Parliament. As this agreement will be applicable to all member states of the EU, Switzerland will have an automatic exchange of information with some of its most important business partners.

Outlook

It is intended that all the agreements, conventions and acts should come into force by 2017 in Switzerland and an automatic exchange of information is expected to start in 2018.

Switzerland is not on the list of the Early Adopters Group. Rather, Switzerland has followed a strategy of taking the time needed to seriously consider the implementation of all the necessary acts and get it right. Switzerland should be ready when the acts come into force and information is automatically exchanged for the first time.