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Switzerland steps up CRS implementation

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Facing the challenges of reform

Businesses across Switzerland began 2020 anticipating a range of challenges emerging from the widest corporate tax reform in decades. Economic plans were drawn and tax experts were summoned. Little did they know that just months later, the COVID-19 pandemic would bring a second wave of equally strong tax-related challenges.

Partnering with expert practitioners who are closest to the action, ITR brings you an exclusive insight into some of the most significant developments that the Swiss tax world faces in the coming year.

International tax reforms have added a further dimension of complexity to the proceedings. The article by Bär & Karrer explains how the implementation of the Swiss tax reform has been influenced by the impact from the OECD's BEPS Action Plan and the EU's implementation of the Anti-Tax Avoidance Directive (ATAD).

The need to strengthen the country's reputation as a global business centre forms the crux of burckhardt Ltd's article, which also looks at how Swiss modifications to the automatic exchange of information (AEOI) implementation can help optimise legal and planning certainty.

Deloitte Switzerland's article tracks how the pandemic has forced companies to accelerate their digitalisation plans, and



Prin Shashiharan
Senior commercial editor
ITR

discusses how tax departments can accordingly reshape their data, process and people functions.

A further revolution brought about by the pandemic to the traditional workplace is the subject of Tax Partner AG's article. Swiss authorities have sought to address international tax queries that have emerged from the rise of the 'home office'.

Amid the pandemic and waves of reforms, Switzerland continues to harbour a culture of innovation by offering tax incentives on patents and research and development (R&D) programmes. The article from Meyerlustenberger Lachenal considers how companies can benefit from the Swiss innovation toolkit.

Showcasing its strength and resilience, Switzerland has reacted soundly to novel tax challenges. We hope that you enjoy hearing from the tax experts leading the progression in our ninth Switzerland Special Focus.

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How international tax reforms have transformed the Swiss tax landscape

Daniel U Lehmann and **Anke Stumm** of **Bär & Karrer** consider how measures put forward by the OECD's BEPS project and the EU Anti-Tax Avoidance Directive have impacted corporate taxation in Switzerland.

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Promoting innovation through tax policy in Switzerland

Thomas Nabholz and **Julian Kläser** of **Meyerlustenberger Lachenal** describe how the research and development super-deduction and the patent box provide innovative Swiss companies with an opportunity for significant tax savings.

Switzerland steps up CRS implementation

Rolf Wüthrich of **burckhardt Ltd** explains how Switzerland is improving its compliance and reporting functions to strengthen the country's reputation as a global business centre.



The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) regularly assesses the domestic implementation of the standard for the international automatic exchange of information in tax matters. As part of the assessment procedure, the Global Forum has made a series of recommendations to Switzerland.

The Swiss legislator considered the recommendations and implemented amendments concerning the repeal of the exemption clause for co-owner associations recorded in a Swiss land register and an adjustment of the applicable due diligence requirements for reporting Swiss financial institutions. In addition, amounts relating to dormant accounts must now be stated in US dollars and a document retention obligation will be introduced for reporting Swiss financial institutions.

After the Swiss parliament, the Federal Council also approved the amended Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOIA), as well as the amended Ordinance on the International Automatic Exchange of Information in Tax Matters (AEOIO) in 2020 and decided to bring the amendments into force with effect from January 1 2021.

This further step, taken in the direction of the standard-compliant implementation of the AEOI, aims to strengthen the credibility and integrity of the Swiss financial centre in international relations, and attempts to optimise legal and planning certainty by making a significant contribution to the reputation of Switzerland as a business location.

The role of the Global Forum

The Global Forum ensures that international standards regarding transparency and the exchange of information for tax purposes are observed and implemented in a uniform manner at an international

level. The aim is to create a level playing field worldwide, which is also in the interest of Switzerland.

As with the exchange of information upon request, the Global Forum reviews the domestic implementation of the international automatic exchange of information on financial accounts (AEOI) standard by means of country reviews (peer reviews). The Global Forum conducts different peer review processes:

- Reviews to ensure that jurisdictions are meeting the legal and operational requirements with respect to confidentiality and data safeguards;
- Review of each jurisdiction's domestic and international legal frameworks to ensure completeness of the framework, in accordance with the requirements; and
- Review of effectiveness of each jurisdiction's implementation of the AEOI standard in practice, including the operational frameworks in place ensuring compliance by financial institutions with the requirements.

The common reporting standard (CRS) calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. It consists of the following four key parts:

- A model competent authority agreement (CAA), providing the international legal framework for the automatic exchange of CRS information;
- The common reporting standard;
- The commentaries on the CAA and the CRS; and
- The CRS XML Schema User Guide.

If a jurisdiction commits to implementing the AEOI standard, the Global Forum monitors the implementation of the milestone necessary to fulfil the commitment. The milestones are:

- A domestic legal framework to require financial institutions to collect and report the information for the exchange, which must be in place to require the collection of the information in the year prior to its reporting and exchange;
- An international legal framework allowing the exchange of information with the partner states in the year of exchange, including an international legal basis to exchange information automatically and a competent authority agreement containing the details of the exchanges; and
- A suitable technical infrastructure to receive the information from financial institutions, to process it as necessary and to transmit it to a partner state.

The Global Forum makes recommendations to countries



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burckhardt Ltd provides its clients and their businesses with comprehensive advice on national and international tax planning issues and structuring. It offers corporate, general, secretarial and notary services, and regularly supports clients with its professional expertise and broad international experience on restructurings, mergers and joint ventures. The firm has experience in advising on inbound and outbound investments, as well as on financing, and in all matters related to employment, trade and transport law.

that have not yet fully implemented all requirements. The states concerned are required to implement these recommendations. With respect to the requirements for the legal frameworks, two core requirements are requested:

- Domestic legal requirement: Jurisdictions must have a domestic legislative framework in place requiring all reporting financial institutions to conduct the due diligence and reporting procedures in the CRS, and providing for the effective implementation of the CRS.
- International legal requirement: Jurisdictions must have exchange relationships in effect with all interested partners providing for the exchange of information in accordance with the model CAA.

AEOI implementation in Switzerland

Switzerland has been implementing the AEOI standard since January 1 2017. Since then, the reporting Swiss financial

institutions have been collecting information from their clients to be transmitted, provided the clients are tax residents in an AEOI partner state of Switzerland. This information is transmitted once a year to the competent authority in the partner state. The first exchange took place in autumn 2018.

The country reviews of the AEOI began in 2020. In order to ensure the integrity of the AEOI standard from the outset, its key elements were pre-audited in a process since 2017. The first element of this step-by-step pre-audit is compliance with the provisions on confidentiality and data security. As a second element, the Global Forum checks whether the states fully implement the AEOI standard in their national law. Thirdly, the Global Forum plans a review process regarding an appropriate network between AEOI partner states. The fourth element concerns the administrative and information technology resources required for the correct functioning of the AEOI.

Switzerland has so far been pre-audited on two of the four elements. Compliance with the provisions on confidentiality and data security was assessed in 2017 and found to be good. The evaluation of the legal basis for the AEOI, the AEOIA and the AEOIO, followed in 2018. The guidelines issued by the Swiss Federal Tax Administration (SFTA) on the AEOI, which are important for its implementation in practice, were also evaluated. The result of this review resulted in necessary clarifications on the implementation of the international requirements; certain modifications were necessary in the Swiss legal basis. As part of the pre-audit of the legal basis, the Global Forum made recommendations to Switzerland in 2018. The examination of the third and fourth elements are ongoing.

In its report “Peer Review of the Automatic Exchange of Financial Account Information 2020”, approved by the AEOI Peer Review Group in November 2020, the OECD stated that Switzerland’s legal framework implementing the AEOI standard is in place, but needs improvement in order to be fully consistent with the requirements of the AEOI terms of reference. While Switzerland’s international legal framework is consistent with the requirements of the AEOI terms of reference, its domestic legal framework requiring reporting financial institutions to conduct the due diligence and reporting procedures has, according to the AEOI Peer Review Group, deficits to ensure a proper functioning of elements of the AEOI standard.

According to the report, Switzerland provides for two categories of jurisdiction-specific, non-reporting financial institutions that do not correspond to any of the categories of non-reporting financial institutions foreseen in the AEOI standard: i) associations that pursue a non-commercial purpose, and ii) foundations that pursue a public, charitable or non-material purpose.

Furthermore, Switzerland provides for three jurisdiction-specific excluded accounts which are not in line with the

requirements of the AEOI standard. The scope of financial accounts, including the provision of excluded accounts, is material to the proper functioning of the AEOI standard. Switzerland should amend its domestic legislative framework to remove three entries from its jurisdiction specific list of excluded accounts as they do not meet the requirements: i) accounts of associations that pursue a non-commercial purpose; ii) accounts of foundations that pursue a public, charitable or non-material purpose; and iii) capital contribution accounts. Excluded accounts under i) and ii) do not correspond to any of the categories of excluded accounts in the AEOI standard. Swiss capital contribution accounts are similar to escrow accounts, but do not relate to the sale, exchange or lease of real or personal property and do not have sufficiently similar characteristics to the requirements nor to ensure that these accounts pose a low risk of being used to evade tax.

As Switzerland has incorporated the reporting requirements in its domestic legal framework in accordance with the CRS and its commentary, and as it has a domestic legal framework in place to enforce the requirements of the CRS in practice, no recommendations were made with respect to these two standard requirements.

With respect to the international legal framework, the Global Forum did not make any recommendations as the standard requirements are implemented. Switzerland’s international legal framework to exchange information is in place, is consistent with the model CAA and provides for exchange with all of Switzerland’s partners. Switzerland has exchange agreements that permit the automatic exchange of CRS information in effect with all its partners.

Swiss modifications for 2021

The aim of the modifications that entered into force on January 1 2021 is to take the measures necessary to implement the Global Forum’s recommendations of 2018. In doing so, Switzerland is underlining its willingness to implement the international standards regarding transparency and the exchange of information for tax purposes.

Summarised, the modifications provide for the repeal of the exemption for accounts of co-ownership associations. Furthermore, adjustments are made to the applicable due diligence requirements for reporting Swiss financial institutions, the amounts in relation to dormant accounts are to be reported in US dollars, and the document retention obligations for reporting Swiss financial institutions are stipulated. Finally, the established practice regarding the notification of so-called trustee-documented trusts (TDT) was included in the law, as well as a provision authorising the Swiss competent authority to suspend, on its own discretion, the AEOI with a partner state if the partner state does not meet the requirements of the OECD regarding confidentiality and data security.

The modifications, however, do not cover all recommendations by the Global Forum made to Switzerland in 2020. The exemption for foundations and associations, under which reporting Swiss financial institutions may, under certain circumstances, treat accounts of Swiss foundations with public, charitable or non-material purposes as well as of Swiss associations with non-commercial purpose as excluded accounts, are not to be repealed at this time. The same applies to the time limit of 90 days for the exclusion for capital contribution accounts as requested by the Global Forum, which is not included in the modifications of January 1 2021. Instead, Switzerland intends to first discuss the handling of these accounts at the level of OECD Working Group 10.

Co-ownership associations

Under the AEOIO applicable until December 31 2020, co-owner associations recorded in a land register in Switzerland were under certain circumstances deemed to be non-reporting financial institutions.

In the view of the Global Forum, co-ownership associations cannot qualify as financial institutions under any circumstances and are therefore always to be treated as non-financial entities (NFEs). It was recommended that Switzerland repeals this provision. The exclusion has therefore been repealed by January 1 2021 as it has no effect in practice.

Dormant accounts

Since the amounts relating to the threshold values according to the CRS are to be shown only in US dollars, an adjustment of the AEOIO was necessary. The term ‘Swiss francs’ was replaced by ‘US dollars’. As of January 1 2021, reporting Swiss financial institutions may treat dormant accounts that have a balance or value of no more than \$1,000 at the end of the calendar year, or another appropriate reporting period or at the time of account closure, as excluded accounts.

Excluded accounts under account holder’s legislation

According to the AEOIO applicable until December 31 2020, reporting Swiss financial institutions could treat accounts maintained by reporting Swiss financial institutions, and treated as excluded accounts under the legislation of the account holder’s residence jurisdiction for the implementation of the CRS, as excluded accounts.

It was in the responsibility of the reporting Swiss financial institution to determine which accounts qualified as excluded accounts in the account holder’s country of residence. Since the Global Forum has found that the provision does not correspond to an exemption category of the CRS, it was recommended to repeal the provision. This means that reporting Swiss financial institutions are obliged to check the accounts affected by this exclusion for reportable accounts as of January 1 2021.

Identification required for opening of accounts

Under the CRS, a self-identification for the opening of a new account is considered valid if it is dated, signed by a person authorised to sign or otherwise authenticated, and contains at least the following information: name, address, country(ies) of tax residence, tax identification number (TIN) for each reporting country, if the country issues such a number, and in the case of accounts held by individuals, the date of birth, if the account holder is a resident of a reporting country.

Under the law in force until December 31 2020, a reporting Swiss financial institution had, in principle, to close a new account if it did not have the name, address and date of birth of the account holder or controlling persons within 90 days of a new account being opened. However, neither the transfers into and out of an account needed to be blocked, nor did the account have to be closed for the reason alone that a reporting Swiss financial institution had not received the TIN of the account holder or controlling person of the entity within 90 days of a reportable new account being opened. The financial institution had to take appropriate measures to obtain the tax identification number of the account holder or controlling person of the entity by the end of the second calendar year following the opening of the account.

Thus, a new account did not have to be closed within 90 days if only the TIN was missing. The Global Forum considered this exception to be incompatible with the CRS. The Swiss authorities’ experience is that the TIN plays a central role in the data allocation procedure (matching process). Also for the Swiss tax authorities, it is important for the allocation of AEOI data that the partner states systematically collect and transmit the TIN. To increase the exchanged data quality, it will be necessary that the TIN will be available.

On the basis of these considerations, a self-declaration must therefore, from January 1 2021 on, in addition to the other required information, always contain a TIN if the account holder and/or the controlling persons are tax resident in a reporting state and if the reporting state issues such a TIN.

For accounts held on December 31 2020, i.e. the day before the amendment entered into force and for which a self-declaration without a TIN was obtained as part of the verification by the reporting Swiss financial institution, the rules under Section I Subsection C CRS apply. Generally exempt from the obligation to obtain a TIN, are those cases in which the account holder and/or the controlling persons are resident for tax purposes in a non-reporting state (e.g. Switzerland), in which the reporting state does not issue such a TIN or in which the domestic law of the reporting state in question does not require the TIN issued by the reporting state to be recorded.

Account opening without self-identification

As of January 1 2021 a reporting Swiss financial institution can, without self-identification of the account holder, open a new account only (i) if the account holder is a person not qualifying as reportable person; or (ii) if another exclusion applies. Exclusions are considered cases of new accounts openings without the active assistance in the course of the opening process by the reporting Swiss financial institution, or without the possibility of the financial institution to stop the opening. The AEOIO mentions three examples of exemptions:

- Life insurances: In the area of third-party life insurance policies where a change of policyholder is the result of a legal succession of a life insurance, a new account can be opened within the meaning of the AEOI without the life insurer contributing anything to it or being able to refuse the creation of the new account. Since in these cases no self-disclosure can be obtained in advance, but the insurer is nevertheless obliged to register the new policyholder, an exception must be formulated. E.g.: Merger of two insurance companies, as a result of which the policyholder relationship is transferred from the absorbed company (contracting party) to the absorbing company (new contracting party) by virtue of universal succession, but the insurance contract and thus the subject matter of the contract remain the same;
- Change of an account holder due to a court order or an order by the authorities, e.g. on the basis of a court order in the course of a divorce settlement; or
- Creation of a claim as a beneficiary against a trust

or a comparable construct on the basis of the deed of establishment. New accounts may be created on the basis of articles of association or trust creation acts, which can neither be prevented nor rejected or closed by the financial institution. One example is the birth of a child who has been designated in advance as the beneficiary of a fixed interest trust.

If such an exemption applies, the reporting Swiss financial institution must receive the self-declaration within 90 days and must plausibilise the self-declaration. If a reporting Swiss financial institution does not have the necessary information to plausibilise the self-declaration or the exemption within 90 days of a new account being opened, the account must be closed and all transfers to and from the account will be frozen until all information has been received. The Swiss financial institution has an extraordinary termination right to close the account.

Effects on Switzerland as a business location and on competition

The standard-compliant implementation of the AEOI aims to strengthen the credibility and integrity of the Swiss financial centre in international relations and to optimise legal and planning certainty.

The implemented measures serve to ensure this goal with regard to the comprehensive country review of the Global Forum. In this way, the standard-compliant implementation of the AEOI makes a significant contribution to the reputation of the Swiss financial centre and reduces the risk of Switzerland being not compliant.