

从瑞士视角看信息自动交换

Automatic Exchange of Information from a Swiss perspective



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中国大陆及香港企业或居民可能直接或间接的在瑞士银行开立账户或持有存款,如通过其所控股的瑞士公司、以个人名义、或通过其在海外设立的离岸公司。本文将回答相关银行账户信息是否可能受经济合作和发展组织(经合组织)推行的税务自动信息交换的监管。

背景介绍

2014年10月,包括中国大陆和香港在内的96个国家或地区承诺执行经合组织理事会于2014年7月15日颁布的《税务自动信息交换标准》(AEOI标准)。其中,56个国家或地区计划自2017年起启动银行账户信息交换(意味着这些国家将在2016年开始收集相关信息),40个国家或地区(包括中国大陆、香港和瑞士)承诺自2018年起开始收集和分享此类信息。

信息自动交换的运作方式

瑞士将基于下列文件与欧盟成员国以外的国家交换银行账户信息:(1)作为AEOI标准实施法律框架的《多边主管当局协定》(MCAA),以及(2)与各信息交换国单独签订的双边条约。换言之,银行账户信息仅在签署了采纳AEOI标准的双边条约的两个经合组织成员国(AEOI双边条约合作伙伴国)之间交换。

因此,虽然多边AEOI标准和MCAA将从2017年开始在瑞士生效,但是瑞士将仅与签署了AEOI双边条约合作伙伴国实施信息交换标准(目前这类合作伙伴国只有澳大利亚一个国家,两国将从2018年开始交换银行账户信息)。

因此,虽然瑞士、中国大陆和香港已承诺自2018年起开始交换银行账户信息,但是还需要中国和香港在2018年前分别成为瑞士的AEOI双边条约合作伙伴,才能与瑞士交换信息。而目前我们尚未得知有关此类条约谈判的任何动向。

值得注意的是,“自动”信息交换不应与正式行政协助程序范围内“经请求的”信息交换相混淆。根据瑞士与中国和香港分别签订的双重税收条约,如果符合特定条件,双边条约成员国一方有权请求另一方披露特定信息,包括特定纳税人或纳税人群体的银行账户信息。

瑞士有关AEOI双边条约合作伙伴国的条件。瑞士政府对AEOI双边条约合作伙伴国提出的条件之一是合作伙伴国应允许其纳税人申报海外资产而不对其实施高额罚款。

上报要求

哪些账户在自动信息交换的适用范围内?根据AEOI标准,在某一AEOI双边条约合作伙伴国内的居民或企业在另一伙伴国内的银行或其他金融机构开立的账户都在自动信息交换规定范围内。如果某个账户由多人共同持有,无论各人持有比例如何,在相关合作伙伴国内有居所的人的信息都将被上报。另外,“非活跃”用户(即信箱或虚拟住所地公司)持有的、相关AEOI双边条约合作伙伴国居民在其中拥有至少25%权益的账户应当予以上报。

因此,如果中国成为瑞士的AEOI双边条约合作伙伴国,中国居民的在英属维尔京群岛注册的虚拟住所地公司名下的瑞士银行账户将需要予以上报。

哪些类型的账户信息需要被上报?根据AEOI标准,账号、账户持有者的税务代码、账户持有者的实际控制人的税务代码、名称和地址、利息和股息、保险收益、账户余额和金融资产销售收益将每年按照标准格式予以上报。虽然目前尚无法预期AEOI双边条约合作伙伴国将如何处理其收到的数十万的电子处理信息,但是这种信息上报制度无疑对潜在避税者起到震慑作用。

哪些人有上报义务?在AEOI双边条约合作伙伴国有法定住所的金融机构将需要向另一伙伴国的相关机构上报相关账号信息,其中金融机构包括银行、特定产品的保险公司、托管人、独立资产管理人以及信托。对于信托而言,结算人、受托人或保护人中其中一方是AEOI双边条约合作伙伴国的居民即满足上报义务人的充分条件。因此这可能多个义务人上报同一账户信息。

总结

一个经合组织成员国参与全球信息交换的承诺本身是与其他经合组织成员国交换银行账户信息的必要但非充分条件,交换信息的国家还必须是AEOI双边条约合作伙伴国,而目前瑞士与中国或香港还不存在这类合作伙伴关系。但是,由于英属维尔京群岛等国家已经承诺在2017年转交信息(并在2016年开始收集相关内容),在涉及离岸结构时需要密切关注与这些国家的谈判动向。■

“ [大陆、香港和瑞士] 承诺自2018年起开始收集和分享[银行账户]信息 ”

Chinese and Hong Kong-controlled Swiss companies, as well as many Hong Kong or mainland China residents – directly or indirectly through companies domiciled in offshore jurisdictions – hold accounts or deposits with Swiss banks. This article answers whether the relevant bank account data may become the subject of the Automatic Exchange of Information in Tax Matters (AEOI) pursued by the Organisation for Economic Co-operation and Development (OECD).

Background

In October 2014, 96 jurisdictions, including mainland China and Hong Kong, committed to implement the Standard for Automatic Exchange of Information in Tax Matters (AEOI Standard) as developed and released by the OECD Council on 15 July 2014. Of those 96, 56 plan to start exchanging bank account information from 2017, which means they will start collecting the respective data in 2016, and 40 – including mainland China, Hong Kong and Switzerland – committed to collect and share such information from 2018.

How it works

With countries other than the EU member states, Switzerland will exchange bank account information based on: (a) the Multilateral Competent Authority Agreement (MCAA), which is the legal framework for the implementation of the AEOI Standard; and (b) a bilateral treaty with each particular country with which information is to be exchanged. In other words, bank account information will only be exchanged between two OECD countries if they also signed and put into force a bilateral treaty adopting the AEOI Standard between them (the AEOI Bilateral Treaty Partners).

Therefore, although the multilateral AEOI Standard and MCAA will be effective in Switzerland from 2017, Switzerland will only apply the AEOI Standard with respect to its AEOI Bilateral Treaty Partners, and so far there is only one – Australia, allowing the exchange of bank account information between Switzerland and Australia from 2018.

Accordingly, although Switzerland, China and Hong Kong committed to exchange bank account information from 2018 on, this will only happen if prior to 2018 China and Hong Kong, respectively,

become AEOI Bilateral Treaty Partners of Switzerland. Currently we have no information about any negotiations on such treaties.

The *automatic* exchange of information (AEOI) should, however, not be mixed up with the exchange of information upon request within a formal administrative assistance procedure. According to the double taxation treaties in force between Switzerland and China, and Switzerland and Hong Kong, respectively, each country is entitled to request the disclosure of particular information, including information on bank accounts of a specific taxpayer or group of taxpayers, if certain conditions are met.

Swiss conditions for AEOI Bilateral Treaty Partners. The Swiss government requires, among other conditions, that its AEOI Bilateral Treaty Partner allows its taxpayers to declare their assets held offshore without imposing dramatically high penalties on them.

Reporting requirements

Which accounts will be subject to AEOI?

According to the AEOI Standard, any bank account or other account held with a financial institution in an AEOI Bilateral Treaty Partner, by either an individual or a company domiciled in the other AEOI Bilateral Treaty Partner, will be subject to exchange of information. If more than one person holds an account, all account holders, irrespective of the percentage of their share, will be reported to the extent resident in the relevant AEOI Bilateral Treaty Partner. In addition, any account held by a “non-active” – i.e. letter box or domiciliary – entity in which a person resident in the relevant AEOI Bilateral Treaty Partner has a stake of at least 25%, will be reported.

Accordingly, the Swiss bank account of a British Virgin Islands domiciliary company owned by a person resident in China would be subject to reporting if China becomes an AEOI Bilateral Treaty Partner of Switzerland.

What type of account information will be reported?

According to the AEOI Standard, the account number, the tax ID number of the account holder or the person in control of the account holder, the name and address, amounts of interest and dividend income received, payments made by certain insurance policies,

“ [Mainland China, Hong Kong and Switzerland] committed to collect and share [bank account] information from 2018 ”

account balance and proceeds from the sale of securities will be reported annually in a standardized format. Although only time will show how the information of hundreds of thousands of electronically processed pieces of information will be used by receiving AEOI Bilateral Treaty Partners, it will certainly have a deterrent effect on potential tax evaders.

Who will have to report?

Any financial entity with legal domicile in an AEOI Bilateral Treaty Partner, i.e. banks, insurance companies for certain products, custodians, independent asset managers and also trusts, will have to report the respective account information to the relevant other AEOI Bilateral Treaty Partner.

As far as trusts are concerned, it is sufficient that the settlor, a trustee or a protector is resident in an AEOI Bilateral Treaty Partner. This might lead to multiple reporting of the same account.

Summary

The pure commitment of an OECD country to participate in the global exchange of information is a necessary, but not sufficient, condition to exchange bank account data with other OECD countries, as the exchanging countries must on top be AEOI Bilateral Treaty Partners, which is not yet the case among Switzerland, China and Hong Kong, respectively.

However, since other countries such as the British Virgin Islands, have committed to transfer information already in 2017 – and collect the respective content in 2016 – it will be important to monitor any negotiations with these countries in cases of offshore structures. ■

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