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Automatic Exchange of Information from a Swiss perspective

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The Swiss exchange of information policy – a living history

- For decades: **no** information on bank accounts to foreign tax authorities.
- According to a provision made by the Swiss government to Art. 26 of OECD Model Tax Convention.
- Exemptions: - tax fraud with regards to certain taxes (e.g. VAT)
  - tax fraud (and the like*) according to certain double taxation agreements (e.g. DTT CH/US, EU savings agreement).

*e.g. use of offshore company and wrong information on W8 form

The Swiss Exchange of Information Policy – a living history

- The Swiss banking secrecy and the strict provision to protect it were abused by foreign (and Swiss) customers to hide assets.
- Certain banks supported and facilitated tax evasion...

  ...until 2007: UBS Whistleblower Bradley Birkenfeld.
- 2009: UBS concluded NPA with US DoJ, paid penalty of USD 780 millions and – with the approval of the Federal Council – delivered 4500 customer data to the US.

The Swiss Exchange of Information Policy – a living history

- The UBS / Birkenfeld case might be seen as the starting point to a new Swiss policy: the white money strategy.
- The Swiss Financial Centre has approx. 30% market share on global cross-border banking services.
- Finance sector contributes 10% to GDP and employs 6% of working population.
  → access to foreign markets, in particular to the European Union, Asia and US, is key for Swiss banks.
  → this requires the conclusion of cooperation and exchange of information agreements.

The Swiss Exchange of Information Policy – a living history

- 13 March 2009: Federal Council decided to adopt full OECD standard on exchange of information (provision to protect bank data should no longer be held up).
- 22 February 2012: Federal Council officially confirms commitment to white money strategy...

  ... and from then the wheel started to turn even faster:

- 1 January 2013: withholding tax agreement with UK and Austria entered into force: 'automatic' delivery of bank data to UK and Austria (or deduction of withholding tax on any type of financial income).

The Swiss Exchange of Information Policy – a living history

- 1 February 2013: Swiss legislation to provide administrative assistance in tax matters enters into force.
  Condition: (revised) DTT with OECD standard or TIA in force.
- 29 August 2013: Joint Statement of Swiss and US government: US Program for Non-Prosecution Agreements or Non-Target letters for Swiss banks.
  → 80 "category II banks" finally participated, total penalty paid USD 1.36 billion, delivery of thousands of customer data.
- **15 October 2013**: the Federal Council signs the agreement of OECD and the European Council on administrative assistance in tax matters.

The Swiss Exchange of Information Policy – a living history

- 2 June 2014: FATCA agreement between Switzerland and the US enters into force → automatic delivery of bank data directly to the US (model 2 agreement).
- 1 August 2014: revised Swiss legislation on administrative assistance in tax matters; including group requests (as decided by OECD).
- 19 November 2014: Federal Council signs Multilateral Competent Authority Agreement (MCAA) as a condition to implement Automatic Exchange of Information…

  … and here we are!

Automatic Exchange of Information – how it works in Switzerland

- Automatic Exchange of Information is not possible solely based on the existing DTTs or TIAs.
- In a first instance, the respective bilateral agreements need to be concluded.
- 2 different models are possible, whereby the standard defined by the OECD (common reporting standard, CRS) will be applicable for both models.
- **Note:** automatic exchange of information only for financial accounts, not for other information (such as APAs, tax rulings, tax assessments etc.).

Automatic Exchange of Information – how it works in Switzerland

Model 1

Bilateral Treaty

↓

Legislation for AEoI

or

Model 2

Agreement of OECD and European Council on administrative assistance in tax matters

↓

MCAA
(legal framework for implementation of AEoI standard)

↓

Legislation for AEoI

↓

Bilateral Activation
(notification of the secretary of the OECD coordination committee)

Automatic Exchange of Information – how it works in Switzerland

- Swiss legislation for AEoI contains definitions, competent authorities and organization, certain simplifications (e.g. regarding trusts), administrative procedure, legal means (e.g. data protection), avoidance provisions, sanctions.
- Model 1: will be applicable between Switzerland and European Union (agreement signed on 27 May 2015).
- Model 2: will be applicable to other jurisdictions;
  until now, Switzerland has concluded mutual declarations to implement the AEoI with the following jurisdictions: Australia, Guernsey, Jersey, Isle of Man, Norway, Japan, Canada, South Korea.

Automatic Exchange of Information – how it works in Switzerland

- Automatic Exchange of Information will, according to the Swiss policy, enter into force on January 2017 (data collection) with first data delivery from January 2018.
- Conditions defined by Swiss Federal Council to include (in addition to the US and EU) further jurisdictions:
  - Close and intensive economic relationship
  - Reasonable possibility of voluntary disclosure prior to exchange of information
  - Reliable data protection legislation
  - Reliable data security
- Which will be the next jurisdictions? Currently no information available; maybe Hong Kong? Brazil? Argentina? China? India?

Automatic Exchange of Information – what's about Switzerland?

Keep in mind: no automatic exchange of information without notification of OECD coordination board.

- Until now there is no automatic exchange (i.e. delivery) of bank data to Swiss authorities.
- Initiative to protect banking secrecy in Federal Constitution pending.

But: Swiss banks usually ask new customers or even existing customers to provide evidence for declaration.

Automatic Exchange of Information – only one part of the game

Keep in mind: the AEoI is only one element of the agreement of OECD and the European Council on administrative assistance in tax matters.

- Exchange of information upon request (including group requests)
- Spontaneous exchange of information: tax authorities will exchange tax rulings or other information to third party jurisdictions.
  - ➢ review your tax rulings and make sure they are in line with your corporate structure.
  - ➢ align the corporate structure with the OECD guidelines in light of BEPS
  - ➢ withdraw your tax rulings, if necessary.

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Thank you.

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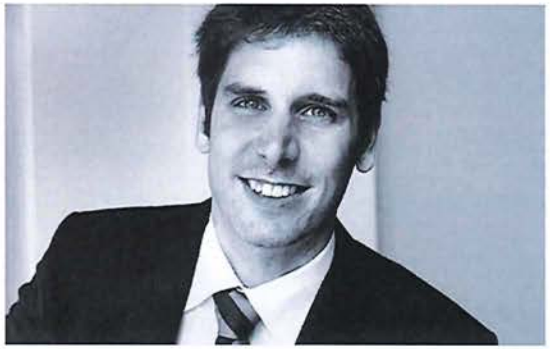

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