

Switzerland

Overall findings

Overall determination on the legal framework: In Place But Needs Improvement

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 to exchange the information with all of Switzerland's Interested Appropriate Partners (CR2) is consistent with the requirements of the AEOI Terms of Reference, its domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has deficiencies significant to the proper functioning of elements of the AEOI Standard. More specifically, Switzerland provides for jurisdiction-specific Non-Reporting Financial Institutions and Excluded Accounts that do not meet the requirements of the AEOI Standard.

The methodology used for the peer reviews and that therefore underpins this report is outlined in Chapter 2.

Conclusions on the legal framework

General context

Switzerland commenced exchanges under the AEOI Standard in 2018.

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, Switzerland:

- enacted the Federal Act of 18 December 2015 on the International Automatic Exchange of Information in Tax Matters; as amended on 9 October 2020;
- introduced the Ordinance of 23 November 2016 on the International Automatic Exchange of Information in Tax Matters; as amended on 9 October 2020;
- issued further guidance, which is legally binding; and
- made reference to the Federal Act of 12 December 2014 on the Implementation of the Revised FATF Recommendations of 2012 for the purposes of the identification of Controlling Persons under the AEOI Standard.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 January 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 31 December 2017 and on Lower Value Individual Accounts and Entity Accounts by 31 December 2018.

Following the initial Global Forum peer review, Switzerland made various amendments to its legislative framework to address issues identified, the last of which will be effective from 1 January 2021.

With respect to the exchange of information under the AEOI Standard, Switzerland:

- is a Party to the Convention on Mutual Administrative Assistance in Tax Matters and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018;
- has in place an agreement with the European Union; and
- put in place two bilateral agreements.¹

Detailed findings

The detailed findings for Switzerland are below, organised per Core Requirement (CR) and sub-requirement (SR), as extracted from the AEOI Terms of Reference (www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf).

CR1 Domestic legal framework: Jurisdictions should have a domestic legislative framework in place that requires all Reporting Financial Institutions to conduct the due diligence and reporting procedures in the CRS, and that provides for the effective implementation of the CRS as set out therein.

Determination: In Place But Needs Improvement
--

Switzerland's domestic legislative framework is in place and contains most of the key aspects of the CRS and its Commentary requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures, but it needs improvement in relation to the scope of Reporting Financial Institutions required to report information (SR 1.1), and the scope of Financial Accounts required to be reported (SR 1.2).

More specifically, Switzerland provides for categories of jurisdiction-specific Non-Reporting Financial Institutions and Excluded Accounts that do not meet the requirements of the AEOI Standard.

SR 1.1 Jurisdictions should define the scope of Reporting Financial Institutions consistently with the CRS.

Switzerland has defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, 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. The scope of Reporting Financial Institutions, including the provision on Non-Reporting Financial Institutions is material to the proper functioning of the AEOI Standard.

Recommendations:

Switzerland should amend its domestic legislative framework to remove two categories from its jurisdiction-specific list of Non-Reporting Financial Institutions as they do not correspond to any of the categories of Non-Reporting Financial Institutions foreseen in the AEOI Standard. The entries are: i) associations that pursue a non-commercial purpose, and ii) foundations that pursue a public, charitable or non-material purpose.

SR 1.2 Jurisdictions should define the scope of Financial Accounts and Reportable Accounts consistently with the CRS and incorporate the due diligence procedures to identify them.

Switzerland has defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and incorporated the due diligence procedures that must be applied to them in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, Switzerland provides for three jurisdiction-specific Excluded Accounts which are not in line with the requirements of the AEOI Standard. Two of the Excluded Accounts do not correspond to any of the categories of Excluded Accounts in the AEOI Standard. The capital contribution accounts have some similarity 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. The scope of Financial Accounts, including the provision of Excluded Accounts, is material to the proper functioning of the AEOI Standard.

Recommendations:

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. The entries are: 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.

SR 1.3 Jurisdictions should incorporate the reporting requirements contained in Section I of the CRS into their domestic legislative framework.

Switzerland has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

SR 1.4 Jurisdictions should have a legislative framework in place that allows for the enforcement of the requirements of the CRS in practice.

Switzerland has a legislative framework in place to enforce the requirements in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

CR2 International legal framework: Jurisdictions should have exchange relationships in effect with all Interested Appropriate Partners as committed to and that provide for the exchange of information in accordance with the Model CAA.

Determination: In Place

Switzerland's international legal framework to exchange the information is in place, is consistent with the Model CAA and its Commentary and provides for exchange with all of Switzerland's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Switzerland and that meet the required standard in relation to confidentiality and data safeguards). (SRs 2.1 – 2.3)

SR 2.1 Jurisdictions should have exchange agreements in effect with all Interested Appropriate Partners that permit the automatic exchange of CRS information.

Switzerland has exchange agreements that permit the automatic exchange of CRS information in effect with all its Interested Appropriate Partners.

Recommendations:

No recommendations made.

SR 2.2 Such an exchange agreement should be put in place without undue delay, following the receipt of an expression of interest from an Interested Appropriate Partner.

Switzerland put in place its exchange agreements without undue delay.

Recommendations:

No recommendations made.

SR 2.3 Jurisdictions should ensure that the exchange agreements in effect provide for the exchange of information in accordance with the requirements of the Model CAA.

Switzerland's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

Switzerland would like to express its general appreciation for the work of the Global Forum and reiterates that it takes its commitment to implement the AEOI Standard according to the Global Forum's recommendations very seriously. Following the initial Global Forum peer review, Switzerland made various amendments to its legislative framework to address the issues identified.

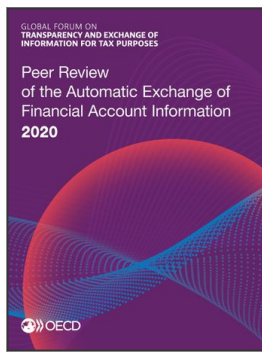
Switzerland takes note of the remaining recommendations set out under SR 1.1. and 1.2., but is convinced that the entities and accounts concerned have a very low risk of being misused for tax evasion, especially as the legal framework contains strict requirements that significantly reduce or exclude the danger of abuse, which is therefore of a theoretical nature. Nonetheless, Switzerland understands the reasons for the recommendations in the context of the applicable standard.

Switzerland would like to highlight that the treatment of the concerned entities and accounts will be discussed as a part of the OECD's review of the AEOI Standard with first discussions starting in late October 2020. Regarding the treatment of non-profit entities, the OECD Secretariat has already submitted a specific proposal for the review of the AEOI Standard. This proposal reflects Switzerland's concerns and would take into account four recommendations on SR 1.1 and SR 1.2 regarding non-commercial associations and charitable foundations. As regards capital contribution accounts, it is necessary to await the outcome of the discussions.

As long as the discussions of the issues raised as part of the OECD's review of the AEOI Standard have not taken place, the question whether or not the entities and accounts aforementioned are exempt from the reporting requirements should be left open and should not prejudice Switzerland's legal determination.

Note

¹ With Hong Kong (China) and Singapore.



From:

Peer Review of the Automatic Exchange of Financial Account Information 2020

Access the complete publication at:

<https://doi.org/10.1787/175eeff4-en>

Please cite this chapter as:

OECD (2020), "Switzerland", in *Peer Review of the Automatic Exchange of Financial Account Information 2020*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/ca69169c-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.