

KPMG REG CRS alert

Date:	May 31, 2016
Alert Type:	Document
Country:	Switzerland
Regime:	CRS
Document Type:	Regulation

Switzerland: The AEol Ordinance as a Next Step to Implementing AEol in Switzerland

On 18 May 2016, the consultation period on the Ordinance on the Automatic Exchange of Information (AEol) started. The purpose of the AEol Ordinance is to regulate further relevant details on how the AEol is to be implemented. As such, the AEol Ordinance complements the AEol Act as well as the Common Reporting Standard (CRS).

After the AEol already entered into force among the EU member-states (excluding Austria) and especially Liechtenstein, the AEol will also follow in Switzerland, on 1 January 2017. The Swiss Parliament already ratified the AEol Act in December 2015. All that is now missing is the formal ratification of the AEol Agreements with the EU (concerning all EU member-states), Australia, Canada, Guernsey, Iceland, Isle of Man, Japan, Jersey, Norway and South Korea. It is therefore very likely that a first exchange of data will take place between Switzerland and all of the above-mentioned countries in September 2018 for 2017 data.

Transparent Treatment of Investment Entities in Non-Participating Jurisdictions

Article 1 of the AEol Ordinance will bring about a significant simplification of the application of the AEol at Swiss financial institutions. The background of this provision is the following:

Switzerland Contacts:



Juerg Birri
Partner
jbirri@kpmg.com



Philipp Zuend
Senior Manager
pzuend@kpmg.com

Under AEol not only banks and certain insurance companies will have to report information but also domiciliary companies, trusts and foundations that qualify as Investment Entities. Investment Entities are in particular legal entities which collect mostly investment income and whose assets are managed by a Financial Institution. As Investment Entities under AEol must conduct their own reports, the banks maintaining the accounts do not have to report the Controlling Persons of Investment Entities. In order to prevent a circumvention of the AEol, the CRS nonetheless foresees that the banks maintaining the accounts treat Investment Entities in Non-Participating Jurisdictions as Passive NFEs and therefore must report the relevant Controlling Persons.

According to the Article 1 of the AEol Ordinance, Participating Jurisdictions for this purpose are deemed to be not only the countries with which Switzerland has concluded AEol agreements, but also all of the about 100 countries which have agreed to implement AEol, as well as the USA. Therefore, a Swiss bank, which, for instance, keeps accounts for an Investment Entity domiciled in the USA but where the Controlling Person is resident in Germany, does not have to report this person under AEol to Germany, even though the USA does not implement the AEol and under FATCA only transmits limited data.

Asset Managers as Non-Reporting Financial Institutions

Under the AEol, asset management companies are usually considered to be Financial Institutions. Article 4 of the AEol Ordinance explicitly states that asset management companies, however, are Non-Reporting Financial Institutions, and therefore do not have to report their clients under AEol. This is the case if the asset management company manages clients' assets, which are held at a domestic or foreign Financial Institution in the name of the client, based exclusively on a Power of Attorney. In such a case, the bank maintaining the account, will report the client. For this reason, the asset management company does not also have to report the client under AEol.

Excluded Accounts

Excluded Accounts are not reported under the AEol. These are accounts where the risk of tax evasion is small. Already the AEol Act specifically defined that 2nd or pillar 3a accounts as well as escrow accounts for rent deposits are deemed to be excluded. The AEol Ordinance adds also the following types of accounts:

- certain accounts of lawyers and notaries public,
- capital contribution accounts and
- accounts of testators until the inheritance has been divided,

which are deemed to be Excluded Accounts (and therefore do not require reporting).

Opening New Accounts Despite a Missing TIN

According to the AEol Act, reportable accounts must generally be blocked for incoming or outgoing transactions if the tax identification number (TIN) has not been provided within 90 days after the account has been opened. It may be assumed that in practice various foreign

clients will not have their TIN on hand and therefore will fail to provide it when opening their account. For this reason the AEol Ordinance contains a clarification of Article 21 of the AEol Act, i.e. there is no need to block the account despite the missing TIN. However, appropriate efforts must be made to obtain the TIN at a later date.

Closing Accounts Prior to Having Performed the Due Diligence Necessary under AEol

After the entry into force of the AEol, financial institutions are given two years (individual accounts with a balance of a maximum of CHF/USD 1m and entity accounts) or one year (individual accounts with a balance of more than CHF/USD 1m) to identify the reportable persons. Article 22 of the AEol Ordinance states that accounts which are closed within this period (i.e. after the AEol has entered into force but before the reportable person could be identified according to the CRS rules) do not have to be documented or reported. This also applies to account closures, which were closed after a change in circumstances if the new facts could not be checked beforehand.

Conclusion

In this Ordinance, the Swiss Federal Council has taken advantage of the leeway granted to simplify the implementation of the AEol requirements. Especially the very broad definition of "Participating Jurisdictions" will save banks much time when classifying the accounts of legal entities for AEol purposes. Nonetheless, it remains to be seen whether the OECD is of the opinion that this interpretation is in line with the AEol standard or whether the OECD will exert pressure on Switzerland to adjust certain passages of the AEol Ordinance.

Financial institutions must decide to what degree they would like to make use of potential simplifications when implementing the AEol. For instance, financial institutions may identify and report accounts of legal entities although the account balance does not exceed CHF/USD 250,000 or also report account holders that have closed their account before the client identification under AEol has taken place. Accordingly, all financial institutions should analyze the implementation discretion afforded by the AEol as soon as possible and make the relevant decisions.

Reference: [Swiss Draft AEol Ordinance](#)

For information on KPMG's global AEol network professionals, please email KPMGREGqueries@kpmg.com.

kpmg.com/socialmedia



© 2016 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 566505

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

www.kpmg.com