

Swiss Banks and the Automatic Exchange of Tax Information: How will it affect CIS residents with Swiss bank accounts?*

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Switzerland is the world's largest wealth management hub, with 25% of global cross-border assets managed within its mountainous borders. In this article, we explain how the automatic exchange of tax information (AEI) will affect Swiss bank secrecy.

Indeed, Switzerland has pledged to limit its commitment to bank secrecy in tax matters towards non-residents by implementing AEI over the next few years. Although AEI is not in force between Switzerland and CIS jurisdictions yet, CIS clients with assets in Swiss bank accounts, whether held in their own name or in the name of legal entities, trusts or foundations that they are the beneficial owner of, may be affected in the future. Also, Swiss banks are increasingly demanding proof of general tax compliance from all of their foreign tax resident clients. It is thus important to become informed about your rights, obligations and compliance options in advance.

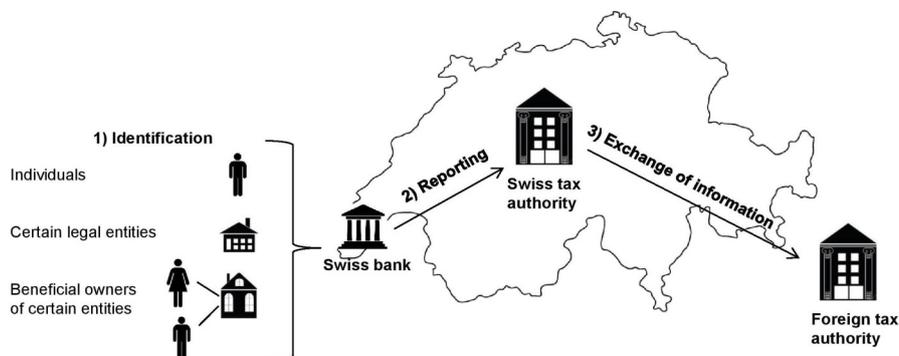
The automatic exchange of tax information (AEI) is approaching fast

AEI is an international standard for exchanging information on bank and other financial accounts between tax authorities in different countries. Developed by the Organization for Economic Cooperation and Development (OECD), its objective is tax transparency: To make sure that taxpayers pay the correct amount of taxes to the right jurisdiction by exchanging the bank information of taxpayers holding assets in financial accounts outside of their country of tax residence. AEI is currently the globally accepted standard for international tax cooperation and is fast becoming a reality in Switzerland and abroad.

Over 100 countries, including Switzerland, Russia, Kazakhstan and Georgia, have signed the OECD multilateral agreement that commits them to implementing AEI. However, Switzerland will only exchange information with other countries with which it has signed an additional, bilateral agreement on such exchange (so-called "Partner Jurisdictions"). Switzerland has signed such agreements with the EU and 30 other jurisdictions so far, and although it has not signed a bilateral agreement on AEI with any CIS states yet, such an agreement could be signed at any time in the future. Once AEI is implemented, foreign taxpayers will no longer be able to conceal undeclared funds in Swiss banks from the tax authorities. For this reason, it is important to become familiar with the AEI procedure and its consequences now.

How does AEI work in practice?

Financial institutions in Switzerland, in particular Swiss banks, will collect a "snapshot" of the accounts of clients with tax residence in Partner Jurisdictions starting in 2017, gathering information such as name, address, country of tax residence, account balance and gross income. Then, starting in 2018, said financial institutions will be required to report the relevant information annually to the Swiss tax authorities, who will forward the data to the tax authorities of Partner Jurisdictions in September of each year.



How AEI works in Switzerland:

- 1) The bank identifies reportable customers and accounts;
- 2) The bank reports the required information on these accounts to the Swiss Federal Tax Administration;
- 3) The Swiss Federal Tax Administration exchanges the information with foreign tax authorities in states with which Switzerland has signed a bilateral exchange agreement.

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Notwithstanding the foregoing, Swiss banks are already beginning to examine all of their accounts in order to identify the tax residence of each of their clients and their tax compliance status, and they have already begun to request proof of tax compliance in foreign tax residents' countries. This also affects individuals with tax residence in CIS states, certain entities with their domicile in such states as well as certain foreign entities, including passive companies, trusts and foundations, whose controlling persons and beneficial owners have their tax residence in a CIS state.

As mentioned above, Switzerland has not yet signed any bilateral agreements to conduct AEI with CIS states, and exchange is likely to be implemented later than the year 2018. However, careful clients will anticipate the introduction of AEI and Swiss banks' investigation of their tax compliance and plan in advance. Moreover, several other factors make tax compliance crucial for all clients at this time. For example, some tax authorities of clients not residing in a Partner Jurisdiction already have the possibility to obtain information about clients with bank accounts abroad through so-called individual or group requests. Finally, other legislation, such as the Russian Federation's Law on Deoffshorization, which requires Russian tax residents to report and pay taxes on the profits of foreign companies they control, may already be relevant for CIS clients now. Swiss financial institutions are also starting to ask for proof of compliance with such foreign legislation.

Finding the right solutions to become compliant – time to take action

The legal landscape for CIS clients holding Swiss bank accounts or foreign entities which, in turn, may hold a bank account in Switzerland, is extremely complex. Some clients are asking themselves what they can do. Your options depend on the individual case at hand and may include reporting, relocation, restructuring or liquidation of a foreign structure. In any case, should you not be sure of your tax compliance status, taking action to regularize your status is of the utmost importance, not least due to potential fines and even criminal penalties for tax evasion in your country of tax residence.

Please note that this article is of a purely general and informative nature and that each client's case is different. Altenburger Ltd legal + tax can draw on many years of expertise in banking and tax law. The attorneys and legal staff at our Zurich, Geneva and Lugano offices have the knowledge and understanding to help you learn more about your legal situation and address your needs for tax-compliant solutions.



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