

International Financial Management Association

THE AUTOMATIC EXCHANGE OF INFORMATION & ITS IMPACT ON SWISS (AND FOREIGN) TAX PAYERS

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1. **Introduction**
2. The Automatic Exchange of Information
3. Case Studies

1. Introduction

Different forms of information exchange

➤ The exchange of information upon request

- OECD Convention on Mutual Administrative Assistance in Tax Matters

➤ The spontaneous exchange of information

- Enforced by the MCAA and the Convention
- Transmitted when a State suspects to hold interesting information for another State
- Revised OEAR : organizational measures enabling a closer collaboration between cantonal and federal authorities, measuring on the procedure, on the information transmitted to foreign tax authorities and on the set time limit
- TAAA : spontaneous exchange limited to State Member of the Convention
- Application field limited to financial data
- Met OECD standards
- Information transmitted routinely and at regular intervals

1. Introduction

OCDE Convention for Exchange of Information in Tax Matters

- The exchange of information on rulings is enforced by TAA Ordinance
 - Definition of categories which are subject to the spontaneous exchange
 - List of States which have to be informed
 - Provisions on group applications (unchanged)
- Automatic Exchange of Information
 - Defined by the Convention, the MCAA, the LEAR and OEAR

1. Introduction
2. **The Automatic Exchange of Information**
3. Case Studies

2. The Automatic Exchange of Information

Revision of the law on Tax Administrative Assistance

1. The Convention

The Council of Europe and OECD convention on Mutual Administrative Assistance in Tax Matters.

Developed in 1988, amended by Protocol in 2010, open to all countries since 2011

2. AEOI and MCAA

Automatic Exchange of tax Information at an international level (AEOI) and Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA).

Developed since 2009, approved in 2013, open to all countries since 2014, first expected exchanges: 2017



2. The Automatic Exchange of Information

The Convention

- Legal framework for cooperation in tax matters between Member States

Income, wealth, capital, profit, withholding tax, exemption from tax at source on cross-border payments between related companies, ~~donations, VAT, compulsory social security contributions (AVS / AI / APG), inheritance.~~



Signed by Switzerland on October 15 2013 and approved by the Federal Assembly on December 18 2015

- 3 forms of information exchange

The exchange of information upon request

The spontaneous exchange of information

The introduction of automatic exchange of information

2. The Automatic Exchange of Information

Steps for implementing the AEOI in Switzerland

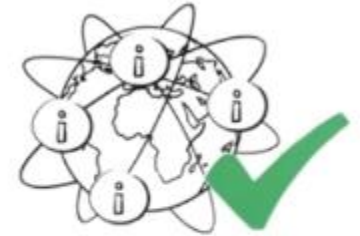


2. The Automatic Exchange of Information

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

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JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018

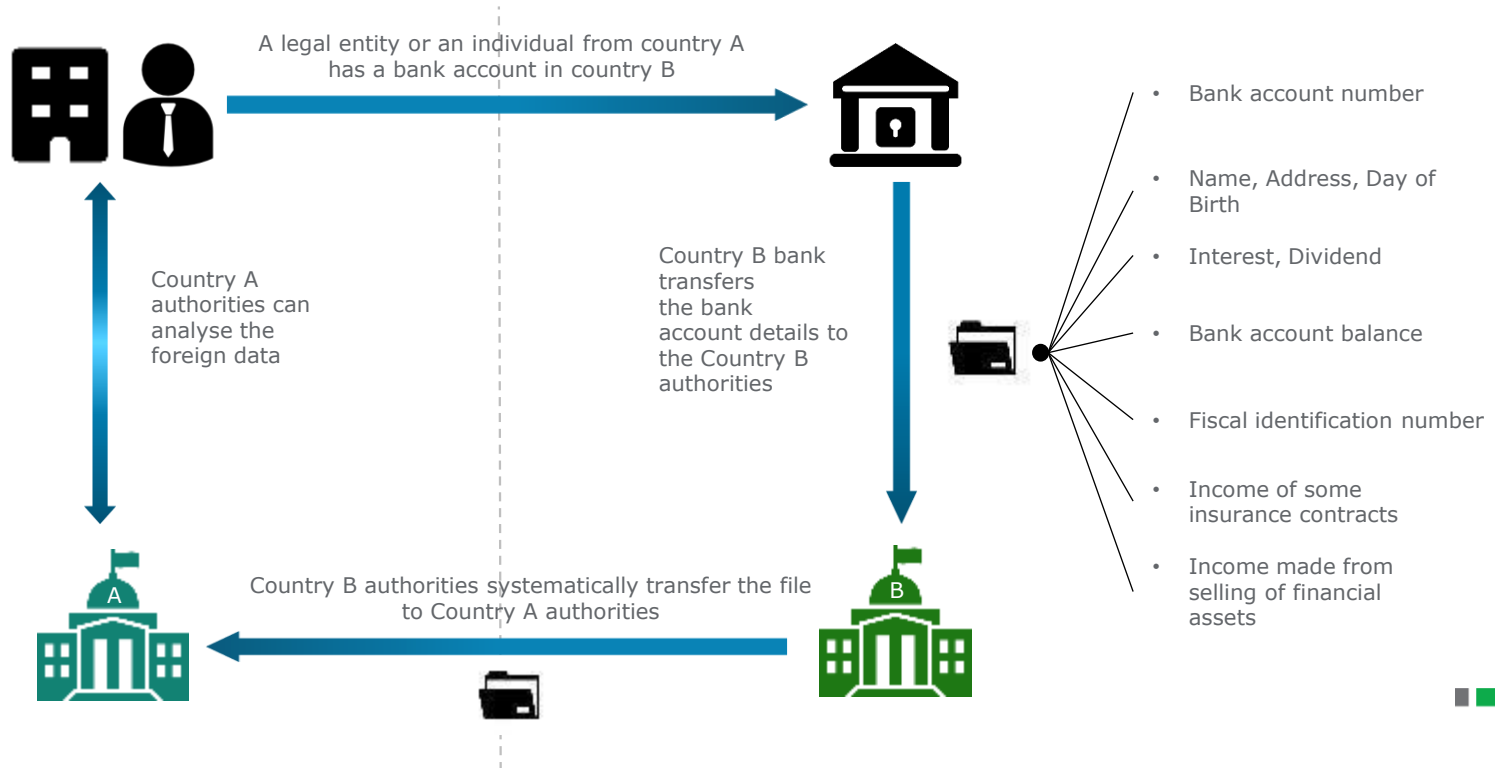
Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Marshall Islands, Macao (China), Malaysia, Monaco, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay

JURISDICTIONS THAT HAVE NOT INDICATED A TIMELINE OR THAT HAVE NOT YET COMMITTED

Bahrain, Nauru, Vanuatu



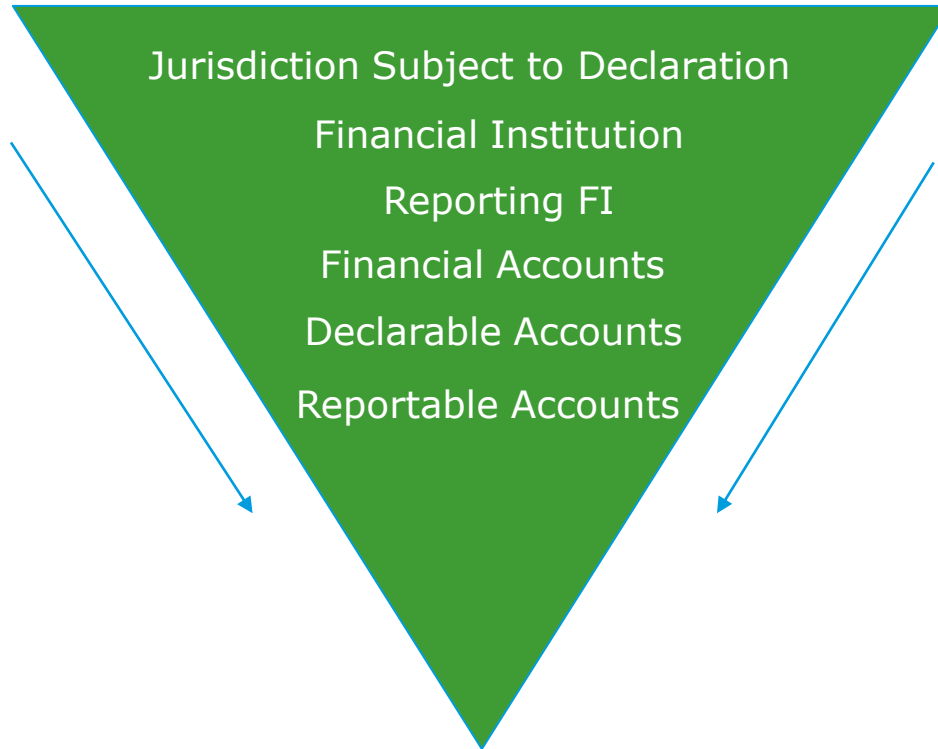
2. The Automatic Exchange of Information



2. The Automatic Exchange of Information

Application Scope: the AEOI universe

Non-participatory
Jurisdiction



2. The Automatic Exchange of Information

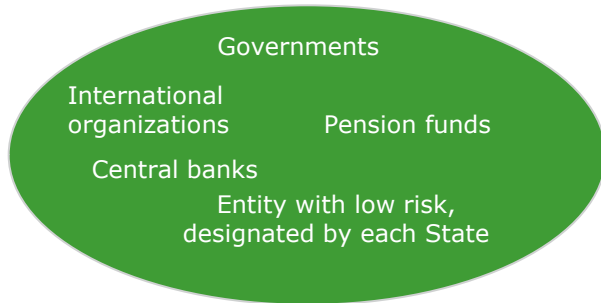
Financial Institutions: 4 categories

- Depository Institution: entity practicing a bank activity or similar activity and accepting deposits
- Custodial Institution: entity practicing an activity of financial assets management on behalf of a third party
- Specified Insurance Company: organization issuing pension or insurance contracts with a strong buy-back value
- Investment Entity:
 - I. Primarily conducting as business, on behalf of a client
 - financial assets transactions
 - individual or collective portfolio management
 - others investment operations or fund management on behalf of a third party
 - II. Mainly receiving its gross income from investment or reinvestment activity or financial assets trading

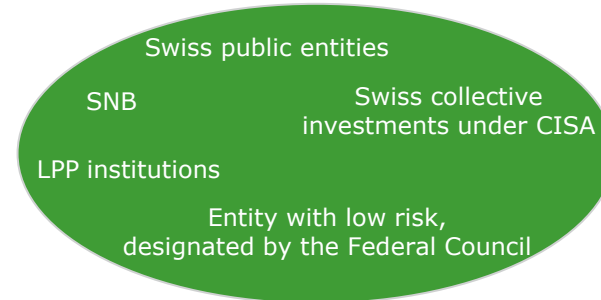
2. The Automatic Exchange of Information

Primary Non-Reporting Institutions : 3 levels

Common reporting standards



LEAR



OEAR



2. The Automatic Exchange of Information

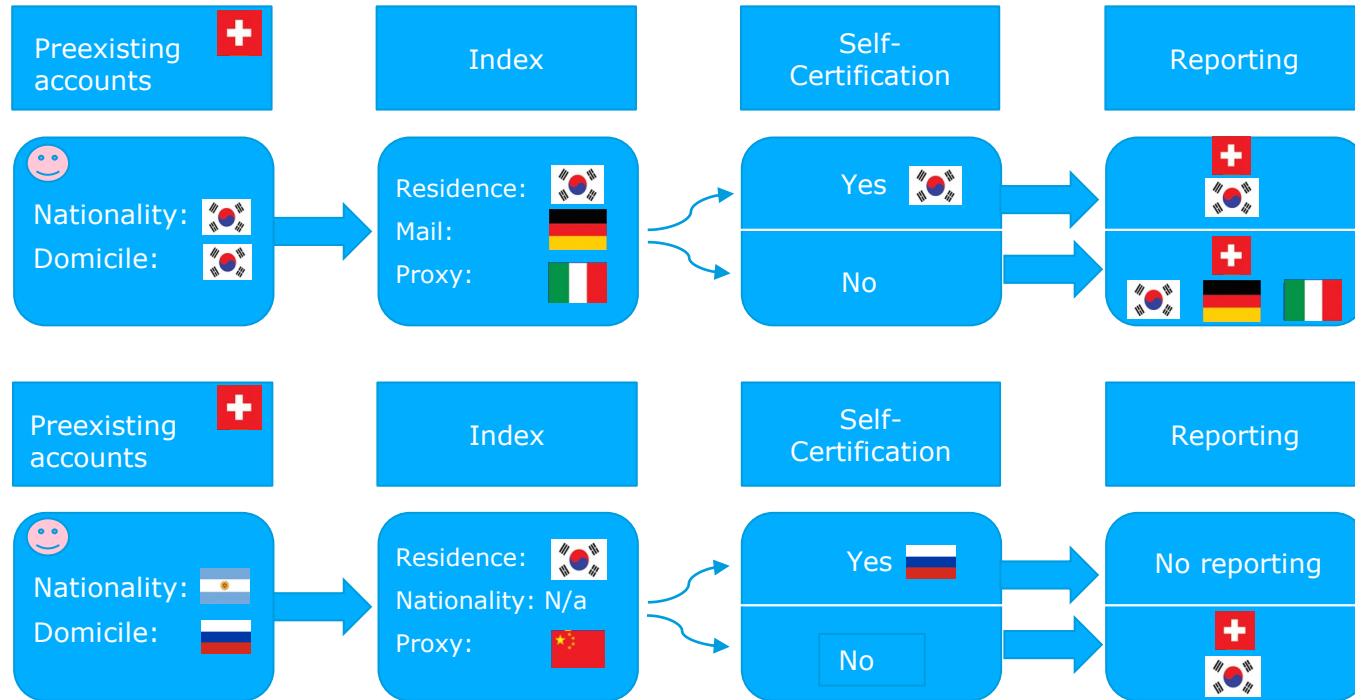
Financial Account of Financial Institutions

Considered as financial accounts for

- Depository Institution: any current, commercial and savings accounts
- Custodial Institution: any stock deposit
- Insurance Institution: any insurance contracts with a buy-back value and any annuity contract
- Investment entity:
 - financial assets that are deposited at the entity
 - any equity or debt interests in the entity
 - If the equity interest is a trust one (or any assimilated entities), a beneficiary is considered as equity interest holder when:
 - I. He has the right to a mandatory distribution (nondiscretionary or fix interest trust)
 - II. He benefits from a discretionary distribution for a particular year

2. The Automatic Exchange of Information

Financial Account of Financial Institutions



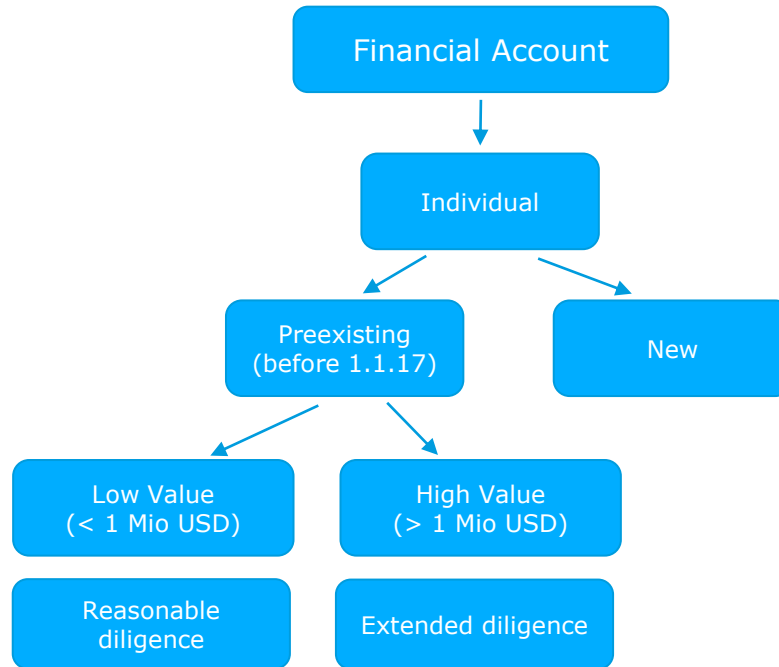
2. The Automatic Exchange of Information

Self-Certification

- It enables financial institutions to ask for additional information to a bank account holder
- It is used if the financial institution does not have the bank account holder's residence address and cannot find information about the bank account holder by electronic means
- It must to be checked if the financial institution has reason to doubt the information's veracity
- It considers the account as '*undocumented*' if it is not done by the account holder
 - Any information related to this account are given to the FTA
 - The examination of the information related to this account must be done every year until the account becomes documented

2. The Automatic Exchange of Information

The Due Diligence Procedure



2. The Automatic Exchange of Information

Status of Entity

➤ Financial Institutions (FI)

- Reporting Financial Institutions
- Non-Reporting Financial Institutions

➤ Non-Financial Entities (NFE)

➤ Active Non-Financial Entities

- Operating companies
- Publicly traded company and its subsidiaries
- Public entity, central bank and international organization
- Holding company
- Group cash management entity
- Start-up
- Company in liquidation
- Non-profit organization being tax exempt

➤ Passive Non-Financial Entities

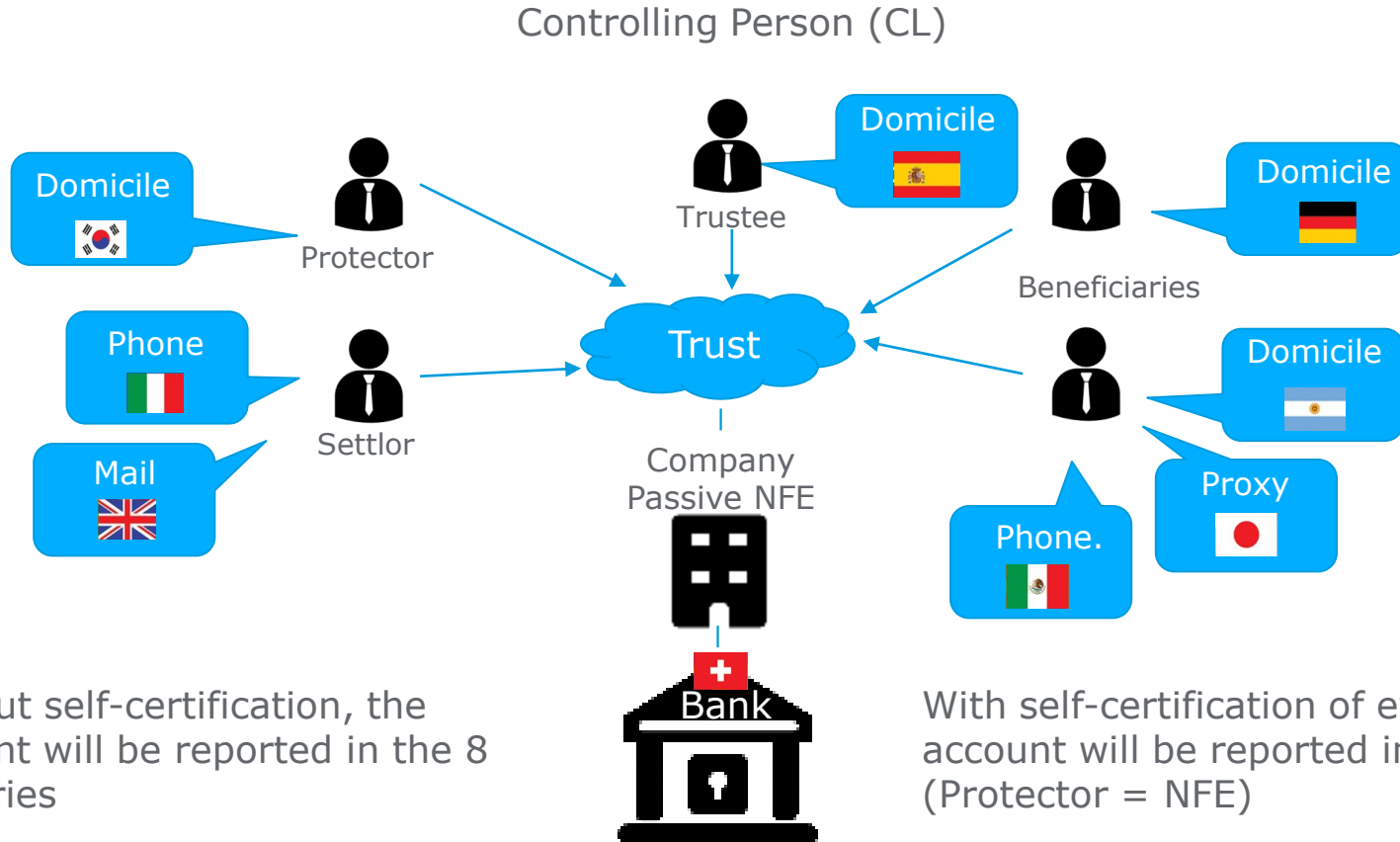
- Entity that is not an active NFE
- Type 'II' investment entity, resident company in a non-participating jurisdiction

2. The Automatic Exchange of Information

Controlling Person in Passive and Non-Financial Entity

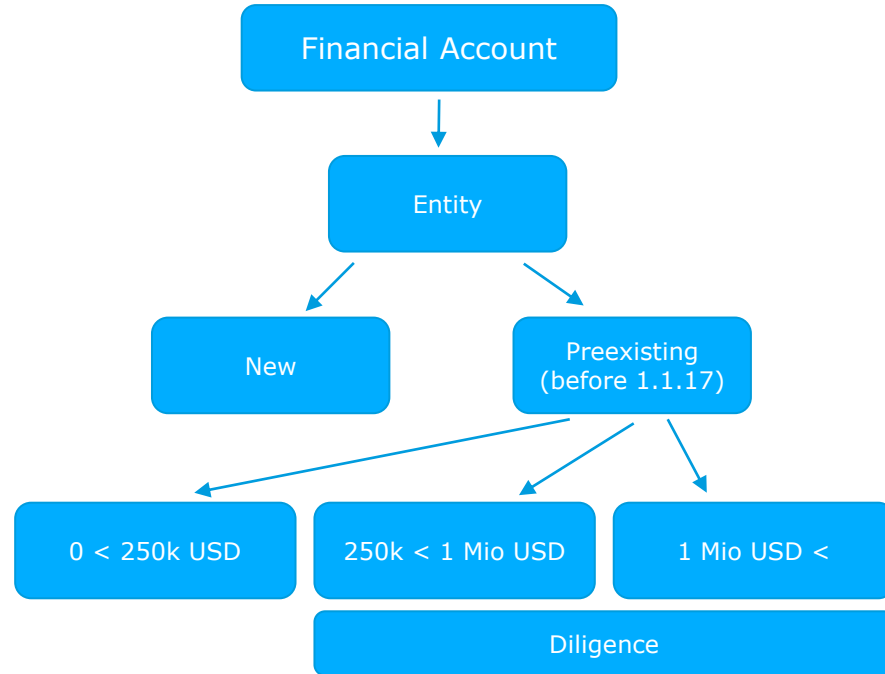
- Identification and documentation of the controlling person
- Definition of 'the controlling person' under the FATF
 - Company: controlling more than 25% of capital or persons controlling or directing the company
 - Trust or similar structure: settlor, protector, trustee and beneficiaries
- In Switzerland: AMLA et CDB
 - For the operational companies: K form to identify the holders
 - For the domiciled companies: A form to identify the beneficiaries
 - For the trust and foundation: T/S form to identify any individual

2. The Automatic Exchange of Information



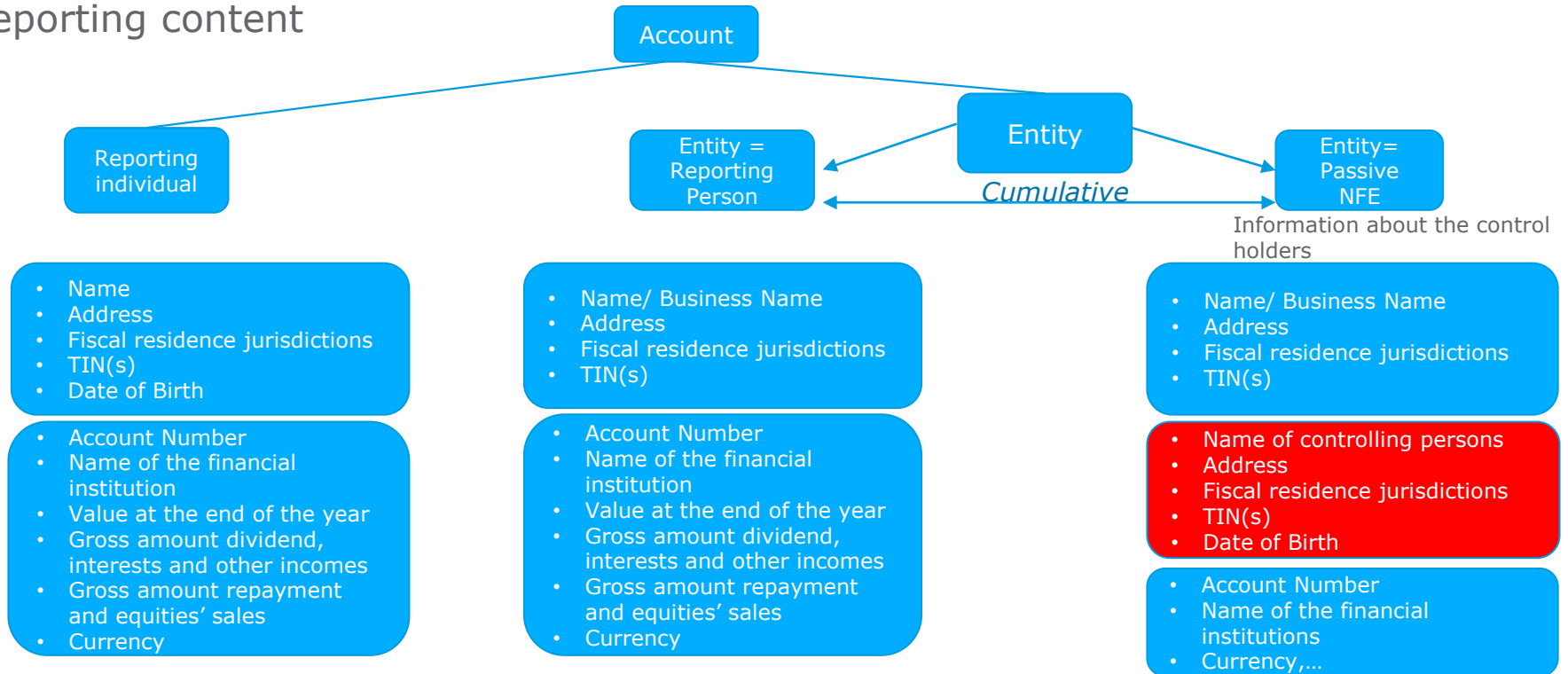
2. The Automatic Exchange of Information

Due Diligence Procedure



2. The Automatic Exchange of Information

Reporting content



2. The Automatic Exchange of Information

Diligence Obligation of Financial Institutions

- An account is considered as reportable if:
 - It is open in a declarant financial institution
 - It is subject to reporting regarding another jurisdiction
 - It is held by a passive NFE whose one or several controlling persons are subject to reporting in another jurisdiction

- Different required diligence obligations
 - Reporting obligation: reporting to the concerned jurisdiction
 - Obligation of due diligence: information relative to a reporting account must be provided during the civil year following the account identification
 - Due diligence procedure applicable to:
 - Preexisting accounts of individuals
 - New accounts of individuals
 - Preexisting accounts of entity
 - Specific rules in terms of the due diligence regarding the self-certification, the insurance, the aggregate and the conversion of the accounts

2. The Automatic Exchange of Information

Automatically Received Information

As of January 1st 2017: Enforcement of the LEAR



Article 21 LEAR :

1. For the purpose of applying and executing the Swiss fiscal law, the FTA relays information automatically received by other States to the competent Swiss authorities for assessing and collecting the taxes falling within the scope of the applicable convention. It reminds to these authorities the restrictions concerning the utilization of the received information and the obligation to maintain secrecy as provided for under the provision regulating the administrative assistance of the applicable convention.

2. The FTA relays, when the applicable convention authorizes it and the Swiss law anticipates it, the information automatically received by another State to other Swiss authorities for which those information are interesting. If required it asks for the agreement of the competent State authority that has relayed the information.



The automatically received information from foreign sources could be used in Swiss procedures for collecting taxes



A database including the fiscal identification number, the domicile, the AHV number, etc. will allow the link

1. Introduction
2. The Automatic Exchange of Information
3. **Case Studies**

3. Case Studies

Case Study I

Mister Petit is an independent worker in retail sector. During a trade mission of several months in 1991, Mr. Petit fell under the charm of South Africa and planned to return for his retirement. He decided to open an account in Standard Bank in order to deposit a portion of his income each month for his retirement. He did not consider necessary to declare this account to the Swiss authorities.

What about Mr. Petit's situation in the next few years? What factor(s) will be determinant for him and what are the risks to which he is exposed?

3. Case Studies

Case Study Solution I

What about Mr. Petit's situation in the next few years? What factor(s) will be determinant for him and what are the risks to which he is exposed?

As of 1 January 2018, the Swiss-South Africa Exchange of Information Agreement enters into force. This means that information will be exchanged as early as 2019 (collection of information in 2018).

As of 2019, information concerning South African bank accounts, including the Swiss holder, will be transferred to Swiss authorities for individuals without any minimum amount. Accounts of Entity will be identified and announced if the amount of the bank account is equal to or more than USD 250,000 in the year prior to the date of the agreement's applicability (Section V (A) MCAA, Article 9 para.1 let.d LEAR).

Thus, Mr. Petit will see the information on his South African bank account transmitted to the Swiss tax authorities as early as 2019. 10-year retroactivity, fine and interest for late payment. Self disclosure procedure possible until end of 2018, maybe more...

3. Case Studies

Case Study II

Patrick and Louis, two French residents, are the only shareholders of the company Petraque Ltd, based in London. Their company is responsible for managing their wealth. The account of the company is at UBS ZH.

Will France be informed of the company's income? If so, when and by whom? Is the tax domicile of the company determining?

3. Case Studies

Case Study Solution II

Will France be informed of the company's income? If so, when and by whom? Is the tax domicile of the company decisive?

Petraque Ltd is considered as an investment entity if it manages the assets in the name and on behalf of the French residents. Its gross income comes exclusively from an investment activity (Section VIII (A)(6) MCAA). This form of entity is thus qualified as a **financial institution**. The **company is therefore responsible** for announcing the assets it manages on behalf of the French residents to the HMRC, which will then forward the information to the French tax authorities. Thus, UBS ZH is not responsible for transmitting account information due to the status of financial institution of Petraque Ltd. **However**, if UBS identifies that Petraque Ltd is not an FI, it will have to define the persons holding control and make the necessary announcements in UK and F.

In the European Area, the transfer of information begins in 2017 for information relating to 2016.

If the company is considered as a financial institution, its tax domicile is definitely decisive for the two French residents. If not, the place of residence is not relevant.

3. Case Studies

Case Study III

Mister Stoner lived all his life in Liverpool. He founded a family with his wife Valentina with whom he had two children, Claudio and Valentino. He also set up a company through which he realized a significant profit. Mr. Stoner set up a trust in 2010 to allow his two children to benefit from his wealth.

Mr. Stoner chose to entrust the management of the trust's assets to Credit Suisse in Zurich. Claudio now lives in Paris where he manages a branch of his father's company and Valentino travels around the world as a representative for the company.

Should Credit Suisse transmit information to the FTA on the assets of the trust? If not why? If so, to which countries will the FTA transmit information?

3. Case Studies

Case Study Solution III

Should Credit Suisse transmit information to the FTA on the assets of the trust? If not why? If so, to which countries will the FTA transmit information?

The Trust is considered to be a Non-Reporting Financial Institution if the following conditions are met (Article 3 para.9 LEAR) :

1. The trustee of this trust is a reporting Financial Institution and
2. It shall communicate all the information required under the applicable agreement concerning all the declarable accounts of the trust.

In the case of a Non-Reporting Financial Institution, the persons in control are decisive. According to the MCAA, the controlling persons are the settlor, the protector, the trustee and the beneficiaries if **they last exercise effective control over the trust**. Credit Suisse will be required to provide the FTA with information relating to the trust account(s). The FTA will then communicate to the tax authorities in England, France and the country of residence of Valentino (due diligence procedure for preexisting accounts made by the financial institution (Section V MCAA)).

3. Case Studies

Case Study IV

Lebonconseil SA is a company specialized in advising on financial investments for private clients. However, it quickly decided to expand its business by also providing a wealth management service. The Pellegrino family, who was resident in Switzerland, moved to Quebec in 2012. This family decided to leave part of their assets under the management of Lebonconseil SA.

Is Lebonconseil SA considered as a financial institution? If not, what additional information would we need to have? If so, what are its obligations?

3. Case Studies

Case Study Solution IV

Is Lebonconseil SA considered as a financial institution? If not, what additional information would we need to have? If so, what are its obligations?

The qualification of Lebonconseil SA will depend on the **importance** of its wealth management activity in relation to its advisory activity. To qualify this company as a financial institution, we would have to know the composition of its income.

If wealth management represents **less than 50%** of the company's income, and therefore its consulting activity is preponderant, it will **not be considered as a financial institution** (Section VIII (A)(6)(b) MCAA).

As such, it will not be required to report to the FTA and declare the accounts of its clients.

3. Case Studies

Case Study Solution (continued) IV

If the income from wealth management activity represent more than 50% of the total income, Lebonconseil SA will be considered as an **investment entity** as its principal activity is to manage funds on behalf of its clients. Thus, it will enter the category of **reporting financial institution** and will have to make appropriate announcements to the FTA (Article 13 LEAR).

In this case, Lebonconseil SA will have to transmit the information concerning the account(s) of entities which have an amount of more than CHF 250,000 (Article 9 para.1 let.d LEAR) as well as all accounts of individuals for the countries member of the Agreement.

For the Pellegrino family, Switzerland and Canada have concluded an agreement on the exchange of information, thus the information must be transferred to the FTA. The first exchanges with this country will take place in **2018**.

Considering the 10 years limitation, it could be that Switzerland uses the information provided to correct tax returns of Pellegrino family prior to their move out of Switzerland should they have not declared the assets and income related to the account.

3. Case Studies

Case Study V

I. Goupil Holding AG is a company which owns 100% of the shares of various companies active in the manufacture of machinery in Africa. The holding company, based in Mali, has its bank account at a Swiss establishment. This holding company is wholly owned by Mr. Fenec, a German resident.

Should the Swiss bank declare the holding company's account? If so, to whom? If not why ?

II. Would the situation be the same if the company was Italian?

3. Case Studies

Case Study Solution V

I. Should the Swiss bank declare the holding company's account? If so, to whom? If not why ?

No, because the holding company is in a state that has not signed an agreement with Switzerland and it is **not a passive NFE**.

II. Would the situation be the same if the company was Italian?

No, because Switzerland has an exchange of information agreement with the EU. As a holding company, Goupil Holding AG is in principle considered an **active non-financial entity**. In this case, the persons in control must not be identified and only information related to the entity is provided. **However**, if more than **50%** of its income are passive income AND less than 50% of its assets produces passive income, then it will be considered as **a passive non-financial entity**. This qualification obliges the financial institution to identify the account and to look for information about holders of the holding company (Section V (D) MCAA).

3. Case Studies

Case Study VI

Mr. Boissard, a French citizen, has a Sàrl company in order to work as a physiotherapist. The company has a savings account of CHF 200,000, a mortgage of CHF 600,000 and a current account of CHF 150,000 in the MIGROS bank.

Should the bank provide information on these accounts? Should it obtain more information about the company?

3. Case Studies

Case Study Solution VI

Should the bank provide information on these accounts? Should it obtain more information about the company?

As we have seen, a financial institution must identify and report information about an entity account if the value exceeds CHF 250,000. However, the financial institution must take into account all aggregated accounts balances to see if they exceed CHF 250,000 (Article 9 para.1 let.d LEAR) . In addition, *an account with a balance or a negative value is deemed to be zero* (Article 12 para.1 LEAR).

The MIGROS bank will consider the company's accounts as declarable because the aggregated value of these accounts amounts to CHF 350,000. The financial institution will then provide the information to the FTA which will transmit it to the French tax authorities.

3. Case Studies

Case Study VII

Mister Xavier, of French nationality, is domiciled in Schwyz. He sells shares he owns for a total of 10 Mio. He creates a discretionary and irrevocable foundation in Liechtenstein in which he pays the entire amount. The beneficiaries are the members of his family or any other person who would need financial assistance for his/her education or to support him/herself. Mr. Xavier intends to return to France and hopes to escape the ISF. His wife who is expecting a child already lives in France.

3. Case Studies

Case Study Solution VII

The situation in Liechtenstein is similar to that in Switzerland. Indeed, the country has also signed an exchange of information agreement replacing the agreement on the taxation at source of savings.

In the present case, the Liechtenstein family foundation is to be regarded as a **passive non-financial entity** in the same way as a trust. Therefore, the financial institution owning the foundation's account will have to identify the persons in control of the foundation's account (Section V (D)(2) MCAA).

The account of the foundation exceeding 1 Mio, a thorough examination procedure will be used to identify the persons in control of the account (Section III (C) MCAA).

Thus, the account of the foundation will be considered as reportable and the due diligence procedure will identify Mr. Xavier. The account information will be announced to the French authorities by the FTA. In addition, the board of trustees will also be identified in the same way as a protector for a trust and the same information will be transferred to their respective countries of residence.



QUESTIONS?

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