



# Impact of the AEoI on Wealth Management Structures

Financial Services

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The purpose of the Automatic Exchange of Information (AEOI) is the prevention of tax evasion by holding assets abroad. The information below explains how wealth management structures and the respective involved individuals are affected by the AEOI. It is important to carefully analyze each wealth management structure in order to know the treatment under the AEOI in advance and to properly inform involved individuals about the reporting obligations.

## Structures that must report by themselves

In the near future, Financial Institutions like banks, certain types of insurance companies and Investment Entities (i.e. certain wealth management structures) are required to report by themselves under the AEOI according to the OECD Common Reporting Standard (CRS).

Trusts, foundations and domiciliary companies qualify as an Investment Entity

- if they manage Financial Assets for a customer or
  - if their assets are “managed” by another entity that qualifies as Financial Institution (including Investment Entities, “[Managed By Test](#)”), provided that the gross income of the wealth management structure is primarily (to at least 50%) attributable to investing, reinvesting, or trading in Financial Assets (“[Gross Income Test](#)”).
- Financial Assets are all kind of bankable assets, including participations in underlying companies, but not for example, direct interests in real estate.

With respect to the Managed By Test, it is furthermore required that the other Financial Institution (e.g. asset manager or a bank) has discretionary authority to manage the assets of the wealth management structure. This is generally given if there is a discretionary asset management mandate with a bank/asset manager or if there is a corporate board member, director or trustee that qualifies as Financial Institution (including Investment Entity). If employees of a fiduciary/trust company act in their own name as trustee/director, it is still assumed for AEOI purposes that the fiduciary/trust company acts as trustee/director, unless the employees act at their own risk.

## Reporting obligations for structures that qualify as an Investment Entity

Investment entities (e.g. wealth management structures that fulfil the Entity Managed By and the Gross Income Test) are required to report the persons that are holding an equity or debt interest in the Investment Entity.

### Companies

With respect to a company, individuals ultimately holding at least 25% of the shares must be treated as holding an equity interest for AEOI purposes.

If there is no natural person(s) controlling through ownership interests, the equity interest holders of the entity will be the natural person(s) who controls the entity through other means. If there is no natural person(s) identified as exercising control of the entity at all, the equity interest holder(s) of the entity will be the natural person(s) who holds the position of senior managing official.

### Trusts or foundations

In the case of a trust or a foundation which is an Investment Entity, an equity interest is considered to be held by any person treated as a settlor/founder or beneficiary of all or a portion of the trust/foundation assets, or any other natural person exercising ultimate effective control over the trust/foundation.

The discretionary beneficiaries are only required to be reported in the years they receive a distribution. Furthermore, only the amount of the distribution needs to be reported (and not the full income/balance of the account).

Additionally, the trustees/board members and the protectors need to be reported by the Investment Entity.

# Treatment as Non-Financial Entity (NFE)

Structures that do not qualify as an Investment Entity (Financial Institution) will be considered to be NFEs (Non-Financial Entities). There are two types of NFEs under the CRS – Active and Passive NFEs.

## Active NFE

Active NFEs would be in particular entities which meet the following criteria:

- less than 50% of the entity's gross income is passive income and less than 50% of the assets held by the entity are assets that produce or are held for the production of passive income; and
- certain tax exempt charitable organizations.

Most wealth management structures will not fulfill these criteria for the qualification as Active NFE and will therefore qualify as Passive NFE (except certain charitable structures).

## Passive NFE

Passive NFE means on the one hand any NFE which does not qualify as Active NFE, and on the other hand, an Investment Entity that is not resident in a Participating Jurisdiction. In this context the term Participating Jurisdiction includes:

- The jurisdiction with which the country of domicile of the bank has signed an AEoI agreement (from a Swiss point of view the EU-member countries, Australia, Canada, Japan, Jersey, Guernsey, the Isle of Man, Iceland, Norway and South Korea as from 2017).
- The jurisdiction in which the bank managing the account for the Investment Entity is domiciled (e.g. a Swiss bank is not required to treat a Swiss Investment Entity as Passive NFE).
- Local AEoI implementation legislation may provide for a broader definition of the term Participating Jurisdiction that would also include states with which there is no AEoI agreement in place, but which generally have committed to implement the AEoI. According to Article 1 of the draft AEoI Ordinance, Participating Jurisdictions for this purpose are deemed to be not only the countries with which Switzerland has concluded AEoI agreements, but also all of the about 100 countries which have agreed to implement the AEoI, as well as the USA. However, the USA may not anymore be included in the final version of the AEoI Ordinance as Participating Jurisdiction. 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 AEoI to Germany, even though the USA does not implement the AEoI and under FATCA only transmits limited data.

Financial Institutions managing accounts for Active or Passive NFEs will have to report the entity to its country of residence. In respect of a Passive NFE, also the Controlling Persons will need to be identified and reported to their country of residence.

# Controlling persons of Passive NFEs

With respect to legal persons, individuals ultimately holding at least 25% of the shares must be treated as Controlling Person(s) for AEoI purposes.

Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of a trust/foundation, the settlors/founders, the trustees/board members, the protectors, and the beneficiaries must always be treated as Controlling Persons of a trust/foundation, regardless of whether or not any of them exercises control over the trust/foundation.

Furthermore, beneficiaries known by name must generally be reported by the banks irrespective of whether they receive any distributions (contrary to the Investment Entities that are only required to report discretionary beneficiaries with respect to the years they receive any distributions and only the amount of the distribution). The Swiss AEoI law and the draft Swiss Guidance Notes contain, however, an exception with respect to discretionary beneficiaries, which also allow the banks to report the beneficiaries only regarding the years they receive distributions.

# It is now time to analyze wealth management structures

The AEoI already entered into force on 1 January 2016 in the EU member countries (without Austria) as well as Liechtenstein. Furthermore, it will enter into force in Switzerland on 1 January 2017. It is hence the right time to analyze wealth management structures from an AEoI point of view.

# How can KPMG support you?

KPMG's Regulatory Competence Center has managed to prove itself as one of the top advisors on AEoI matters. Our broad experience allows us advising individuals, fiduciary companies, asset managers and wealth management structures with the same level of commitment and understanding of client's needs. KPMG's network enables us to provide international solutions, calling on our in-house specialists in the countries of residence of the individuals involved in the wealth management structures.

Our analysis of wealth management structures includes:

- Determining whether the structure is an Investment Entity (Financial Institution) and accordingly required to report by itself under the AEoI
- Analysis of the reporting obligations
- Identifying the persons to be reported by the structure as equity/debt interest holder and/or by the bank managing the accounts as Controlling Persons
- Support regarding the AEoI documentation requested by the banks
- Analysis of the tax obligations of the involved individuals
- Analysis of the financial and other consequences in case of a voluntary disclosure of the participation in a wealth management structure



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