



Tax Transparency

How are you affected by the AEOI, OECD/EU MDR (DAC6) and the UBO Registers?





Overview

The introduction of the US Foreign Account Tax Compliance Act (FATCA) in 2014 laid the basis for a new era of global tax transparency. FATCA was followed by the Automatic Exchange of Information (AEOI, CRS), introduced by the OECD in 2016/2017. Further, in March 2018, the OECD implemented the “Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures” (OECD MDR). A few months later, the EU enacted a directive regarding the introduction of mandatory disclosure rules in relation to reportable cross-border arrangements (EU MDR/DAC6). In parallel, the OECD launched a further initiative called “Preventing abuse of residence by investment schemes to circumvent the CRS”, aimed at fictitious tax residences based on investments. Besides these initiatives, the Ultimate Beneficial Owner Registers (UBO Registers), the offshore substance requirements and (group) requests for administrative assistance lead to further tax transparency.

Tax Transparency

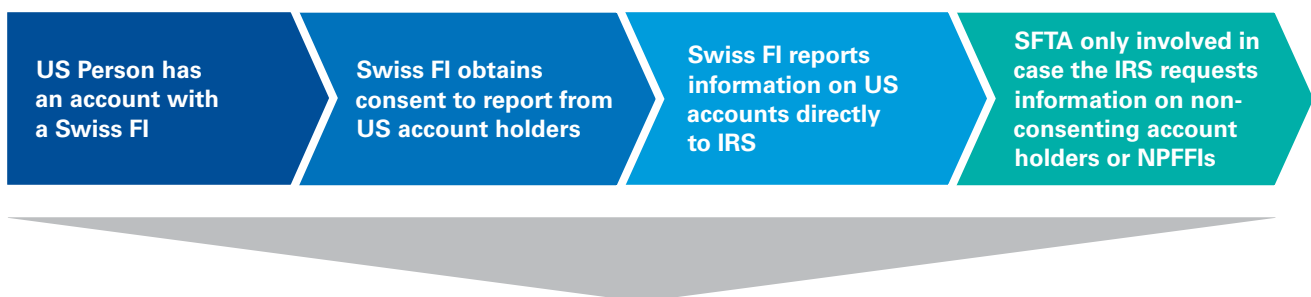


1 The US Foreign Account Tax Compliance Act (FATCA)

1.1 Introduction

In an effort to combat tax evasion, the HIRE Act was signed into law by the US government on 18 March 2010. The HIRE Act contained the Foreign Account Tax Compliance Act ("FATCA"), which introduced a new reporting regime aimed at the disclosure of US persons with accounts and investments outside the US.

FATCA requires Swiss Financial Institutions ("FIs") to comply with far-reaching documentation, withholding and reporting obligations with respect to financial accounts held directly or indirectly by U.S. persons. Swiss financial institutions must further carry out a periodic review of their FATCA compliance program and confirm their compliance with the FATCA regulations to the U.S. Internal Revenue Service IRS every three years.



1.2 FATCA requirements

The most important FATCA requirements for Swiss FIs include:

- Entity classification
- Documentation & due diligence requirements to identify US accounts
- Annual reporting of all US accounts
- 30% FATCA withholding on withholdable payments to:
 - Non-participating FFIs; and
 - "recalcitrant" account holders (i.e. non-consenting account holders where exchange of information according to para. 7.2 of IGA-CH does not occur)
- Ongoing monitoring requirements
- A comprehensive FATCA compliance framework, including adequate policies and procedures

- Regular FATCA training for employees
- FATCA Periodic Reviews every 3 years, and a corresponding certification of FATCA compliance by the Responsible Officer

1.3 How are Swiss trust companies affected?

For Swiss trust companies and fiduciaries, it is essential to ensure that all their entities are correctly classified under FATCA, that all account holders of each entity (incl. settlors, protectors and beneficiaries of trusts) are identified, documented and, where they are US persons, reported. Another challenge is to ensure that a periodic review is conducted for all entities (incl. sponsored entities and trustee-documented trusts) resident in a Model 2 IGA jurisdiction such as Switzerland and a certification by the Responsible Officer is performed.

1.4 Conclusion

- FATCA contains complex entity classification, documentation, due diligence, reporting and potential withholding obligations.
- In order to comply with these obligations, Swiss FIs need to ensure they have policies and procedures in place that define appropriate processes and responsibilities for the due diligence, reporting, ongoing monitoring and compliance requirements under FATCA.
- Further, Swiss FIs need to ensure they comply with the requirement to perform a periodic review as part of the Responsible Officer certification every 3 years.

2 The Automatic Exchange of Information (AEOI)

2.1 Introduction

In the so-called early adopter countries, the AEOI already entered into force on 1 January 2016. Most other countries, including Switzerland, have implemented the AEOI as at 1 January 2017. As of August 2020, approximately 4,200









bilateral exchange relationships have been activated with respect to more than 100 jurisdictions that provide for an information exchange in each September¹.

AEOI Partner Jurisdictions of Switzerland















First exchange in 2018 regarding 2017

 Australia	 Iceland
 Canada	 Japan
 EU Member States	 Jersey
 Gibraltar	 Norway
 Guernsey	 South Korea
 Isle of Man	 United Kingdom












First exchange in 2019 regarding 2018

 Andorra	 Liechtenstein
 Argentina	 Malaysia
 Barbados	 Mauritius
 Belize	 Mexico
 Bermuda ¹	 Monaco
 Brazil	 Montserrat
 BVI ¹	 New Zealand
 Cayman Islands ¹	 Russia
 Chile	 Saint Kitts and Nevis
 China	 Saint Lucia
 Colombia	 Saint Vincent and the Grenadines
 Cook Islands	 San Marino
 Costa Rica	 Saudi-Arabia
 Curaçao	 Seychelles
 Faroe Islands	 Singapore
 Greenland	 South Africa
 Hong Kong	 Turks- and Caicos Islands ¹
 India	 Uruguay
 Indonesia	






First exchange in 2020 regarding 2019

 Anguilla ¹	 Kuwait ¹
 Aruba	 Marshall Islands ¹
 Bahamas ¹	 Nauru ¹
 Bahrain ¹	 Panama
 Bonaire	 Saba
 Grenada	 Saint Eustatius
 Israel	 United Arab Emirates ¹

First exchange in 2021 regarding 2020

 Antigua and Barbuda	 Pakistan
 Azerbaijan	 Qatar ¹
 Dominica	 Samoa
 Ghana	 Trinidad and Tobago
 Lebanon	 Vanuatu ¹
 Macao	

First exchange in 2022 regarding 2021

 Albania ¹	 Peru
 Brunei Darussalam ¹	 Turkey
 Nigeria ¹	

¹⁾ "Non-reciprocal jurisdictions"; i. e. they will supply account information to Switzerland, but will not receive such data from Switzerland. Source: <https://www.sif.admin.ch>

2.2 Who is affected?

2.2.1 General remarks

Under the AEOI, not only individuals holding reportable accounts are affected but also entities, including trusts and foundations. Furthermore, depending on the status of the entity, the bank managing the accounts is also required to report the controlling persons (in case of Passive Non-Financial Entities, NFE) or the entity itself is required to report under the AEOI (if it qualifies as a financial institution, in particular as investment entity).

Particularly, it is important to note that wealth management structures qualifying as investment entities (including their controlling persons) are not reported by the account managing bank, as these entities must report their equity and debt interest holders by themselves.

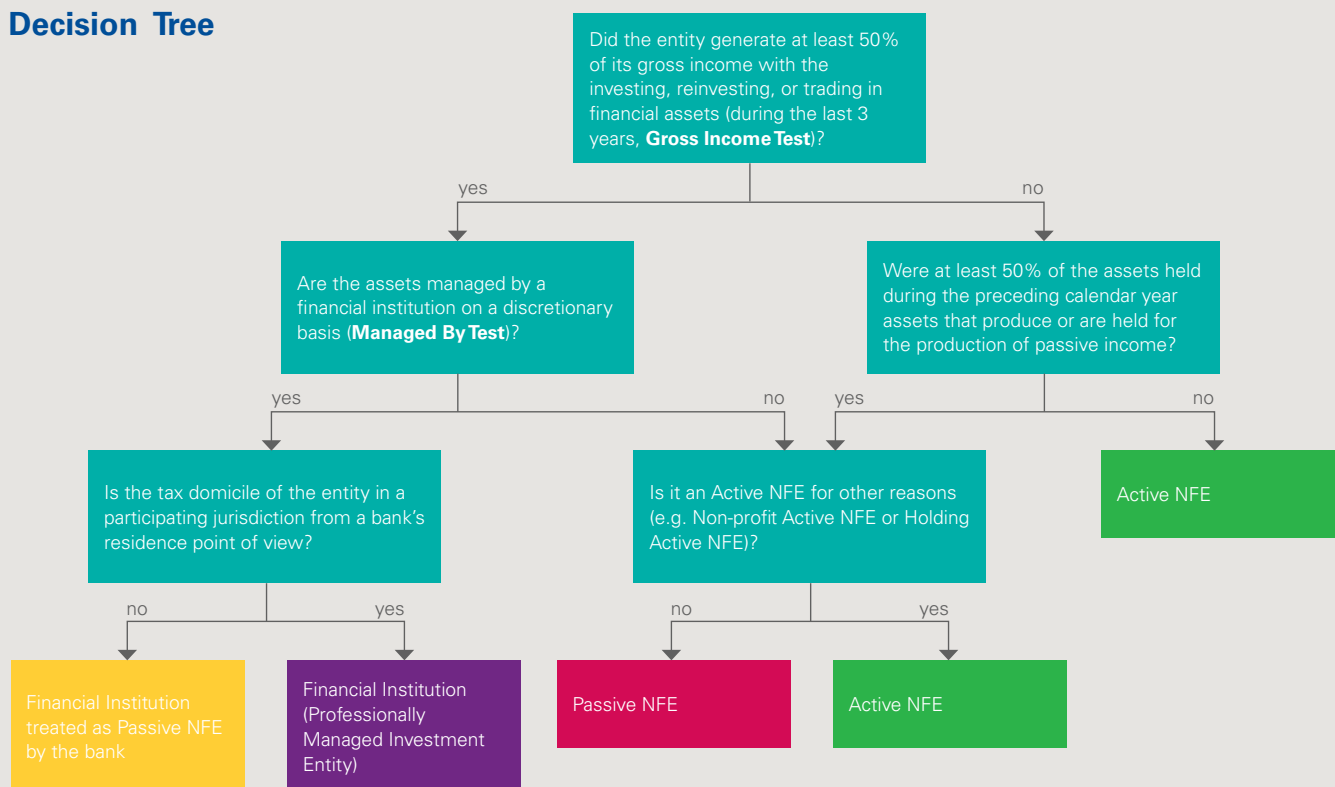
¹ <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>

However, there is one exception to this rule: if the investment entity is domiciled in a non-participating jurisdiction from a bank's jurisdiction point of view, the investment entity must be treated by the bank as a Passive NFE and accordingly, the bank must report the respective controlling persons.

2.2.2 Classification of entities

As the AEoI reporting obligations depend on the status of the entity, each entity needs to classify itself as Active/Passive NFE or as financial institution. The classification of wealth management structures can be made based on the following decision tree²:

Decision Tree



Based on our experiences, in particular some smaller wealth management structures have not realized that they could qualify as investment entity and as a consequence, need to report under the AEoI by themselves. This is also illustrated in the following example:

- A trust with an individual trustee resident in Jersey holds an account with a bank in the USA worth USD 1m and an annual investment income of USD 15,000. The US bank was entrusted with a discretionary asset management mandate.

- As the Gross Income Test (100% investment income) and the Managed By Test (a financial institution has discretionary authority over the assets) are given, the trust qualifies as investment entity. As a consequence, the trustee needs to report the equity interest holders (e.g. settlor, protector, discretionary beneficiaries receiving distributions) and the debt interest holders (persons that granted a loan to the trust) under the AEoI.



² Not covered by the decision tree are: Depository Institutions, Custodial Institutions, Specified Insurance Companies as well as "Type A" Investment Entities (e.g. external asset managers). Furthermore, a Holding Active NFE does not qualify as Investment Entity, even the Gross Income Test and Managed By Test are met.

The trustee in the example above cannot burden the bank with complying with the AEol's reporting obligations but has to comply with them himself. The only available option for the trustee would be to commission an advisor to handle the AEol obligations. Non-compliance with the AEol reporting obligations could lead to significant

penalties, depending on the regulations in the country of residence of the entity. Furthermore, the persons involved in wealth management structures must also be aware that the information to be reported may differ considerably depending on the status of the entity. This is shown in the following example:

Example

- Trust set up by Mr. Smith
- Beneficiary is his son, who received a distribution of USD 10,000
- The assets consist of a bank deposit (USD 10m) and an art collection (USD 20m)
- The income of the trust consists of USD 1m in interest income, dividends and gross proceeds from sales

	Reporting of the settlor must include	Reporting of the beneficiary must include
 <p>Trust is not an investment entity (Passive NFE): reporting done by the bank</p> <p>A</p>	<ul style="list-style-type: none"> – the bank deposit of USD 10m – the total income of USD 1m 	<ul style="list-style-type: none"> – the bank deposit of USD 10m – the total income of USD 1m
 <p>Trust is an investment entity: reporting done by the trust</p> <p>B</p>	<ul style="list-style-type: none"> – the trust's total value of USD 30m 	<ul style="list-style-type: none"> – the distribution of USD 10,000

At least in some countries, it can be argued that a non-controlling settlor can be reported by a trust qualifying as investment entity with a balance of zero. Furthermore, there are discussions in some countries whether a non-controlling protector is reportable too, or whether at least a nil value reporting is possible with respect to such protector. On the other hand, banks are always required to report the total values regarding all reportable persons, e.g. even in a joint account or regarding several controlling persons of a Passive NFE.

2.3 Conclusion

With the exception of the USA (where FATCA applies), the AEol is in force globally. Irrespective of this transparency, depending on the specific facts and circumstances of the case, other information is reportable by different persons. Therefore, we highly advise everyone involved in wealth management structures to deal in detail with the AEol and its implications for the involved individuals.

3 Group requests for administrative assistance

3.1 Introduction

Under the AEOI, account holders are automatically reported to their country of residence. However, such reporting only includes the year-end balance as well as the gross income. On the other hand, the reporting does not include any information regarding specific payments over the account or any correspondence between the reportable person and the financial institution. Furthermore, the AEOI only entered into force in the year 2016 in the first countries.

Therefore, and irrespective of the AEOI, foreign tax authorities may obtain data of (former) clients of banks, insurance companies or, for example, fiduciary firms by submitting a so-called (group) request for administrative assistance. The legal basis for group requests is provided by the OECD's decision of 17 July 2012 to update Article 26 of the OECD Model Tax Convention to extend administrative assistance requests to groups. This means that tax authorities are able to ask for information on a group of taxpayers, without naming them individually, as long as the request is not a "fishing expedition".

³ <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.html>

3.2 Who is affected?

In particular, the following requirements have to be met for administrative assistance to be granted based on a group request:

- A specific request for the assistance by the country in question; and
- a detailed description of the group of the affected taxpayers with a clear and fact-based justification on the grounds that the taxpayers falling into the group are generally not tax-compliant (e.g. clients who closed an account against cash in order to escape the AEOI or clients that have not confirmed their tax compliance to the bank when asked to do so); and
- a Double Taxation Agreement (DTA) or Tax Information Exchange Agreement (TIEA) with a clause on administrative assistance in line with the OECD standard providing for group requests; or
- alternatively, a group request can be based on the OECD Convention on Mutual Administrative Assistance in Tax Matters. Already 141 jurisdictions participate in the Convention, including for example Brazil, Argentina, Russia, BVI and Panama³.



The following example illustrates the workings of the group requests for administrative assistance:

The group request placed by the Netherlands

After the closure of the Dutch voluntary disclosure program, the Dutch tax authorities tried to obtain the names of persons who neither fulfilled their tax obligations nor participated in the voluntary disclosure program. In a first step, the Netherlands submitted a group request relating to unnamed UBS clients to the Swiss Federal Tax Administration in July 2015. In principle, the clients domiciled in the Netherlands, who had held an account with UBS in Switzerland between 1 February 2013 and 31 December 2014 and who had the specific characteristics listed below were affected by this first Dutch group request:

- UBS had sent the client in question a letter where they were told that their account would be closed unless the client could prove his or her tax compliance; and,
- the client did not prove his or her tax compliance to UBS.

This group request was accepted by the Swiss Federal Court. The Swiss Federal Court in particular checked whether this group request could be considered a legitimate group request or a fishing expedition, which would not have been permitted. Despite the fact that the definition of group in the request for administrative assistance concerned went quite far, the Swiss Federal Supreme Court judged that it is not an inadmissible fishing expedition.

Also a request from France that was only based on account numbers was accepted by the Swiss Federal Supreme Court.

Accordingly, we expect a number of other states to follow the example set by the Netherlands and to address Switzerland and other countries with similar group requests, such as Italy did earlier this year. At this time, it remains to be seen which additional countries will place similar requests.

// If an individual moves to another country, the country of departure may demand data on the emigrating taxpayer from the country of destination by means of administrative assistance. //

3.3 Conclusion

The Dutch group request mentioned above proved how far-reaching group requests can be. Whilst we expect that other countries will follow this example, it remains to be seen which countries will target which banks with group requests in the future.

Furthermore, countries are increasingly asking for information from other countries through such requests for administrative assistance regarding specific taxpayers under investigation. We have recently seen several cases such as the following: A taxpayer moved several years ago from Sweden to Switzerland. The Swedish tax authority claims that the taxpayer is still tax resident in Sweden. As the taxpayer does not agree with this view, he does not provide the Swedish tax authorities with detailed information about his foreign income and assets. The Swedish tax authority requested through an administrative assistance request from Switzerland information about his Swiss bank accounts as well as the taxable income declared in his Swiss tax returns.

4 OECD Mandatory Disclosure Rules

4.1 Introduction

On 8 March 2018, the OECD issued the “Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures”. The purpose is twofold:

- provide tax administrations with intelligence on the arrangements that circumvent the CRS (“CRS Avoidance Arrangements”) and on structures that disguise the beneficial owners of assets held offshore (“Opaque Offshore Structures”); and,
- act as a deterrent against the design, marketing and use of these arrangements and schemes and bolster the overall integrity of the CRS.

The OECD expects that the new rules will be implemented by all financial centers, and many countries are considering their introduction. Thus, for the application of the OECD MDRs, the respective countries first must have

implemented the new rules in their respective domestic laws. Please see section 4 below for similar rules implemented in the EU.

Following the Brexit, the UK has announced to implement these OECD rules instead of DAC6, the respective EU rules.

4.2 Who is affected?

Once the OECD MDRs are in force, the new rules require

- i. all intermediaries (i.e. promoters, service providers) in respect of
- ii. an arrangement, which has the hallmarks of a “**CRS Avoidance Arrangement**” or “**Opaque Offshore Structure**”,
- iii. to disclose certain information (including the names of the clients/beneficiaries) on that arrangement or structure to the tax authorities.

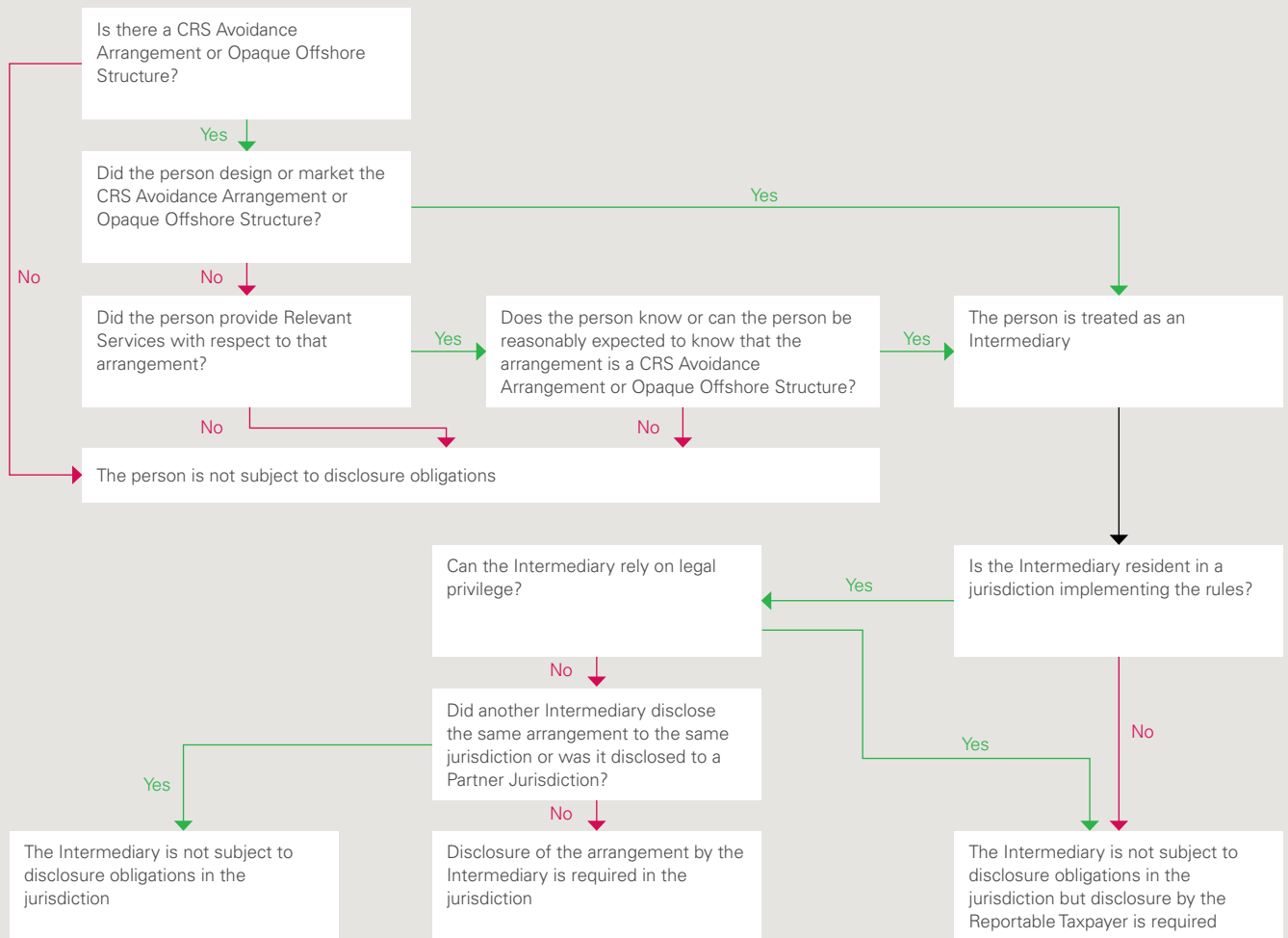
CRS Avoidance Arrangements are specified as arrangements that are designed to, marketed as or have the effect of circumventing the CRS, i.e. where it avoids the reporting of CRS information to all jurisdictions of tax residence of the taxpayers in a way that undermines the policy intent of the CRS. Examples of arrangements that are in particular covered by these rules are:

- Offering financial products or investments that provide the investor with the core functionality of a financial account but which include features that are designed to take it outside the definition of a financial account (e.g. the use of e-money);
- arrangements to transfer the assets held in financial accounts outside of the CRS scope (e.g. moving funds to a bank in a non-participating jurisdiction);
- arrangements to exploit weaknesses in due diligence procedures used by financial institutions to identify the account holder and/or controlling person and their actual country of tax residence, leading to an inaccurate or incomplete reporting;
- arrangements to qualify an entity as an Active NFE to take advantage of the fact that an Active NFE is not subject to disclosure or reporting obligations with respect to its controlling persons (e.g. advising a client to increase the stake of assets held in an entity to qualify as Holding Active NFE).

Opaque Offshore Structures are defined as structures that involve the use of passive vehicles that are designed to, marketed as or have the effect of disguising the identity of the beneficial owners. This could include the use of nominee shareholders, the exercise of indirect control over entities or the use of jurisdictions with weak rules for the identification of beneficial owners.

The operation of the new rules for a particular jurisdiction is illustrated in the following flowchart⁴.

⁴ Based on the OECD Q&A on the MDRs: <http://www.oecd.org/tax/exchange-of-tax-information/mandatory-disclosure-rules-questions-and-answers.pdf>.



4.3 Conclusion

Whilst the EU has already implemented similar rules that require a disclosure of certain cross-border arrangements, it remains to be seen when the OECD MDRs enter into force in which countries. Following the Brexit, the UK will implement the OECD MDRs (instead of the DAC6). Additional countries are considering implementing these rules, including Jersey, Guernsey, Isle of Man, Cayman Islands, Bermuda, Bahamas, Barbados and the United Arab Emirates.

Overall, these rules will lead to further transparency, even if the respective arrangement does not lead to any tax avoidance.

5 EU Mandatory Disclosure Rules for Intermediaries (“DAC6”)

5.1 Introduction

As already mentioned, the EU reached an agreement on a similar initiative, the Directive on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6 or EU MDR⁵).

This Directive came into force on 25 June 2018. The EU member states are obliged to transpose the Directive into local law by 31 December 2019 and to apply the rules from 1 July 2020. Certain cross-border tax planning arrangements are, however, already reportable according to the Directive, provided the first step of the arrangement was implemented as from 25 June 2018 (entry into force) and 1 July 2020. Information on reportable cross-border arrangements which were implemented during this transition phase are then to be submitted to the tax authorities by 31 August 2020.

However, EU member states were allowed to defer the reporting deadlines by 6 months in view of the pandemic. Whilst most EU countries deferred the reporting deadlines by 6 months, Finland and Germany decided to stick to the initial reporting deadlines. In Austria, the first reporting was due in October 2020.

5.2 Who is affected?

5.2.1 Cross-border arrangements

The disclosure requirement set out in the Directive is limited to cross-border arrangements. These are arrangements that involve either more than one EU member state or a member state and a third country. An arrangement is deemed to be reportable if it contains at least one of the hallmarks set out in the Directive. Moreover, the main benefit test must be satisfied if certain hallmarks are found. The main benefit test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

The Directive provides for the following hallmarks:

A) Generic hallmarks linked to the main benefit test

- 1) The taxpayer undertakes to comply with a confidentiality condition (in relation to other intermediaries or the tax authorities).
- 2) The intermediary is entitled to a fee contingent on either the amount of tax advantage derived from the arrangement or on the advantage being obtained.
- 3) Standardized documentation (incl. standard forms) is used.

B) Specific hallmarks linked to the main benefit test

- 1) A participant in the arrangement takes contrived steps which consist in acquiring a lossmaking company, discontinuing the main activity of such company and using its losses.
- 2) An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
- 3) An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function.

C) Specific hallmarks related to cross-border transactions (only the hallmarks b(i), c and d are subject to the main benefit test)

- 1) An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
 - a) the recipient is not resident for tax purposes in any tax jurisdiction;
 - b) the recipient is resident for tax purposes in a jurisdiction that:
 - i. does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
 - ii. has been black listed by the EU or OECD.
 - c) The payment benefits from a full exemption from tax in the recipient's jurisdiction;
 - d) The payment benefits from a preferential tax regime
- 2) The same asset is subject to depreciation in two or more jurisdictions.
- 3) Relief from double taxation is claimed in different jurisdictions in respect of the same item of income or capital.
- 4) An arrangement that includes transfers of assets and there is a material difference in the amount of consideration paid.

D) Specific hallmarks concerning automatic exchange of information and beneficial ownership (not subject to the main benefit test)

- 1) An arrangement which may have the effect of undermining the Automatic Exchange of Information (AEOI, CRS) reporting obligations.
- 2) An arrangement involving a non-transparent legal or beneficial ownership chain.

E) Specific hallmarks concerning transfer pricing (not subject to the main benefit test)

- 1) Arrangements which involve the use of unilateral safe harbor rules.
- 2) Arrangements involving the transfer of hard-to-value intangibles.
- 3) Arrangements involving an intra-group cross-border transfer of functions, and/or risks, and/or assets, where the transfer results in a decline of 50% or more of the projected EBIT in the transferring jurisdiction, over a period of three years.

The primary reporting obligation under DAC6 lies with the intermediary. In the following cases, however, the reporting obligation shifts to the taxpayer:

- The intermediary is exempt by virtue of legal professional privilege or
- There is no EU intermediary

Accordingly, if there is no intermediary involved, in particular in case of in-house arrangements, the reporting obligations are with the EU taxpayer (individual or company).

5.2.2 What information is disclosed?

The information to be disclosed includes, among others, the following:

- Identification of intermediary and taxpayer including their name;
- details of the hallmarks that make the cross-border arrangement reportable;
- a summary of the content of the reportable cross-border arrangement;
- the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- details of the national provisions that form the basis of the reportable cross-border arrangement;
- the value of the reportable cross-border arrangement.

⁵ Directive 2018/822/EU of 25 May 2018 amending Directive 2011/16/EU.

5.3 Conclusion

While the OECD MDR focus on the circumvention of the AEOI, the EU MDRs have a much broader scope and affect many cross-border tax planning structures, even if they are fully in line with the local tax regulations.

All relevant arrangements are required to be reported back to 25 June 2018. Intermediaries and companies are required to implement procedures to detect such arrangements now, in order to be in a position to efficiently report such historic and future arrangements.

Intermediaries resident outside of the EU are also required to deal with these rules in detail, as the EU taxpayers could be reported by another EU resident intermediary or the EU taxpayers are required to do the reporting by themselves in absence of an EU resident intermediary. The new rules do not only affect intermediaries providing aggressive tax advice, but also a number of intra-group transactions that fall under a hallmark. As mentioned above, the hallmarks are very broadly drafted and do not only catch aggressive tax planning schemes, but also many ordinary transactions between related companies.

6 OECD initiative against fictional residences

6.1 Introduction

Under the AEoI, account holders or controlling persons of Passive NFEs have to be reported to their tax residences. Accordingly, in order for the AEoI to be effective, it is imperative that the reportable persons are reported to the country where they hold their actual tax residence. In seeking to close additional loopholes to circumvent the AEoI, the OECD launched a further initiative called "Preventing abuse of residence by investment schemes to circumvent the CRS," aimed at tax residences based on investments.

The launch of the initiative against fictional residences occurred in view of the fact that in some countries it is possible to obtain a residence permit (and thus a tax residence) or even citizenship by investing there. This is problematic insofar as a tax residence based on an investment could be used to circumvent the AEoI, namely in the case if residency was not actually necessary in order to establish one's tax residence. However, in the case that the person in question actually moves to this country, the investment is no longer of any relevance. Also there is no risk of a circumvention of the AEoI in the case of obtaining a citizenship by investing, as the AEoI is not based on citizenship.

6.2 Who is affected by these rules?

According to the OECD, potentially high-risk Citizenship by Investment (CBI) and Residence by Investment (RBI) schemes are those that give access to a low personal tax rate on income from foreign financial assets and do not require an individual to spend a significant amount of time in the jurisdiction offering the scheme. Such schemes, according to OECD research, are currently operated by Antigua and Barbuda, The Bahamas, Bahrain, Barbados, Cyprus, Dominica, Grenada, Malta, Qatar, Saint Kitts and

Nevis, Saint Lucia, Seychelles, Turks and Caicos Islands, United Arab Emirates and Vanuatu (as of 20 November 2020).

Together with the results of the analysis, the OECD has also published FAQs that will enable financial institutions to identify and prevent CRS avoidance through the use of such schemes. In particular, the OECD expects that financial institutions consider raising further questions if a client is resident in one of the above mentioned countries:

- Did the client obtain residence rights under a CBI/RBI scheme?
- Does the client hold residence rights in any other jurisdiction(s)?
- Did the client spend more than 90 days in any other jurisdiction(s) during the previous year?
- In which jurisdiction(s) has the client filed personal income tax returns during the previous year?

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The responses to the above questions should assist financial institutions in ascertaining whether the provided AEoI self-certification is incorrect or unreliable.

This OECD initiative has an impact on financial institutions as well as the countries that offer residence permits based on investments.

- For financial institutions, this will mean that they will have to investigate more carefully whether the self-declared tax residence is indeed correct. This especially applies when a client is resident in one of the above mentioned countries.
- Countries will be under pressure to reconsider their frameworks and start issuing tax residence certificates, only for the individuals who are actually "living" in the respective country.

6.3 Conclusion

Irrespective of this initiative, financial institutions should ensure that they have documented the effective tax residence for all their clients. In particular, even if the client provides a tax residence certificate, the financial institution should check whether the claimed tax residence is reasonable.

On the other hand, countries have also the option of directly targeting those who move away. In practice, we have already seen cases where the country of departure has demanded data on the emigrating taxpayer from the country of destination by means of administrative assistance.

7 The Beneficial Ownership Register (“UBO Register”)

7.1 Introduction

On 5 July 2015 the European Union (EU) published the 4th Anti Money Laundering Directive (AMLD4). The directive aims to prevent the use of the financial system of the EU for money laundering and terrorist financing. According to the AMLD4, the member states had approximately two years to implement a beneficial ownership register (UBO Register) into their respective national law.

The UBO Register is a country-specific central register that contains beneficial owners of companies, trusts, foundations as well as other legal arrangements similar to trusts. A member state can also decide to make the UBO Register public.

In the case of corporate entities, the beneficial owner is defined as the natural person who ultimately owns or controls, directly or indirectly, more than 25% of the shares or voting rights, or controls the entity through other means.

With regards to trusts and other legal arrangements similar to trusts, the trustees must file the details mentioned below in the UBO Register of the following persons:

- Settlor;
- Trustee;
- Protector (if any);
- Beneficiaries or the class of beneficiaries; and
- any other person who has ultimate control over the entity.

7.2 Who is affected

At least the following information about the above mentioned persons must be included in the UBO Register, whilst some countries provide for additional information that must be reported:

- Name;
- Month of birth;
- Nationality;
- Country of residence; and
- Nature and size of the beneficial interest held by the beneficial owner.

7.3 Who has access to the register?

Upon the introduction of the 4th EU Anti-Money Laundering Directive, the EU member states had to introduce UBO registers in 2017. At that time, however, the EU states were not obliged to make the UBO Registers publicly accessible. Only persons with a legitimate interest had access to the registers.

Based on the 5th EU Money Laundering Directive which came into force in July 2018, the EU member states had to make the UBO registers publicly accessible by the beginning of 2020. However, a legitimate interest is still required in order to be able to access the UBO registers for information on trusts and the like.

While in some member-states there is direct internet access to the UBO registers (e.g. in the UK), in other states access is more difficult.

7.4 Conclusion

Both the AMLD4 and the AMLD5 have increased transparency within the EU. Furthermore, there are other countries around the world with a similar UBO register, e.g. the BVI, Singapore, Liechtenstein, Panama or New Zealand.

Furthermore, for example in the BVI, Cayman Islands, Isle of Man, Guernsey and Jersey, these registers will likely become publicly available as of 2023.

8 Offshore Substance Requirements

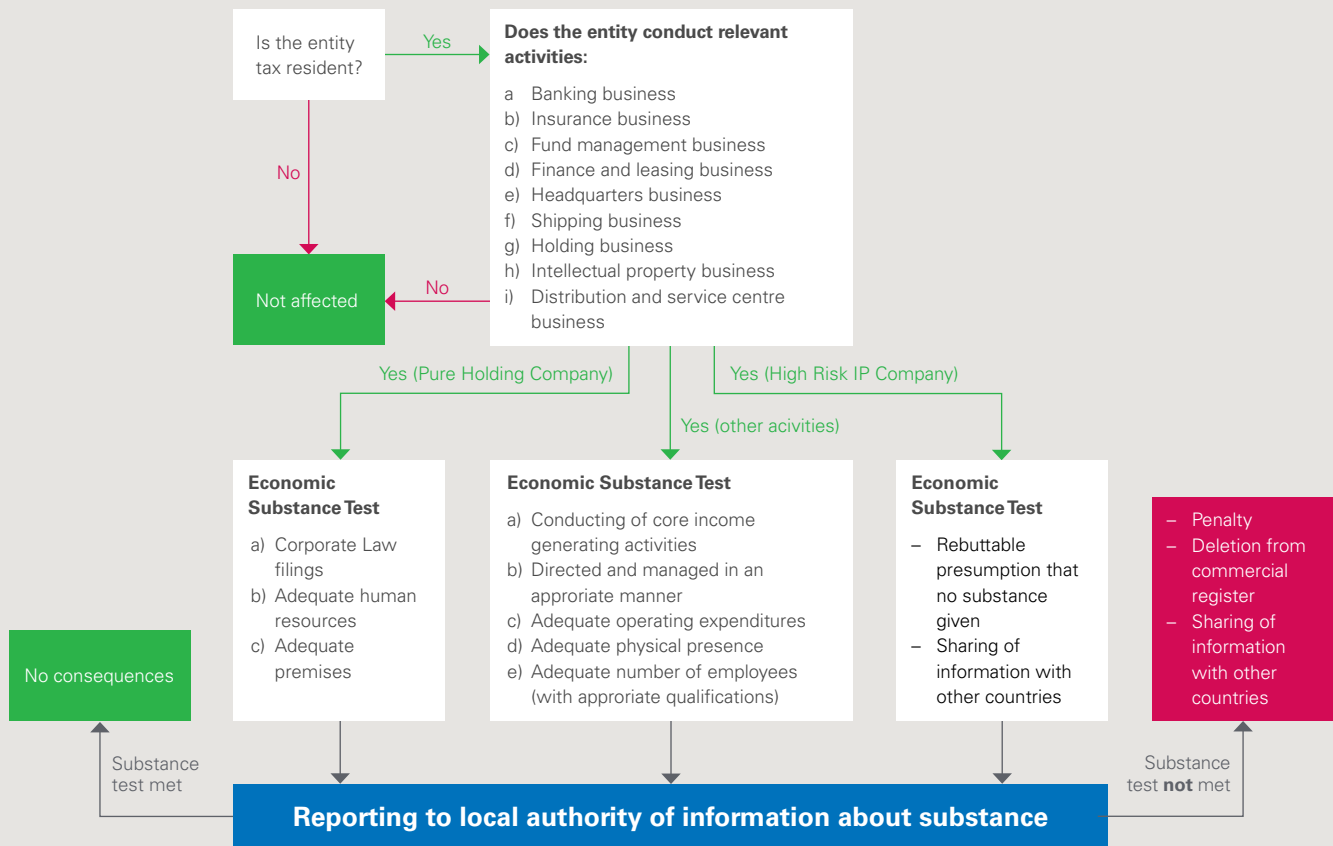
8.1 Introduction

In a number of offshore jurisdictions, including the BVI, Cayman Islands, Bermuda, Guernsey, Jersey and the Isle of Man, legislation entered into force on 1 January 2019 that requires entities carrying on specified activities to have adequate economic substance.

These rule are a response to EU and OECD initiatives in the context of establishing a standard on substantial activities requirements for zero or almost-zero tax jurisdictions.

8.2 Who is affected?

While each jurisdiction has independently drafted and enacted their own economic substance legislation, the requirements are broadly equivalent across the most common offshore jurisdictions, as summarized below (this decision tree is simplified and does not take into account country specific legislation):



8.3 Conclusion

It is still unclear how much local substance is required, i.e. what the term "adequate" means. However, if a company is solely administered by directors not resident in the entity's jurisdiction of domicile, the Economic Substance Test should in most cases not be met. It is required to analyse with respect to each offshore company if the substance requirements are fulfilled and, if not, what potential measures could be taken in those cases (e.g. creation of local substance or relocation of company). Non-compliance is not an option, as depending on the jurisdiction, substantial penalties could be levied and a deletion from the commercial register is possible.

Our services

According to your needs, we can support you regarding all aspects of tax transparency, e.g. with a full impact analysis, the implementation of the regulatory requirements or by answering only your specific questions. Thanks to our global network, we can support you in Switzerland and in your country of residence. In particular, we can support you with the following services:

Analyze wealth management structures under the new transparency rules

Support of banks, asset managers and trust/fiduciary companies to comply with these transparency rules

Classify entities for AEOI/FATCA purposes and support them in complying with the AEOI/FATCA reporting obligations

Support in the context of administrative assistance proceedings

Analyze the tax obligations of individuals with assets in wealth management structures or deposited offshore

Support banks, trustees and fiduciaries with the challenges of the FATCA periodic review and the Responsible Officer certification

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