



# Julius Bär

NOVEMBER 2016

1/4

## AUTOMATIC EXCHANGE OF INFORMATION (AEOI)

### INTRODUCTION AND OVERVIEW

The Common Reporting Standard (CRS) is the result of the drive by the G20 nations to develop a global Standard for the Automatic Exchange of Financial Account Information (AEOI). To facilitate AEOI, the OECD (Organisation for Economic Co-operation and Development), together with the G20 countries and in close cooperation with the EU and other stakeholders, has developed CRS.

AEOI is about improving transparency in the fight against tax evasion and in so doing protecting the integrity of the tax systems of the participating jurisdictions.

### JULIUS BAER'S POSITION ON AEOI

The Julius Baer Group and all its entities are committed to the implementation of the necessary requirements to fulfil AEOI.

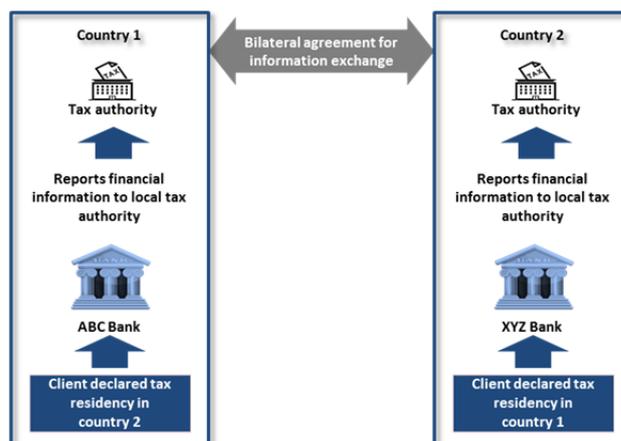
Julius Baer booking centres in Germany, Guernsey, Luxembourg and India are in committed early adopter jurisdictions with the implementation date of 1 January 2016 and first reporting from 2017 onwards. All other Julius Baer booking centres will start exchanging data in 2018.

### IDENTIFYING AND REPORTING REPORTABLE PERSONS

The objectives of AEOI are

- to identify clients holding assets in financial accounts outside their jurisdiction of tax residence (so-called Reportable Persons); and
- to provide information about those clients and their financial accounts to the local tax authorities.

A Reportable Person, for the purposes of AEOI, is a person who is resident in a country which has committed to the AEOI (Participating Jurisdiction) and holds a financial account with a financial institution in a Participating Jurisdiction outside his/her country of tax residence. Information will only be shared if the two countries have agreed to exchange information. Therefore, the first general rule is the existence of an AEOI agreement between the client's tax residence country and the country where the financial account is maintained. If no agreement exists, the client is not in scope for the AEOI.



With AEOI, information regarding Reportable Persons and Reportable Accounts is delivered by the financial institutions to the domestic tax authorities. The domestic tax authorities then exchange the information with the tax authorities in the client's tax residence jurisdiction (jurisdictions). It is worth noting that CRS is neither a tax calculation nor a tax withholding regime.

**CLIENTS IN SCOPE**

As a general rule, a client who maintains a financial account at a bank in a country outside their tax residence jurisdiction could fall in scope of the due diligence and reporting requirements as set out in the CRS and requires closer scrutiny. The due diligence and reporting (i.e. disclosure) requirements apply to accounts held by both, individuals and legal entities.

A client (individual or legal entity) will be impacted by AEOI

- if the client’s tax residence is not the country in which the client maintains a financial account with Julius Baer (e.g. a German resident client maintaining an account with Bank Julius Baer & Co. Ltd., Zurich); and
- if these countries have agreed to exchange data under the CRS (e.g. Germany and Switzerland implemented an intergovernmental agreement); and
- if, in the case of a legal entity/corporate client, the entity is not exempt from AEOI reporting.

**DOCUMENTATION REQUIREMENTS FOR IMPACTED CLIENTS**

If an agreement exists, the bank holding the account has to assess if such client is subject for reporting under the AEOI, by verifying different criteria. Such criteria differ depending if the financial account is held by an individual or a legal entity client. For new accounts, the bank will collect the necessary information such as client’s tax residence jurisdiction on forms (e.g. self-certifications) which will be part of the account-opening process. For pre-existing clients, the bank will request information in case the existing documentation is not sufficient to determine the tax residence jurisdiction and/or the legal entity classification of the client unambiguously.

**PROCEDURE FOR THE IDENTIFICATION OF INDIVIDUAL CLIENTS FOR AEOI**

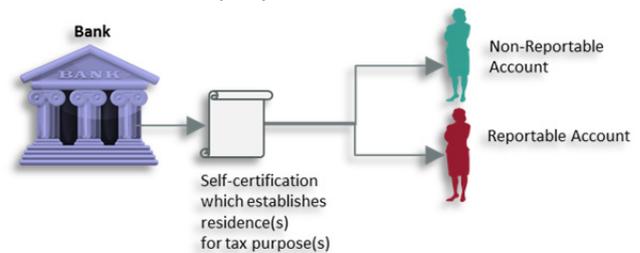
For individual accounts, from the perspective of a typical bank, the named account holder of a custody or deposit account could qualify as a Reportable Person for AEOI.

Account holders with individual accounts become Reportable Persons by virtue of their tax residence jurisdiction and/or by certain criteria relevant to a Reportable Jurisdiction. Generally, client information suggesting possible residence in a given jurisdiction includes:

- a) current mailing or residence address (including a post office box);

- b) one or more telephone numbers (and no telephone number in the jurisdiction of the Reporting Financial Institution);
- c) standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a Reportable Jurisdiction;
- d) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
- e) a ‘hold mail’ instruction or ‘in-care-of’ address in a Reportable Jurisdiction if the bank does not have any other address on file for the account holder.

Should any of these indicate a link to a Reportable Jurisdiction, the account holder will be asked to provide further documentation to confirm his/her residence for the purposes of AEOI.



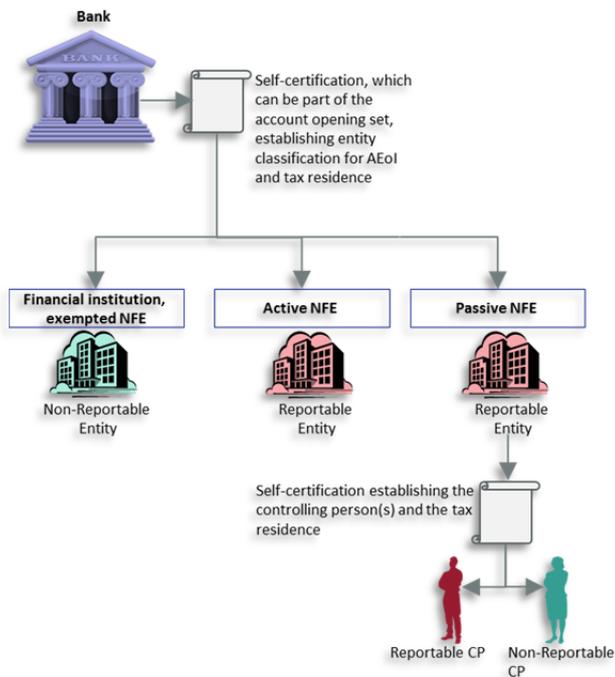
In joint account structures with several account holders, some of whom are Reportable and Non-Reportable Persons, the personal information of the Non-Reportable Person will not be reported. However, the whole account (including all financial information without splitting) will be disclosed and reported for the Reportable Person.

If several joint account holders are Reportable Persons, the account will be reported to several jurisdictions.

**PROCEDURE FOR THE IDENTIFICATION OF LEGAL ENTITY CLIENTS FOR AEOI**

Legal entity clients become Reportable Persons depending firstly on their entity classification under AEOI and secondly on their tax residence jurisdiction. For certain entity types, the individual controlling person (CP) behind such an entity must be identified as well.

Both information will have to be indicated by the legal entity account holder.



Certain legal entities can classify as Non-Reportable Accounts irrespective of their tax residence jurisdiction, such as financial institutions (custodial and depository institutions, investment entities, specified insurance companies) or exempted Non-Financial Entities (NFE). For example, trusts with a gross income which is primarily attributable to investing, reinvesting, or trading in financial assets, which are professionally managed by a corporate trustee or have a discretionary mandate at a bank, and which are resident in a jurisdiction committed to the AEOI (Participating Jurisdiction), classify as a financial institution for CRS.

NFEs qualify as exempted if they are a corporation the stock of which is regularly traded on one or more established securities markets or any entity that is a Related Entity of a corporation the stock of which is regularly traded on an established securities market; a Governmental Entity; an International Organisation; or a Central Bank or an entity wholly owned by one or more of the foregoing.

Accounts held by entities classified as active Non-Financial Entities (active NFEs) are Reportable Accounts by virtue of the entity's tax residence. Entities which classify as active NFEs are:

- active NFEs by reason of income and assets: less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income **and** less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- holding NFEs that are members of a non-financial group;
- start-up NFEs;
- NFEs in liquidation or emerging from bankruptcy;
- treasury centres that are members of a non-financial group; or
- non-profit NFEs.

Accounts held by entities classified as passive Non-Financial Entities (passive NFEs) are Reportable Accounts by virtue of the entity's tax residence and/or by virtue of the tax residence of the controlling person(s).

A passive NFE is a NFE that is not an active NFE; e.g. it is an entity whose gross income is primarily ( $\geq 50\%$ ) passive income or whose assets are primarily ( $\geq 50\%$ ) held to produce or produce passive income.

This can include trusts, foundations, partnerships and companies. Also entities that fulfil the criteria of an investment entity can classify as passive NFEs, in case the tax residence is not in a Participating Jurisdiction.

## REPORTABLE INFORMATION

The following will be reported to the local tax authority for both individual and legal entity account holder(s):

- personal information on the Reportable Person, i.e. name, address, Tax Identification Number (TIN), date of birth (for individual account holder[s] and controlling person[s]); and
- financial account information, i.e. account number, balance, interest, dividends, other income and gross proceeds.

## **AEOI TERMS AND DEFINITIONS: REPORTABLE ACCOUNT**

The term Reportable Account means an account held by one or more Reportable Persons or by a passive Non-Financial Entity (NFE) with one or more controlling persons who is (are) (a) Reportable Person(s).

## **REPORTABLE PERSON**

A Reportable Person means an individual or entity that is resident for tax purposes in a Reportable Jurisdiction.

## **REPORTABLE JURISDICTION**

A Reportable Jurisdiction means a jurisdiction with which an agreement is in place pursuant to which there is an obligation for the automatic exchange of information according to CRS.

## **REPORTING FINANCIAL INSTITUTION**

Reporting Financial Institutions (FIs) are depository institutions, custodial institutions, investment entities and specified insurance companies.

For example a private investment company qualifying as investment entity for AEOI purposes is a Reporting Financial Institution and would need to report its debt and equity interest holder(s) as account holder(s).

## **LEGAL ENFORCEMENT OF AEOI**

Each jurisdiction is able to decide whether it will implement AEOI or not. Consequently, AEOI is implemented on a country-by-country basis.

In addition, in order for two jurisdictions to be able to exchange information, they must have an inter-governmental agreement – a so-called Competent Authority Agreement (CAA) – in place.

## **RELATION TO EXISTING REGULATORY REGIMES**

Whilst CRS is not replacing US FATCA, the EU savings taxation, the final withholding tax agreements and UK FATCA will be replaced.

## **STATUS OF COMMITMENTS**

So far 101 jurisdictions have committed to the implementation of AEOI. However, the enforcement is subject to local law and needs to be enacted by every single jurisdiction.

The list with current status of commitments can be found under [www.oecd.org/tax/transparency/AEOI-commitments.pdf](http://www.oecd.org/tax/transparency/AEOI-commitments.pdf)

Switzerland has entered into negotiation for the introduction of the automatic exchange of information with the following partner states: Australia, Canada, EU (including Gibraltar), Guernsey, Isle of Man, Iceland, Japan, Jersey, Norway and South Korea. The current list can be accessed under [www.sif.admin.ch](http://www.sif.admin.ch) > Topics > International tax policies > Automatic Exchange of information

## **EFFECTIVE DATE**

Jurisdictions committed to undertake first exchanges by 2017 implemented the due diligence procedures as of 1 January 2016 (early adopter jurisdictions).

Jurisdictions committed to undertake first exchanges by 2018 are expected to implement the due diligence procedures as of 1 January 2017.

## **IMPORTANT LEGAL INFORMATION**

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