

# Automatic exchange of information

## 1 Starting position

With the Liechtenstein Declaration of 2009, Liechtenstein and its banks expressly committed themselves to implementing the global standards of transparency and information exchange in tax matters developed by the OECD and to intensifying participation in international efforts to combat non-compliance with foreign tax laws. In a joint statement, a number of countries, including all major financial centres and Liechtenstein, have announced that they will introduce the new OECD standard on transparency and information exchange in tax issues, the so-called “Automatic exchange of information” (AEOI). The OECD standard on the AEOI is designed as a global standard. The member countries of the G20, the OECD and other important countries have stated that they will exchange all information on financial accounts relevant to ensuring taxation on the basis of the AEOI in the near future. This new global standard on the AEOI is intended to prevent cross-border tax evasion.

The global implementation of a uniform standard is to prevent a patchwork of different models that could result in conflicting requirements and uncertainty for the involved parties. To ensure equal competitive conditions, the financial institutions are to apply the same rules everywhere (e.g. when identifying reportable persons). This equal treatment is also underlined by the fact that the OECD standard provides for reciprocity as a matter of principle – i.e. all countries participating in the AEOI will collect and exchange the information with each other and according to the same requirements.

Other central elements of the global standard include the compliance with the principle of speciality – i.e. the information may not be used for purposes other

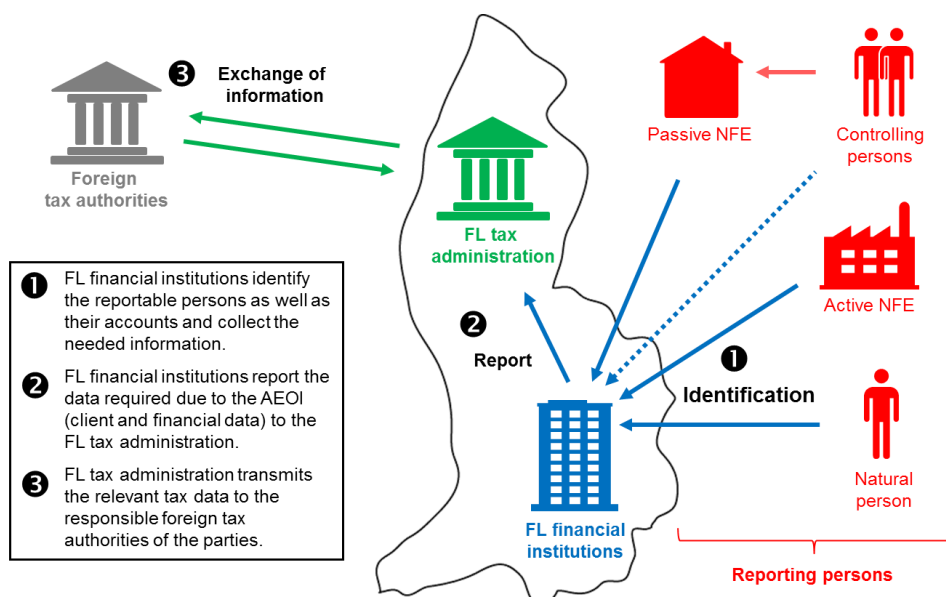
than the intended (tax) purposes. Moreover, suitable rules are to ensure adequate legal and technical data protection.

By ratifying the convention on mutual administrative assistance in 2016, Liechtenstein has laid the foundations for implementing the AEOI through a multilateral agreement. Within the scope of the AEOI, financial institutions in countries that have agreed to the application of the AEOI with other countries (so-called AEOI partner countries) on the basis of a bilateral or multilateral treaty are required to provide their national tax authorities with information on their foreign clients and their financial accounts. This data is then exchanged with the tax authorities of other countries. In the case of Liechtenstein, the AEOI requirements applied for the first time for financial information relevant to the 2016 tax year. The first effective automatic exchange of reportable data took place in 2017.

## 2 Functioning of the AEOI

Within the scope of the AEOI, financial institutions in countries that have agreed to the application of the AEOI with other countries on the basis of a bilateral or multilateral treaty (AEOI partner countries) are required to provide their national tax authorities with information on their clients with tax residency in the respective AEOI partner countries and their financial accounts. Upon receipt of these data, the national tax authority will exchange these data with the tax authorities of AEOI partner countries. In this way, foreign tax authorities will receive information that will enable them to review and verify the fulfilment of the tax liability even for taxpayers who hold assets outside their national borders.

The AEOI procedure for assets booked in Liechtenstein can be illustrated as follows:



Unlike other models, in the case of the AEOI, the taxpayer remains fully responsible for complying with all relevant laws relating to a personal tax obligation, and only the tax authorities in the taxpayer's country of residence are responsible for collecting the taxes. Neither the foreign state nor the financial institutions will be under the obligation to assess or withhold taxes.

**Who will be affected by the AEOI and what obligations exist?**

Within the scope of the AEOI, Liechtenstein financial institutions are required to report information on clients whose tax domicile is in another AEOI partner country. Reportable accounts include accounts of natural persons and legal entities, regardless of their legal form (including trusts and foundations that are not classified as financial institutions); the standard also includes the obligation to review so-called passive NFEs and to report natural persons who exercise a controlling influence on these legal entities. Legal entities that qualify as a financial institution are directly responsible for fulfilling the reporting obligations.

**With which countries will Liechtenstein exchange data?**

On 28 October 2015, Liechtenstein and the EU Commission signed an agreement on the automatic exchange of financial account information, with the goal of improving international tax compliance. The agreement entered into force on 1 January 2016. Under the agreement, Liechtenstein has automatically exchanged information with the 28 EU member states starting in 2017 for information collected in the tax year 2016 (exception: in the case of Austria, data exchange started in 2018 for information collected in the tax year 2017 beginning on 1 January 2017.)

By ratifying the convention on mutual administrative assistance in August 2016, Liechtenstein has moreover laid the foundations for implementing the AEOI through a multilateral agreement. Within the scope of the AEOI, financial institutions in countries that have agreed to the application of the AEOI with other countries on the basis of a bilateral or multilateral treaty (AEOI partner countries) are required to provide their national tax authorities with information on their clients with tax domicile in the respective AEOI partner country and their financial accounts.

### List of AEOL partner countries of Liechtenstein:

- **valid from 01.01.2016:**

|  |   |                       |
|--|---|-----------------------|
| Austria  | Belgium   | Bulgaria              |
| Croatia  | Cyprus  | Czech Republic        |
| Denmark (excl. Greenland and the Faroe Islands)  | Estonia   | Finland (incl. Åland) |
| France (incl. Guadeloupe, Martinique, French Guiana and La Réunion)  | Germany   | Greece                |
| Hungary  | Ireland   | Italy                 |
| Latvia   | Lithuania   | Luxembourg            |
| Malta  | Netherlands (without Aruba, Bonaire, Curacao, Saba, Sint Eustatius, Sint Marteen) | Poland                |
| Romania  | Portugal (incl. Madeira and the Azores)   | Slovakia              |
| Slovenia   | Spain (incl. the Canary Islands)  | Sweden                |
| United Kingdom <sup>1</sup><br>(including Gibraltar but excluding the British Virgin Islands, the Cayman Islands, Guernsey, Jersey, the Isle of Man, Montserrat, the Turks and Caicos Islands) |   |                       |

- **valid from 01.01.2017:**

|                          |                |                                |
|--------------------------|----------------|--------------------------------|
| Andorra                  | Anguilla       | Argentina                      |
| Belize                   | Bermuda        | British Virgin Islands         |
| Canada                   | Cayman Islands | Chile                          |
| China                    | Faroe Islands  | Greenland                      |
| Guernsey                 | Iceland        | India                          |
| Isle of Man              | Japan          | Jersey                         |
| Kuwait <sup>2</sup>      | Malaysia       | Mauritius                      |
| Mexico                   | Monaco         | New Zealand                    |
| Norway                   | San Marino     | Seychelles                     |
| South Africa             | South Korea    | St. Vincent and the Grenadines |
| Turks and Caicos Islands |                |                                |

<sup>1</sup> In the case of the United Kingdom, the AIA will continue seamlessly under the MAC and the MCAA even after the withdrawal of Great Britain from the EU (from 2021 onward).

<sup>2</sup> Kuwait is considered a non-reciprocal jurisdiction from the 2019 reporting period until further notice.

- **valid from 01.01.2018:**

|                |                        |             |
|----------------|------------------------|-------------|
| Aruba          | Australia <sup>3</sup> | Barbados    |
| Bonaire        | Brazil                 | Cook Inseln |
| Colombia       | Costa Rica             | Curaçao     |
| Ghana          | Indonesia              | Israel      |
| Lebanon        | Marshall Islands       | Montserrat  |
| Nauru          | Niue                   | Russia      |
| Saba           | Saint Kitts and Nevis  | Saint Lucia |
| Samoa          | Saudi Arabia           | Singapore   |
| Sint Eustatius | Sint Maarten           | Switzerland |
| Uruguay        |                        |             |

- **valid from 01.01.2019:**

|                     |                   |                      |
|---------------------|-------------------|----------------------|
| Antigua and Barbuda | Azerbaijan        | Bahamas              |
| Bahrain             | Brunei Darussalam | Dominica             |
| Grenada             | Hong Kong (China) | Macau (China)        |
| Nigeria             | Pakistan          | Panama               |
| Peru                | Qatar             | Turkey               |
| Trinidad and Tobago | Vanuatu           | United Arab Emirates |

- **valid from 01.01.2020:**

|                       |         |            |
|-----------------------|---------|------------|
| Albania               | Ecuador | Kazakhstan |
| Maldives <sup>4</sup> | Oman    |            |

- **valid from 01.01.2021:**

|       |         |                            |
|-------|---------|----------------------------|
| Kenia | Marokko | New Caledonia <sup>4</sup> |
|-------|---------|----------------------------|

- **valid from 01.01.2022<sup>5</sup>:**

|            |          |        |
|------------|----------|--------|
| Georgia    | Jamaica  | Jordan |
| Montenegro | Thailand | Uganda |
| Ukraine    |          |        |

<sup>3</sup> Due to the change of the tax year in Australia, the Liechtenstein Tax Administration and the competent authority of Australia have agreed to exchange AEOI relevant data for the first time in September 2019 regarding the reporting period 2018 and not, as originally planned, already in September 2018 regarding the reporting period 2017.

<sup>4</sup> New Caledonia is considered a non-reciprocal jurisdiction from the 2021 reporting period until further notice (New Caledonia does not receive AIA data). Due to the special political circumstances, the AIA with New Caledonia will be handled through the French competent authority.

<sup>5</sup> With report and motion 65/2021 and 85/2021, the of Liechtenstein approved the bilateral activation of AEOI with Georgia, Jamaica, Jordan, Montenegro, Thailand, Uganda as well as Ukraine. Provided that the Liechtenstein Parliament approves this government proposal, these countries will be AEOI partner states of Liechtenstein as of the 2022 reporting period.

With regard to the AEOI partner countries with validity from 01.01.2022, the AEOI Ordinance of Liechtenstein will be issued by the Government of Liechtenstein not before 01.01.2022.

Within the framework of the AEOI, it is possible for participating states to declare themselves to be "permanent non-reciprocal jurisdictions". This means that they will permanently deliver AEOI reports to tax authorities of AEOI partner countries but will not receive such data themselves. In these cases, Liechtenstein will not provide AEOI reporting to such "permanent non-reciprocal jurisdictions".

Please note that the list of Liechtenstein's AEOI partner countries can be continuously expanded.

A list of Liechtenstein's definitive AEOI partner countries is laid down in the [Liechtenstein AEOI Ordinance](#) (only available in German).

### **Which data will be exchanged under the AEOI?**

Based on the OECD standard, financial institutions must report the following information to the national tax authorities on a yearly basis:

- The name, address, tax domicile(s), tax identification number(s) and date of birth (in the case of natural persons) of each reportable person who is the account holder and, where the account holder is a legal entity, the name, address, tax domicile(s) and tax identification number(s) of the legal entity and name, address, tax domicile(s), tax identification number(s) and date of birth and role (if known) of each reportable controlling person.
- The account number, name and (if applicable) identification number of the reporting financial institution.
- The total gross income from dividends, interest and other income generated with the assets held, the total income from the sale or repurchase of assets during the reporting period, and the total balance or value of the account/custody account as of the end of the relevant reporting period.

With regard to the financial information to be reported, please note that in cases involving several natural persons as the holders of a joint account or in the case of several controlling persons of a passive NFE, 100% of the financial information must be reported for every reportable person and no equity shares may be taken into account. In addition, please note that when reporting a controlling person, the name, address, country (countries) of domicile for tax purposes and tax identification number(s) of the applicable legal entity must also be provided to the Tax Administration of the Principality of Liechtenstein so that these can be forwarded to the controlling persons's country of domicile for tax purposes.

Furthermore, please note that the collected and reported information may differ from the tax-relevant information of a reportable person.

### **How is the information to be exchanged used and is the data treated confidentially?**

According to the OECD, the exchange of data between the AEOI partner countries must ensure that the respective tax obligations of the reportable person can also

be fulfilled in their tax domicile with regard to all assets held with foreign banks and the resulting income.

Any information to be exchanged obtained by the competent authority of a partner country shall be treated as confidential in the same manner as information obtained under the domestic law of that partner country. Thus, the transmitted information may, in principle, be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, enforcement, prosecution or the determination of appeals in relation to taxes of a partner country or responsible for the supervision of the above persons or authorities. Such persons or authorities may use the exchanged information only for the purposes as specified above. Furthermore, the exchanged information may be disclosed in public legal proceedings or court decisions.

Notwithstanding the above provisions, a jurisdiction may use the exchanged information for other purposes when such information may be used for such other purposes under the laws of the jurisdiction and Liechtenstein law, and the Liechtenstein tax authority authorises such use.  
It is not permitted to pass on exchanged information to third-party countries.

### 3 Additional Information

#### **What rights is a reportable person entitled to?**

According to the Liechtenstein AEOI Act and the Liechtenstein Data Protection Act (Datenschutzgesetz, DSG), reportable persons are in particular entitled to the right to information and the right to correction or deletion of incorrect data to be exchanged.

#### **Right to information**

Reportable persons and account-holding entities may assert the right to information in accordance with the DSG concerning the data to be exchanged vis-à-vis the reporting Liechtenstein financial institution. The reporting Liechtenstein financial institution must inform the person concerned about all data relating to them, including available information about the origin of the data, the purpose and, if applicable, the legal basis for processing such data. This information also includes the categories of processed personal data, the parties involved in collecting it and the data recipients. The information is generally to be provided in writing, in the form of a printout or a photocopy.

According to Art. 12 of the AEOI Act, persons and account-holding entities subject to reporting may assert their right under the data protection legislation and the special provisions of the AEOI Act with regard to exchangeable information processed by a reporting Liechtenstein financial institution or the Tax Administration.



### Right to correction or deletion of incorrect data to be exchanged

Reportable persons and account-holding entities are also entitled to have inaccurate information corrected in accordance with the DSG. The right to have inaccurate exchanged information corrected or deleted must be asserted in writing to the reporting Liechtenstein financial institution or the tax administration. This right is not limited in time.

Information and documents in accordance with the Due Diligence in Financial Transactions Act (SPG) or other documentation<sup>6</sup> are deemed to be necessary in this respect as follows:

- Name, address, domicile(s), tax identification number(s) and date of birth of the reportable natural person who is the holder of the account.
- In the case of any entity that is an account holder, name, address, tax domicile(s) and tax identification number(s) of the entity and name, address, tax domicile(s), tax identification number(s) and date of birth of each controlling person that is a reportable person.

If a (permissible) data correction or deletion is made or implemented by the subject only after the reports have been sent, a subsequent correction (report) must be made by the reporting financial institution at all events.

If a reportable person or the account holder makes use of his right to correction of data, but if it is not possible to reach agreement with the reporting Liechtenstein financial institution, the latter institution is required to send the information to the Liechtenstein tax administration only in the event of legal proceedings or temporary injunction (protective measure) relating to the protection of privacy, and only after the ruling on the accuracy of the information to be exchanged becomes legally effective.

If a temporary injunction is not handed down, the information to be exchanged is assumed to be accurate. In accordance with Art. 7 AEOI Act, this information shall be sent to the Liechtenstein tax authority within six months of the end of the respective calendar year. Art. 14 AEOI Act stipulates that the Liechtenstein tax administration shall then pass on the relevant information to the competent authority in the respective partner country.

If a reportable person or account holder makes use of his right to correction or deletion of data, but if it is not possible to reach agreement with the Liechtenstein

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<sup>6</sup> The following documents are regarded as other documentation:

- a) A certificate of residence, issued by an authorised official agency of the state
- b) A valid ID card issued by an authorised official agency of the state which includes the name of the natural person and is normally used to establish the holder's identity
- c) An official document issued by an authorised agency of the state which includes the name of the entity and either the address of its principal registered office in the country in which it claims to be domiciled or the country in which the entity was established
- d) Audited financial statements, a credit report from a third party, an application for insolvency or a report from the stock market supervisory authority



tax administration, the latter administration is required to send the information to the partner country only in the event of legal proceedings or temporary injunction (protective measure) relating to the protection of privacy and only after the ruling on the accuracy of the information to be exchanged becomes legally effective.

If a temporary injunction is not handed down, the information to be exchanged is assumed to be accurate. In accordance with Art. 14 AEOI Act, this information shall be sent to the competent authority in the respective partner country within the time limits specified in the applicable agreement.

However, there is no right to have the legal validity of the transmission of the information abroad checked or to demand the blocking of an illegal forwarding or the destruction of data processed without a sufficient legal basis.

## 4 Useful external links

- [FL-tax administration - AIA](#)
- [AEOI Act](#)
- [AEOI Ordinance](#)
- [Data Protection Act](#)
- [OECD – Automatic Exchange of Information](#)

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