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Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOIA)

of 18 December 2015 (Status as of 1 January 2022)

*The Federal Assembly of the Swiss Confederation,
based on Article 173 paragraph 2 of the Federal Constitution¹,
having examined the Federal Council Dispatch of 5 June 2015²,
decrees:*

Section 1 General Provisions

Art. 1 Subject matter

¹ This Act governs the implementation of the automatic exchange of information in tax matters (automatic exchange of information) between Switzerland and a partner jurisdiction in accordance with:

- a. the Multilateral Competent Authority Agreement of 29 October 2014³ on the Automatic Exchange of Financial Account Information (MCAA), including its annex;
- b. other international agreements that provide for the automatic exchange of financial account information.

² The deviating provisions of individual applicable agreements are reserved.

Art. 2 Definitions

¹ In this Act:

- a. *applicable agreement* means an agreement or a treaty within the meaning of Article 1 paragraph 1 which applies in a particular case;
- b. *common reporting standard (CRS)* means the common standard on reporting and due diligence for financial account information of the Organisation for Economic Co-operation and Development (OECD);

AS 2016 1297

¹ SR 101

² BBI 2015 5437

³ SR 0.653.1

- c. *partner jurisdiction* means a state or sovereign territory with which Switzerland has agreed to implement the automatic exchange of information;
- d. *Swiss financial institution* means:
 - 1. a financial institution resident in Switzerland, but excluding any branch of that financial institution that is located outside Switzerland; or
 - 2. a branch of a financial institution not resident in Switzerland if that branch is located in Switzerland;
- e. *undocumented account* means a preexisting individual account for which a reporting Swiss financial institution is unable to determine the tax residence of the account holder in accordance with the provisions of the applicable agreement;
- f. *Swiss tax identification number for individuals* means the OASI number⁴ in accordance with the Federal Act of 20 December 1946⁵ on Old-Age and Survivors Insurance;
- g. *Swiss tax identification number for entities (BIN)* means the business identification number within the meaning of the Federal Act of 18 June 2010⁶ on the Business Identification Number;
- h. *foreign tax identification number* means the identification number of a taxpayer according to the law of the state or sovereign territory where that taxpayer is resident for tax purposes;
- i. *preexisting account* means a financial account maintained by a reporting Swiss financial institution on the day before the automatic exchange of information with a partner jurisdiction came into force;
- j. *new account* means a financial account maintained by a reporting Swiss financial institution that was opened on or after the day that the automatic exchange of information with a partner jurisdiction came into force;
- k. *lower value account* means a preexisting individual account with an aggregate balance or value that does not exceed USD⁷ 1,000,000 as of 31 December of the year prior to the implementation of the automatic exchange of information with a partner jurisdiction;
- l. *high value account* means a preexisting individual account with an aggregate balance or value that exceeds USD 1,000,000 as of 31 December of the year prior to the implementation of the automatic exchange of information with a partner jurisdiction or 31 December of any subsequent year.

⁴ Term in accordance with Annex No 21 of the FA of 18 Dec. 2020 (Systematic Use of the OASI Number by Authorities), in force since 1 Jan. 2022 (AS 2021 758; BBl 2019 7359). This change has been made in the provisions specified in the AS.

⁵ SR 831.10

⁶ SR 431.03

⁷ Denomination in accordance with No I of the FA of 19 June 2020, in force since 1 Jan. 2021 (AS 2020 5247; BBl 2019 8135). This amendment has been made in the provisions specified in the AS.

² The Federal Council may, for a limited duration, define the term «participating jurisdiction» used in applicable agreements in a broader sense than the agreements do.

Art. 3 Non-reporting financial institutions

¹ The following in particular are treated as a non-reporting financial institution that is a governmental entity:

- a. the Swiss Confederation;
- b. the cantons and communes;
- c. wholly owned instrumentalities and agencies of an entity under letters a or b, including in particular institutions, bodies and funds of the social security system at federal, cantonal and communal level.

² The following in particular are treated as a non-reporting financial institution that is an international organisation:

- a. any partner organisation of the Swiss Confederation to an international headquarters agreement;
- b. any diplomatic mission, permanent mission or other representation to international organisations, consular post or special mission whose status, privileges and immunities are governed by the Vienna Convention of 18 April 1961⁸ on Diplomatic Relations, the Vienna Convention of 24 April 1963⁹ on Consular Relations or the Convention of 8 December 1969¹⁰ on Special Missions.

³ The Swiss National Bank and any of its wholly owned bodies are treated as non-reporting financial institutions that are a central bank.

⁴ The financial institutions referred to in paragraphs 1 to 3 above are reporting financial institutions with respect to payments arising from an obligation in connection with commercial financial activities that correspond to those of a specified insurance company, a custodial institution or a depository institution.

⁵ The following occupational benefit institutions in particular are treated as a non-reporting financial institution that is a broad participation retirement fund, a narrow participation retirement fund, a pension fund of a governmental entity, international organisation or central bank or an entity that presents a low risk of being used to evade tax and has substantially similar characteristics to any of the non-reporting financial institutions according to the applicable agreement:

- a.¹¹ pension institutions and other retirement arrangements established in Switzerland according to Articles 48 and 49 of the Federal Act of 25 June 1982¹² on Occupational Old Age, Survivors' and Invalidity Pension

⁸ SR 0.191.01

⁹ SR 0.191.02

¹⁰ SR 0.191.2

¹¹ See Art. 41.

¹² SR 831.40

Provision (OPA), Article 89a paragraph 6 or 7 of the Swiss Civil Code (CC)¹³ or Article 331 paragraph 1 of the Swiss Code of Obligations (CO)¹⁴;

- b. vested benefits institutions established in implementation of Article 4 paragraph 1 and Article 26 paragraph 1 of the Vested Benefits Act of 17 December 1993 (VBA)¹⁵;
- c. the substitute occupational benefits institution under Article 60 of the OPA;
- d. the guarantee fund under Articles 56 to 59 of the OPA;
- e. institutions for recognised forms of pension benefits under Article 82 of the OPA;
- f. investment foundations according to Articles 53g to 53k of the OPA, provided all of the participants in the investment foundation are pension institutions or other retirement arrangements according to letters a to e.

⁶ If the applicable agreement does not provide for a deadline, a credit card issuer shall be treated as a qualified credit card issuer and thus as a non-reporting financial institution if it fulfils the conditions set out in the applicable agreement at the time this Act comes into force. If a credit card issuer commences its commercial activity after this Act comes into force, it shall be treated as a non-reporting financial institution if it fulfils the conditions set out in the applicable agreement within six months of commencing commercial activity, at the latest.

⁷ Swiss collective investment schemes subject to the Collective Investment Schemes Act of 23 June 2006¹⁶ that fulfil the conditions set out in the applicable agreement with respect to interests in the collective investment vehicle and to unit certificates which are structured as shares in bearer form are in particular treated as a non-reporting financial institution that is an exempt undertaking for collective investment vehicles. The Federal Council shall set the conditions according to which a collective investment vehicle is treated as a non-reporting financial institution. It determines the vehicles.

⁸ If the applicable agreement does not provide for a deadline, collective investment vehicles fulfil the condition with respect to unit certificates which are structured as shares in bearer form if they:

- a. do not issue any unit certificates which are structured as shares in bearer form from the time this Act comes into force; and
- b. have measures and procedures in place which ensure that unit certificates which are structured as shares in bearer form are redeemed or withdrawn from the market as soon as possible, but at the latest within two years of this Act coming into force.

⁹ If the applicable agreement so provides, a trust is treated as a non-reporting financial institution to the extent that the trustee of the trust is a reporting financial

¹³ SR 210

¹⁴ SR 220

¹⁵ SR 831.42

¹⁶ SR 951.31

institution and reports all information required to be reported under the applicable agreement with respect to all reportable accounts of the trust.

¹⁰ ...¹⁷

¹¹ The Federal Council may designate further entities as non-reporting financial institutions if they present a low risk of being used to evade tax and have substantially similar characteristics to any of the non-reporting financial institutions according to the applicable agreement. It shall set the conditions according to which other entities are treated as non-reporting financial institutions.

Art. 4 Excluded accounts

¹ The following accounts in particular are treated as an excluded account that is a retirement or pension account or an account that presents a low risk of being used to evade tax and that has substantially similar characteristics to any of the excluded accounts according to the applicable agreement:

- a. accounts within the framework of occupational benefit plans, including group insurance contracts, maintained or held by one or more non-reporting Swiss financial institutions;
- b. vested benefits policies and accounts established on the basis of Article 4 paragraph 1 and Article 26 paragraph 1 of the VBA¹⁸;
- c.¹⁹ blocked insurance policies with insurance institutions or blocked bank accounts with bank foundations recognised as forms of pension scheme in accordance with Article 82 paragraph 2 of the OPA²⁰.

² The following accounts in particular are treated as an excluded account that presents a low risk of being used to evade tax and that has substantially similar characteristics to any of the excluded accounts according to the applicable agreement:

- a. accounts maintained or held by one or more non-reporting Swiss financial institutions;
- b. rent security deposit accounts in accordance with Article 257e of the CO²¹.

³ The Federal Council may designate further accounts as excluded accounts if they present a low risk of being used to evade tax and have substantially similar characteristics to any of the the excluded accounts according to the applicable agreement. It sets the conditions according to which other accounts are treated as excluded accounts.

¹⁷ Repealed by No I of the FA of 19 June 2020, with effect from 1 Jan. 2021 (AS 2020 5247; BBl 2019 8135).

¹⁸ SR 831.42

¹⁹ Amended by No I of the FA of 19 June 2020, in force since 1 Jan. 2021 (AS 2020 5247; BBl 2019 8135).

²⁰ SR 831.40

²¹ SR 220