

Automatic exchange of information (AEOI)

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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).

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 will apply 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.

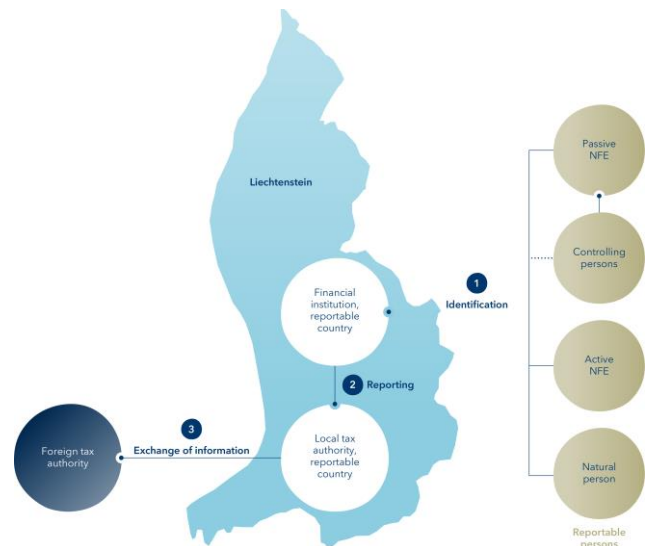
In this fact sheet, we would like to inform you of key aspects of the OECD standard and point out how you might potentially be affected as a reportable person of a Liechtenstein Bank, and the rights to which you are entitled in this respect.

How does the AEOI work?

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 this data, the national tax authority will exchange this 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.

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 obligation to assess or withhold taxes.

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



1. FL financial institutions identify the reportable persons as well as their accounts and collect the needed information.
2. FL financial institutions report the data required due to the AEOI (client and financial data) to the FL tax administration.
3. The FL tax administration transmits the relevant tax data to the responsible foreign tax authorities of the parties.

What led to the global standard of the 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 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.

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 over 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 started automatically exchanging information with the 28 EU member states in 2017 for information collected in the tax year 2016 (exception: in the case of Austria, data exchange will start in 2018 for information collected in the 2017 tax year 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.

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 regulation and can be viewed under the following link:

<https://www.gesetze.li/konso/2015358000> (only available in German).

What data will be exchanged under the AEOI?

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

- 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 entity, 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 entity'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.

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 Art. 58 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. 13 of the AEOI Act, persons subject to reporting and account-holding entities may also assert the right to information vis-à-vis the Liechtenstein 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 Art. 58 DSG. The right to have inaccurate exchanged information corrected or

deleted must be asserted in writing to the reporting Liechtenstein financial institution. This right is not limited in time.

Correction or deletion of incorrect information to be exchanged may only be requested before reporting to the tax administration pursuant to Art. 9 AEOI Act if the Liechtenstein financial institution making the report is provided with the necessary information by 31 May of the calendar year in which the report is submitted to the tax administration at the latest.

Information and documents in accordance with the Due Diligence in Financial Transactions Act (*Sorgfaltspflichtgesetz*, SPG) or other documentation¹ 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 an 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 a 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. 9(6) 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.

Reportable persons and account-holding entities may also request correction or deletion of the information to be

¹ 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

exchanged vis-à-vis the Liechtenstein tax administration. The Liechtenstein tax administration will then instruct the reporting financial institution to resend the report.

The correction or cancellation of incorrect information to be exchanged may only be requested prior to the forwarding of the information by the tax administration in accordance with Art. 14 of the AEOI Act if it is requested in writing by 31 August of the calendar year in which the information is to be transmitted by the tax administration. For this purpose, reportable persons and account-holding entities with residence or registered office outside Liechtenstein must designate a person authorised to accept service within Liechtenstein.

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 an agreement with the Liechtenstein tax administration, the latter administration is required to

send the information to the partner country only in the event of legal proceedings or a 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(1) 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.