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Extension of the AEOI to Crypto-Assets

The Federal Council publishes its message

Par Lionel Jeanneret le 21 February 2025

On February 19, 2025, the Federal Council sent the message to Parliament concerning the project to extend the automatic international exchange of information in tax matters (AIE) to crypto-assets (the Message) by adopting a framework for the declaration of crypto-assets (CDA).

In addition to the CDC, the Message proposes additions and amendments to the law (P-LEAR) and the ordinance (P-OEAR) on the automatic exchange of information. The new rules are expected to come into force on January 1, 2026, for an initial exchange in 2027.

The bill also aims to i) make punishable the negligent violation of due diligence, reporting and information obligations, ii) simplify the admission of new partner states within the framework of the AEOI and iii) the dynamic adoption of the OECD's comments (art. 2*b)* P-LEAR). Some selected aspects of this legislative sprint, declared by the Federal Council to be free of a "*Swiss finish*" (cf. the Message, p. 18), are discussed below.

Obligations of Crypto-asset service providers

The CDC defines a Crypto-asset as a digital representation of value that relies on a distributed ledger secured by cryptographic means or similar technology used to validate and secure transactions, with the exception of digital currencies issued by a central bank (cf. CDC, Section IV par. A).

Crypto-asset service providers (service providers) are natural persons or entities that provide a service in the form of crypto-asset transactions.

Service providers are defined in Switzerland as (art. 30*a* al. 4 P-OEAR) :

- Financial intermediaries within the meaning of art. 2 al. 2 LBA ;
- Crypto service providers who carry out their activity on a professional basis, i.e. they exceed one of the thresholds (financial and transaction volume) of articles 7 to 10 of the OBA.

In short, all transactions involving crypto-assets carried out during a calendar year, as well as the identity of the beneficial owners of these crypto-assets, must be reported to the Federal Tax Administration (FTA) (see CDC, Section II, Art. 15 P-LEAR). In addition, the service provider will

have to obtain a self-certification from the user of its services to determine his or her tax residence(s), the plausibility of which the service provider will have to confirm.

Swiss service providers may rely on third-party service providers to fulfill their due diligence obligations under the CDC, but will remain responsible for them (art. 12*d of* P-LEAR).

The P-LEAR also introduces the definition of a State participating in the AEOI Crypto-assets / AEOI (art. 2 para. 1 let. c^{bis}) as opposed to States participating only in the AEOI relating to financial accounts / CRS. It will be up to the service providers to take both lists into account and to (regularly) adapt their *reporting.*

Swiss Nexus

Art. 12*b)* para. 1 P-LEAR delegates to the Federal Council the task of setting the criteria according to which a service provider is considered to be i) a Swiss tax resident, ii) obliged to file a tax information return or iii) considered to have a branch in Switzerland (cf. CDC, Section I para. A).

Art. 30*a)* P-EOAR provides for these criteria to be defined as follows :

1. tax residence according to art. 3 or 50 LIFD ;
2. the obligation to file a tax information return (IFD, ICC, VAT returns as well as tax certificates on simple partnerships and partnerships concerning their partners, in particular on the shares of the latter in the income and assets of the company) ;
3. the operation of a permanent establishment in Switzerland without being domiciled there.

These criteria also make it possible to distinguish between the types of service providers who will be subject to different due diligence and reporting obligations.

Criminal provisions

The criminal provisions, which fall under the competence of the FTA and whose prosecution is therefore subject to the DPA (art. 37 LEAR), will be reinforced by a new art. 32a P-LEAR. This new criminal provision penalizes the violation of the obligation to inform the AFC referred to in Art. 25 para. 1 P-LEAR. However, it is provided that the AFC may waive criminal prosecution and punishment in cases of minor gravity (cf. Art. 32 para. 2 and 32a para. 2 P-LEAR). Note that the concept of “minor cases”, added in response to criticisms expressed during the consultation process, could be a source of uncertainty and is not, at least for the moment, addressed in the P-OEAR.

Furthermore, Art. 35 P-LEAR provides for the punishment of failure to provide a self-certification or the provision of an incorrect self-certification. The concurrence with art. 251 CP punishing forgery of documents is not addressed in the Message and could pose some practical problems, in particular if the form in question also identifies the beneficial owner of the assets. In the absence of clarification, service providers could reproduce these two articles on the self-certification forms sent to their clients.

Probably the most significant new development is Art. 25(2) P-LEAR, which allows the FTA,

FINMA and the supervisory and self-regulatory organizations to exchange information concerning the AEOI (both crypto-assets and financial accounts).

A sporting calendar

Service providers with a connection to Switzerland will have to analyze the new Swiss AEOI standards and take the necessary steps to comply with the new regulatory requirements by January 1, 2026.

A new version of the OEAR is expected to be published in November 2025 and will likely resemble the outline of the draft submitted for consultation on May 15, 2024. However, the final technical details will need to be finalized in a few weeks. The timetable for service providers is therefore tight, to say the least.

In contrast, and in all likelihood, the United States will not share information on the basis of the CDC until 2028 (cf. IRS, *Federal Register*, July 9, 2024 p. 56517).

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