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Ordinance on the International Automatic Exchange of Information in Tax Matters (AEOI Ordinance)

of 23 November 2016 (Status as of 1 January 2022)

The Swiss Federal Council,

based on the Federal Act of 18 December 2015¹

on the International Automatic Exchange of Information in Tax Matters (AEOIA),
ordains:

Section 1 ...

Art. 1²

Section 2 Non-Reporting Financial Institutions

Art. 2 Collective investment vehicles

¹ The following collective investment vehicles are treated as non-reporting financial institutions under Article 3 paragraph 7 AEOIA, provided that all interests are held by or through individuals or entities which are not reportable persons and that the requirements set out in Article 3 paragraph 8 of the AEOIA are met:

- a. contractual funds under Articles 25 to 35 of the Collective Capital Investment Schemes Act of 23 June 2006³ (CISA);
- b. investment companies with variable capital under Articles 36 to 52 of the CISA;
- c. limited partnerships for collective investments under Articles 98 to 109 of the CISA;
- d. investment companies with fixed capital under Articles 110 to 118 of the CISA;

AS **2016** 4885

¹ SR **653.1**

² Repealed by No I of the O of 7 Nov. 2018, with effect from 1 Jan. 2019 (AS **2018** 4333).

³ SR **951.31**

- e. investment companies in the form of Swiss companies limited by shares listed on a Swiss stock exchange under Article 2 paragraph 3 of the CISA.

² However, these vehicles are deemed to be reporting financial institutions if interests are held by or through passive non-financial entities (NFEs) pursuant to the common reporting standard (CRS) with controlling persons that are reportable persons.

Art. 3 Entities active in asset management or investment advice

Entities active in asset management or investment advice which, based on a customer's power of attorney or as the body of a company or a foundation, exclusively manage assets held in the name of the customer, company or foundation with a financial institution in Switzerland or abroad are treated as non-reporting financial institutions under Article 3 paragraph 11 AEOIA.

Art. 4 Central securities depositories

Central securities depositories under in accordance with Article 61 of the Financial Market Infrastructure Act of 19 June 2015⁴ are deemed to be non-reporting financial institutions under Article 3 paragraph 11 AEOIA for activities requiring authorisation under that Act, provided the account holders are the following persons or entities:

- a. individuals or entities that are not reportable persons; or
- b. passive NFEs with controlling persons that are not reportable persons.

Art. 5 Associations

Associations organised and established in Switzerland that pursue a non-commercial purpose are deemed to be non-reporting financial institutions under Article 3 paragraph 11 AEOIA.

Art. 6 Foundations

Foundations organised and established in Switzerland are deemed to be non-reporting financial institutions under Article 3 paragraph 11 AEOIA if they:

- a. pursue public or charitable purposes and endow their profits exclusively and irrevocably for those purposes; or
- b. pursue non-material purposes, generate profits of no more than CHF 20,000 and endow those profits exclusively and irrevocably for those purposes.

Art. 7⁵

⁴ SR 958.1

⁵ Repealed by No I of the O of 11 Nov. 2020, with effect from 1 Jan. 2021 (AS 2020 5251).

Section 3 Excluded Accounts

Art. 8 Accounts of lawyers or notaries

¹ Depository or custodial accounts held by lawyers or notaries licensed in Switzerland or by a firm of lawyers or notaries licensed in Switzerland that are organised in the form of a company on behalf of clients as the beneficial owners of the assets deposited are treated as excluded accounts.

² The assets that may be held in such accounts and the conditions under which such accounts may be held are governed by the Agreement of 14 February 2013⁶ between Switzerland and the United States of America for cooperation to facilitate the implementation of FATCA.

Art. 9 Capital contribution accounts

Reporting Swiss financial institutions may treat capital contribution accounts as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA, provided:

- a. the accounts are used exclusively to deposit the capital on the foundation of a company or an increase in its capital;
- b. the accounts are closed or transformed into accounts in the name of the company after its foundation or a capital increase; and
- c. any repayments resulting from a failed foundation or capital increase or from excess capital being paid in are made solely to the persons who contributed the capital.

Art. 10 Accounts of associations

Reporting Swiss financial institutions may treat accounts of associations organised and established in Switzerland that pursue a non-commercial purpose as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA.

Art. 11 Accounts of foundations

Reporting Swiss financial institutions may treat accounts of foundations organised and established in Switzerland as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA provided the foundations meet the requirements set out in Article 6 letters a and b of this Ordinance.

Art. 12⁷ Accounts of co-owners associations

Reporting Swiss financial institutions may treat accounts of co-owners associations as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA provided:

⁶ SR 0.672.933.63

⁷ Amended by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

- a. the shares in co-ownership under Article 23 of the Land Register Ordinance of 23 September 2011⁸ are recorded in the land register;
- b. the co-owners have agreed use and management regulations under Article 647 of the Civil Code⁹ (CC) in which it is stipulated that the financial assets managed by the co-owners' association be used exclusively for expenditures in connection with the property in co-ownership; and
- c. the use and management regulations under Article 649a paragraph 2 CC is noted in the land register.

Art. 13 Accounts of condominium owners associations

Reporting Swiss financial institutions may treat accounts of condominium owners associations as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA provided the condominium owners associations meet the requirements set out in Article 712/ paragraph 2 of the CC¹⁰.

Art. 14¹¹ Dormant accounts

Reporting Swiss financial institutions may treat dormant accounts in accordance with Article 11 paragraph 6 letters a and b AEOIA that have a balance or value of no more than USD 1,000 at the end of the calendar year or another appropriate reporting period or at the time of account closure as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA.

Art. 15¹²

Art. 16 E-money accounts

¹ Reporting Swiss financial institutions may treat e-money accounts as excluded accounts in accordance with Article 4 paragraph 3 of the AEOIA, provided:

- a. the accounts are used exclusively as a means of payment in the form of e-money for cashless payments for goods and services, for cash withdrawals or for cashless payment transactions between individuals for which an electronically stored balance is a requirement for the transaction;
- b. a contractually agreed balance of no more than 10,000 Swiss francs, US dollars or euros applies;
- c. each overpayment of more than 10,000 Swiss francs, US dollars or euros is refunded to the account holder within 60 days; and
- d. no interest is credited to the accounts.

⁸ SR 211.432.1

⁹ SR 210

¹⁰ SR 210

¹¹ Amended by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

¹² Repealed by No I of the O of 11 Nov. 2020, with effect from 1 Jan. 2021 (AS 2020 5251).

² E-money means any electronically stored monetary value in the form of a claim on the e-money issuer that is issued on receipt of an amount of money for the purpose of making payment transactions and that is accepted by individuals or entities other than the e-money issuer.

Art. 17 Accounts of deceased persons

Reporting Swiss financial institutions may treat deceased persons' accounts as accounts held exclusively by an estate with its own legal personality, and thus as excluded accounts, until the community of heirs is dissolved, provided the deceased's death was notified to them by an opened will, a death certificate or in another appropriate form.

Section 4 Residence of Financial Institutions in Switzerland

Art. 18 Financial institutions subject to and exempt from tax

The following are treated as resident in Switzerland in accordance with Article 5 paragraph 1 AEOIA:

- a. financial institutions that are subject to unlimited taxation in Switzerland or that have an economic affiliation in accordance with Article 4 paragraph 1 letter b or Article 51 paragraph 1 letter b of the Federal Act of 14 December 1990¹³ on Direct Federal Taxation;
- b. tax-exempt financial institutions established under Swiss law.

Art. 19 Trusts regulated abroad

Trusts that are regulated abroad as collective investments vehicles are not treated as resident in Switzerland irrespective of the trustees' domicile.

Art. 20 Place of management

The place of management in accordance with Article 5 paragraph 2 letter b of the AEOIA is the place of effective administration in Switzerland.

Section 5
Alternative Provisions of the OECD Commentary on the CRS

Art. 21

The alternative provisions of the OECD commentary on the CRS are contained in the annex. They apply insofar as that is not precluded by the agreement applicable in the particular case.

¹³ SR 642.11

Section 6 Further Details on the General Reporting Requirements

Art. 22 Amount and classification of payments

¹ Reporting Swiss financial institutions report payments in favour of a reportable account as:

- a. interest;
- b. dividends;
- c. proceeds from sales or redemptions;
- d. other income.

² Interest is in particular interest on bonds, mortgage certificates and land charge certificates issued in series, debt register assets and client assets.

³ Dividends are in particular distributions of profit, liquidation surpluses and pecuniary benefits from financial interests of all kinds, including bonus shares, bonus nominal value increases and the like.

⁴ Proceeds from sales or redemptions are in particular proceeds from the sale or redemption of the following:

- a. bonds, insofar as the proceeds are not interest;
- b. equity securities of any kind;
- c. derivative products of any kind, insofar as the proceeds are not interest or dividends;
- d. units in collective investment schemes.

⁵ Other income is income that is not treated as interest, dividends or proceeds from sales or redemptions, including benefits received from reportable insurance contracts and forwarded payments of a collective investment scheme in accordance with paragraph 1.

Art. 23 Categories of financial accounts

¹ The following are also treated as depository accounts:

- a. capitalisation transactions by life insurers in accordance with in Annex 1, insurance sector A6, of the Insurance Oversight Ordinance of 9 November 2005¹⁴ (IOO);
- b. tontines by life insurers in accordance with insurance sector A7 in Annex 1 insurance sector A7, of the IOO;
- c. advance premiums and premium deposits that are based on a separate contractual relationship.

¹⁴ SR 961.011

² Insurance contracts where the occurrence of the insured event is definite but which the insurer does not yet have to redeem in full or in part are treated as cash value insurance contracts.

³ In order for a contract to qualify as an annuity contract, it is irrelevant whether it provides temporary or indefinite life cover. Endowment insurance contracts are not treated as annuity contracts.

Art. 24 Refund of unused premiums as part of the cash value

A reporting Swiss financial institution may treat the refund of unused premiums from a non-investment-linked cash value insurance contract or annuity contract as part of the cash value.

Art. 25 Surrender value in the case of annuity contracts

¹ For the purposes of the applicable agreement, the surrender value of the insurance contract is treated as the surrender value of the annuity contract. Capital-forming annuity contracts have a surrender value of zero provided:

- a. they may not yet or may no longer be surrendered;
- b. they may not be surrendered.

² A reporting Swiss financial institution may use the actuarial reserve as the surrender value of an annuity contract for the purposes of the applicable agreement instead of the surrender value.

Art. 26 Reporting currency

¹ Reporting Swiss financial institutions must specify in the reports the currency in which the amounts are denominated.

² They may indicate the amounts in the following currencies:

- a. in the currency in which the financial account is maintained;
- b. in the reference currency specified by the account holder;
- c. in Swiss francs; or
- d. in US dollars.

Section 7 Further Details on the Due Diligence Obligations

Art. 27¹⁵ Opening of new accounts

¹ Cases in which new accounts are opened without the reporting Swiss financial institution contributing to or being able to prevent their opening are deemed to be exceptions under Article 11 paragraph 8 letter b AEOIA.

¹⁵ Amended by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

² Such exceptions include in particular:

- a. change of policyholder in the case of insurance on the life of another person through legal succession;
- b. change of account holder as a consequence of a court or official order;
- c. creation of a beneficiary claim against a trust or similar legal entity on the basis of its deed of creation or the foundation deed.

Art. 28 Closure of accounts

¹ If a preexisting individual or entity account is closed before the end of the time frame in accordance with Article 11 paragraph 2 or 3 AEOIA and the review of the account by the reporting Swiss financial institution has not been completed by the time of closure, the financial institution may treat it as a non-reportable account.

² If a new individual or entity account is closed and the tax residence of the account holder or controlling person of the entity could not be determined by the reporting Swiss financial institution up to the time of closure, the financial institution may treat it as a non-reportable account.

³ If a preexisting or new individual or entity account is closed following a change in circumstances and the re-examination of the account required by the change in circumstances has not been completed by the time of closure, the reporting Swiss financial institution need not take the change in circumstances into account for the report.

Art. 29 Third-party claims arising from cash value insurance contracts and annuity contracts upon maturity

¹ If a claim arising from a cash value insurance contract or an annuity contract becomes due and the individual or entity entitled to the claim is not the previous account holder, this third party entitled to the claim shall be treated as the holder of a new account.

² Before fulfilling the claim, the reporting Swiss financial institution must have a self-certification from the third party entitled to the claim. This is without prejudice to cases where the financial institution:

- a. can establish on the basis of information in its possession or public information that the entity entitled to the claim is not a reportable person;
- b. can apply the alternative procedure for financial accounts held by individual beneficiaries of a cash value insurance contract or an annuity contract in accordance with the applicable due diligence obligations in the CRS.

³ If the reporting Swiss financial institution is unable to fulfil the claim arising from the contract due to the absence of a self-certification, the third party entitled to the claim is in default. The consequences of default will be suspended for the financial institution until the self-certification is received.

⁴ Article 11 paragraphs 8 and 9 of the AEOIA do not apply.

Art. 30¹⁶**Section 8
Registration Duty for Reporting Swiss Financial Institutions****Art. 31**

¹ A Swiss financial institution must register with the Federal Tax Administration (FTA) at the latest by the end of the calendar year in which it becomes a reporting Swiss financial institution.

² A reporting Swiss financial institution must de-register with the FTA at the latest by the end of the calendar year in which its capacity as a reporting Swiss financial institution ceases to apply or in which it ceases its commercial activity.

³ If the reporting Swiss financial institution notifies the FTA that it does not maintain any reportable financial accounts, this is not treated as de-registration.

⁴ In the case of a trust that must reported under Article 13 paragraph 4 AEOIA, the trustee must add «TDT=» before the name of the trust. Article 13 paragraphs 2 and 3 AEOIA applies by analogy.¹⁷

Section 9 Information Transmitted Automatically from Abroad**Art. 32**

¹ The cantons shall report the following to the FTA within two months after the end of each calendar year:

- a. the OASI number¹⁸ of the individuals with unlimited tax liability in the canton;
- b. the business identification number of the entities with unlimited tax liability in the canton.

² The FTA shall assign the information transmitted automatically from abroad on the basis of these reports and if need be on the basis of further details required for identification pursuant to the applicable agreement to the cantons.

³ It shall make the information transmitted automatically from abroad accessible in the retrieval procedure to the authority concerned with the assessment and collection of direct taxes in the canton where the reportable person has unlimited tax liability.

⁴ Employees of this authority have access to this information in the retrieval procedure only if they identify themselves with two-factor authentication, whereby one of the factors has to be a unique and forgery-proof physical identifier.

¹⁶ Repealed by No I of the O of 11 Nov. 2020, with effect from 1 Jan. 2021 (AS 2020 5251).

¹⁷ Inserted by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

¹⁸ Term in accordance with Annex No II 25 of the O of 17 Nov. 2021, in force since 1 Jan. 2022 (AS 2021 800).

Section 10 Information System

Art. 33 Organisation and management of the information system

¹ The FTA's information system is operated as an independent information system on the platform of the Federal Office of Information Technology, Systems and Telecommunication on behalf of the FTA.

² If the same data of various FTA organisational units is processed, the corresponding information systems can be networked to exchange master data, insofar as this is necessary for efficient data processing.

³ The FDF may specify detailed rules for the organisation and operation of the FTA's information system.

Art. 34 Categories of personal data processed

The FTA may process the personal data transmitted to it pursuant to the applicable agreement.

Art. 35 Destruction of data

The FTA shall destroy the data no later than 20 years after the end of the calendar year in which it received it.

Section 11 Final Provisions¹⁹

Art. 35a²⁰ Transitional provision to the Amendment of 11 November 2020

In relation to accounts that are being operated on the day before the Amendment of 11 November 2020 comes into force and in respect of which the reporting Swiss financial institution has a self-certification that does not carry a tax identification number, the rules set out in Section I, Subsection C of the Annex to the Multilateral Competent Authority Agreement of 29 October 2014²¹ on the Automatic Exchange of Financial Account Information apply.

Art. 36 Commencement²²

This Ordinance comes into force on 1 January 2017.

¹⁹ Amended by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

²⁰ Inserted by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

²¹ SR 0.653.1

²² Inserted by No I of the O of 11 Nov. 2020, in force since 1 Jan. 2021 (AS 2020 5251).

Annex
(Art. 21)

Alternative Provisions of the OECD Commentary on the CRS

1. In addition to the alternative procedure set out in the CRS or in an applicable agreement for financial accounts of individuals who are beneficiaries of a cash value insurance contract or annuity contract, the following provisions apply:

«A reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets the following requirements:

- a) *the group cash value insurance contract or group annuity insurance contract is issued to an employer and covers 25 or more employees/certificate holders;*
- b) *the employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and*
- c) *the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1,000,000.*

The term «group cash value insurance contract» means a cash value insurance contract that (i) provides cover for individuals who are affiliated through an employer, trade association, labour union or other association or group, and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender and smoking habits of the member (or class of members) of the group.

The term «group annuity insurance contract» means an annuity insurance contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.»

2. Instead of the definition given for «preexisting account» in the CRS or in an applicable agreement, the following applies:

«The term «preexisting account» means:

- a) *a financial account maintained by a reporting financial institution as at [xx.xx.xxxx];*
- b) *any financial account of an account holder, regardless of the date such financial account was opened, if:*
 - i. *the account holder also holds with the reporting financial institution (or with a related entity within the same jurisdiction as the reporting financial institution) a financial account that is a preexisting account under subparagraph C(9)(a),*

- ii. *the reporting financial institution (and, as applicable, the related entity within the same jurisdiction as the reporting financial institution) treats both of the aforementioned financial accounts, and any other financial accounts of the account holder that are treated as preexisting accounts under letter b, as a single financial account for the purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII and for the purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds,*
 - iii. *with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the preexisting account described in subparagraph C(9)(a), and*
 - iv. *the opening of the financial account does not require the provision of new, additional or amended client information by the account holder other than for purposes of the common reporting standard.»*
3. Instead of the definition given for «related entity» in the CRS or in an applicable agreement, the following applies:

«An entity is a «related entity» of another entity if (a) either entity controls the other entity; (b) the two entities are under common control; or (c) the two entities are investment entities as described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such investment entities. For this purpose, control includes direct or indirect ownership of more than 50% of the votes and value in an entity.»