

Automatic exchange of information

Overview of the exchange of tax information under a global standard

The Government of the Virgin Islands has committed to implementing the exchange of tax information on the basis of a global standard. In recent months, efforts to ensure tax transparency at international level have intensified. The intention going forward is to replace the many bilateral and multilateral agreements with a common standard for the automatic exchange of information (AEOI). The Organisation for Economic Co-operation and Development (OECD) adopted the Common Reporting Standard (CRS) in mid-2014, which establishes the framework for such a global solution.

This fact sheet explains the key aspects of the global standard regarding AEOI and how you, as a client of a Virgin Islands bank, will be affected.

1. What is the applicable legal framework?

Developments at EU level

In 2005, the Government of the Virgin Islands entered into Bilateral Agreements with each of the EU Member States in relation to reporting Savings Income information. Initially, the Virgin Islands opted to go through a transitional period, in which they would withhold a percentage from savings income and report it to the respective EU Members annually. In 2011 the Virgin Islands has changed the way it complies with the EU Savings Directive. According to the Mutual Legal Assistance (Tax Matters) (Automatic Exchange Of Information) Order 2011, withholding tax would be applied for the tax year ending 31 December 2011. With effect from the 1 January 2012, the EU Savings Directive is now complied with through automatic exchange of information.

The EU has adopted the Directive on administrative co-operation in the field of taxation (the "Mutual Assistance Directive", Directive 2011/16/EU), which was due to be adopted as part of national law of member states by 1 January 2013. It provides for the automatic exchange of information with regard to specific categories of income, including pensions and income from employment. On 12 June 2013, the EU Commission put forward a proposal to extend the Mutual Assistance Directive to include the automatic exchange of information on all investment income (from dividends, interest payments, redemption or sale proceeds and any other income generated with respect to the assets held in a financial account). The amended Mutual Assistance Directive (Directive 2014/107/EU) was adopted by the EU Council of Ministers on 9 December 2014. As currently drafted it sets out the rules and procedures for the automatic exchange of financial account information between EU member states from 1 January 2017 relating to the year commencing on 1 January 2016 (taking retrospective effect from 1 January 2014 for certain types of income). It applies only within the EU.

Developments at OECD level

The OECD began the process of establishing AEOI several years ago. However, the process has accelerated since 2010, when the amended multilateral Convention on Mutual Administrative Assistance in Tax Matters¹ was adopted. Over 80 countries signed the Convention as a framework instrument, including Switzerland, Liechtenstein, Singapore, Luxembourg and the British Virgin Islands. The Convention takes effect once the applicable instrument of ratification has been deposited with the European Council. Although individual provisions of the Convention have direct effect in the signatory countries, the Convention will only apply once it has been adopted as part of national law.

On 23 February 2014, the OECD also put forward a new global standard for the automatic exchange of information. The standard consists of two parts. Part one contains the Competent Authority Agreement (CAA)², which is a model agreement that forms the basis for the exchange of information and defines the extent of information to be exchanged, the procedures for transferring information and the terms of cooperation. This Agreement can be implemented within the framework of existing rules and regulations, including double taxation agreements, together with Article 26 of the OECD Model Convention on the automatic exchange of information, or as a bilateral or multilateral agreement between two or more countries based on the multilateral Convention on Mutual Administrative Assistance in Tax Matters (in the EU, for example, under the Mutual Assistance Directive).

Part two contains the Common Reporting Standard (CRS)³ and Commentary. The CRS lays down reporting requirements and procedural rules and specifies the process for identifying clients, the financial information to be reported and the financial intermediaries affected. AEOI will be adopted as the standard from 1 January 2016 both within the EU and also by other jurisdictions (including the British Virgin Islands) within the "early adopters group", which have committed to early adoption of the OECD guidelines (Joint Statements dated 19 March 2014 and 1 August 2014,⁴ multilateral Competent Authority Agreement implementing the automatic exchange of information⁷ and country-specific commitments). AEOI needs to be fleshed out before further implementing agreements and national implementing legislation can be adopted. For all the "early adopter" countries, financial information for the tax year commencing 1 January 2016 will be the first relevant set of data for

¹www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf

²www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financialaccount-information-common-reporting-standard.pdf

³www.oecd.org/ctp/exchange-of-tax-information/standard-for-automaticexchange-of-financial-information-in-tax-matters.htm

⁴www.oecd.org/tax/transparency/AEOIjointstatement.pdf

AEOI purposes. The first effective exchanges of data will take place in 2017. A number of other countries, including Switzerland, have committed to adopting the new OECD standard one year later, with financial information relating to the 2017 fiscal year to be exchanged for the first time in 2018.

To this end, the British Virgin Islands and 50 other jurisdictions signed the multilateral Competent Authority Agreement implementing the automatic exchange of information on 29 October 2014.⁵

Financial information for the tax year commencing 1 January 2016 will be the first relevant set of data for AEOI purposes. The first effective exchanges of data will take place in 2017.

"Early adopter" AEOI timeline



A number of other countries have committed to adopting the new OECD standard one year later, with financial information relating to the 2017 fiscal year to be exchanged for the first time in 2018.

"Later adopter" AEOI timeline



⁵www.oecd.org/tax/exchange-of-tax-information/multilateral-competent-authority-agreement.htm

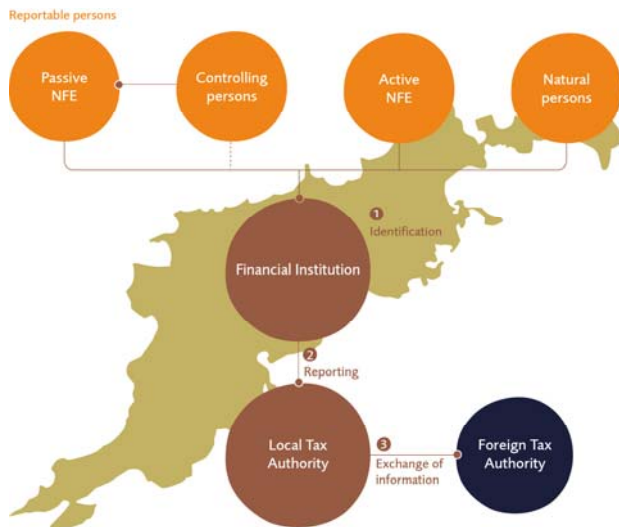
The G20, OECD and other key jurisdictions have committed to exchanging all relevant financial account information in the near future on the basis of AEOI, with a view to ensuring effective taxation. The aim of implementing a global standard is to prevent a hotchpotch of models with conflicting requirements, which can cause uncertainty for the parties involved. To ensure a competitive level playing field, it is essential that financial institutions consistently apply the same rules (e.g. for identifying reportable persons). This equality of treatment is also ensured by the reciprocity embedded as a guiding principle of the OECD standard, i.e. all countries participating in AEOI must follow the same rules when collecting and exchanging information.

Another key feature of the global standard is adherence to the principle of specificity, which means that information may not be used for any purpose other than the (tax) purpose prescribed. Applicable rules should also ensure adequate data protection from both a legal and technical standpoint.



2. How does the automatic exchange of information work?

Financial institutions in countries that have agreed to implement AEOI on the basis of a bilateral or multilateral agreement are obliged to supply information globally on foreign clients and their financial accounts to the relevant national tax authorities. The national tax authorities then exchange the information received with the tax authorities in other participating countries (contracting states). In this way, tax authorities in other jurisdictions receive information that allows them to investigate and verify the basis of assessment for taxpayers who hold assets in a foreign territory. In contrast to other models, the tax authorities in the taxpayer's country of residence have sole responsibility for collecting taxes under AEOI. Neither the foreign state nor financial institutions are under any obligation to assess or withhold taxes. The following diagram shows how AEOI works in respect of assets held in the British Virgin Islands:



- 1 British Virgin Islands financial institution identifies reportable persons and their accounts and records the information required.
- 2 British Virgin Islands financial institution discloses the data required under AEOI/the CRS (client and financial data) to the Local Tax Authority
- 3 The Local Tax Authority sends the relevant information to the tax authorities responsible in the contracting state concerned.

3. Who is affected by AEOI?

British Virgin Islands financial institutions are required to disclose information on clients who are resident for tax purposes in other participating jurisdictions that implement AEOI. The disclosure requirement applies to accounts held by both individuals and entities, irrespective of legal form (including trusts and foundations that do not qualify as financial institutions under AEOI rules). The standard also includes the obligation to investigate "passive entities" and to report the individuals who actually control these entities.

Ultimately, any persons who have a beneficial interest in the assets or who have control over a legal entity ("controlling persons"), must be reported. In general, the standard applies a "look-through approach", which requires the ultimate beneficial owner of the assets to be identified to the extent permitted under existing national rules. Legal entities that qualify as financial institutions are directly responsible for fulfilling the reporting obligations. AEOI imposes extensive documentation and due diligence requirements on financial institutions for the purpose of determining which accounts are affected by the reporting obligation. Accordingly, relevant financial institutions will be required to review existing client relationships. If it is not possible to establish the client's residence for tax purposes based on the available information, a self-certification must be obtained from the client. For new accounts opened after an AEOI agreement is concluded, it will become standard practice for clients from relevant contracting

states to provide self-certification of their residence for tax purposes.

4. What type of information will be transferred under AEOI?

Once AEOI takes effect, the following information must be reported on an annual basis to relevant participating countries in accordance with the OECD standard:

- Name, address and identifying number of the reporting financial institution
- Name of the person, or in the case of entities, the name of the entity and the controlling person(s)
- Address and domicile of the person, or in the case of entities, the address and domicile of the entity and of the controlling person(s)
- TIN (Taxpayer Identification Number) of the person, or in the case of entities, the TIN of the entity and the controlling person(s)
- Date of birth of the person, or in the case of entities, the date of birth of the controlling person(s)
- Place of birth of the person, or in the case of entities, the place of birth of the controlling person(s)
- Account number
- Balance or value of the account(s) and custody account(s) as at 31 December for the year in question
- Total capital gains realised in the year in question

5. What are the implications of AEOI for clients of British Virgin Islands financial institutions?

The groundwork has been laid for the automatic exchange of information internationally, to facilitate the coordinated and systematic prevention of tax evasion and illegal tax avoidance. The implementation of AEOI will ensure in future that regular investment income in foreign territory is taxed.

The British Virgin Islands have offered to enter into bilateral or multilateral negotiations with interested states regarding the automatic exchange of information based on the OECD standard.

Once the relevant agreements are in place, information on foreign bank clients will therefore be exchanged for the first time in 2017 for the calendar year beginning 1 January 2016. Clients of British Virgin Islands financial institutions should use this window of opportunity to continue on their present course towards tax transparency and compliance.

As a private bank, we are aware of the implications of international developments and their impact on the privacy of our clients. Take advantage of our global network of experts, who can give you all the information you need for your particular circumstances. We can help you define strategies, now and going forward, for building a secure future.



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