

## FACT SHEET \*

### Automatic exchange of information (AEOI)

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).

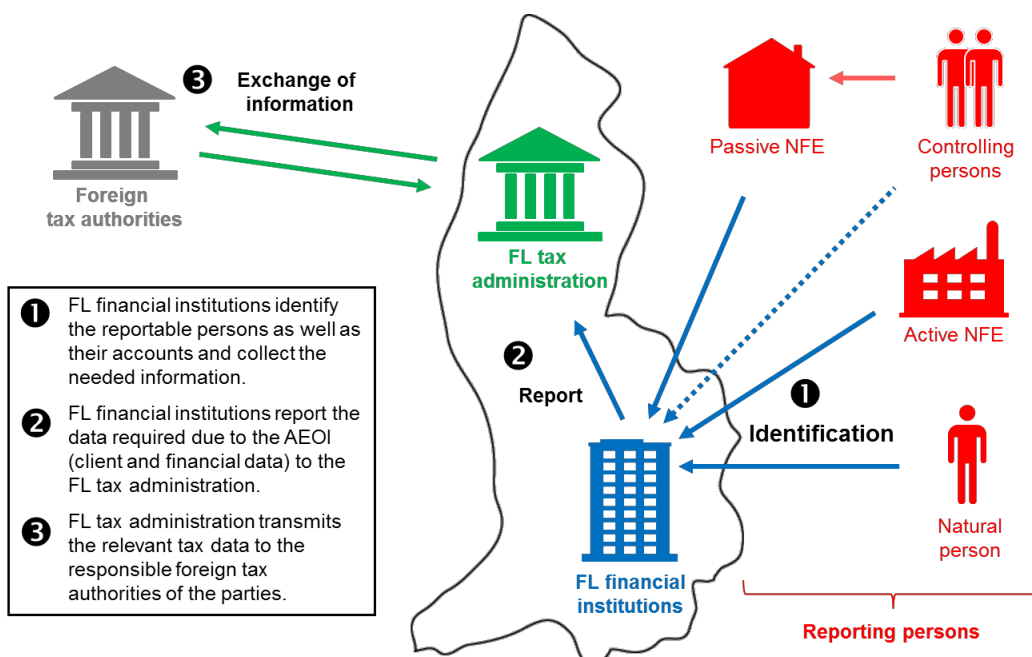
By ratifying the convention on mutual administrative assistance in 2016, Liechtenstein has laid the foundations for implementing the AEOI through a multilateral agreement. Within the scope of the AEOI, financial institutions in countries that have agreed to the application of the AEOI with other countries (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 is to take place in 2017.

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

#### I. 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 these data, the national tax authority will exchange these 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.

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



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 the obligation to assess or withhold taxes.

## **II. What led to the global standard on 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 the 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.

## **III. 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 on these legal entities. Legal entities that qualify as a financial institution are directly responsible for fulfilling the reporting obligations.

## **IV. 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 will automatically exchange information with the 28 EU member states starting 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 tax year 2017 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.

List of AEOI partner countries of Liechtenstein:

- Valid from 01.01.2016:

Belgium	Bulgaria	Croatia
Cyprus	Czech Republic	Denmark (excluding Greenland and the Faroe Islands)
Estonia	Finland (incl. Åland)	France (including Guadeloupe, Martinique, French Guiana and La Réunion)
Germany	Greece	Hungary
Ireland	Italy	Latvia
Lithuania	Luxembourg	Malta
Netherlands (without Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Marteen)	Poland	Romania
Portugal (incl. Madeira and the Azores)	Slovakia	Slovenia
Spain (including the Canary Islands)	Sweden	United Kingdom (including Gibraltar but excluding the British Virgin Islands, the Cayman Islands, Guernsey, Jersey, the Isle of Man, Montserrat, the Turks and Caicos Islands)

- AEOI partner countries of Liechtenstein valid from 01.01.2017:

Andorra	Anguilla	Argentina
Australia	Austria	Belize
Bermuda	British Virgin Islands	Canada
Cayman Islands	Chile	China
Faroe Islands	Greenland	Guernsey
Iceland	India	Isle of Man
Japan	Jersey	Kuwait
Malaysia	Mauritius	Mexico
Monaco	New Zealand	Norway
San Marino	Seychelles	South Africa
South Korea	St. Vincent and the Grenadines	Turks and Caicos Islands

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/lilexprod/lgsystpage2.jsp?menu=2&tablesel=0&formname=showlaw&lqblid=2015358000&version=3&sel\\_lawtype=conso&daysearlier=42&dayslater=60](https://www.gesetze.li/lilexprod/lgsystpage2.jsp?menu=2&tablesel=0&formname=showlaw&lqblid=2015358000&version=3&sel_lawtype=conso&daysearlier=42&dayslater=60) (only available in German)

Please note that the list of Liechtenstein's AEOI partner countries can be continuously expanded.

## V. Which 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 (in this case: cash value insurance contracts as well as annuity contracts) 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 policy number, name and (if applicable) identification number of the reporting financial institution (in this case: insurance company).
- Insurance benefits from cash value insurance contracts resp. annuity contracts, which are being paid or credited for the reporting period in the insured event (resp. at maturity, in case of survival or death), upon (partial) surrender resp. as annuity payments.
- Cash value or cash equivalent of the cash value insurance contract resp. the annuity contracts at 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.

Furthermore, please note that the collected and reported information may differ from the tax-relevant information of a reportable person.

## **VI. 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.

## **VII. 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 the correction of incorrect data.

### Right to information

Reportable persons and account-holding entities may assert the right to information in accordance with Art. 11 DSG vis-à-vis the reporting Liechtenstein financial institution. They are entitled to know whether data relating to them is being processed. 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 to the Liechtenstein tax administration.

### Right to the correction of incorrect data

Reportable persons and account-holding entities are also entitled to have inaccurate information corrected in accordance with Art. 7 DSG. The right to have inaccurate information corrected must be asserted in writing to the reporting Liechtenstein financial institution. The right of correction is not limited in time.

The correction of incorrect information that will be exchanged may only be requested if the disclosures and documents required under the Professional Due Diligence in Financial Transactions Act (SPG) or other documentation<sup>1</sup> are submitted. This relates to the following information:

- 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.

The required disclosures, documents or records shall be submitted to the reporting Liechtenstein financial institution prior to reporting to the Liechtenstein tax administration by 31 May of the year in which a report is made to the Liechtenstein tax administration. The purpose of this procedure is to ensure that the reporting Liechtenstein financial institution can obtain legal certainty about the content of each of the reports in good time before sending them to the Liechtenstein tax administration. If a (permissible) data correction 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 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 temporary injunction (protective measure) relating to the protection of privacy in accordance with Art. 37 (1) DSG, 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 of the information to be exchanged vis-à-vis the Liechtenstein tax administration. In this case they may only request that inaccurate data resulting from transmission errors be corrected. The Liechtenstein tax administration will then instruct the reporting financial institution to re-send the report.

It is only possible to request that incorrect information that will be exchanged, whose incorrectness is the result of transmission errors, be corrected prior to forwarding of the information by the Liechtenstein tax administration if the correction is applied for in writing by 31 August of the calendar year in which the information is to be sent by the Liechtenstein 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 data correction is made or implemented

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<sup>1</sup> 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

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 account holder makes use of his right to correction of data, but if it is not possible to reach 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 temporary injunction (protective measure) relating to the protection of privacy in accordance with Art. 37 (1) DSG, 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.

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\*Source: Liechtenstein Bankers Association: [www.bankenverband.li](http://www.bankenverband.li). The present factsheet has been adopted with the consent of the Liechtenstein Bankers Association and amended for insurance products.

Disclaimer: The Liechtenstein Insurance Association assumes no liability for the content of this paper.