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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)

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*The Swiss Federal Council,*

based on the Federal Act of 18 December 2015<sup>1</sup> on the International Automatic Exchange of Information in Tax Matters (AEOIA),  
*ordains:*

### **Section 1     ...**

**Art. 1<sup>2</sup>**

### **Section 2     Non-Reporting Financial Institutions**

**Art. 2**            Collective investment vehicles

<sup>1</sup> 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 2006<sup>3</sup> (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

<sup>1</sup> SR **653.1**

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 Repealed by No I of the O of 7 Nov. 2018, with effect from 1 Jan. 2019 (AS **2018** 4333).

<sup>3</sup> 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.

<sup>2</sup> 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 2015<sup>4</sup> 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. 7<sup>5</sup>**

<sup>4</sup> SR 958.1

<sup>5</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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 2013<sup>6</sup> 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. 12<sup>7</sup> 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:

<sup>6</sup> SR 0.672.933.63

<sup>7</sup> 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 2011<sup>8</sup> are recorded in the land register;
- b. the co-owners have agreed use and management regulations under Article 647 of the Civil Code<sup>9</sup> (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 CC<sup>10</sup>.

#### **Art. 14**<sup>11</sup> 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. 15**<sup>12</sup>

#### **Art. 16** E- money accounts

<sup>1</sup> 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.

<sup>8</sup> SR 211.432.1

<sup>9</sup> SR 210

<sup>10</sup> SR 210

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

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 Repealed by No I of the O of 11 Nov. 2020, with effect from 1 Jan. 2021 (AS 2020 5251).

<sup>2</sup> 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 1990<sup>13</sup> 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.

<sup>13</sup> SR 642.11