



# Automatic Exchange of Information (AEOI / CRS)

**Continuing challenges for Swiss trustees**



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# Overview of the AEol requirements

The Automatic Exchange of Information (“AEol” or “CRS”) has been in place since 2016 in many jurisdictions. Switzerland followed in 2017. The Swiss Federal Tax Administration (“SFTA”) has recently started conducting first AEol audits at Swiss trustees. In this context, the following document summarises the continuing challenges of compliance with the AEol rules for trustees.

## AEol Partner Jurisdictions of Switzerland

### First exchange in 2018 regarding 2017

 Australia	 Iceland
 Canada	 Japan
 EU Member States	 Jersey
 Gibraltar	 Norway
 Guernsey	 South Korea
 Isle of Man	 United Kingdom

### First exchange in 2020 regarding 2019

 Anguilla <sup>1</sup>	 Kuwait <sup>1</sup>
 Aruba	 Marshall Islands <sup>1</sup>
 Bahamas <sup>1</sup>	 Nauru <sup>1</sup>
 Bahrain <sup>1</sup>	 Panama
 Bonaire	 Saba
 Grenada	 Saint Eustatius
 Israel	 United Arab Emirates <sup>1</sup>

### First exchange in 2019 regarding 2018

 Andorra	 Liechtenstein
 Argentina	 Malaysia
 Barbados	 Mauritius
 Belize	 Mexico
 Bermuda <sup>1</sup>	 Monaco
 Brazil	 Montserrat
 BVI <sup>1</sup>	 New Zealand
 Cayman Islands <sup>1</sup>	 Russia
 Chile	 Saint Kitts and Nevis
 China	 Saint Lucia
 Colombia	 Saint Vincent and the Grenadines
 Cook Islands	 San Marino
 Costa Rica	 Saudi-Arabia
 Curaçao	 Seychelles
 Faroe Islands	 Singapore
 Greenland	 South Africa
 Hong Kong	 Turks- and Caicos Islands <sup>1</sup>
 India	 Uruguay
 Indonesia	

### First exchange in 2021 regarding 2020

 Antigua and Barbuda	 Pakistan
 Azerbaijan	 Qatar <sup>1</sup>
 Dominica	 Samoa
 Ghana	 Trinidad and Tobago
 Lebanon	 Vanuatu <sup>1</sup>
 Macao	

### First exchange in 2022 regarding 2021

 Albania <sup>1</sup>	 Peru
 Brunei Darussalam <sup>1</sup>	 Turkey
 Nigeria <sup>1</sup>	

<sup>1</sup> “Non-reciprocal jurisdictions” i. e. they will supply account information to Switzerland, but will not receive such data from Switzerland. Source: <https://www.sif.admin.ch>

AEoI requires Financial Institutions (“FIs”) in Participating Jurisdictions to implement certain due diligence procedures to identify financial accounts, collect and report certain information about the tax residence status of their account holders.

Most trusts with a corporate trustee and many entities in a classic wealth management context are FIs, by virtue of

being managed by an FI (i.e. the corporate trustee). The trust’s/ company’s compliance with their requirements as FI (i.e. registration, due diligence, reporting and other requirements) are usually performed by the trustee or corporate service provider.

The most important elements of AEoI compliance in a trust context are outlined below.

### Entity classification

Each entity needs to be classified as either an FI or NFE (not just entities that hold a bank account).



### Due Diligence

Each FI is required to identify all its reportable persons and collect certain information regarding the status and tax residence of those account holders. It is generally mandatory to obtain self-certification from all account holders. The account holders of a trust include the settlor, protector, beneficiaries and any person that controls the trust.



### Reporting

FIs are required to report all reportable accounts annually (in Switzerland by 30 June, in other jurisdictions by 31 May). Many jurisdictions (incl. Switzerland) also require nil-reporting in case an FI does not maintain any reportable accounts (e.g. a trust without reportable account holders must file such nil-report). In many jurisdictions (incl. Switzerland) FIs are required to notify account holders before they are reported for the first time.



### Ongoing Monitoring

Amongst others, trustees need to monitor the following aspects of AEoI compliance:

- Monitor clients for changes in circumstances (e.g. settlors/ beneficiaries/ protectors move from one jurisdiction to another)
- Monitor distributions to discretionary beneficiaries



### Compliance & Governance

All FIs (incl. corporate trustees) need to have an AEoI compliance program, including written policies and procedures, effective systems and processes, and regular training to employees.

# AEol challenges for trustees

## Entity classification

Each trustee needs to ensure:

- All client entities (incl. all trusts, underlying companies, holding companies, etc.) are classified for AEol purposes;
- An appropriate audit trail of the entity classifications is maintained (e.g. a central spreadsheet, memos, etc.).

## Written policies & procedures

Trustees must maintain a set of written policies and procedures as part of their AEol compliance program. Most notably, a policy document should cover:

- The trustee's approach to entity classification;
- Client Documentation & Due Diligence procedures;
- Ongoing monitoring procedures;
- Reporting;
- AEol responsibilities, compliance & governance.

## Training

Trustees need to organize regular training sessions for their employees. Training sessions and materials should in particular cover the following topics:

- Due Diligence;
- Reporting;
- Ongoing Monitoring;
- Compliance & Governance;
- Example cases and other specific elements.

## Reporting solution

Swiss trustees need to report all their reportable accounts annually on the SFTA portal or the local AEol portal of the relevant jurisdiction. A trustee needs to ensure that its systems capture all the required information and that it has appropriate processes and controls in place to ensure the reporting is made correctly and in time.

## Significance for your organization

- Correct classification of all client entities is the backbone of a trustee's AEol compliance;
- Classification documents/ memos will likely be requested by the SFTA in case of an audit.

## Significance for your organization

- A comprehensive document explaining the core AEol requirements and how they are implemented in your organization, serving as a policy document and a source of internal reference;
- A fundamental pillar of your organization's AEol framework, ensuring compliance with mandatory requirements / best practice;
- Helpful for the transition to new employees;
- A document the SFTA is likely to request in case of an audit.

## Significance for your organization

- An essential element to ensure your organization continues to meet all AEol requirements and remains up to date with new developments;
- Evidence of training attendance and training materials will likely be requested by the SFTA in case of an audit.

## Significance for your organization

- An appropriate reporting solution is essential, in particular for trustees and fiduciaries that are in charge of the reporting for their clients.

# AEol challenges for trustees

## Ongoing monitoring & controls

FIs are required to monitor and track the different tasks, deadlines, and responsibilities under AEol on a regular basis. For trustees, this includes in particular:

- Regular checks that all clients are correctly documented;
- Monitor changes in circumstances;
- Monitor distributions made to beneficiaries;
- For Passive NFEs with a bank account: inform banks of changes in controlling persons and/ or distributions made to beneficiaries;
- Annually review list of reportable jurisdictions, nil-reporting requirements and other compliance requirements (e.g. certain countries require annual compliance statement).
- A risk control matrix may be a useful monitoring tool.

## AEol pre-audit health check

Based on our experiences, the Swiss Federal Tax Administration takes a strict approach in case of AEol audits of trustees. Therefore, a health check can be an essential mechanism to assess an organization's compliance with AEol and allows taking action before the audit takes place.

## Significance for your organization

- Ongoing monitoring of the relevant aspects is important to ensure continued compliance with AEol;
- Annually completing a risk control matrix or similar tool:
  - Constitutes a simple and effective way to monitor completion of each task and identify potential gaps;
  - Serves as an audit trail of compliance in light of future external AEol audits.

## Significance for your organization

- Regular health checks can help meet the AEol requirements and identify potential areas of improvement;
- Serves as an audit trail of compliance in light of future external AEol audits.

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