

Liechtenstein asset structures and the automatic exchange of information (AEOI)

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Preliminary comments

Since 1 January 2016 the automatic exchange of information in tax matters (AEOI) has been applicable in Liechtenstein. AEOI has been implemented in accordance with the provisions of the Common Reporting Standard (CRS). The AEOI regime is based on the AEOI agreement concluded between Liechtenstein and its EU partner countries, which regulates the exchange of information on financial accounts of relevance for tax purposes. The information to be exchanged is based on the KYC information of Liechtenstein financial intermediaries.

All the world's leading financial centres have signed up to AEOI. Liechtenstein is one of the "early adopters" that will carry out the first exchange of information from 2017 in respect of the data for 2016. Switzerland is part of the "second wave" that will carry out the first exchange of information from 2018 in respect of the data for 2017. Like Liechtenstein, Switzerland will carry out AEOI with the EU member states and also with Australia. Switzerland has plans to conclude new agreements with Iceland, Norway, Guernsey, Jersey, the Isle of Man, South Korea, Japan, Canada and other countries.

The implementation of AEOI will be a genuine challenge for Liechtenstein financial intermediaries. The terminology, duties of diligence and procedures involved are very similar to those of the FATCA Agreement. However, because a large number of clients are domiciled in future AEOI partner countries, the expense involved in implementing the AEOI reporting standard is many times higher than for FATCA. From 2016 asset structures must be brought in line with the AEOI standard.

This Bulletin is intended as an introduction to AEOI and a guide to how it will apply in practice. The aim is to familiarise the reader with the future AEOI reporting standard as applicable to asset structures with an EU connection. At the same time a number of solutions and options exist for asset structures not subject to the AEOI reporting obligation. We will use examples to illustrate these options.

Which asset structures and / or persons are affected by AEOI?

AEOI affects natural persons resident for tax purposes in the EU (beneficial

owners, foundation board members, trustees, protectors, advisory board members, managing directors, beneficiaries, etc.) who control Liechtenstein legal entities (companies, foundations, trusts, Anstalten, partnerships, etc.) that are liable without restriction to tax in Liechtenstein and/or governed by Liechtenstein law.

Who is responsible for reporting for asset structures under AEOI?

The reporting duty applies either to the Liechtenstein banks if the asset structure qualifies as an “investment company” not professionally managed (known as a “non-financial entity” or NFE), or to the asset structure itself if professionally managed (known as a “financial institution” or FI). Thus Liechtenstein asset structures can be classified as follows:

What information is exchanged under AEOI?

Reporting applies to the financial accounts of asset structures. The reportable information depends on whether the asset structure is an NFE or an FI. In the case of an NFE (active or passive) the banks report the assets and gross investment income (including interest, dividends, revenues from certain insurance policies, other similar income and the proceeds from disposal of financial assets) booked to the money/securities account as at 31 December. In addition, the banks report the controlling persons of any asset structure qualifying as a passive NFE.

If it qualifies as an FI the asset structure reports the “financial interest” (equity and debt interest) and the asset structure’s controlling persons. For fiscally transparent (controlled) asset structures the term “financial interest” refers to

the assets (and potentially debt capital) as shown in the balance sheet, books of account, statement of assets or similar document. For fiscally non-transparent (discretionary) asset structures the “financial interest” is the total amount distributed to a beneficiary.

Examples 1 and 2 on the next page illustrate the different ways in which reportable information is defined.

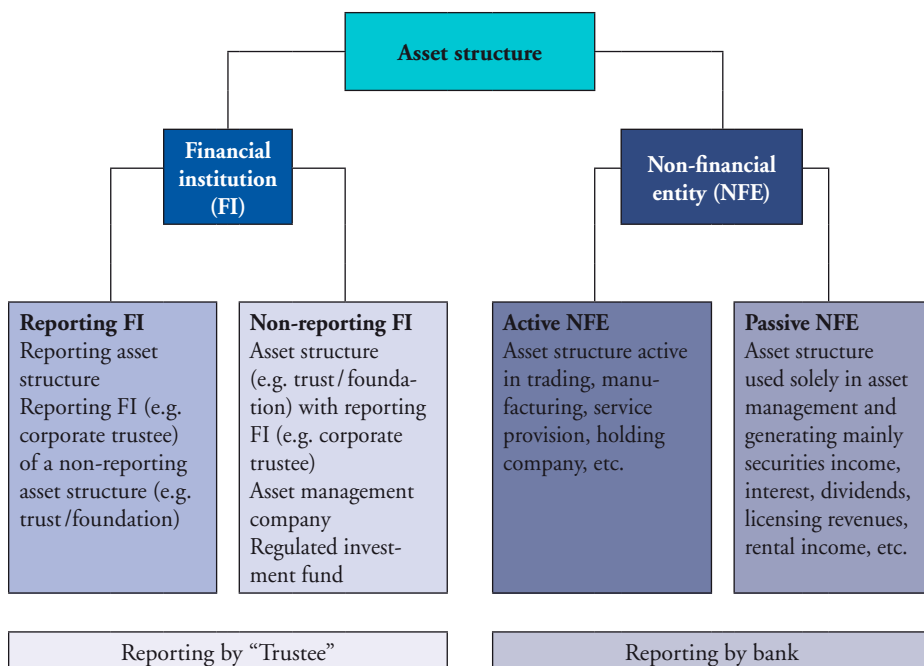
What duties of diligence need to be observed for asset structures?

As under FATCA, participation in the AEOI reporting standard requires that FIs under a reporting obligation identify, classify, document and report the reportable financial accounts. All mandatory due diligence rules must be observed. A first distinction is made between existing and new accounts of natural persons and legal entities. With accounts of natural persons a second distinction is made between low-value accounts (up to USD 1 million) and high-value accounts (above USD 1 million). These distinctions determine which particular time limits need to be observed and the scope of due diligence that applies.

What time limits need to be observed in connection with existing clients?

Liechtenstein asset structures that qualify as FIs are required to identify, document and report the financial accounts of clients resident/domiciled in the EU within the following time limits (see Fig. 2 on the next page).

Fig. 1:



Example 1: “Controlled” foundation:

Classification	Reporting FI	Reportable information
Passive NFE	Bank	Money / securities account plus booked income and sale proceeds
FI	FI or reporting trustee	Equity interest of the settlor / first beneficiary (asset side of balance sheet)

Example 2: “Discretionary” foundation:

Classification	Reporting FI	Reportable information
Passive NFE	See “controlled” foundation	See “controlled” foundation
FI	Asset structure	Equity interest of the discretionary beneficiary (distribution)

Fig. 2:

Common time limits for low-value and high-value accounts	
31.12.2016	Classification of asset structures as NFEs or FIs
	Reporting of asset structures with passive NFE status to LI banks
Time limits for high-value accounts (above USD 1 million)	
31.12.2016	File review finalised
31.03.2017	Notification to relevant controlling persons of asset structures with FI status
31.05.2017	Registration of asset structures with FI status with LI tax authority
30.06.2017	Reporting of financial accounts of asset structures with FI status to LI tax authority
	Notification of controlling persons of asset structures with passive NFE status to LI banks
30.09.2017	Reported information passed on from LI tax authority to AEOI partner countries
Time limits for low-value accounts (up to USD 1 million)	
31.12.2017	File review finalised
31.03.2018	Notification to relevant controlling persons of asset structures with FI status
31.05.2018	Registration of asset structures with FI status with LI tax authority
30.06.2018	Reporting of financial accounts of asset structures with FI status to LI tax authority
	Notification of controlling persons of asset structures with passive NFE status to LI banks
30.09.2018	Reported information passed on from LI tax authority to AEOI partner countries

New DDO forms in Liechtenstein and Switzerland

Partly with a view to the entry into force of the AEOI regime, Liechtenstein has amended the Due Diligence Ordinance (SPV) and implemented the SPV in two stages. Under stage 1 of the SPV as amended, the beneficial owners of pre-ex-

isting corporations (AG, GmbH, Anstalt, etc.) are to be identified by 31 December 2016 and where applicable documented in accordance with the new legislation. Under stage 2 of the amended SPV the beneficial owners of foundation-like structures (foundations, trusts, etc.) are to be identified in accordance with the new legislation by 31 December 2018 (for mandates subject to increased due

diligence) or by 31 December 2020 (for all other mandates). For new asset structures established on or after 1 January 2016, the determination of beneficial owners of asset structures is governed by the provisions of the 4th EU anti-money laundering directive.

Following Switzerland’s introduction of CDB16 (the amended agreement on the banks’ code of conduct with regard to the exercise of due diligence) on 1 January 2016, in future the beneficial owners of asset structures are to be identified and documented by Liechtenstein and Swiss financial intermediaries using the following new forms:

Liechtenstein	Switzerland
Form C (for all corporations)	Form K (for operationally active companies) Form A (for domiciliary companies)
Form T (for foundations and trusts)	Form S (for foundations) Form T (for trusts)
Form D (for recipients of distributions from discretionary structures)	

This comparison shows that even Liechtenstein “domiciliary companies” must use Form C to identify owners of 25 % or greater equity participations as the beneficial owners. For domiciliary companies in Switzerland, irrespective of the 25 % threshold Form A must be used to identify all shareholders.

Which Liechtenstein asset structures are not covered by AEOI?

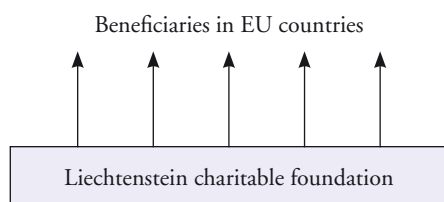
Active NFEs

Controlling persons of legal entities classified as active NFEs are not subject to the AEOI reporting obligation. Active NFEs have no AEOI duties apart from certain documentation, substantiation

and self-declaration requirements. Entities classed as active NFEs include:

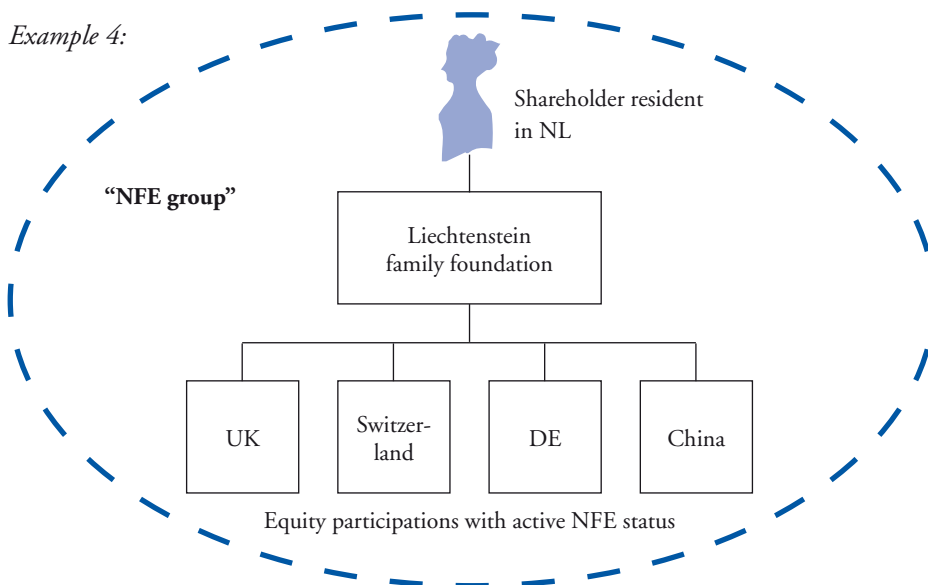
- tax-exempt charitable foundations;
- manufacturing, distribution, service and trading companies;
- holding companies with active participations in an NFE group;
- treasury companies involved in financing an NFE group;
- “economically active” real estate companies (with one or more employees);
- legal entities for which <50% of their income is passive and <50% of their balance sheet assets generate passive income.

Example 3: Tax-exempt charitable foundation:



A Liechtenstein foundation which serves an exclusively charitable purpose and is exempt from tax is classified for AEOI purposes as an active NFE. Payments to beneficiaries of the foundation are thus exempt from the AEOI reporting obligation even if such beneficiaries are resident for tax purposes in an EU country. If the charitable foundation holds a money/securities account in, say, the UK, from 2017 the UK bank will report the account holder (the charitable foundation), the value of the money/securities account as at 31 December 2016 and the income generated on the money/securities account during 2016 to the UK tax authority in London (HM Customs & Revenue, HMRC), which then forwards the data to the Liechtenstein tax authority (LSTV). From the LSTV perspective such reporting is merely a way of monitoring entities that are registered in Liechtenstein but exempt from tax.

Example 4:



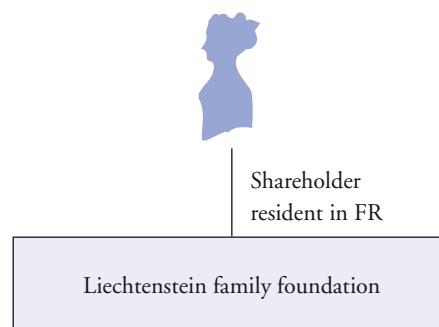
Example 4: Holding company with active participations

In this example a Liechtenstein family foundation holds four operational participations which all qualify as active NFEs. Although the family foundation generates mainly passive income (e.g. dividends) and, if considered stand-alone, would qualify as a passive NFE (since no FI acts as board member and the structure is not professionally managed by an external FI), in its capacity as holding company of an “NFE group” the family foundation likewise acquires the active NFE status of the subsidiaries. This ensures that the bank that manages the account of the Liechtenstein family foundation is not required to report either the shareholder resident in NL or the other controlling persons.

Passive NFEs

For legal entities qualifying as passive NFEs, not only the entity but also its controlling persons are reported. In the case of foundations and trusts the controlling bodies (including protectors and advisory board members), the effective non-fiduciary founders/settlers and the designated or eligible beneficiaries and other persons who control the foundation or trust also count as “beneficial owners” and hence as controlling persons.

Example 5: Structure with no bank account:



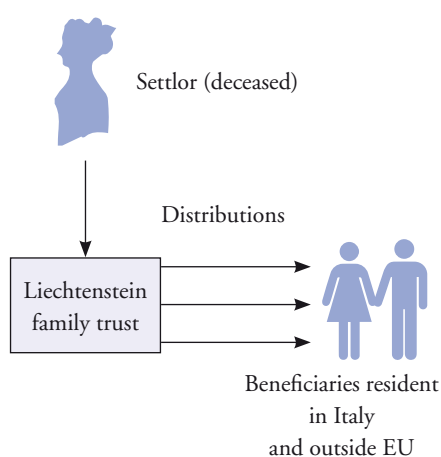
In this example a Liechtenstein family foundation manages a collection of paintings and antiques for the benefit of a founder who is also the first beneficiary. The paintings and antiques are assets that do not count as “financial accounts” within the meaning of the CRS. Since no FI acts as foundation board member officer and the structure is not professionally managed by an external FI, the structure qualifies as a passive NFE. Accordingly, the reporting obligation lies with the bank that manages the account (FI). However, since the family foundation does not hold a money/securities account no reports on its assets are made to the French tax authorities.

FIs

A Liechtenstein legal entity that manages assets and is professionally managed by an FI qualifies as an FI. For AEOI purposes it must register as an FI with

the Liechtenstein tax authority (LSTV). The reportable information concerns the asset structure's "financial interest". For discretionary entities the reportable information is limited to the distributions effectively made to a beneficiary domiciled/resident in an AEOI partner country.

Example 6: Discretionary family trust:



In 2016 the Liechtenstein trustee (FI) of the family trust decides to make distributions to beneficiaries resident in Italy and outside the EU. The distributions to beneficiaries resident in Italy are reported to the LSTV by the Liechtenstein trustee using Form D and the LSTV forwards the data to the competent Italian tax authority. The distributions to beneficiaries outside the EU do not need to be reported by the Liechtenstein trustee.

Because the family trust already existed before the AEOI entered into force, the effective, non-fiduciary founder/donor/settlor (known as the "non-controlling settlor") does not have to be reported. In this particular case such reporting would in any case be pointless, since the settlor has already died. As part of the implementation of the 4th EU anti-money laundering directive the non-controlling settlor must be retroactively documented and reported by 2018 or, as applicable, by 2020. As things stand, however, we can only assume that a settlor who has died will not need to be documented retroactively.

Conclusion

ATU and the managed asset structures are currently in the process of implementing the AEOI rules. We have already gained experience on this issue and can answer a number of complex questions. We would be happy to provide clients with advice on all issues relating to AEOI, the new due diligence rules and the new SPV/anti-money laundering forms. ATU supports its clients in particular on co-ordination issues relating to jointly managed structures with a connection to Switzerland and other AEOI partner countries.

We are confident that it will be possible to maintain confidentiality and asset protection for a large number of asset-managing structures under AEOI, providing they are structured properly and functions are exercised appropriately. Because the AEOI rules do not come into effect for Switzerland and other 2nd wave adopters until 2017, Swiss trust service providers, lawyers, asset managers and advisors have the rest of this year in which to take measures and decisions to optimise asset structures. AEOI presents all financial intermediaries with major challenges, and a proactive approach will be required to overcome them. The sooner work begins on AEOI implementation, the more sustainable and efficient compliance with future reporting duties for asset structures will be.

The author of this article, Christian Wyser, of Allgemeines Treuunternehmen, will be pleased to provide you with further information.

ATU news: new management structure at Allgemeines Treuunternehmen (ATU)

Within the ongoing process of succession planning at executive management level, three long-serving members of the Board of Trustees, Dr Guido Meier, Dr Werner Keicher and Christoph Langenauer, have decided to hand responsibility for managing the company on to a younger generation of management. All three will remain with ATU, concentrating on relationship management and placing their experience at the company's disposal.

The Board of Trustees will in future consist of the long-serving member Roger Frick and the former Executive Committee members Roland Feger, Dr Beat Graf and Elmar Jerjen. Dr Beat Graf has taken over the post of Chairman of the Board of Trustees from Dr Guido Meier.

At the same time the top management of the company has been reorganised through the amalgamation of the Board of Trustees and the Executive Committee into a single body. This move is intended to make decision-making channels shorter, thereby enhancing efficiency and increasing flexibility at senior management level.

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