

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

## **Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOIA)**

of 18 December 2015 (Status as of 1 January 2017)

---

*The Federal Assembly of the Swiss Confederation,  
based on Article 173 paragraph 2 of the Federal Constitution<sup>1</sup>,  
having examined the Federal Council Dispatch of 5 June 2015<sup>2</sup>,  
decrees:*

### **Section 1    General Provisions**

**Art. 1**            Subject matter

<sup>1</sup> This Act governs the implementation of the automatic exchange of information in tax matters (automatic exchange of information) between Switzerland and a partner jurisdiction in accordance with:

- a. the Multilateral Competent Authority Agreement of 29 October 2014<sup>3</sup> on the Automatic Exchange of Financial Account Information (MCAA), including its annex;
- b. other international agreements that provide for the automatic exchange of financial account information.

<sup>2</sup> The deviating provisions of individual applicable agreements are reserved.

**Art. 2**            Definitions

<sup>1</sup> In this Act:

- a. *applicable agreement* means an agreement or a treaty within the meaning of Article 1 paragraph 1 which applies in a particular case;
- b. *common reporting standard (CRS)* means the common standard on reporting and due diligence for financial account information of the Organisation for Economic Co-operation and Development (OECD);

AS 2016 1297

<sup>1</sup> SR 101

<sup>2</sup> BBI 2015 5437

<sup>3</sup> SR 0.653.1

- c. *partner jurisdiction* means a state or sovereign territory with which Switzerland has agreed to implement the automatic exchange of information;
- d. *Swiss financial institution* means:
  - 1. a financial institution resident in Switzerland, but excluding any branch of that financial institution that is located outside Switzerland; or
  - 2. a branch of a financial institution not resident in Switzerland if that branch is located in Switzerland;
- e. *undocumented account* means a preexisting individual account for which a reporting Swiss financial institution is unable to determine the tax residence of the account holder in accordance with the provisions of the applicable agreement;
- f. *Swiss tax identification number for individuals* means the OASI insurance number in accordance with the Federal Act of 20 December 1946<sup>4</sup> on Old-Age and Survivors Insurance;
- g. *Swiss tax identification number for entities (BIN)* means the business identification number within the meaning of the Federal Act of 18 June 2010<sup>5</sup> on the Business Identification Number;
- h. *foreign tax identification number* means the identification number of a taxpayer according to the law of the state or sovereign territory where that taxpayer is resident for tax purposes;
- i. *preexisting account* means a financial account maintained by a reporting Swiss financial institution on the day before the automatic exchange of information with a partner jurisdiction came into force;
- j. *new account* means a financial account maintained by a reporting Swiss financial institution that was opened on or after the day that the automatic exchange of information with a partner jurisdiction came into force;
- k. *lower value account* means a preexisting individual account with an aggregate balance or value that does not exceed CHF 1,000,000 as of 31 December of the year prior to the implementation of the automatic exchange of information with a partner jurisdiction;
- l. *high value account* means a preexisting individual account with an aggregate balance or value that exceeds CHF 1,000,000 as of 31 December of the year prior to the implementation of the automatic exchange of information with a partner jurisdiction or 31 December of any subsequent year.

<sup>2</sup> The Federal Council may, for a limited duration, define the term «participating jurisdiction» used in applicable agreements in a broader sense than the agreements do.

<sup>4</sup> SR 831.10

<sup>5</sup> SR 431.03

**Art. 3** Non-reporting financial institutions

<sup>1</sup> The following in particular are treated as a non-reporting financial institution that is a governmental entity:

- a. the Swiss Confederation;
- b. the cantons and communes;
- c. wholly owned instrumentalities and agencies of an entity under letters a or b, including in particular institutions, bodies and funds of the social security system at federal, cantonal and communal level.

<sup>2</sup> The following in particular are treated as a non-reporting financial institution that is an international organisation:

- a. any partner organisation of the Swiss Confederation to an international headquarters agreement;
- b. any diplomatic mission, permanent mission or other representation to international organisations, consular post or special mission whose status, privileges and immunities are governed by the Vienna Convention of 18 April 1961<sup>6</sup> on Diplomatic Relations, the Vienna Convention of 24 April 1963<sup>7</sup> on Consular Relations or the Convention of 8 December 1969<sup>8</sup> on Special Missions.

<sup>3</sup> The Swiss National Bank and any of its wholly owned bodies are treated as non-reporting financial institutions that are a central bank.

<sup>4</sup> The financial institutions referred to in paragraphs 1 to 3 above are reporting financial institutions with respect to payments arising from an obligation in connection with commercial financial activities that correspond to those of a specified insurance company, a custodial institution or a depository institution.

<sup>5</sup> The following occupational benefit institutions in particular are treated as a non-reporting financial institution that is a broad participation retirement fund, a narrow participation retirement fund, a pension fund of a governmental entity, international organisation or central bank or an entity that presents a low risk of being used to evade tax and has substantially similar characteristics to any of the non-reporting financial institutions according to the applicable agreement:

- a.<sup>9</sup> pension institutions and other retirement arrangements established in Switzerland according to Articles 48 and 49 of the Federal Act of 25 June 1982<sup>10</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA), Article 89a paragraph 6 or 7 of the Swiss Civil Code (CC)<sup>11</sup> or Article 331 paragraph 1 of the Swiss Code of Obligations (CO)<sup>12</sup>;

<sup>6</sup> SR 0.191.01

<sup>7</sup> SR 0.191.02

<sup>8</sup> SR 0.191.2

<sup>9</sup> See Art. 41.

<sup>10</sup> SR 831.40

<sup>11</sup> SR 210

<sup>12</sup> SR 220

- b. vested benefits institutions established in implementation of Article 4 paragraph 1 and Article 26 paragraph 1 of the Vested Benefits Act of 17 December 1993 (VBA)<sup>13</sup>;
- c. the substitute occupational benefits institution under Article 60 of the OPA;
- d. the guarantee fund under Articles 56 to 59 of the OPA;
- e. institutions for recognised forms of pension benefits under Article 82 of the OPA;
- f. investment foundations according to Articles 53g to 53k of the OPA, provided all of the participants in the investment foundation are pension institutions or other retirement arrangements according to letters a to e.

<sup>6</sup> If the applicable agreement does not provide for a deadline, a credit card issuer shall be treated as a qualified credit card issuer and thus as a non-reporting financial institution if it fulfils the conditions set out in the applicable agreement at the time this Act comes into force. If a credit card issuer commences its commercial activity after this Act comes into force, it shall be treated as a non-reporting financial institution if it fulfils the conditions set out in the applicable agreement within six months of commencing commercial activity, at the latest.

<sup>7</sup> Swiss collective investment schemes subject to the Collective Investment Schemes Act of 23 June 2006<sup>14</sup> that fulfil the conditions set out in the applicable agreement with respect to interests in the collective investment vehicle and to unit certificates which are structured as shares in bearer form are in particular treated as a non-reporting financial institution that is an exempt undertaking for collective investment vehicles. The Federal Council shall set the conditions according to which a collective investment vehicle is treated as a non-reporting financial institution. It determines the vehicles.

<sup>8</sup> If the applicable agreement does not provide for a deadline, collective investment vehicles fulfil the condition with respect to unit certificates which are structured as shares in bearer form if they:

- a. do not issue any unit certificates which are structured as shares in bearer form from the time this Act comes into force; and
- b. have measures and procedures in place which ensure that unit certificates which are structured as shares in bearer form are redeemed or withdrawn from the market as soon as possible, but at the latest within two years of this Act coming into force.

<sup>9</sup> If the applicable agreement so provides, a trust is treated as a non-reporting financial institution to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported under the applicable agreement with respect to all reportable accounts of the trust.

<sup>10</sup> Condominium owners associations established in accordance with Article 712/ paragraph 2 of the CC are treated as a non-reporting financial institution that is an

<sup>13</sup> SR 831.42

<sup>14</sup> SR 951.31

entity that presents a low risk of being used to evade tax and that has substantially similar characteristics to any of the non-reporting financial institutions according to the applicable agreement. The Federal Council shall set the conditions according to which a condominium owners association is treated as a non-reporting financial institution.

<sup>11</sup> The Federal Council may designate further entities as non-reporting financial institutions if they present a low risk of being used to evade tax and have substantially similar characteristics to any of the non-reporting financial institutions according to the applicable agreement. It shall set the conditions according to which other entities are treated as non-reporting financial institutions.

#### **Art. 4** Excluded accounts

<sup>1</sup> The following accounts in particular are treated as an excluded account that is a retirement or pension account or an account that presents a low risk of being used to evade tax and that has substantially similar characteristics to any of the excluded accounts according to the applicable agreement:

- a. accounts within the framework of occupational benefit plans, including group insurance contracts, maintained or held by one or more non-reporting Swiss financial institutions;
- b. vested benefits policies and accounts established on the basis of Article 4 paragraph 1 and Article 26 paragraph 1 of the VBA<sup>15</sup>;
- c. recognised forms of pension arrangements, blocked insurance policies with insurance institutions or blocked bank accounts with bank foundations established in accordance with Article 82 paragraph 2 of the OPA<sup>16</sup>.

<sup>2</sup> The following accounts in particular are treated as an excluded account that presents a low risk of being used to evade tax and that has substantially similar characteristics to any of the excluded accounts according to the applicable agreement:

- a. accounts maintained or held by one or more non-reporting Swiss financial institutions;
- b. rent security deposit accounts in accordance with Article 257e of the CO<sup>17</sup>.

<sup>3</sup> The Federal Council may designate further accounts as excluded accounts if they present a low risk of being used to evade tax and have substantially similar characteristics to any of the the excluded accounts according to the applicable agreement. It sets the conditions according to which other accounts are treated as excluded accounts.

<sup>15</sup> SR 831.42

<sup>16</sup> SR 831.40

<sup>17</sup> SR 220

**Art. 5** Financial institutions resident in Switzerland

<sup>1</sup> Financial institutions subject to tax in Switzerland are deemed to be resident in Switzerland.

<sup>2</sup> Financial institutions that are not resident for tax purposes in any jurisdiction are deemed to be resident in Switzerland if they:

- a. are incorporated under Swiss law;
- b. have their place of management, including their effective administration, in Switzerland; or
- c. are subject to Swiss financial market supervision.

<sup>3</sup> A financial institution resident in Switzerland and in one or more other jurisdictions is treated as a Swiss financial institution in respect of the financial accounts that it maintains in Switzerland.

<sup>4</sup> A financial institution in the form of a trust is deemed to be resident in Switzerland for the purposes of the applicable agreement and this Act if at least one of the trustees is resident in Switzerland. The residence of the trustee is determined in accordance with paragraphs 1 to 3.

<sup>5</sup> The Federal Council shall set the conditions according to which a financial institution is deemed to be resident within the meaning of paragraph 1. It shall also designate the tax-exempt financial institutions that are deemed to be resident within the meaning of paragraph 1.

**Art. 6** Agreements on data protection

If the applicable agreement allows the sending authority to set out data protection provisions that are to be respected by the receiving authority, the Federal Council may enter into agreements on data protection. The data protection provisions to be respected must provide at least the same level of protection as the Federal Act of 19 June 1992<sup>18</sup> on Data Protection (FADP) and this Act.

**Section 2 Common Reporting Standard****Art. 7** Application and further development of the MCAA

<sup>1</sup> In implementing the MCAA<sup>19</sup>, the rights and obligations of reporting Swiss financial institutions shall be governed by the annex to the MCAA and by this Act.

<sup>2</sup> The Federal Council may include amendments to the CRS in the annex to the MCAA, provided that the amendments are limited in scope. It shall submit any other amendments to the Federal Assembly for approval.

<sup>3</sup> The following in particular are deemed to be amendments of limited scope:

<sup>18</sup> SR 235.1

<sup>19</sup> SR 0.653.1

- a. those which do not create new obligations or remove existing rights for reportable persons or reporting Swiss financial institutions;
- b. those which primarily concern the authorities, govern administrative-technical issues or do not cause significant financial costs.

**Art. 8** OECD commentaries

Reporting Swiss financial institutions are not required to implement amendments made to the OECD commentaries on the model competent authority agreement and the CRS until the amendments have been incorporated into a federal law, ordinance, or directive of the Federal Tax Administration (FTA).

**Art. 9** Facilitations concerning the fulfilment of reporting and due diligence obligations

<sup>1</sup> Reporting Swiss financial institutions may:

- a. use third-party service providers to fulfil their reporting and due diligence obligations; however, the reporting Swiss financial institutions remain responsible for fulfilling these obligations;
- b. apply the due diligence procedures for high value accounts to some or all lower value accounts;
- c. apply the due diligence procedures for new accounts to some or all preexisting accounts; the rules otherwise applicable to preexisting accounts continue to apply;
- d. dispense with a review, identification and reporting of some or all preexisting entity accounts with an aggregate account balance or value that does not exceed CHF 250,000 as of 31 December of the year prior to the implementation of the automatic exchange of information with a partner jurisdiction;
- e. apply the residence address test or the electronic record search to identify reportable accounts in the case of some or all preexisting lower value individual accounts;
- f. in fulfilling due diligence obligations for preexisting entity accounts, use as documentary evidence any classification in their records with respect to the account holder that was determined based on a standardised national or international industry coding system and which was recorded by the reporting Swiss financial institutions in accordance with their normal business practices for purposes of AML/KYC procedures or other regulatory purposes, other than for tax purposes, and which was implemented by the reporting Swiss financial institutions prior to the date used to classify the financial account as a preexisting account, provided that the reporting financial institutions do not know or have reason to know that such classification is incorrect or unreliable;
- g. treat some or all financial accounts that are opened no earlier than the day this Act comes into force as new accounts; the reporting Swiss financial

institutions may obtain the foreign tax identification number upon account opening.

<sup>2</sup> Reporting Swiss financial institutions may align the scope of the beneficiaries of a trust treated as controlling persons of the trust with the scope of the beneficiaries of a trust treated as reportable persons of a trust that is a financial institution. In the process, they must have appropriate organisational procedures in place to ensure that they can identify distributions to the beneficiaries.

<sup>3</sup> The Federal Council shall determine which alternative provisions in the OECD commentary on the CRS are applicable.

**Art. 10** Further details on the general reporting requirements

<sup>1</sup> If the balance or value of a financial account or other amount is denominated in a currency other than the currency used by the reporting Swiss financial institution in accordance with Article 12 paragraph 4, the reporting Swiss financial institution must translate the amount into the currency equivalent by applying a spot rate. For the purpose of account reporting, the reporting Swiss financial institution shall determine the spot rate as of the last day of the calendar year or other appropriate reporting period for which the account is being reported.

<sup>2</sup> The Federal Council shall determine the criteria according to which:

- a. the amount and characterisation of payments credited to a reportable account are to be determined;
- b. the different types of accounts are to be assigned to the categories of financial accounts defined in the applicable agreement.

<sup>3</sup> If a reportable person dies, the reporting Swiss financial institution shall continue to treat the account as it did before the death until such time as it is notified of the estate or the legitimate heirs.

**Art. 11** Further details on the due diligence requirements

<sup>1</sup> A self-certification remains valid until there is a change in circumstances that causes a reporting Swiss financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable.

<sup>2</sup> From the time the automatic exchange of information with a partner jurisdiction becomes applicable, preexisting individual accounts must be reviewed within the following time frames:

- a. within one year for high value accounts;
- b. within two years for lower value accounts.

<sup>3</sup> Preexisting entity accounts must be reviewed within two years from the time the automatic exchange of information with a partner jurisdiction becomes applicable.

<sup>4</sup> The reporting Swiss financial institution may apply the time frames in paragraphs 2 and 3 from the time this Act comes into force.



<sup>5</sup> An address which was obtained in accordance with Articles 3 and 4 of the Anti-Money Laundering Act of 10 October 1997<sup>20</sup> (AMLA) using a form indicating that giving false information is a criminal offence is deemed to be documentary evidence within the framework of the residence address test.

<sup>6</sup> Within the framework of the residence address test, the address listed in the files of the reporting Swiss financial institution is treated as the current address for the following preexisting individual accounts:

- a. accounts which are deemed to be dormant accounts under Article 37/ paragraph 4 of the Banking Act of 8 November 1934<sup>21</sup>;
- b. other accounts which are not annuity contracts:
  1. if the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the reporting Swiss financial institution in the past three years,
  2. if the account holder has not communicated with the reporting Swiss financial institution that maintains such account regarding the account or any other account held by the account holder with this financial institution in the past six years, and
  3. in the case of a cash value insurance contract, the reporting Swiss financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with this financial institution in the past six years.

<sup>7</sup> Reporting Swiss financial institutions must take appropriate organisational measures to ensure that they have all the information that must be obtained in accordance with the applicable agreement and this Act with regard to the opening of an account, and particularly to ensure that the self-certification is issued.

<sup>8</sup> If a reporting Swiss financial institution does not have the name, address and date of birth of the account holder and controlling persons within 90 days of a new account being opened, it closes the account. It has an exceptional termination right. Article 9 of the AMLA remains reserved.

<sup>9</sup> If a reporting Swiss financial institution does not have the necessary information according to the applicable agreement and this Act within 90 days of a new account being opened, all transfers to and from the account will be frozen until all information has been received. The reporting Swiss financial institution may extend the 90-day deadline to a maximum of one year if there are special reasons for not having the information.

<sup>10</sup> The Federal Council shall regulate the exceptions to paragraphs 8 and 9.

**Art. 12** Further details on the special due diligence requirements

<sup>1</sup> An account with a negative balance or value is deemed to be an account with a balance or value equal to zero.

<sup>20</sup> SR 955.0

<sup>21</sup> SR 952.0

<sup>2</sup> The Federal Council shall determine the amounts in Swiss francs which correspond to the amounts in US dollars indicated in the applicable agreement and in the applicable alternative provisions of the OECD commentary on the CRS.

<sup>3</sup> It may adjust the amounts under Article 2 paragraph 1 letters k and l and Article 9 paragraph 1 letter d if special circumstances so require.

<sup>4</sup> Reporting Swiss financial institutions may choose whether to denominate amounts in US dollars or in Swiss francs. The choice applies to all accounts of the financial institution and may be changed as of 1 January of a following year.

### **Section 3 Registration Duty for Reporting Swiss Financial Institutions**

#### **Art. 13**

<sup>1</sup> Any entity who becomes a reporting Swiss financial institution in accordance with an agreement under Article 1 paragraph 1 and this Act is required to unsolicitedly register with the FTA.

<sup>2</sup> The reporting Swiss financial institution must include in the registration:

- a. its name or business name and place of domicile or residence; entities or companies without legal personality that have their registered office abroad and sole proprietorships domiciled abroad must state their name or business name, their head office and the address of their management in Switzerland;
- b. the BIN;
- c. the nature of its business;
- d. the date of commencement of business.

<sup>3</sup> If its capacity as a reporting Swiss financial institution in accordance with an agreement under Article 1 paragraph 1 and this Act ceases to apply, or if it ceases its commercial activity, the financial institution is required to unsolicitedly inform the FTA.

### **Section 4     Duty of Reporting Swiss Financial Institutions to Inform**

#### **Art. 14**

<sup>1</sup> Reporting Swiss financial institutions shall provide reportable persons, either directly or through their contracting party, with information on the following no later than 31 January of the year in which they first transmit information concerning them to a partner jurisdiction:

- a. their capacity as a reporting Swiss financial institution;
- b. the agreements under Article 1 paragraph 1 and their content, particularly the information to be exchanged based on the agreements;

- c. the list of Switzerland's partner jurisdictions and the place of publication of the updated list;
- d. the permissible use of this information in application of the agreements according to Article 1 paragraph 1;
- e. the rights of the reportable persons according to the FADP<sup>22</sup> and this Act.

<sup>2</sup> In the case of reportable accounts that have been closed, the information shall be sent once to the last known address. There is no duty to inform for accounts that meet the criteria under Article 11 paragraph 6 letter a or b.

<sup>3</sup> Reporting Swiss financial institutions shall publish on their website a list of Switzerland's partner jurisdictions that is updated annually on 31 January or shall refer to the list of the Federal Department of Finance (FDF).

<sup>4</sup> The reporting Swiss financial institution shall, on request, provide a copy of the report to account holders who are reportable persons.

## **Section 5 Reporting Duties and Reporting Authorisation**

### **Art. 15 Transmission and use of information**

<sup>1</sup> Reporting Swiss financial institutions shall electronically transmit the transmissible information according to the applicable agreement as well as information on their undocumented accounts to the FTA on an annual basis within six months after the end of the relevant calendar year. A reporting Swiss financial institution that does not have any reportable accounts shall inform the FTA accordingly within the same time frame.

<sup>2</sup> The FTA shall transmit the information it receives from reporting Swiss financial institutions pursuant to the applicable agreement to the partner jurisdictions' competent authorities within the time frames set out in the applicable agreement.

<sup>3</sup> The FTA shall notify the partner jurisdictions' competent authorities of the restrictions on the use of the transmitted information and of the confidentiality obligations under the administrative assistance provisions of the applicable agreement.

<sup>4</sup> Where the applicable agreement stipulates that the information transmitted within the framework of the automatic exchange of information may be used by the receiving authority for purposes other than tax matters or that it may be forwarded to a third jurisdiction if the competent authority of the sending jurisdiction consents to such use or forwarding, the FTA shall give its consent after examining the situation. If the information is to be forwarded to criminal justice authorities, the FTA shall give its consent in consultation with the Federal Office of Justice.

<sup>5</sup> Information transmitted to the FTA in accordance with paragraph 1 may be used for the application and enforcement of Swiss tax law only insofar as it could have been obtained under Swiss law.

**Art. 16**      Limitation period

<sup>1</sup> The claim against a reporting Swiss financial institution to transmit the report becomes time-barred five years after the end of the calendar year in which the report was to be transmitted.

<sup>2</sup> The limitation period shall be interrupted whenever a reporting Swiss financial institution is notified of any official action pertaining to the enforceability of reporting. Once a limitation period has been interrupted, a new limitation period shall begin to run.

<sup>3</sup> The limitation period expires no later than ten years after the end of the calendar year in which the report was to be transmitted.

**Art. 17**      A trust treated as a reporting financial institution in another jurisdiction

If a trust is deemed to be a reporting financial institution in another jurisdiction under that jurisdiction's law, each trustee resident in Switzerland is entitled to make reports to the competent authority of that jurisdiction on behalf of the trust.

**Section 6**      **Rights and Obligations of Reportable Persons****Art. 18**      Duty to notify a change in circumstances in the case of self-certification

In the event of a change in circumstances, any person who has submitted a self-certification in accordance with the applicable agreement and this Act must notify the reporting Swiss financial institution of the new pertinent data within the framework of the self-certification.

**Art. 19**      Data protection claims and procedure

<sup>1</sup> With regard to information collected by reporting Swiss financial institutions and their transmission to the competent authorities of partner jurisdictions, the rights of the reportable persons are defined in the FADP<sup>23</sup>.

<sup>2</sup> Before the FTA, reportable persons may only assert their right to information and request that incorrect data caused by transmission errors be corrected. If the transmission of data creates disadvantages for the reportable person that could be unreasonable due to a lack of constitutional guarantees, the rights under Article 25a of the Administrative Procedure Act of 20 December 1968<sup>24</sup> apply.

<sup>3</sup> If information transmitted to a partner jurisdiction's competent authority is corrected by virtue of a final judgment, the reporting Swiss financial institution shall transmit the corrected information to the FTA, which shall forward the corrected information to the relevant authority.

<sup>23</sup> SR 235.1

<sup>24</sup> SR 172.021

## **Section 7 Information Transmitted Automatically from Abroad**

### **Art. 20** Use of the Swiss tax identification number for individuals

Reporting financial institutions and a partner jurisdiction's competent authorities shall use the OASI Insurance number when transmitting the information regarding individuals required within the framework of the automatic exchange of information.

### **Art. 21** Forwarding of information

<sup>1</sup> For the application and enforcement of Swiss tax law, the FTA shall forward information that has automatically been transmitted to it by other jurisdictions to the Swiss authorities that are responsible for determining and collecting the taxes under the scope of the applicable agreement. It shall notify these authorities of the restrictions on the use of the transmitted information and of the confidentiality obligations under the administrative assistance provisions of the applicable agreement.

<sup>2</sup> Provided the applicable agreement so authorises and Swiss law so provides, the FTA shall forward information that has automatically been transmitted to it by another jurisdiction to other Swiss authorities for which this information is of interest. Where appropriate, it shall obtain the consent of the sending jurisdiction's competent authority.

## **Section 8 Organisation and Procedure**

### **Art. 22** Tasks of the FTA

<sup>1</sup> The FTA shall ensure the proper implementation of the applicable agreement and this Act.

<sup>2</sup> It shall take all measures and decisions necessary for the implementation.

<sup>3</sup> It may prescribe the use of certain forms and require that certain forms be submitted solely in electronic format.

<sup>4</sup> It may issue directives. These shall be based on the OECD commentaries on the model competent authority agreement and the CRS.

### **Art. 23** Data processing

<sup>1</sup> To perform its tasks under the applicable agreements and this Act, the FTA may process personal data, including personal data on tax-related administrative and criminal prosecutions and sanctions.

<sup>2</sup> It may systematically use the tax identification numbers set out in Article 2 paragraph 1 letters f to h to perform its tasks under the applicable agreements and this Act.

**Art. 24** Information system

<sup>1</sup> The FTA operates an information system to process personal data, including personal data on tax-related administrative and criminal prosecutions and sanctions, that it received based on the applicable agreements and this Act.

<sup>2</sup> The data may be processed only by FTA employees or by specialists under the control of the FTA.

<sup>3</sup> The purpose of the information system is to enable the FTA to perform its tasks under the applicable agreements and this Act. In particular, it may be used to:

- a. receive and forward information in accordance with the applicable agreements and Swiss law;
- b. keep a register of the reporting Swiss financial institutions;
- c. process legal proceedings associated with the applicable agreements and this Act;
- d. carry out the reviews cited in Article 28;
- e. impose and enforce administrative and criminal sanctions;
- f. process administrative and mutual legal assistance requests;
- g. combat tax offences;
- h. compile statistics.

<sup>4</sup> The Federal Council shall specify the details, in particular concerning:

- a. the organisation and management of the information system;
- b. the categories of personal data processed;
- c. the catalogue of data on administrative and criminal prosecutions and sanctions;
- d. the access and processing authorisations;
- e. the duration of storage, the archiving and destruction of data.

<sup>5</sup> The FTA may give the Swiss authorities to which it forwards information in accordance with Article 21 paragraph 1 in the retrieval procedure access to data in the system which is necessary for them to perform their statutory tasks. The Federal Council shall determine the authorities and data to which the FTA may grant access.

**Art. 25** Duty to provide information

Persons and authorities to which the FTA transmits information received from abroad in accordance with the applicable agreements and this Act, as well as Swiss financial institutions, must provide the FTA with all facts relevant for the implementation of the agreements and this Act.

**Art. 26** Confidentiality obligation

<sup>1</sup> Any person entrusted with the enforcement of an applicable agreement and this Act or who is involved in their enforcement shall remain silent towards other authorities

and private individuals about the findings of which they become aware in the course of their work.

<sup>2</sup> There is no confidentiality obligation:

- a. for the transmission of information and notifications under the applicable agreement and this Act;
- b. with respect to judicial and administrative bodies that have been authorised in the specific case by the FDF to obtain official information from the authorities entrusted with the enforcement of this Act;
- c. insofar as the applicable agreement allows for the removal of the confidentiality obligation and there is a legal basis for this removal under Swiss law.

<sup>3</sup> Findings relating to third parties made in the course of a review in accordance with Article 28 may be used only for the implementation of the applicable agreement.

#### **Art. 27** Statistics

<sup>1</sup> The FTA shall publish the statistics necessary for the peer review of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

<sup>2</sup> There is no right to access information beyond that published in accordance with paragraph 1.

#### **Art. 28** Review

<sup>1</sup> The FTA shall review Swiss financial institutions with regard to compliance with their duties under the applicable agreements and this Act.

<sup>2</sup> For the purposes of clarifying the facts, it may:

- a. inspect the books, records and other documents of the financial institution on site or order the surrender thereof;
- b. obtain information in writing and verbally.

<sup>3</sup> Where the FTA finds that the financial institution has inadequately complied with its duties or has not complied with them at all, it shall give it the opportunity to comment on the deficiencies found.

<sup>4</sup> If the financial institution and the FTA cannot reach an agreement, the FTA shall issue a ruling.

<sup>5</sup> On request, the FTA shall issue a declaratory ruling on:

- a. the status of financial institution under the applicable agreements and this Act;
- b. the content of reports made in accordance with the applicable agreements and this Act.

**Art. 29** Applicable procedural law

Unless otherwise specified in this Act, the Administrative Procedure Act of 20 December 1968<sup>25</sup> applies.

**Art. 30** Legal remedies

<sup>1</sup> Appeals against rulings issued by the FTA in accordance with Articles 22 to 29 can be filed in writing within 30 days of such rulings being issued.

<sup>2</sup> The appeal shall include the motions and set out the grounds on which it is based.

<sup>3</sup> Where an appeal has been validly filed, the FTA shall examine the ruling without being bound by the motions submitted and issue a substantiated appeal decision.

<sup>4</sup> A complaint against the appeal decision is governed by the general provisions on federal procedural law.

**Section 9 Suspension and Termination****Art. 31**

The competent Swiss authority may only act with the approval of the Federal Council when it takes one of the following measures pursuant to the applicable agreement:

- a. suspends or terminates the automatic exchange of information with a partner jurisdiction;
- b. terminates the agreement.

**Section 10 Criminal Provisions****Art. 32** Violation of the reporting and due diligence obligations

A fine not exceeding CHF 250,000 shall be imposed on any person who wilfully:

- a. violates the due diligence obligations referred to in the applicable agreement and in Articles 9 to 12 concerning the review of accounts and the identification of reportable persons;
- b. violates the registration duty under Article 13;
- c. violates the duty to inform under Article 14 paragraphs 1 and 3;
- d. violates the reporting duty under Article 15 paragraph 1.

<sup>25</sup> SR 172.021



**Art. 33** Offences against official orders

A fine not exceeding CHF 50,000 shall be imposed on any person who, in the course of a review under Article 28, wilfully fails to comply with an official ruling notified to them under threat of the penalty provided for by this Article.

**Art. 34** Offences in businesses

If a fine not exceeding CHF 50,000 is appropriate and if investigative measures against the offenders under Article 6 of the Federal Act of 22 March 1974<sup>26</sup> on Administrative Criminal Law (ACLA) would require investigations that are disproportionate relative to the applicable penalty, it is possible to refrain from prosecuting the offenders and instead order the business to pay the fine (Art. 7 of the ACLA).

**Art. 35** Incorrect self-certification

A fine not exceeding CHF 10,000 shall be imposed on any person who wilfully provides an incorrect self-certification to a Swiss financial institution, does not notify a Swiss financial institution about changes in circumstances, or provides false information on changes in circumstances.

**Art. 36** Voluntary disclosure

<sup>1</sup> An offender who voluntarily discloses a duty violation shall not be penalised if the following conditions are met:

- a. they have given complete and precise details of the scope and content of the duties;
- b. they have helped to clarify the facts and fulfil their duties; and
- c. they have never before made a voluntary disclosure for an intentional violation of a similar nature.

<sup>2</sup> The decision not to penalise the offender also applies to any participants.

**Art. 37** Procedure

<sup>1</sup> The ACLA<sup>27</sup> applies to the prosecution and adjudication of violations of this Act.

<sup>2</sup> The FTA is the prosecuting and adjudicating authority.

**Art. 38** Selection of partner jurisdictions

The Federal Council shall analyse the applicable data protection provisions and regularisation options in potential partner jurisdictions before proposing the introduction of the automatic exchange of information with these jurisdictions to the Federal Assembly. It shall summarise the results of its analysis in the dispatch.

<sup>26</sup> SR 313.0

<sup>27</sup> SR 313.0

## Section 11 Final Provisions

### Art. 39 Approval powers

The Federal Assembly shall approve with a simple federal decree:

- a. the inclusion of a jurisdiction on the list described in Section 7 paragraph 1 letter 1 of the MCAA<sup>28</sup>;
- b. international treaties within its remit entered into with jurisdictions that are to be included on the list regarding market access for financial service providers and the regularisation of taxpayers' tax situations.

### Art. 40 Amendment of other legislation

...<sup>29</sup>

### Art. 41 Coordination with the amendment of 25 September 2015 to the CC (Employee benefits schemes)

*With the entry into force of the amendment of 25 September 2015<sup>30</sup> to the CC<sup>31</sup> (Employee benefits schemes), Article 3 paragraph 5 letter a of this Act shall read as follows:*

...<sup>32</sup>

### Art. 42 Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement date:<sup>33</sup> 1 Jan. 2017

Art. 39: 27 May 2016

<sup>28</sup> SR 0.653.1

<sup>29</sup> The amendment may be consulted under AS 2016 1297.

<sup>30</sup> AS 2016 935

<sup>31</sup> SR 210

<sup>32</sup> Inserted above.

<sup>33</sup> FCD of 20 April 2016.