

Towards global exchange of tax-data

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Summary

- I. Introduction
- II. Competition of models of information exchange
- III. Towards automatic exchange of information
- IV. Remaining issues

I. Introduction

- Series of scandals : LGT (2007), UBS (2008)
- Financial crisis of 2008
- Global development towards the fight against international tax evasion and towards global transparency:
 - EOCED standards
 - G20 Initiatives
 - FATCA (2010) in the United States

II. Competition of models of information exchange

1. The OECD model of double taxation convention (DTT)

- Article 26
- «Big bang» of March 2009
- 2012, OECD standards in favor of «group requests»
- Automatic exchange is allowed but not required
- Switzerland has signed more than 53 DTT in accordance with OECD standard

II. Competition of models of information exchange

2. International agreement for international exchange of information (TIEA)

- Very important development after 2009
- In principle, only exchange of information upon request
- Is essentially designed against tax heavens
- Switzerland has signed 10 TIEAs

II. Competition of models of information exchange

3. The council of Europe / OECD multilateral convention on mutual assistance in tax matters (CMAAT)

- Concluded in 1988, the convention has been modified in 2011 in accordance with the new OECD standards and open to non OECD members
- Provides for various forms of exchange of information, including automatic exchange (but subject to a specific competent authority agreement)
- Signed by Switzerland on October 15 2013 (ratification under way)

II. Competition of models of information exchange

4. EU directives

- EU saving directives of 2004
- Directives of 2011 on mutual assistance in tax matters (DAC)
- DAC modified on December 9 2014 (implementation of OECD CRS)
- DAC modified on December 8 2015 (automatic exchange on information on rulings)

II. Competition of models of information exchange

5. FACTA

- Adopted in 2010 by the Congress against offshore accounts of US taxpayers
- Joint declaration between United States and G5 (United Kingdom, France, Italy, Spain and Germany) of February 2012 is the first attempt towards a global and reciprocal system designed to implement FATCA
- As of 2013, development of intergovernmental agreements (IGA) with two different models
- Switzerland has signed a Model 2 IGA on February 14 2013, which entered into form on June 2 2014

II. Competition of models of information exchange

6. The Rubik alternative

- The system
- The two agreements with United Kingdom and Austria

III. Towards automatic exchange of information

1. Global acceptance

- A global acceptance (65 states have accepted it in principle as of April 6, 2014)
- On May 4 2014, Switzerland also accepts the principle of automatic exchange of information (AEI)
- On July 21 2014, the OECD obliged the so-called common reporting standard

III. Towards automatic exchange of information

2. Coordination and implementation of AEI

- International legal basis is necessary
- Competent authority agreements (CAA) between competent authorities (including a multilateral CAA;MCAA)
- Legal basis in each state implementing the common reporting standard

III. Towards automatic exchange of information

3. Implementation in Switzerland

- International legal basis :
 - Bilateral agreement with EU signed on May 27 2015
 - CMAAT, under ratification
- Notification of the Multilateral CAA under way (a specific agreement of the Federal Parliament is required)
- Draft federal law a automatic exchange of information

IV. Remaining Issues

1. Implementation of AEI

- A Coordination between the models
- The principle of reciprocity
- A “level playing field” between competing financial places
- The definition of “controlling person” in domestic law
- Taxpayer and data protection rules within AEI

IV. Remaining Issues

2. Implementation of the BEPS Program

- A Designed for MNE
- Spontaneous exchange of information on rulings (BEPS Action 5, Financial Report 2015)

IV. Remaining Issues

3. Regulation of the past

- Existing models
 - Tax amnesty
 - Lichtenstein (LDF) system
 - Rubik ?
 - The US DOJ Program for Swiss banks
- Legal issues
 - Retroactivity principle
 - The use of stolen data's
 - Criminal consequences ?

IV. Remaining Issues

4. Taxpayers right