

## Extension of the international automatic exchange of information to cryptoassets and salary data

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Switzerland committed to extend the international automatic exchange of information to include cryptoassets and salary data, whereby salary data is only exchanged with Italy and France. In order to establish the necessary legal foundation, the Federal Council has submitted amendments to the existing Federal Act on the Automatic Exchange of Information and the introduction of a new Federal Act on the Automatic Exchange of Information on Salary Data for consultation. The main points are outlined below.

### INTERNATIONAL EXCHANGE OF INFORMATION FOR CRYPTOASSETS

In fall 2022, the OECD presented an automatic exchange of information ("AEOI") specifically for digital assets, the so-called Crypto Asset Reporting Framework ("CARF"). In November 2023, around 50 countries, including Switzerland, agreed to extend the AEOI to digital assets and the CARF. The CARF is intended to close existing gaps in the tax transparency regime and eliminate the different treatment of "traditional" financial products and crypto products. It is planned to enact the crypto AEOI on January 1, 2026, so that the first data exchange on the basis of the CARF can take place in 2027. To this end, the international legal basis must first be approved by Parliament and the existing Federal Act and the AEOI must be amended accordingly. At the same time, various recommendations of the *Global Forum on Transparency and Exchange of Information for Tax Purposes* regarding the already existing AEOI will also be implemented. In this regard, the Federal Council opened the consultation process on 15 May 2024 (see [here](#)).

The AEOI for cryptocurrencies follows the same system as the AEOI for financial accounts. It provides for the automatic and regular exchange of information on transactions involving cryptocurrencies. The information to be exchanged is to be collected by the providers of crypto services subject to the reporting obligation and transmitted to the Swiss Federal Tax Administration ("SFTA") once a year. The information to be exchanged and the qualification as a reportable provider of crypto services are regulated as follows in the multilateral agreement on the crypto AEOI and in the DTA.

**Who:** Legal entities and natural persons are subject to the CARF reporting obligations, if they provide services for or on behalf of their customers in the form of exchange transactions between various relevant cryptocurrencies and between relevant cryptocurrencies and fiat currencies. As such services also qualify the providing trading platforms or by assuming the role of a counterparty or an intermediary in the aforementioned exchange transactions.

**About whom:** Reportable users within the meaning of the CARF are natural persons and legal entities (including trusts and foundations) that are clients of a reportable provider of crypto services

and are not exempt from the reporting obligation. The beneficial owners of the cryptocurrencies in question are also deemed to be reportable clients. The purpose of recording the beneficial owners is to prevent circumvention of the AEOI.

**What:** The reports must generally contain information on the identity of the person subject to the reporting obligation (name, address, date of birth, tax residency, tax identification number, etc.) and on the transactions carried out (type of cryptoasset, total gross amount, total number of units, number of transactions, staking and lending fees etc.). The information on the provider of the crypto services concerned subject to the reporting obligation must also be provided.

**How:** In order to identify the reportable users of cryptocurrencies, determine the countries relevant for tax reporting and obtain the necessary information, the CARF contains diligence obligations for the reportable providers of crypto services. The intentional breach of these diligence obligations and other obligations under the AEOI can be punished with fines of up to CHF 250,000. In the event of negligence, the fine is up to CHF 100,000.

Potentially reportable providers of crypto services are recommended to check as early as possible whether they or their services fall within the scope of the Crypto AEOI and - if a reporting obligation exists - to implement appropriate processes to ensure reporting.

## **INTERNATIONAL AUTOMATIC EXCHANGE OF SALARY DATA**

On June 7, 2024, the Federal Council opened the consultation on a new federal law on the automatic exchange of salary data (see [here](#)). The draft of this law is based on the agreements that Switzerland was able to conclude with Italy and France to create new rules for the taxation of cross-border commuters (Italy) and the taxation of teleworking (France).

On 23 December 2020, Switzerland was able to conclude a new "cross-border commuter agreement" with **Italy**. This agreement entered into force on July 17, 2023 and has been applicable since January 1, 2024. In addition to the redefinition of the term "cross-border commuter" and the new allocation rules for taxable income, the agreement provides for the automatic exchange of information on salary data under the title of "Administrative cooperation". According to the new cross-border commuter agreement, persons are deemed to be cross-border commuters if they

- are resident for tax purposes in a municipality whose territory lies wholly or partly within a 20 km border zone of the other contracting state,
- are gainfully employed in the border area of the other contracting state for an employer based there or for a permanent establishment or fixed base located there and
- return to their tax domicile in their country of residence on a daily basis.

Under the new agreement, "new" cross-border commuters who are resident in the Italian border region and are gainfully employed by an employer based in the Swiss border region or have a corresponding permanent establishment will be subject to ordinary taxation in Italy. However, Switzerland may tax the income at 80% of the withholding tax, whereby Italy credits this tax to avoid double taxation. Existing cross-border commuters, i.e. those who already qualified as cross-border

commuters between December 31, 2018 and July 17, 2023 and are still considered cross-border commuters under the new agreement, will continue to be taxed exclusively in Switzerland. The cantons of Grisons, Ticino and Valais are obliged to pay 40% of this tax revenue to the Italian border communes until December 31, 2033.

In order to ensure the correct taxation of new cross-border commuters, the cross-border commuter agreement provides for the automatic exchange of salary data. For employers in the cantons of Grisons, Ticino and Valais, this means that they must report salary data and other information on the person concerned for all cross-border commuters resident in Italy to the cantonal tax authorities for the first time at the beginning of 2025 for the 2024 calendar year. The tax authorities of the cantons of Grisons, Ticino and Valais will then be responsible for forwarding the information.

In relation to **France**, a supplementary agreement to the existing double taxation agreement was concluded on June 27, 2023, which was adopted by Parliament on June 14, 2024 (see [here](#)). With this supplementary agreement, the tax attribution standards for teleworking previously regulated in various mutual agreements will be transferred to the DTA and the protocol to it. The new regulation stipulates that 40% of the working time per calendar year can be performed in the form of teleworking without the employee's country of residence having the right to tax the wages paid. This regulation applies to the whole of Switzerland, with the exception of cross-border commuters who work in the cantons of Basel-Landschaft, Basel-Stadt, Bern, Jura, Neuchâtel, Solothurn, Vaud and Valais. Although the same tolerance of 40% applies to them, they are technically not covered by the DTA.

The employer's state pays the other state compensation amounting to 40% of the tax owed for work performed in the form of teleworking. However, a special rule applies to employers in the canton of Geneva: Here an exemption limit of 15% of the working days for which no compensation payment has been established. In other words, a compensatory payment is only due for teleworking days that account for between 15% and 40% of working time. This provision was included in the agreement since Geneva must continue to pay the departments of Ain and Haute-Savoie a compensation payment amounting to 3.5% of the gross salary of cross-border workers employed in Geneva. France did not want to waive this payment for domestic political reasons.

It is obvious that monitoring compliance with the aforementioned regulations requires detailed and reliable information on the activities and remuneration of the persons concerned. France has therefore expressed the wish for many years to compare the salary amounts reported by Switzerland with the income declared in France by cross-border commuters. With the supplementary agreement of June 27, 2024, an automatic exchange of information for salary data has now been included. In addition to the personal details of the persons concerned, the following information must be transmitted: Calendar year in which the income was earned; number of teleworking days or teleworking rate in percent; total amount of gross remuneration paid. The introduction of the exchange of information is planned for the beginning of 2026, which means that employers in all Swiss cantons will have to submit information to the competent tax authorities for the first time at the beginning of 2026 for the calendar year 2025 for all employees residing in France. In contrast to the exchange of information with Italy, salary data will be reported to France via the SFTA.

As the international automatic exchange of salary data is being introduced for the first time, the Federal Council intends to create the necessary legal basis for this in a new federal law, the Federal Act on the International Automatic Exchange of Information on Salary Data. In addition to the procedure, responsibilities and confidentiality obligations, the new law also covers the rights of employees. In particular, they have a right to information about the information concerning them and to be transmitted, as well as the rights arising from the Data Protection Act. Finally, the penal provisions should also be emphasized for employers. Negligent or intentional violation of the obligation to provide information that must be reported and violation of the obligation to provide information to employees can be penalized with a fine of up to CHF 1,000. In serious cases or in the event of recidivism, the fine can be set at up to CHF 10,000.

## **CONCLUSION**

As shown above, the expansion of the international automatic exchange of information to include crypto and salary data also entails corresponding obligations for information holders, i.e. crypto service providers and employers. It is advisable - not least with regard to the criminal provisions - to check at an early stage whether and to what extent the described extensions are relevant for your own company and, if necessary, to set up appropriate processes to ensure the timely and correct provision of the data to be transmitted. It remains to be seen whether and when the automatic exchange of wage data will also be introduced in relation to Germany and Austria.