

CRS, FATCA and the end of discretion

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The automatic exchange of information has changed the market more profoundly than any tax provision. Under the Common Reporting Standard of the OECD, insurers that issue cash value insurance contracts or annuity contracts are reporting financial institutions. Since a cash value insurance contract is a financial account, the insurer must report the policyholder, the surrender value and, on payment, the recipient of the benefit to its tax authority, which forwards the information to the country of residence of the persons concerned. Where the policyholder is an entity, the controlling persons must be identified and reported.¹

Switzerland and Liechtenstein have exchanged information with the member states of the European Union since 2017, with the first exchange in 2018. As a result, a German resident holding a Liechtenstein policy can no longer expect that his tax authority will remain unaware of it. The American FATCA regime, which preceded the CRS, imposes comparable obligations on foreign insurers with American policyholders. Switzerland implemented FATCA under a Model 2 agreement, in which Swiss financial institutions report directly to the American authorities, and agreed to move to a reciprocal Model 1 agreement. The entry into force of the new agreement is foreseen for 2027.²

The end of discretion has transformed the wrapper from an instrument that was sometimes chosen because of its opacity into an instrument that is used for its legal effects in a fully transparent environment. Insurers now require the policyholder to confirm his tax compliance and often to provide evidence of it. Policies designed for the tax law of the policyholder's country of residence have become standard, so insurers decline policyholders resident in countries for which they have no compliant product.

1 Notes

1. OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (2014, with later amendments including the 2023 amendments to the CRS), Section VIII on specified insurance companies and cash value insurance contracts. To be verified. ↩
2. On the automatic exchange of information in Switzerland, see the Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOIA) and the agreement with the EU. On FATCA, see the Model 2 agreement of 14 February 2013 and the new Model 1 agreement signed in 2024. Date of entry into force to be verified. Status to be verified. ↩

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