

Netherlands

Overall findings

Overall determination on the legal framework: In Place But Needs Improvement

The Netherlands' legal framework implementing the AEOI Standard is in place but needs improvement in order to be fully consistent with the requirements of the AEOI Terms of Reference. While the Netherlands' international legal framework to exchange the information with all of the Netherlands' Interested Appropriate Partners (CR2) is consistent with the requirements, the Netherlands' domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has a deficiency significant to the proper functioning of an element of the AEOI Standard. More specifically, a deficiency has been identified in the Netherlands' enforcement framework.

The methodology used for the peer reviews and that therefore underpins this report is outlined in Chapter 2.

Conclusions on the legal framework

General context

The Netherlands commenced exchanges under the AEOI Standard in 2017.

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, the Netherlands:

- introduced the Decree of 23 December 2015 (Common Reporting Standard Identification and Reporting Requirements (Implementation) Decree);
- introduced the Ministerial Order on the Common Reporting Standard made on 30 December 2015;
- amended the International Assistance (Levying of Taxes) Act and Money Laundering and Terrorist Financing (Prevention) Act (Implementation) Decree 2018; and
- issued further guidance, which is not legally binding.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 January 2016. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete due diligence procedures on High Value Individual Accounts by 31 December 2016 and on Lower Value Individual Accounts and Entity Accounts by 31 December 2017.

With respect to the exchange of information under the AEOI Standard, the Netherlands:

- is a Party to the Convention on Mutual Administrative Assistance in Tax Matters and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2017;
- has in place European Union Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, as amended by Directive 2014/107/EU;
- has in place European Union agreements with five European third countries¹; and
- put in place three bilateral agreements.²

Detailed findings

The detailed findings for the Netherlands are below, organised per Core Requirement (CR) and sub-requirement (SR), as extracted from the AEOI Terms of Reference (www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf).

CR1 Domestic legal framework: Jurisdictions should have a domestic legislative framework in place that requires all Reporting Financial Institutions to conduct the due diligence and reporting procedures in the CRS, and that provides for the effective implementation of the CRS as set out therein.

Determination: In Place But Needs Improvement
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The Netherlands' domestic legislative framework is in place and contains most of the key aspects of the CRS and its Commentary requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures, but it needs improvement in one area relating to the framework to enforce the requirements (SR 1.4). More specifically, the Netherlands does not have rules to prevent the circumvention of the due diligence and reporting procedures.

SR 1.1 Jurisdictions should define the scope of Reporting Financial Institutions consistently with the CRS.

The Netherlands has defined the scope of Reporting Financial Institutions in its domestic legislative framework in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

SR 1.2 Jurisdictions should define the scope of Financial Accounts and Reportable Accounts consistently with the CRS and incorporate the due diligence procedures to identify them.

The Netherlands has defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and incorporated the due diligence procedures that must be applied to identify them in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

SR 1.3 Jurisdictions should incorporate the reporting requirements contained in Section I of the CRS into their domestic legislative framework.

The Netherlands has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

SR 1.4 Jurisdictions should have a legislative framework in place that allows for the enforcement of the requirements of the CRS in practice.

The Netherlands has a legislative framework in place to enforce the requirements in a manner that is largely consistent with the CRS and its Commentary. However, a deficiency has been identified. More specifically, the Netherlands' legislative framework does not include rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

It is noted that the Netherlands has EU Directive 2018/22 (DAC 6) (the implementation of the Mandatory Disclosure Rules in the European Union) in place, which facilitates tax authorities becoming aware of practices intended to circumvent the reporting and due diligence procedures. The AEOI Standard, however, requires rules to be in place to prevent or ensure the effective implementation of the AEOI Standard once such practices are discovered.

Recommendations:

The Netherlands should amend its domestic legislative framework to include rules to prevent Financial Institutions, persons and intermediaries adopting practices intended to circumvent the due diligence and reporting procedures. While it is acknowledged that the mandatory reporting requirements in place will facilitate the identification of such practices, additional rules are needed to prevent such practices.

CR2 International legal framework: Jurisdictions should have exchange relationships in effect with all Interested Appropriate Partners as committed to and that provide for the exchange of information in accordance with the Model CAA.

Determination: In Place

The Netherlands' international legal framework to exchange the information is in place, is consistent with the Model CAA and its Commentary and provides for exchange with all of the Netherlands' Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from the Netherlands and that meet the required standard in relation to confidentiality and data safeguards). (SRs 2.1 – 2.3)

SR 2.1 Jurisdictions should have exchange agreements in effect with all Interested Appropriate Partners that permit the automatic exchange of CRS information.

The Netherlands has exchange agreements that permit the automatic exchange of CRS information in effect with all its Interested Appropriate Partners.

Recommendations:

No recommendations made.

SR 2.2 Such an exchange agreement should be put in place without undue delay, following the receipt of an expression of interest from an Interested Appropriate Partner.

The Netherlands put in place its exchange agreements without undue delay.

Recommendations:

No recommendations made.

SR 2.3 Jurisdictions should ensure that the exchange agreements in effect provide for the exchange of information in accordance with the requirements of the Model CAA.

The Netherlands' exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

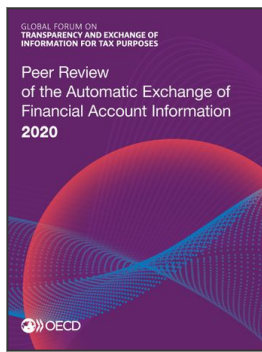
We took note of the recommendation and initiated legislation to implement adequate rules to prevent or ensure the effective implementation of the AEOI Standard once anti-avoidance practices are discovered.

These rules will be comparable to the provisions of the UK and/or Canada. However, the implementation of new legislation takes time and the new rules will be in place as of 1 January 2022.

Notes

¹ Andorra, Liechtenstein, Monaco, San Marino and Switzerland.

² With Hong Kong (China), Qatar and Singapore. The Netherlands has also activated relationships under the CRS MCAA with Qatar and Singapore.



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