

Chile

Overall findings

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

Chile's 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 Chile's international legal framework to exchange the information with all of Chile's Interested Appropriate Partners (CR2) is consistent with the requirements, Chile's 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 Chile's 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

Chile commenced exchanges under the AEOI Standard in 2018.

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

- enacted Decree N°418, 2017, Ministry of Finance, Article 62 ter of the Tax Code which was introduced by Act 21.047; and
- introduced secondary legislation in Resolución Ex. SII N°48 of 31 May 2018 and Resolución Ex. Ministry of Finance N°173 of 27 June 2018.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 July 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 30 June 2018 and on Lower Value Individual Accounts and Entity Accounts by 30 June 2019.

With respect to the exchange of information under the AEOI Standard, Chile 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 2018.

Detailed findings

The detailed findings for Chile 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

Chile's 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 relation to the framework to enforce the requirements (SR 1.4). More specifically, Chile's legislative framework does not include rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting requirements.

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

Chile has defined the scope of Reporting Financial Institutions in its domestic legislative framework in accordance with the CRS and its Commentary. While a deficiency has been identified concerning making explicit how to interpret the term Investment Entity, given there is nothing to suggest the interpretation would otherwise be incorrect, the deficiency is considered to be relatively minor and its impact not to be material.

Recommendations:

Chile should amend its domestic legislative framework to require the term Investment Entity to be interpreted consistently with similar language defining "financial institution" in the Financial Action Task Force Recommendations.

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.

Chile 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.

Chile 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.

Chile 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, Chile's domestic legislative framework does not contain rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures as required. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

Recommendations:

Chile should amend its legislative framework to include rules to prevent Financial Institutions, persons and intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures.

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

Chile's 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 Chile's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Chile 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.

Chile 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.

Chile 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.

Chile's 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

Chile would like to express its appreciation for the work done by the Global Forum Secretariat, the AEOI Assessment Panel and the AEOI Peer Review Group in evaluating Chile's legal frameworks implementing the AEOI Standard. Chile also thanks the Secretariat of the Global Forum for its valuable assistance throughout this process. Chile supports the work of the Global Forum, remains fully committed to the effective exchange of information and will continue working towards ensuring full compliance with the AEOI Standard.



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