

Aruba

Overall findings

Overall determination on the legal framework: Not In Place

Aruba's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. While Aruba's international legal framework to exchange the information with all of Aruba's Interested Appropriate Partners (CR2) is consistent with the requirements, its domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has significant deficiencies in areas that are fundamental to the proper functioning of the AEOI Standard. Most significantly, Aruba's legislative framework does not set out some of the key due diligence timelines, does not properly identify all of the relevant Financial Institutions and lacks sanctions under its 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

Aruba 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, Aruba:

- enacted Ordinance No. 74 of 2017;
- introduced State Decree No. 76 of 2017;
- issued further guidance, which is not legally binding; and
- relies on its legal framework implementing the FATF Recommendations for the purposes of the identification of Controlling Persons under the AEOI Standard.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 January 2017. With respect to Preexisting Accounts, the non-binding guidance states that the review of High Value Individual Accounts should be completed in time for the 2018 reporting deadline and by 31 December 2018 in the cases of Lower Value Individual Accounts and Entity Accounts.

With respect to the exchange of information under the AEOI Standard, Aruba has the Convention on Mutual Administrative Assistance in Tax Matters in place¹ and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018.

Detailed findings

The detailed findings for Aruba 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.

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| Determination: Not In Place |
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Aruba's domestic legislative framework is not in place as required as it does not contain several key aspects of the CRS and its Commentary. Significant deficiencies have been identified in relation to the scope of Reporting Financial Institutions required to report information (SR 1.1), the scope of Financial Accounts required to be reported and the due diligence procedures to be applied (SR 1.2) and the framework to enforce the requirements (SR 1.4). Most significantly, the due diligence provisions in Aruba's legislative framework do not include some key dates determining the application of the due diligence obligations, the procedures and evidence that may be relied upon for the determination of the status of Financial Institutions depart from those set out in the AEOI Standard and there are no sanctions in the enforcement framework.

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

Aruba has defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is largely consistent with the AEOI Standard and its Commentary. However, deficiencies have been identified. More specifically, Aruba's legislative framework:

- classifies certain entities as Non-Reporting Financial Institutions that are not in accordance with the requirements set out in the AEOI Standard; and
- does not specify the date as of when Qualified Credit Card Issuers that are treated as Non-Reporting Financial Institutions are required to implement policies requiring the returning of overpayments made.

The scope of Reporting Financial Institutions, including the specification of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard.

Recommendations:

Aruba should amend its domestic legislative framework to remove the classification of: (i) entities with shareholders, participants or controlling persons from one single family or a very limited group; and (ii) Trust Office Foundation (or STAK) as Non-Financial Entities without regard to the requirements to be classified as such.

Aruba should amend its domestic legislative framework to require Qualified Credit Card Issuers to implement policies with respect to the returning of overpayments from a specified date in order to be treated as Non-Reporting Financial Institutions.

Aruba should amend its domestic legislative framework to remove two entries from its jurisdiction-specific list of Non-Reporting Financial Institutions as they do not meet the requirements with respect to legally defined thresholds on contributions and limited options of withdrawal. The entries are: (i) Cooperative Savings and Credit Associations; and (ii) Customs and Savings and Credit Associations.

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.

Aruba has not defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and has not incorporated the due diligence procedures that must be applied to identify them in a manner that is consistent with the AEOI Standard and its Commentary as significant deficiencies have been identified. More specifically, Aruba's legislative framework:

- does not specify the date as of when the Qualified Credit Card Issuers need to implement policies for the returning of overpayments, which is required for Depository Accounts due to not-returned overpayments to be treated as Excluded Accounts;
- does not follow the conditions set out in the AEOI Standard for when Reporting Financial Institutions can use existing classifications as Documentary Evidence with respect to Preexisting Entity Accounts;
- does not specify the date on which a Preexisting Entity Account is first to be identified; and
- does not specify the dates by when the due diligence procedures on High and Lower Value Preexisting Individual Accounts as well as Preexisting Entity Accounts are to be completed; the non-binding guidance indicates that these procedures should be completed in time for 2018 reporting deadline in the case of High Value Individual Accounts and by 31 December 2018 in the cases of Lower Value Individual Accounts and Entity Accounts.

The scope of Financial Accounts and the due diligence procedures to identify them are material to the proper functioning of the AEOI Standard.

Recommendations:

Aruba should amend its domestic legislative framework to require Qualified Credit Card Issuers to implement policies with respect to the returning of overpayments from a specified date in order for Depository Accounts due to not-returned overpayments to be treated as Excluded Accounts.

Aruba should amend its domestic legislative framework to require Reporting Financial Institutions to only use Documentary Evidence in relation to the due diligence procedures for Preexisting Entity Accounts in accordance with the conditions in the AEOI Standard.

Aruba should amend its domestic legislative framework to specify the date on which a Preexisting Entity Account is first to be identified using the USD 250 000 balance or value threshold.

Aruba should amend its legislative framework to specify the completion dates for the reviews of: (i) Preexisting High Value Individual Accounts; (ii) Preexisting Lower Value Individual Accounts; and (iii) Preexisting Entity Accounts.

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

Aruba has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary. While a deficiency has been identified with respect to the reporting of the currency denomination, it is considered to be relatively minor as the CRS XML Schema will compel the reporting of a currency type.

Recommendations:

Aruba should amend its domestic legislative framework to require Reporting Financial Institutions to identify the currency in which each account is denominated.

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

Aruba does not have a legislative framework in place to enforce the requirements in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. More specifically, Aruba'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 procedures as required;

- does not contain provisions imposing sanctions on Account Holders and Controlling Persons for the provision of a false self-certification;
- does not impose sanctions on Reporting Financial Institutions for failing to apply the due diligence procedures (they are restricted to failing to report the relevant information); and
- allows self-certifications to be obtained after the opening of the account in circumstances beyond those that are permitted.

These are key elements of the required enforcement framework and are therefore material to the proper functioning of the AEOI Standard.

Recommendations:

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

Aruba should amend its domestic legislative framework to include sanctions on Account Holders and Controlling Persons for the provision of a false self-certification.

Aruba should amend its domestic legislative framework to include sanctions for failure to comply with the due diligence and reporting procedures in accordance with the AEOI Standard.

Aruba should amend its domestic legislative framework to limit the circumstances when it is permissible to obtain a valid self-certification after the opening of a New Account in accordance with the requirements.

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.

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| Determination: In Place |
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Aruba'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 Aruba's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Aruba 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.

Aruba 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.

Aruba 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.

Aruba's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

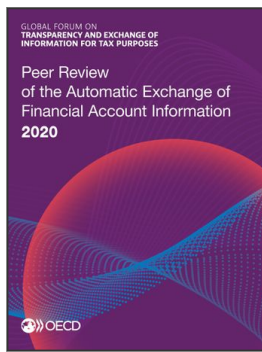
No recommendations made.

Comments by the assessed jurisdiction

No comments made.

Note

¹ Through a territorial extension by the Netherlands.



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