

Spain

Overall findings

Overall determination on the legal framework: In Place

Spain's legal framework implementing the AEOI Standard is in place and is consistent with the requirements of the AEOI Terms of Reference. This includes Spain's domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) and its international legal framework to exchange the information with all of Spain's Interested Appropriate Partners (CR2).

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

Spain 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, Spain:

- enacted the 22nd Additional Provision of General Taxation Law passed by Act 58/2003; and
- introduced the Royal Decree 1021/2015 that contains the requirement to determine the residence for tax purposes of Account Holders and those who have control over Financial Accounts and the requirement to report information pursuant to Mutual Assistance; and
- introduced the Order HAP/1695/2016 on FORM 289 on annual reporting on financial accounts in the field of mutual assistance.

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 the 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.

Spain has introduced a draft bill to address the recommendations made, but the legislative procedure has been delayed due to the COVID-19 pandemic.

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

- 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 Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation as amended by Directive 2014/107/EU; and
- has in place European Union agreements with five European third countries.¹

Detailed findings

The detailed findings for Spain 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

Spain's domestic legislative framework is in place and contains all of the key aspects of the CRS and its Commentary requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (SRs 1.1 – 1.3). It also provides for a framework to enforce the requirements (SR 1.4).

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

Spain 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.

Spain 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.

Spain 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.

Spain has a legislative framework in place to enforce the requirements in accordance with the CRS and its Commentary. While a deficiency has been identified with respect to the retention period for records in relation to closed accounts, it is considered relatively minor and does not materially undermine the implementation of SR 1.4. This is because the deficiency is only with respect to closed accounts and Spanish Financial Institutions are still required to keep records of the steps taken and evidence relied upon in relation to such accounts until the end of the fourth year following the year in which the account was closed.

Recommendations:

Spain should amend its domestic legislative framework to require Reporting Financial Institutions to maintain records for at least five years from the deadline to report the information, even when the account is closed.

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

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

Spain 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.

Spain 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.

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

Recommendations:

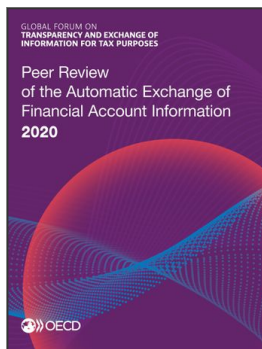
No recommendations made.

Comments by the assessed jurisdiction

No comments made.

Note

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



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