

British Virgin Islands

Overall findings

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

The British Virgin Islands' 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 British Virgin Islands' international legal framework to exchange the information with all of the British Virgin Islands' 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 deficiencies significant to the proper functioning of elements of the AEOI Standard. More specifically, deficiencies have been identified with respect to the British Virgin Islands' 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 British Virgin Islands 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 British Virgin Islands:

- enacted the Mutual Legal Assistance (Tax Matters) (Amendment) (No.2) Act, 2015, as amended in 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 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.

Following the initial Global Forum peer review, the British Virgin Islands amended its legislative framework to address issues identified, effective from 17 September 2018.

With respect to the exchange of information under the AEOI Standard, the British Virgin Islands:

- 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 2017; and
- put in place three bilateral agreements.²

Detailed findings

The detailed findings for the British Virgin Islands 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 British Virgin Islands' 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, the British Virgin Islands does not impose sanctions on Account Holders and Controlling Persons for the provision of a false self-certification and does not require records to be kept in accordance with the requirements.

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

The British Virgin Islands 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 British Virgin Islands 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 British Virgin Islands 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 British Virgin Islands has a legislative framework in place to enforce the requirements in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, the British Virgin Islands' legislative framework:

- does not impose sanctions for the provision of a false self-certifications by Account Holders and Controlling Persons; and
- does not include rules requiring Reporting Financial Institutions to keep records in accordance with the requirements.

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

Recommendations:

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

The British Virgin Islands should amend its domestic legislative framework to require Reporting Financial Institutions to keep records of the steps taken and evidence relied upon for the performance of the procedures, rather than permitting either to be kept.

The British Virgin Islands 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, rather than for six years from the end of the year to which the information relates or during which the due diligence steps were undertaken.

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 British Virgin Islands' international legal framework to exchange the information is in place, is consistent with the Model CAA and its Commentary and provides for exchanges with all of the British Virgin Islands' Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from the British Virgin Islands 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 British Virgin Islands 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 British Virgin Islands 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 British Virgin Islands' exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

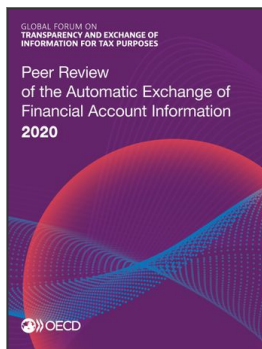
Comments by the assessed jurisdiction

No comments made.

Notes

¹ Through a territorial extension by the United Kingdom.

² With Guernsey, the Isle of Man and the United Kingdom.



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