

Belgium

Overall findings

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

Belgium'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 Belgium's international legal framework to exchange information with all Belgium'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 a deficiency significant to the proper functioning of an element of the AEOI Standard. More specifically, a deficiency has been identified in Belgium'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

Belgium 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, Belgium:

- enacted "*Loi du 16 décembre 2015 réglant la communication des renseignements relatifs aux comptes financiers, par les institutions financières belges et le SPF Finances, dans le cadre d'un échange automatique de renseignements au niveau international et à des fins fiscales*"; and
- issued further guidance, which is 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 review, Belgium amended its legislative framework to address issues identified, effective from 1 January 2018.

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

- 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 2016;
- has in place European Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation as amended by Directive 2014/107/EU; and
- has in place agreements with five European third countries¹

Detailed findings

The detailed findings for Belgium 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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Belgium'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, Belgium 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.

Belgium 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.

Belgium 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.

Belgium 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.

Belgium 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, Belgium'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. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

Recommendations:

Belgium should amend its domestic legislative framework to include rules to prevent Financial Institutions, persons or intermediaries 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

Belgium'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 Belgium's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Belgium and that meet the required standard in relation to confidentiality and data safeguards).

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

Belgium 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.

Belgium 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.

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

Recommendations:

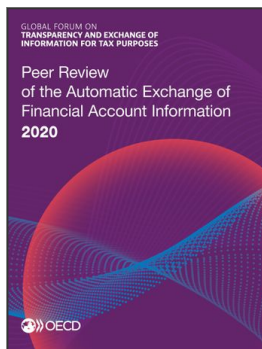
No recommendations made.

Comments by the assessed jurisdiction

No comments made.

Note

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



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