

# Macau (China)

## Overall findings

### Overall determination on the legal framework: Not In Place

Macau's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. While Macau's international legal framework to exchange the information with all of Macau'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, there is a gap in the scope of Reporting Financial Institutions and there are significant deficiencies in the due diligence procedures required for New Accounts.

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

Macau 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, Macau:

- enacted Law No. 5/2017 (Legal System of Tax Information Exchange);
- issued Chief Executive Resolution No. 211/2017; and
- enacted Law No. 21/2019 (Revision of Complementary Tax Regulation) which revises Articles 4, 5, 10 and 11 of Law No. 5/2017.

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, Macau has the Convention on Mutual Administrative Assistance in Tax Matters in place<sup>1</sup> and Macau activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018.

### Detailed findings

The detailed findings for Macau 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](http://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.***

<b>Determination: Not In Place</b>
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Macau'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 (SR 1.2) and the framework to enforce the requirements (SR 1.4). Most significantly, there is a fundamental deficiency in the scope of Reporting Financial Institutions, self-certifications for New Accounts are permitted to be collected after account opening in all cases, and there are no sanctions for failing to collect such self-certifications.

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

Macau has not defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. Most significantly, Macau defines a Reporting Financial Institution by reference to a discrete list of entities carrying out a financial business, which does not cover all relevant entities (particularly, but not necessarily limited to, certain Investment Entities). Furthermore, Macau provides for eight jurisdiction-specific Non-Reporting Financial Institutions that are not in accordance with the requirements. The scope of Reporting Financial Institutions, including the provision of Non-Reporting Financial Institutions, is material to the operation of the AEOI Standard.

**Recommendations:**

Macau should amend its domestic legislative framework to ensure its definition of Reporting Financial Institution reflects the detailed definitions in the AEOI Standard, rather than relying on a discrete list of Entities carrying out a financial business as this will not cover all relevant Entities, including certain Investment Entities in particular.

Macau should amend its domestic legislative framework to remove three entries from its jurisdiction-specific list of categories of Non-Reporting Financial Institutions as they do not meet the requirements. The entries are: i) finance companies; ii) pension funds; and iii) "Other Financial Institutions".

Macau should amend its domestic legislative framework to remove five entries from its jurisdiction-specific list of categories of Non-Reporting Financial Institutions as they would in many cases be Non-Financial Entities and should therefore be treated as such under the AEOI Standard. The entries are: i) cash couriers; ii) currency exchangers; iii) finance leasing entities; iv) general insurers; and v) gaming venue currency exchangers.

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

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**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.

Macau 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 CRS and its Commentary as significant deficiencies have been identified. Most significantly, Macau's legislative framework does not fully incorporate the due diligence procedures to identify Controlling Persons and provides for three jurisdiction-specific Excluded

Accounts that are not in accordance with the requirements. The scope of Financial Accounts, including the provision of Excluded Accounts, as well as the due diligence procedures, are material to the proper functioning of the AEOI Standard.

**Recommendations:**

Macau should amend its domestic legislative framework to fully incorporate the definition of Controlling Persons in accordance with the AEOI Standard by including all natural persons required to be identified in relation to trusts and similar legal arrangements.

Macau should amend its domestic legislative framework to define New Accounts in accordance with the AEOI Standard, rather than limiting the scope only to accounts opened by new customers.

Macau should amend its domestic legislative framework to redefine or remove dormant accounts from its jurisdiction-specific list of categories of Excluded Accounts as they do not meet the requirements of the AEOI Standard.

Macau should amend its domestic legislative framework to remove two entries from its jurisdiction-specific list of categories of Excluded Accounts as they do not meet the requirements. The entries are: i) provident fund accounts; and ii) private pension fund accounts.

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

Macau has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary.

**Recommendations:**

No recommendations made.

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

Macau 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, Macau's legislative framework:

- does not contain rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures as required; and
- does not incorporate measures to ensure that self-certifications are always obtained and validated for New Accounts as is required.

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

**Recommendations:**

Macau 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.

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

Macau 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, and include strong measures to ensure that valid self-certifications are always obtained for New Accounts 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.***

<b>Determination: In Place</b>
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Macau'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 Macau's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Macau 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.

Macau 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.

Macau 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.

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

**Recommendations:**

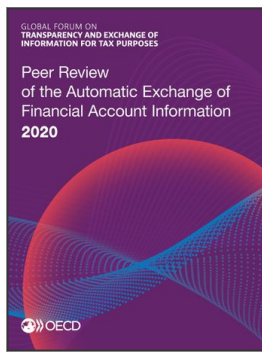
No recommendations made.

## Comments by the assessed jurisdiction

Macau (China) is currently revising Chief Executive Resolution No. 211/2017. Legislative amendments plan was significantly delayed due to the COVID-19 pandemic. Limited services and operations were available during the epidemic since the end of January amongst private and public sectors. As a result, the consultation of legislative amendment was completed in April 2020 and relevant legislative procedures are to be conducted shortly.

## Note

<sup>1</sup> Through a territorial extension by China.



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