

The Bahamas

Overall findings

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

The Bahamas' 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 Bahamas' international legal framework to exchange the information with all of The Bahamas' 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. Most significantly, a jurisdiction-specific Non-Reporting Financial Institution is provided for that does not meet the requirements and incorrect values may be reported in relation to certain Controlling Persons of trusts.

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 Bahamas 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, The Bahamas:

- enacted the Automatic Exchange of Financial Account Information Act 2016 (amended in 2017 and in 2019);
- introduced the Automatic Exchange of Financial Account Information Regulations 2017 (amended in 2017); 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 July 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 31 December 2017 and on Lower Value Individual Accounts and Entity Accounts by 31 December 2018.

Following the initial Global Forum peer review, The Bahamas made various amendments to its legislative framework to address issues identified, the last of which was effective from 30 April 2019.

With respect to the exchange of information under the AEOI Standard, The Bahamas 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 2018.

Detailed findings

The detailed findings for The Bahamas 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 Bahamas' domestic legislative framework is in place and contains many 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 some areas relating to the scope of Reporting Financial Institutions required to report information (SR 1.1) and the reporting requirements (SR 1.3). Most significantly, a jurisdiction-specific Non-Reporting Financial Institution is provided for that does not meet the requirements and incorrect values may be reported with respect to certain Controlling Persons of trusts.

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

The Bahamas has defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is largely consistent with the CRS and its Commentary. However, a deficiency has been identified. More specifically, The Bahamas provides for a jurisdiction-specific Non-Reporting Financial Institution that is not in accordance with the requirements. The scope of Reporting Financial Institution, including the provision of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard, which may materially impact the proper functioning of the AEOI Standard.

Recommendations:

The Bahamas should amend its domestic legislative framework to remove Bahamas Executive Entities from its list of categories of jurisdiction-specific Non-Reporting Financial Institutions, as they do not meet the requirements of the AEOI Standard.

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 Bahamas 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 Bahamas has incorporated the reporting requirements in its domestic legislative framework in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. Most significantly, The Bahamas has guidance advising that in the case of a Reportable Person who is a settlor of an irrevocable trust, or a protector or any other natural person exercising ultimate effective control over any trust (revocable or irrevocable), the account balance attributable to them is zero if that person has no beneficial interest in the trust. The reporting of account balance or value is a key element of the reporting requirements and is therefore material to the proper functioning of the AEOI Standard.

Recommendations:

The Bahamas should amend its domestic legislative framework to ensure that lodging a notification of reporting in another jurisdiction is not a substitute for reporting on Reportable Accounts maintained in The Bahamas in the limited circumstances where reporting may be required in both jurisdictions.

The Bahamas should amend its domestic legislative framework to require the account balance or value with respect to all Controlling Persons of a trust holding a Reportable Account to be reported in accordance with the AEOI Standard.

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 Bahamas has a legislative framework in place to enforce the requirements in accordance with the CRS and its Commentary.

Recommendations:

No recommendations made.

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

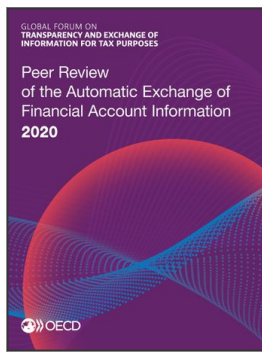
The Bahamas' exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

The Bahamas is in the process of making amendments to the second schedule of the Automatic Exchange of Financial Account Information Regulations 2017.



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