

Germany

Overall findings

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

Germany'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 Germany's international legal framework to exchange the information with all of Germany'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 deficiencies significant to the proper functioning of elements of the AEOI Standard. More specifically, Germany's legislative framework provides for jurisdiction-specific Non-Reporting Financial Institutions and Excluded Accounts that do not meet the requirements, and does not include strong measures to ensure valid self-certifications are obtained in all cases.

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

Germany 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, Germany:

- enacted the Law of December 21, 2015; announced in the Bundesgesetzblatt Part II, No. 35, December 29, 2015, page 1630 and Law of December 21, 2015; announced in Bundesgesetzblatt Part I, No. 55, December 30, 2015, page 2531; 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.

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

- 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 Germany 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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Germany's 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 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). More specifically, Germany's legislative framework provides for jurisdiction-specific non-Reporting Financial Institutions and Excluded Accounts that do not meet the requirements, and there are insufficient sanctions related to the making and collection of self-certifications.

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

Germany 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, deficiencies have been identified. More specifically, Germany provides for seven jurisdiction-specific Non-Reporting Financial Institutions that are not in accordance with the requirements. The definition of Reporting Financial Institutions, including the provision of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard, although it should be noted that several of the incorrect entries are likely to have a very limited impact.

Recommendations:

Germany should amend its domestic legislative framework to remove four entries from its jurisdiction-specific list of categories of Non-Reporting Financial Institutions as they are Non-Financial Entities and should therefore be treated as such under the AEOI Standard. The entries are: i) "bad banks"; ii) leasing entities; iii) factoring entities; and iv) Chambers of Commerce.

Germany should amend its domestic legislative framework to remove a further 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) foundations; ii) closed ended funds; and iii) Building and Loan Associations.

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.

Germany has defined 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 a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, Germany provides for 19 jurisdiction-specific Excluded Accounts that are not in accordance with the requirements. The definition of Financial Accounts, including the provision of Excluded Accounts, is material to the proper functioning of the AEOI Standard, although it should be noted that several of the incorrect entries are likely to have a very limited impact.

Recommendations:

Germany should amend its domestic legislative framework to remove 19 entries from its jurisdiction-specific list of categories of Excluded Accounts as they are either not Financial Accounts or do not meet the requirements for exclusion from being Financial Accounts. The entries are: i) (OTC Derivatives and similarly derived non-depository instruments; ii) letters of credit; iii) deposits without financial instruments;

iv) customer cards; v) personal credit; vi) liens; vii) corporate mortgages; viii) credit lines; ix) factoring products; x) leasing products; xi) receivables in cash management; xii) passive loans, in particular promissory note (bond) loans; xiii) Riester accounts; xiv) collateral orders; xv) financing arrangements; xvi) credit line accounts; xvii) time-limited overdraft facilities; xviii) pocket-money accounts; and xix) escrow/securities accounts managed by lawyers, auditors, chartered accountants (tax advisers) and insolvency administrators.

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

Germany 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.

Germany 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, Germany's legislative framework:

- does not impose sanctions on Account Holders and Controlling Persons for the provision of a false self-certification; and
- does not incorporate measures to ensure that self-certifications are always obtained and validated by Reporting Financial Institutions and in particular in the limited circumstances where valid self-certifications may be obtained after the opening of the account as required,

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

Recommendations:

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

Germany should amend its domestic legislative framework to include strong measures to ensure that valid self-certifications are always obtained for New Accounts and, more specifically, in the limited circumstances where a valid self-certification is permitted to be obtained after the opening of a New Account.

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

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

Germany 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.

Germany 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.

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

Recommendations:

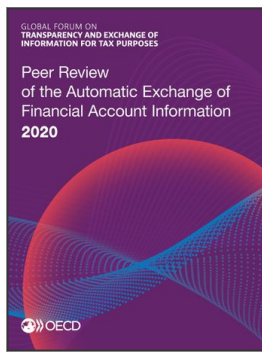
No recommendations made.

Comments by the assessed jurisdiction

With regard to the recommendations for SR 1.1, 1.2 and 1.4, Germany will promptly make changes to its regulations and will then apply for a reassessment.

Note

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



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