

South Africa

Overall findings

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

South Africa'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 South Africa's international legal framework to exchange the information with all of South Africa'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, South Africa provides for two categories of jurisdiction-specific Excluded Accounts that are not in accordance with the requirements.

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

South Africa 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, South Africa:

- enacted enabling provisions in the Tax Administration Act, 28 of 2011;
- introduced the CRS Regulations; 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 March 2016. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 28 February 2017 and on Lower Value Individual Accounts and Entity Accounts by 28 February 2018.

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

- 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; and
- put in place three bilateral agreements.¹

Detailed findings

The detailed findings for South Africa 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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South Africa'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 scope of Financial Accounts required to be reported (SR 1.2). More specifically, South Africa has provided for two categories of jurisdiction-specific Excluded Accounts that are not in accordance with the requirements.

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

South Africa 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.

South Africa 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 a manner that is largely consistent with the CRS and its Commentary. However, two deficiencies have been identified. More specifically, South Africa has provided for two categories of jurisdiction-specific Exclude 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.

Recommendations:

South Africa should amend its domestic legislative framework to remove two entries from its jurisdiction-specific list of Excluded Accounts: i) the Central Securities Accounts and ii) the Depository Accounts held by Non-Profit Organizations. These do not meet the relevant requirements as i) no restrictions are made in accordance with the AEOI Standard and ii) the contributions into the accounts are not limited and withdrawals are also not restricted.

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

South Africa 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.

South Africa 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

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

South Africa 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.

South Africa 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.

South Africa'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

South Africa has removed the two categories of jurisdiction-specific Excluded Accounts referred to in the recommendations under SR 1.2 in the CRS Regulations. These amendments were published on 9 October 2020, but will take effect from 1 June 2021.

Note

¹ With Hong Kong (China), Qatar and Singapore. South Africa has also activated a relationship under the CRS MCAA with Qatar.



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