

Curaçao

Overall findings

Overall determination on the legal framework: Not In Place

Curaçao's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. This is because Curaçao's 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, deficiencies have been identified in Curaçao's enforcement framework and in other key areas.

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

Curaçao 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, Curaçao:

- enacted National Ordinance International Assistance Taxation;
- introduced National Decree International Assistance Taxation; 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 January 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.

With respect to the exchange of information under the AEOI Standard, Curaçao has the Convention on Mutual Administrative Assistance in Tax Matters in place¹ and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018.

Detailed findings

The detailed findings for Curaçao 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: Not In Place

Curaçao'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 framework to enforce the requirements (SR 1.4). Most significantly, Curaçao's domestic legislative framework does not provide for rules to prevent the circumvention of the reporting and due diligence procedures, does not incorporate sanctions for the provision of false self-certifications and does not contain strong measures to ensure valid self-certifications are always obtained for New Accounts. Moreover, there are deficiencies in relation to the scope of Reporting Financial Institutions required to report information (SR 1.1) and the scope of Financial Accounts required to be reported and the due diligence procedures required to identify them (SR 1.2).

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

Curaçao 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, Curaçao's legislative framework:

- classifies certain Entities as Non-Financial Entities, which are not in accordance with the requirements set out in the AEOI Standard;
- does not specify the date as of when Qualified Credit Card Issuers need to implement policies for the returning of overpayments, which is required for them to be treated as Non-Reporting Financial Institutions; and
- does not specify the date as of when Exempt Collective Investment Vehicles are prevented from issuing bearer shares nor the date prior to which any existing bearer shares are required to be redeemed or immobilised, which is required for them to be treated as Non-Reporting Financial Institutions.

The scope of Reporting Financial Institutions, including the specification of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard.

Recommendations:

Curaçao should amend its domestic legislative framework to remove the classifications of entities held by one single family or a very limited group and Trust Office Foundation ("Stichting administratiekantoor" or STAK) as Non-Financial Entities without regard to the requirements to be classified as such.

Curaçao should amend its domestic legislative framework to require Qualified Credit Card Issuers to implement policies with respect to the returning of overpayments from a specified date in order to be treated as Non-Reporting Financial Institutions.

Curaçao should amend its domestic legislative framework to prevent Exempt Collective Investment Vehicles from issuing bearer shares from a specified date and for any existing bearer shares to be redeemed or immobilised prior to that date in order to be treated as Non-Reporting Financial Institutions.

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.

Curaçao has defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and has 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, Curaçao's legislative framework:

- does not specify the date on which a Preexisting Entity Account is first to be identified;
- does not define Controlling Persons in accordance with the requirements;

- does not specify the date as of when Qualified Credit Card Issuers need to implement policies for the returning of overpayments, which is required for Depository Accounts due to not-returned overpayments to be treated as Excluded Accounts; and
- does not follow the conditions set out in the AEOI Standard for when Reporting Financial Institutions can use existing classifications as Documentary Evidence with respect to Preexisting Entity Accounts.

The scope of Financial Accounts and the due diligence procedures to identify them is material to the proper functioning of the AEOI Standard.

Recommendations:

Curaçao should amend its domestic legislative framework to specify the date on which a Preexisting Entity Account is first to be identified using the USD 250 000 balance or value threshold.

Curaçao should amend its domestic legislative framework to require Reporting Financial Institutions to always identify and determine the reportable status of Controlling Persons in accordance with the AEOI Standard.

Curaçao should amend its domestic legislative framework to define Controlling Persons in accordance with the AEOI Standard, by removing the 25% ownership or share of profits threshold for partnerships in order to ensure the identification of all relevant Controlling Persons of partnerships and legal arrangements similar to partnerships.

Curaçao should amend its domestic legislative framework to require Qualified Credit Card Issuers to implement policies with respect to the returning of overpayments from a specified date in order for Depository Accounts due to not-returned overpayments to be treated as Excluded Accounts.

Curaçao should amend its domestic legislative framework to require Reporting Financial Institutions to only use Documentary Evidence in relation to the due diligence procedures for Preexisting Entity Accounts in accordance with the conditions in the AEOI Standard.

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

Curaçao has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary. While a deficiency has been identified with respect to the reporting of the currency denomination, it is considered to be relatively minor as the CRS XML schema will compel the reporting of a currency type.

Recommendations:

Curaçao should amend its domestic legislative framework to require Reporting Financial Institutions to identify the currency in which each account is denominated.

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

Curaçao 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, Curaçao'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 as required;
- does not include sanctions on Account Holders and Controlling Persons for the provision of a false self-certification; and

- allows self-certifications to be obtained after the opening of the account in circumstances beyond those that are permitted.

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

Recommendations:

Curaçao should amend its domestic legislative framework to introduce rules to prevent Financial Institutions, persons and intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures.

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

Curaçao 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 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.

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| Determination: In Place |
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Curaçao'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 Curaçao's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Curaçao 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.

Curaçao 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.

Curaçao 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.

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

Recommendations:

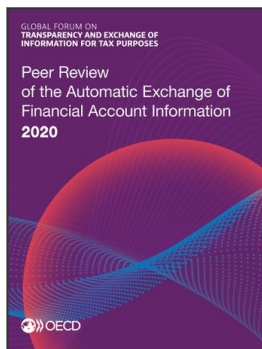
No recommendations made.

Comments by the assessed jurisdiction

No comments made.

Note

¹ Through a territorial extension by the Netherlands.



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