

India

Overall findings

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

India'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 India's international legal framework to exchange the information with all of India'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 in areas significant to the proper functioning of the AEOI Standard. More specifically, India's legislative framework provides for several categories of jurisdiction-specific Non-Reporting Financial Institutions that do not meet the requirements of the AEOI Standard.

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

India 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, India:

- enacted Section 285BA of the Income-tax Act 1961 and Rules 114F to 114H of the Income-tax Rules, 1962;
- issued further guidance, which was amended on 30 July 2020 and is legally binding; and
- made reference to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 for the purposes of the identification of Controlling Persons under the AEOI Standard.

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 30 June 2017.

Following the initial Global Forum peer review, India amended its legislative framework to address issues identified, effective from 30 July 2020.

With respect to the exchange of information under the AEOI Standard, India 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.

Detailed findings

The detailed findings for India 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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India'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). More specifically, India provides for six categories of jurisdiction-specific Non-Reporting Financial Institutions that are not in line with the requirements.

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

India 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. Most significantly, India has provided for four categories of jurisdiction-specific Non-Reporting Financial Institution that do not correspond to any of the categories of Non-Reporting Financial Institutions foreseen in the AEOI Standard. The definition of Reporting Financial Institutions, including the provision of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard.

Recommendations:

India should amend its domestic legislative framework to remove four categories from its jurisdiction-specific list of Non-Reporting Financial Institutions as they do not correspond to any of the categories of Non-Reporting Financial Institution foreseen in the AEOI Standard. The entries are: i) Financial Institutions with Low Value Accounts; ii) Local Banks; iii) Treaty Qualified Retirement Funds and iv) Financial Institutions with a local client base.

India should amend its domestic legislative framework to remove two further categories from its jurisdiction-specific list of Non-Reporting Financial Institutions as they are Non-Financial Entities and should therefore be treated as such under the AEOI Standard. The categories are: (i) the Gratuity Fund and (ii) the Non-Public Fund of the Armed Forces.

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.

India 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.

India 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.

India 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

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

India 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.

India 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.

India'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.



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