

Antigua and Barbuda

Overall findings

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

Antigua and Barbuda'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 Antigua and Barbuda's international legal framework to exchange the information with all of Antigua and Barbuda'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. Most significantly, Financial Account is not defined in accordance with the AEOI Standard and there are no sanctions on Account Holders and Controlling Persons for the provision of false self-certifications.

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

Antigua and Barbuda 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, Antigua and Barbuda:

- enacted the Automatic Exchange of Financial Account Information Act 2016 (No. 11 of 2016);
- enacted the Automatic Exchange of Financial Account Information (Amendment) Act 2017 (No. 39 of 2017); and
- introduced the Automatic Exchange of Financial Account Information Regulations 2017, (Statutory Instrument No. 18 of 2017).

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, Antigua and Barbuda 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 Antigua and Barbuda 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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Antigua and Barbuda'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), the reporting requirements (SR 1.3) and the framework to enforce the requirements (SR 1.4). Most significantly, Financial Account is not defined in accordance with the requirements and there are no sanctions on Account Holders and Controlling Persons for the provision of false self-certifications.

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

Antigua and Barbuda 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.

Antigua and Barbuda 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, a deficiency has been identified. More specifically, Antigua and Barbuda's domestic legislative framework omits several key details of the definition of Financial Account, which is material to the proper functioning of the AEOI Standard.

Recommendations:

Antigua and Barbuda should amend its domestic legislative framework to define Financial Account in accordance with the AEOI Standard, rather than defining it by exclusion as is currently the case (i.e. an account that is not (a) a retirement or pension account; (b) a non-retirement tax favoured account; (c) a term life insurance contract; (d) a estate account; (e) a depository account due to not-returned over payments and (g) a low risk excluded account).

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

Antigua and Barbuda 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 timing of the measurement of the balance of a Reportable Account, given the account is still required to be reported along with its balance, the deficiency is considered to be relatively minor and its impact not to be material.

Recommendations:

Antigua and Barbuda should amend its domestic legislative framework to specify that Reporting Financial Institutions should always report the balance or value of a Reportable Account as at the end of the calendar year.

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

Antigua and Barbuda 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. Most significantly, Antigua and Barbuda's legislative framework does not impose sanctions for the provision of false self-certifications by Account Holders and Controlling Persons. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

Recommendations:

Antigua and Barbuda should amend its domestic legislative framework to include sanctions on Account Holders and Controlling Persons for providing false self-certifications.

Antigua and Barbuda should amend its domestic legislative framework to require Reporting Financial Institutions to maintain records of self-certifications for at least five years from the deadline to report the information, rather than five years from the date when an account is closed.

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

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

Antigua and Barbuda 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.

Antigua and Barbuda 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.

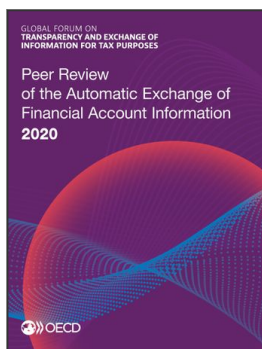
Antigua and Barbuda's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

Antigua and Barbuda has conducted remedial action and submitted legislative amendments to the Automatic Exchange of Financial Account Information Act 2016 as amended and the Automatic Exchange of Financial Account Information Regulations 2017, in accordance with the stated recommendations. Accordingly, the said amendments will be subjected to the Parliamentary process of debate and passage in 2020.



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