

Australia

Overall findings

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

Australia'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 Australia's international legal framework to exchange the information with all of Australia'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, Australia's legal framework includes a category of jurisdiction-specific Non-Reporting Financial Institution and a jurisdiction-specific Excluded Account that are not in accordance with the AEOI Standard. Moreover, Australia's rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures are insufficient in scope.

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

Australia 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, Australia:

- enacted the Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2015 (TLA(ICRS) 2015); 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 July 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 31 July 2018 and on Lower Value Individual Accounts and Entity Accounts by 31 July 2019 and 31 July 2018 respectively.

Following the initial Global Forum peer review, Australia amended its legislative framework to address issues identified, effective from November 2018.

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

- 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; and
- put in place a bilateral agreement.¹

Detailed findings

The detailed findings for Australia 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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Australia'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 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, Australia's legislative framework provides for a category of jurisdiction-specific Non-Reporting Financial Institution and a jurisdiction-specific Excluded Account that do not meet all the requirements, and the rules to prevent persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures are insufficient in scope.

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

Australia 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, a deficiency has been identified. More specifically, Australia provides for a category of jurisdiction-specific Non-Reporting Financial Institutions that is not in accordance with the requirements, such as not necessarily being related to an employer-employee relationship. 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:

Australia should amend its domestic legislative framework to remove the Narrowly Based Superannuation Funds from its jurisdiction-specific list of Non-Reporting Financial Institutions as their characteristics do not meet the requirements of the AEOI Standard, such as not necessarily being related to an employer-employee relationship, not indexing or limiting contributions based on the contributor's salary and permitting non-residents to own up to 50% of the fund's assets.

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.

Australia 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, Australia provides for a jurisdiction-specific Excluded Account that is not in accordance with the requirements, as it does not provide for effective penalties for withdrawals that do not meet the criteria of the account. The definition of Financial Accounts, including the provision of Excluded Accounts, is material to the proper functioning of the AEOI Standard.

Recommendations:

Australia should amend its domestic legislative framework to remove the Scholarship Plans from its jurisdiction-specific list of Excluded Accounts, as they do not meet the requirements in the AEOI Standard, such as by not having penalties for withdrawals from the accounts for non-educational purposes.

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

Australia 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.

Australia has a legislative framework in place to enforce the requirements in a manner that is largely consistent with the CRS and its Commentary. However, a deficiency has been identified. More specifically, Australia's legislative framework does not include rules to prevent all relevant persons (including other persons and intermediaries) from adopting practices intended to circumvent the due diligence and reporting procedures to the extent required. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

Recommendations:

Australia should amend its domestic legislative framework to include rules to prevent all Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures, rather than just Reporting Financial Institutions or Account Holders involved in transactions or arrangements with the purpose of causing an account to not be a Reportable 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

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

Australia 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.

Australia 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.

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

Recommendations:

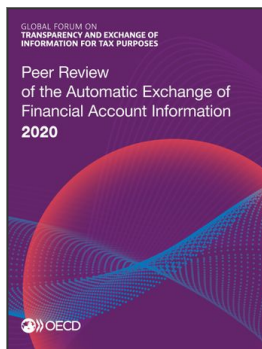
No recommendations made.

Comments by the assessed jurisdiction

No comments made.

Note

¹ With Singapore. Australia has also activated a relationship under the CRS MCAA with Singapore.



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