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Peer reviews of the AEOI Standard's implementation

In addition to monitoring the timeliness of the delivery of each jurisdiction's commitment to implementing the Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI Standard), the Global Forum conducts peer reviews to ensure its implementation is both complete and effective. This chapter provides an overview of the methodology used for the peer reviews. It also includes a summary of the findings from the assessments of the legal frameworks put in place by each jurisdiction to implement the AEOI Standard.

In addition to the monitoring the timeliness of the delivery of the commitments made to implement the AEOI Standard, the Global Forum conducts peer reviews to ensure the implementation is both complete and effective. These are conducted in accordance with the agreed Terms of Reference for the AEOI reviews (www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf).

Global Forum AEOI peer reviews: A multifaceted assessment process

The Global Forum conducts various peer review processes in order to cover the various requirements in the AEOI Terms of Reference. The Global Forum designed the timing and content of each of the processes to best assess the particular requirements in question. The various processes are as follows:

- Reviews to provide assurance jurisdictions are meeting the legal and operational requirements with respect to **confidentiality and data safeguards**. Given the sensitivity of the taxpayer information involved, the Global Forum conducts the reviews in advance of exchanges commencing. This is to identify issues early, to facilitate jurisdictions addressing them prior to exchange. The Global Forum provides assistance to address any issues as necessary. The Global Forum then conducts a further review in relation to confidentiality and data safeguards after exchanges have commenced, in order to provide continuing assurance. The Global Forum also has a mechanism to react to breaches of confidentiality or the safeguarding of data.
- Peer reviews of the **legal frameworks in place to implement the AEOI Standard**. These reviews cover the domestic legislative frameworks in place to implement the AEOI Standard (i.e. to require Financial Institutions to conduct the due diligence and reporting rules) and the **international legal frameworks** (i.e. to exchange the information). The results of these reviews are the focus of this report. Further information on the processes and the conclusions is below.
- Peer reviews of the **effectiveness in practice** of each jurisdiction's implementation of the AEOI Standard, including the operational frameworks to ensure compliance by Financial Institutions and the systems and processes in place to transmit the information. The Global Forum has commenced the effectiveness reviews, now that a number of exchange cycles have taken place. It expects to publish the results in 2022.

The Global Forum conducts these reviews in stages, to match the timings of the implementation process. This ensures that issues are identified early, supporting the effectiveness of the AEOI Standard during the implementation process. Further details on the staging of the various reviews (the "Staged Approach") are available in Annex A.

Focus of this report: Peer reviews of the AEOI legal frameworks

This report focuses on the results of the peer reviews of the legal frameworks put in place to implement the AEOI Standard, including determinations on the extent to which each jurisdiction put the necessary frameworks in place. The results relate to all jurisdictions that committed to commencing exchanges under the AEOI Standard in either 2017 or 2018. Next year, the results in relation to jurisdictions committed to commencing exchanges in 2019 will be included, and so on (i.e. the Global Forum conducts the reviews of the legal frameworks in the early years of implementation and publishes the results two years after the exchanges are due to commence). Furthermore, where jurisdictions have addressed issues in relation to their legal frameworks, reassessments will be conducted and the results will be included in future reports.

Peer reviews of the legal frameworks

The AEOI Terms of Reference group the requirements with respect to the legal frameworks according to two Core Requirements (CRs). The first CR relates to the domestic legislative framework and the second CR relates to the international legal framework. These are set out below:

- **CR1 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.
- **CR2 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.

Annex C reproduces these CRs, along with their associated Sub-Requirements.

Details of the Global Forum's peer review processes used to assess these requirements are set out below. For each of them, the Global Forum Secretariat conducts an initial in-depth analysis, before sending it to all AEOI Peers¹ for input. The AEOI Peer Review Group (APRG)² then approves the analysis and any recommendations, before all AEOI Peers adopt them.

Peers reviews in relation to Core Requirement 1

The AEOI Terms of Reference refer to the detailed due diligence and reporting procedures that Financial Institutions must follow contained in the AEOI Standard. These procedures are to ensure that Financial Institutions report the correct information on Financial Accounts and their Account Holders to the tax authority. It is therefore crucial that each jurisdiction properly reflects these requirements in its domestic legislative framework.

The Global Forum therefore carries out a detailed analysis and review of each jurisdiction's domestic legislative framework implementing the AEOI Standard. Where the review identifies gaps then it makes recommendations for the jurisdiction to address them. The particular elements reviewed are as follows:

- The detailed due diligence and reporting rules, as well as the framework to enforce the requirements, that each jurisdiction has introduced in its domestic legislative framework to implement the AEOI Standard. This includes a review of: (i) each jurisdiction's implementation of the scope of Reporting Financial Institutions, (ii) the scope of the Financial Accounts they must review, (iii) the detailed due diligence procedures that Financial Institutions must use to identify the Reportable Accounts, (iv) the information that must be reported and (v) the legal framework to enforce the requirements. The Global Forum conducts a detailed gap analysis to verify each jurisdiction has correctly implemented each key element of the procedures.
- The Non-Reporting Financial Institutions and Excluded Accounts provided for by each jurisdiction. This consists of a specific review to ensure that the Non-Reporting Financial Institutions and Excluded Accounts provided for by each jurisdiction meet the requirements of the categories of Non-Reporting Financial Institutions and Excluded Accounts contained in the AEOI Standard or have substantially similar characteristic to those categories and pose a low-risk use for tax evasion.
- A review of any other legal frameworks jurisdictions rely on for the implementation of the AEOI Standard. The scope of this review depends on how a particular jurisdiction has implemented the AEOI Standard. Some jurisdictions have cross-referenced pre-existing legislative provisions to define Controlling Persons and/or to enforce the due diligence and reporting requirements, rather than include bespoke provisions in their legislative framework implementing the AEOI Standard. This review may therefore involve: (i) a review of a jurisdiction's definition of "beneficial owner" contained in its legislative framework implementing the Financial Action Task Force (FATF) Recommendations, where relied upon for the identification of Controlling Persons, and/or (ii) a

jurisdiction's pre-existing penalty and enforcement framework where it is relied upon to ensure compliance with the AEOI Standard.

Peers reviews in relation to Core Requirement 2

The AEOI Terms of Reference contain requirements with respect to both the contents of the international agreements used to exchange the information and the scope of the network of exchange relationships. These requirements are also essential for the AEOI Standard to operate effectively.

The Global Forum therefore has peer review processes with respect to the international legal frameworks for exchange to ensure each jurisdiction meets these requirements. Where the review identifies gaps in a jurisdiction's implementation then it makes recommendations for the jurisdiction to address them. The particular processes are as follows:

- There is a process to facilitate jurisdictions in identifying their Interested Appropriate Partners (i.e. those jurisdictions interested in receiving information from a jurisdiction and that meet the expected standards in relation to confidentiality and data safeguards).
- A jurisdiction may trigger a peer review mechanism if it becomes concerned with respect to delays in a particular potential partner putting in place an exchange agreement with them.
- There is also a peer review process in relation to the contents of the exchange agreements put in place to ensure they are in accordance with the requirements of the AEOI Terms of Reference.

Conclusions of the various assessments and publication of the results

Once the Global Forum has completed the reviews of the legal frameworks in relation to Core Requirements 1 and 2, it draw overall conclusions with respect to the extent to which each jurisdiction is considered to have the required legal frameworks "in place".

In order to support it in this exercise, the APRG established an AEOI Assessment Panel of 13 experts drawn from AEOI Peer jurisdictions with a mandate of analysing the results of the peer reviews and preparing a short report on each jurisdiction that set out the extent to which each jurisdiction has the necessary legal frameworks in place. The reports include determinations on the extent to which each jurisdiction has the legal frameworks in place, including in relation to each of the Core Requirements as well as overall. The AEOI Assessment Panel consults each Assessed Jurisdiction in relation to its report and invites input on all of the reports from AEOI Peers. The APRG then discusses and approves the reports and the AEOI Peers adopt them for publication.

This report, for the first time, contains the results from the completion of the process to draw conclusions with respect to the legal frameworks of the 100 jurisdictions who committed to implementing the AEOI Standard in time to commence exchanges in either 2017 or 2018. The jurisdiction-specific reports are presented in Chapter 3.

Interpreting the results

The determinations made with respect to each Core Requirement and the overall determination are either: "**In Place**", "**In Place But Needs Improvement**" or "**Not In Place**". Further details on how to interpret each of these determinations are set out in Table 2.1 below.

Table 2.1. The determinations

Determination	Description
In Place	<p>A jurisdiction's legal framework is determined as being "In Place" where the review of its legal framework does not identify any gaps that need to be addressed in order for the legal framework to be in accordance with the AEOI Terms of Reference.</p> <p>This is the case where the peer review processes have not resulted in any recommendations. It is possible, although unusual, for a legal framework to be determined to be In Place even where there is a recommendation. This is only the case where the gap is viewed as so minor that it would have a highly limited impact on the operation of the AEOI Standard.</p>
In Place But Needs Improvement	<p>A jurisdiction's legal framework is determined as being "In Place But Needs Improvement" where the review of its legal framework concludes that the legal framework is in place but certain aspects need improvement in order for it to be fully in accordance with the AEOI Terms of Reference.</p> <p>This is the case where the peer review processes have identified one or more deficiencies material to the proper functioning of elements of the AEOI Standard.</p> <p>The determination of In Place But Needs Improvement is therefore a broad category. It includes jurisdictions with one recommendation, as well as jurisdictions with multiple recommendations. In all cases, the deficiencies are viewed collectively as material to the proper functioning of certain elements of the AEOI Standard, but not to its overall operation.</p>
Not In Place	<p>A jurisdiction's legal framework is determined as being "Not In Place" where the review of its legal framework shows that the legal framework needs to be significantly improved in order to be in accordance with the AEOI Terms of Reference.</p> <p>At the extreme, this is the case where a jurisdiction has not implemented the relevant legal framework. More commonly, this is where the peer review processes have resulted in recommendations viewed collectively as having a material impact on the overall operation of the AEOI Standard.</p> <p>It is important to note, aside from the jurisdictions that have not implemented a legal framework, a determination of Not In Place does not mean that a jurisdiction's legal framework is not in effect. In fact, several aspects of that legal framework are likely to be in place as required. The determination instead means that the impact of the deficiencies found are viewed as creating a material risk to the overall proper functioning of the AEOI Standard (e.g. a jurisdiction's legal framework to enforce the due diligence requirements is substantively incomplete).</p>

A global effort with very encouraging results: Conclusions from the peer reviews

When considering the results it should be noted how extraordinary the progress has been to implement the AEOI Standard. Following the commitments by 100 jurisdictions to implement the AEOI Standard in time to commence exchanges by 2017 or 2018, they moved in record time to put in place the necessary legal frameworks. In a scale perhaps unprecedented, around 100 jurisdictions simultaneously enacted detailed due diligence and reporting requirements for Financial Institutions to follow. Furthermore, around 7 000 bilateral exchange relationships have been put in place to date to exchange the information, the vast majority of which through the signature and activation of a new international legal instrument (the CRS MCAA). This represents a remarkable amount of change over just a few years.

Iterative peer review process helped jurisdictions respond to deficiencies

The Global Forum conducted reviews of the domestic and international legal frameworks the around 100 jurisdictions put in place to implement the AEOI Standard. This included a review of over 550 jurisdiction-specific exclusions from the AEOI Standard. The purpose of conducting these reviews during the implementation process was to highlight issues early to support the effectiveness of the AEOI Standard from the start.

This approach worked. Many jurisdictions were quick to address the issues raised to ensure a complete implementation of the required legal frameworks. Several jurisdictions made amendments before the

reviews were even completed and the recommendations issued. Where the Global Forum made recommendations, 64 jurisdictions were quick to bring into effect amendments to their due diligence, reporting and enforcement frameworks and requested a reassessment by the Global Forum. The reassessments showed that these amendments successfully addressed over 400 recommendations. Furthermore, over 50 jurisdiction-specific exclusions from the AEOI Standard that were found to insufficiently meet the requirements were removed and therefore brought within the scope of the requirements. It is expected that several more jurisdictions will make such changes. In some cases this has been delayed due to the impact of the COVID-19 pandemic. The Global Forum will continue to reassess any amendments made to the legal frameworks and will publish updated analysis and conclusions accordingly.

Summary of the main findings

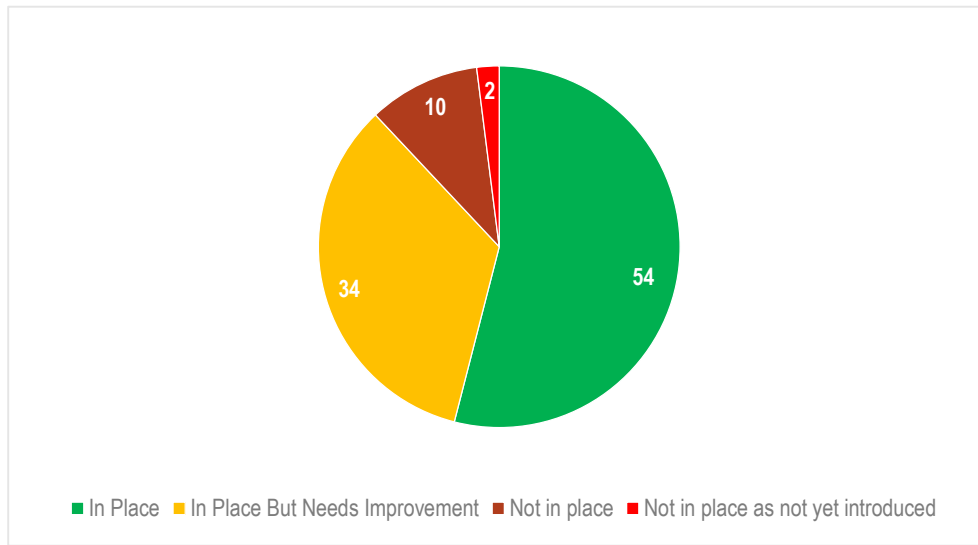
There is a very high level of compliance of the legal frameworks put in place to implement the AEOI Standard with the AEOI Terms of Reference. Of the 100 jurisdictions committed to commencing exchanges in 2017 or 2018, virtually all of them (98) have an international legal framework that is fully in accordance with the AEOI Terms of Reference. The Global Forum has therefore issued them a determination of **“In Place” for CR2**. Furthermore, the majority of jurisdictions (54) have domestic legislative frameworks that are also fully in accordance with the AEOI Terms of Reference. The Global Forum has therefore issued these jurisdictions with a determination of **“In Place” for CR1**. **Fifty-four jurisdictions received an overall determination of “In Place”**.

By far the next largest group of jurisdictions (34) are those for which the Global Forum issued a determination of **“In Place” for CR2** and **“In Place But Needs Improvement” for CR1**. Their peer review reports include one or more recommendations to amend their domestic legislative framework in order for it to be fully consistent with the AEOI Terms of Reference. Consequently, **34 jurisdictions received an overall determination of “In Place But Needs Improvement”**. In total, 88% of the jurisdictions have domestic and international legal frameworks that are fully or substantially in place. This demonstrates a generally high level of compliance with the Terms of Reference.

Following the Global Forum’s peer reviews, 88% of the jurisdictions have been determined to have domestic and international legal frameworks that are fully or substantially in accordance with the AEOI Terms of Reference.

Of the remaining jurisdictions (12), 10 have implemented a domestic legislative framework which contains many of the requirements, but includes deficiencies that could undermine the AEOI Standard’s operation. The remaining two jurisdictions have not yet implemented a domestic legal framework. They have not yet brought into effect the necessary primary and secondary legislations containing the due diligence and reporting procedures, which is also necessary to activate the international legal framework. **Twelve jurisdictions have therefore received an overall determination of “Not In Place”**. Figure 2.1 summarise the distribution of the peer review results.

Figure 2.1. Overall determinations at a glance



Horizontal analysis of common areas in need of improvements

While the results of the peer reviews show a generally high level of compliance with the requirements, it is also possible to identify some commonalities where recommendations are made. Some of these are highlighted below. The Global Forum will work with the jurisdictions concerned to assist them in addressing all of the issues where recommendations have been made.

The most common issues relate to the following:

- The AEOI Standard permits jurisdictions to provide for jurisdiction-specific Non-Reporting Financial Institutions and Excluded Accounts that have substantially similar characteristics to the provisions in the AEOI Standard and pose a low risk of being used for tax evasion. In some cases, following the peer review, the Global forum has found that the entries provided for are not sufficiently similar to the categories in the AEOI Standard. This is the largest category of remaining recommendations.
- The AEOI Standard requires jurisdictions to have in place various legislative provisions to enforce the requirements. The reports identify that these provisions are sometimes incomplete. This includes cases where jurisdictions rely on their pre-existing and general enforcement frameworks, which do not fully reflect the requirements specific to the AEOI Standard. For example, the requirement to having powers that can be used to address avoidance of the due diligence and reporting requirements, the ability to impose sanctions on Account Holders and Controlling Persons for submitting false self-certifications and having record-keeping obligations that cover the full scope of the records required to be kept under the AEOI Standard. Recommendations relating to the enforcement frameworks represent the next largest category of issues. This is of course a particularly important area of the requirements and all of the jurisdictions with legal frameworks that have been determined to be **“Not In Place”** have multiple recommendations with respect to their enforcement frameworks.
- Several more specific recommendations have also been made in cases where jurisdictions have looked to summarise the detailed definitions in the AEOI Standard or have otherwise omitted some elements of the definitions that are needed to ensure their full and proper operation.

Jurisdiction-specific conclusions

Table 2.2 contains a summary of the determinations made with respect to legal frameworks introduced by each jurisdiction to implement the AEOI Standard. Further details on the analysis and reasons for the determinations can be found in Chapter 3.

Table 2.2. Overview of the determinations on the legal frameworks for the assessed jurisdictions

Jurisdiction	Core Requirement 1 (domestic legal framework)	Core Requirement 2 (international legal framework)	Overall determination
Andorra	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Anguilla	In Place	In Place	In Place
Antigua and Barbuda	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Argentina	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Aruba	Not In Place	In Place	Not In Place
Australia	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Austria	In Place	In Place	In Place
Azerbaijan	Not In Place	In Place	Not In Place
Bahrain	In Place	In Place	In Place
Barbados	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Belgium	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Belize	Not In Place	In Place	Not In Place
Bermuda	In Place	In Place	In Place
Brazil	In Place	In Place	In Place
British Virgin Islands	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Brunei Darussalam	In Place	In Place	In Place
Bulgaria	In Place	In Place	In Place
Canada	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Cayman Islands	In Place	In Place	In Place
Chile	In Place But Needs Improvement	In Place	In Place But Needs Improvement
China	In Place	In Place	In Place
Colombia	In Place	In Place	In Place
Cook Islands	In Place	In Place	In Place
Costa Rica	Not In Place	In Place	Not In Place
Croatia	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Curaçao	Not In Place	In Place	Not In Place
Cyprus	In Place	In Place	In Place
Czech Republic	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Denmark	In Place	In Place	In Place
Dominica	Not In Place	In Place	Not In Place
Estonia	In Place But Needs Improvement	In Place	In Place But Needs Improvement

Jurisdiction	Core Requirement 1 (domestic legal framework)	Core Requirement 2 (international legal framework)	Overall determination
Faroe Islands	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Finland	In Place	In Place	In Place
France	In Place	In Place	In Place
Germany	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Gibraltar	In Place	In Place	In Place
Greece	In Place	In Place	In Place
Greenland	In Place	In Place	In Place
Grenada	Not In Place	In Place	Not In Place
Guernsey	In Place	In Place	In Place
Hong Kong (China)	In Place	In Place	In Place
Hungary	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Iceland	In Place	In Place	In Place
India	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Indonesia	In Place	In Place	In Place
Ireland	In Place	In Place	In Place
Isle of Man	In Place	In Place	In Place
Israel	Not In Place	In Place	Not In Place
Italy	In Place	In Place	In Place
Japan	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Jersey	In Place	In Place	In Place
Korea	In Place	In Place	In Place
Latvia	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Lebanon	In Place	In Place	In Place
Liechtenstein	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Lithuania	In Place	In Place	In Place
Luxembourg	In Place	In Place	In Place
Macau (China)	Not In Place	In Place	Not In Place
Malaysia	In Place	In Place	In Place
Malta	In Place	In Place	In Place
Marshall Islands	In Place	In Place	In Place
Mauritius	In Place	In Place	In Place
Mexico	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Monaco	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Montserrat	In Place	In Place	In Place
Nauru	In Place	In Place	In Place
Netherlands	In Place But Needs Improvement	In Place	In Place But Needs Improvement
New Zealand	In Place	In Place	In Place

Jurisdiction	Core Requirement 1 (domestic legal framework)	Core Requirement 2 (international legal framework)	Overall determination
Niue	In Place	In Place	In Place
Norway	In Place	In Place	In Place
Pakistan	In Place	In Place	In Place
Panama	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Poland	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Portugal	In Place	In Place	In Place
Qatar	In Place	In Place	In Place
Romania	Not In Place	In Place	Not In Place
Russia	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Saint Kitts and Nevis	In Place	In Place	In Place
Saint Lucia	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Saint Vincent and the Grenadines	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Samoa	In Place	In Place	In Place
San Marino	In Place	In Place	In Place
Saudi Arabia	In Place	In Place	In Place
Seychelles	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Singapore	In Place	In Place	In Place
Sint Maarten	Not In Place	Not In Place	Not In Place
Slovak Republic	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Slovenia	In Place	In Place	In Place
South Africa	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Spain	In Place	In Place	In Place
Sweden	In Place	In Place	In Place
Switzerland	In Place But Needs Improvement	In Place	In Place But Needs Improvement
The Bahamas	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Trinidad and Tobago	Not In Place	Not In Place	Not In Place
Turkey	In Place	In Place	In Place
Turks and Caicos Islands	In Place But Needs Improvement	In Place	In Place But Needs Improvement
United Arab Emirates	In Place	In Place	In Place
United Kingdom	In Place	In Place	In Place
Uruguay	In Place But Needs Improvement	In Place	In Place But Needs Improvement
Vanuatu	In Place	In Place	In Place

Notes

¹ All jurisdictions committed to implementing the AEOI Standard and that have passed domestic legislation to that effect.

² A peer review group of the Global Forum consisting of 33 members which replaced the former AEOI Group (www.oecd.org/tax/transparency/documents/aprg-members.pdf).



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