

GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES

The framework for the full AEOI reviews: the Terms of Reference

The AEOI Terms of Reference

Background and context

1. In 2014, the Standard for Automatic Exchange of Financial Account Information in Tax Matters¹ (the AEOI Standard) was developed by the OECD, working with G20 countries, and subsequently endorsed by the Global Forum. It comprises of a comprehensive framework for Reporting Financial Institutions to review the Financial Accounts they hold, to collect specified information on Financial Accounts held by Reportable Persons (individual or Entity Account Holders, and the individuals that control Entity Account Holders that are Passive Non-Financial Entities) each year and to report it to the tax authorities where the Reporting Financial Institutions are located. The information is then sent by those tax authorities to the tax authorities of its exchange partners where the Reportable Persons are resident for tax purposes. It can then be used by the receiving tax authorities to help ensure compliance by their taxpayers.

2. The Global Forum agreed to monitor and review the implementation of the AEOI Standard and in 2014, as a first step, launched a commitment process whereby all members, aside from developing countries that do not host a financial centre, were asked to commit to:

1. implement the AEOI Standard;
2. commence exchanges in 2017 or 2018; and
3. exchange information with all “Interested Appropriate Partners.” An Interested Appropriate Partner is considered to be a jurisdiction that is interested in receiving information from another jurisdiction and that meets the requirements in relation to confidentiality and data safeguards.

3. Since then, the Global Forum has also put in place a process whereby a jurisdiction not previously asked to commit to implement the AEOI Standard but seen as relevant for AEOI is asked to commit to implement the AEOI Standard to particular timelines and to exchange information with all Interested Appropriate Partners. New members, aside from developing countries that do not host a financial centre, are also asked to make such a commitment. Finally, jurisdictions not asked to commit can nevertheless make such a commitment. Together these constitute the “AEOI commitments”.

4. The Terms of Reference set out in this document are part of the peer review process the Global Forum has put in place to ensure the effective delivery of the AEOI Commitments (the AEOI Reviews). This is to provide peers with the assurance that all jurisdictions are delivering what is required for the AEOI Standard to be an effective tool to tackle cross-border tax evasion and improve compliance on the basis of a level playing field.

¹ www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm.

Relevant sources

5. For the purposes of the AEOI Reviews, in addition to the elements of the AEOI Commitments in relation to the timing and scope of the exchanges, the relevant requirements to implement the AEOI Standard are found in the following sources:

- the **Common Reporting Standard (CRS)**² which provides the due diligence and reporting requirements, as well as requirements with respect to the effective implementation of the CRS, that a jurisdiction implementing the AEOI Standard must have in place to ensure that their Reporting Financial Institutions review the Financial Accounts they hold and collect and report the information specified;
- the **Model Competent Authority Agreement (Model CAA)**³ which, when concluded under an international agreement providing for AEOI that is in force, provides the model international legal framework for the automatic exchange of information between jurisdictions, including aspects in relation to keeping the information confidential and properly safeguarded;
- the **Commentaries to the Model Competent Authority Agreement and the Common Reporting Standard**⁴ which provide additional details as to the above elements;
- the **Common Reporting Standard XML Schema: User Guide for Tax Administrations** (the CRS Schema User Guide)⁵, including the CRS XML Schema, which sets out the content and format of the information exchanges;
- the **Common Reporting Standard Status Message XML Schema: User Guide for Tax Administrations** (the CRS Status Message User Guide)⁶ which provides further technical provisions, including in relation to file and record validations to be carried out prior to the transmission and upon receipt of information; and
- the **2012 FATF Recommendations and Interpretative Notes** to the extent they are referenced in the CRS and its Commentaries to interpret the terms “Investment Entity” and “Controlling Person”.

6. In order to ensure the consistent implementation of the commitments based on a level playing field, the following sources provide further guidance when interpreting the requirements:

- the **AEOI Implementation Handbook** provides further explanations and illustrative guidance in relation to the implementation of the AEOI Standard;
- the **CRS FAQs** which provide answers to frequently asked questions in relation to the implementation of the AEOI Standard; and
- the **Common Transmission System (CTS) File Preparation and Encryption User Guide** in cases where transmissions are conducted using the CTS.

7. The purpose of the Terms of Reference is to reflect the requirements necessary to effectively implement the AEOI Standard, which will therefore provide the basis for the

² Part II, B. of the AEOI Standard.

³ Part II, A. of the AEOI Standard contains the reciprocal bilateral Model CAA. Annexes 1 and 2 of the AEOI Standard contain multilateral and non-reciprocal versions.

⁴ Part III of the AEOI Standard

⁵ Annex 3 to the AEOI Standard Second Edition (or any subsequent edition that might be published)

⁶ www.oecd.org/tax/exchange-of-tax-information/common-reporting-standard-status-message-xml-schema-user-guide-for-tax-administrations.htm.

AEOI Reviews. It should be noted that any term used in these Terms of Reference shall have the meaning as set out in the sources referred to above, taking into account that the sources referred to in paragraph 5 impose direct requirements on implementing jurisdictions, while those referred to in paragraph 6 contain important further guidance that should be taken into account depending on the specific circumstances.

The Core Requirements

8. Taking into account the relevant sources referred to above, the commitments can be said to be delivered effectively when:

- all Reporting Financial Institutions in each jurisdiction conduct the due diligence procedures, collect and report complete and accurate information with respect to all Financial Accounts they maintain for Account Holders and Controlling Persons that must be reported on (i.e. Reportable Persons);
- each jurisdiction then correctly prepares and formats the information and sends it in a timely manner from the year committed to as part of its AEOI Commitment;
- information exchange takes place with all Interested Appropriate Partners;
- the information exchanged is kept confidential and used in accordance with the exchange agreement.

9. In order to ensure that each of these steps is effectively delivered in practice, there are a number of requirements that jurisdictions must comply with, in their capacity as jurisdictions sending information and in their capacity as jurisdictions receiving information, if relevant. To provide an objective and structured basis against which the effectiveness of each jurisdiction's implementation of the AEOI Standard can be tested, three Core Requirements have been identified, each with aspects relating to legal implementation and effectiveness in practice. These core requirements are set out below.

- **Core Requirement 1:** Jurisdictions should ensure that all Reporting Financial Institutions apply due diligence procedures which are in accordance with the CRS to review the Financial Accounts they maintain, and collect and report the information required by the CRS.
 - **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.
 - **CR1 Effectiveness in practice:** Jurisdictions should have an administrative framework to ensure the effective implementation of the CRS and ensure that in practice Reporting Financial Institutions correctly implement the due diligence and reporting procedures in the CRS.
- **Core Requirement 2:** Jurisdictions should exchange information with all Interested Appropriate Partners in accordance with the AEOI Standard, in a timely manner, ensuring it is sorted, prepared, validated and transmitted in accordance with the AEOI Standard.
 - **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.
 - **CR2 Effectiveness in practice:** Jurisdictions should exchange the information effectively in practice, in a timely manner, including by sorting, preparing, validating and transmitting the information in accordance with the AEOI Standard.

- **Core Requirement 3:** Jurisdictions should keep the information exchanged confidential and properly safeguarded, and use it in accordance with the exchange agreement under which it was exchanged.

10. As set out below, each of the Core Requirements (CRs) can be further broken down into sub-requirements (SRs). Together they constitute the Terms of Reference for the AEOI Reviews. It is against these Terms of Reference that each jurisdiction will be assessed as to the effectiveness of its implementation of the AEOI Standard in accordance with the commitment it has made.

11. It should be noted that, given the Commentaries to the Model CAA and the CRS provide additional guidance and clarifications on the interpretation of all aspects of the Model CAA and the CRS, all references below to the Model CAA or the CRS should be read as also reflecting these Commentaries. It should also be noted that the Model CAA, CRS and their Commentaries explicitly provide for a number of alternative optional approaches that jurisdictions may adopt when implementing the AEOI Standard. The AEOI Review shall therefore be conducted without prejudice to the choices made by jurisdictions provided they are in accordance with the AEOI Standard, do not conflict with the commitments made to implement the AEOI Standard to particular timelines and are in line with the purposes of the AEOI Standard.

Core Requirement 1: Jurisdictions should ensure that all Reporting Financial Institutions apply due diligence procedures which are in accordance with the CRS to review the Financial Accounts they maintain, and collect and report the information required by the CRS

12. Reporting Financial Institutions must collect and report to the relevant tax authorities the information specified in the CRS, for the subsequent exchange of the information by those authorities. To ensure Reporting Financial Institutions properly collect and report the information, jurisdictions must, as a first critical step, put in place a domestic legal framework that (i) correctly defines Reporting Financial Institutions and Financial Accounts, (ii) correctly incorporates the due diligence procedures that set out the detailed process to identify the Financial Accounts with respect to which information must be collected and reported (i.e. Reportable Accounts) and (iii) correctly incorporates the reporting requirements. Jurisdictions must also ensure that the CRS operates effectively in practice and that the correct information is actually reported as required. To help ensure this, the CRS sets out rules and administrative procedures that must be in place to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures.

CR 1 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

Defining Reporting Financial Institutions

SR 1.1 Jurisdictions should define the scope of Reporting Financial Institutions consistently with the CRS, in particular by:

- a) incorporating the definitions contained in paragraph A of Section VIII of the CRS into their domestic legislative framework; and
- b) ensuring that any Financial Institution or category of Financial Institutions defined domestically as a Non-Reporting Financial Institution meets the requirements for its status as a Non-Reporting

Financial Institution as set out in paragraph B of Section VIII of the CRS.

Defining the Financial Accounts to be reported and incorporating the due diligence procedures to identify them

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, in particular by:

- a) incorporating the definitions contained in subparagraphs C. 1 to 16, and paragraphs D and E of Section VIII of the CRS into their domestic legislative framework.
- b) defining New Accounts as those opened from the first day of the calendar year (or other appropriate reporting period) prior to the year of first exchange and Preexisting Accounts as those that are open on the last day of the preceding calendar year (or other appropriate reporting period).
- c) incorporating the due diligence procedures contained in Sections II to VII of the CRS into their domestic legislative framework.⁷
- d) ensuring that any Financial Account or category of Financial Accounts defined in their domestic legislative framework as an Excluded Account meets the requirements for its status as an Excluded Account as set out in subparagraph C. 17 of Section VIII of the CRS.

Reporting the information

SR 1.3 Jurisdictions should incorporate the reporting requirements contained in Section I of the CRS into their domestic legislative framework.⁸

Enforcement

SR 1.4 Jurisdictions should have a legislative framework in place that allows for the enforcement of the requirements of the CRS in practice, including through rules to:

- a) prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures;
- b) require Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the due diligence procedures for at least five years following the end of the period within which the Reporting Financial Institution must report the information required to be reported under Section I of the CRS;
- c) ensure that valid self-certifications are always obtained for New Accounts; and
- d) address non-compliance with the requirements of the CRS.

⁷ Sections II to VII of the CRS set out the General Due Diligence Requirements, the Due Diligence for Preexisting Individual Accounts, the Due Diligence for New Individual Accounts, the Due Diligence for Preexisting Entity Accounts, the Due Diligence for New Entity Accounts, the Special Due Diligence Rules and the Defined Terms respectively. Paragraphs D and E of Section VIII of the CRS set out the definitions relevant to the due diligence procedures.

⁸ Section I of the CRS sets out the General Reporting Requirements, specifying the information that must be reported with respect to each Reportable Account.

CR 1 Effectiveness in practice: Jurisdictions should ensure that in practice Reporting Financial Institutions correctly implement the due diligence and reporting procedures, which includes a requirement for jurisdictions to have in place an administrative framework to ensure the effective implementation of the CRS

Ensuring effectiveness domestically

SR 1.5 Jurisdictions should ensure that in practice Reporting Financial Institutions identify the Financial Accounts they maintain, identify the Reportable Accounts among those Financial Accounts, as well as their Account Holders, and where relevant Controlling Persons, by correctly conducting the due diligence procedures and collect and report the required information with respect to each Reportable Account. This includes having in place:

SR 1.5.1 an effective administrative compliance framework to ensure the effective implementation of, and compliance with, the CRS. This framework should:

SR 1.5.1.1 be based on a strategy that:

- a) facilitates compliance by Reporting Financial Institutions; and
- b) which is informed by a risk assessment in respect of the effective implementation of the CRS that takes into account relevant information sources (including third party sources);

SR 1.5.1.2 include procedures to ensure that Financial Institutions correctly apply the definitions of Reporting Financial Institutions and Non-Reporting Financial Institutions and report information as required;

SR 1.5.1.3 include procedures to:

- a) periodically verify Reporting Financial Institutions' compliance;⁹
- b) conducted by authorities that have adequate powers with respect to the reviewed Reporting Financial Institutions, with procedures to access the records they maintain;¹⁰ and

SR 1.5.2 effective procedures to ensure that Financial Institutions, persons or intermediaries do not circumvent the due diligence and reporting procedures;

SR 1.5.3 effective enforcement mechanisms to address non-compliance by Reporting Financial Institutions;

SR 1.5.4 strong measures to ensure that valid self-certifications are always obtained for New Accounts;¹¹

SR 1.5.5 effective procedures to ensure that each, or each type of, jurisdiction-specific Non-Reporting Financial Institution and Excluded

⁹ Paragraph A. 3 of Section IX of the CRS

¹⁰ Paragraph A. 2 of Section IX of the CRS

¹¹ Paragraph 18 of the Commentary on Section IX of the CRS

Account continue to present a low risk of being used to evade tax;¹² and

SR 1.5.6 effective procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported in order to establish the reasons why such information is being reported.¹³

International collaboration to ensure effectiveness

SR 1.6 Jurisdictions should collaborate on compliance and enforcement. This requires jurisdictions to:

SR 1.6.1 use all appropriate measures available under the jurisdiction's domestic law to address errors or non-compliance notified to the jurisdiction by an exchange partner, as referred to in Section 4 of the Model CAA; and

SR 1.6.2 have in place effective procedures to notify an exchange partner of errors that may have led to incomplete or incorrect information reporting or non-compliance with the due diligence or reporting procedures by a Reporting Financial Institution in the jurisdiction of the exchange partner, as referred to in Section 4 of the Model CAA.¹⁴

Core Requirement 2: Jurisdictions should exchange information with all Interested Appropriate Partners, in accordance with the AEOI Standard, in a timely manner, ensuring it is sorted, prepared, validated and transmitted in accordance with the AEOI Standard

13. A critical step to implementing Core Requirement 2 is for jurisdictions to put in place an international legal framework that provides for the exchange of information in accordance with the AEOI Standard with each of their Interested Appropriate Partners in time for exchanges as committed to. Then, once the Reporting Financial Institutions have reported the information, which requires jurisdictions to put the necessary domestic reporting systems in place, the information should be sorted, prepared, validated and exchanged with each exchange partner, in accordance with the AEOI Standard.

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

Putting in place the exchange agreements on time

SR 2.1 Jurisdictions should have exchange agreements in effect with all Interested Appropriate Partners that permit the automatic exchange of CRS information.

¹² Paragraph A. 4 of Section IX of the CRS

¹³ Paragraph A. 3 of Section IX of the CRS

¹⁴ As set out in the Commentary to the Model CAA, a notification as referred to in Section 4 of the Model CAA must be in writing and must clearly set out the error or non-compliance and the reasons for the belief that such error or non-compliance has occurred. It is considered good practice to engage in dialogue with the partner concerned before making such a notification. Furthermore, it is also good practice to ensure that any such notifications make reference to Section 4 of the Model CAA or equivalent.

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.¹⁵

The contents of the agreements

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 CAA¹⁶, including with respect to:

- a) the categories of information to be exchanged;¹⁷
- b) the timing of the exchange of information;¹⁸
- c) the notifying of an exchange partner when the jurisdiction has reason to believe that an error may have led to incomplete or incorrect information reporting or there is non-compliance with the due diligence or reporting procedures by a Reporting Financial Institution, located in the exchange partner;¹⁹ and
- d) taking all appropriate measures available under the jurisdiction's domestic law to address errors or non-compliance notified to it.²⁰

CR2 Effectiveness in practice: Jurisdictions should exchange the information effectively in practice, in a timely manner, including by sorting, preparing, validating and transmitting it in accordance with the AEOI Standard

Preparing and validating the information

SR 2.4 Jurisdictions should sort, prepare and validate the information in accordance with the CRS XML Schema User Guide²¹ and the CRS Status Message User Guide, including by:

- a) sorting and preparing the information for each exchange partner, carrying out appropriate checks in relation to possible recurrent, frequent and grave errors (i.e. to mitigate against Status Message Error Codes, typically in the 60000 range, being generated once the file is sent);
- b) in the case of corrections, ensuring that the correction fields are properly filled and references to previous files are correctly set (i.e. to avoid the Status

¹⁵ Exchange agreements are expected to be put in place in time for exchanges from the date committed to unless the expression of interest indicates a later date for the commencement of exchanges or the expression of interest is not received in time. Whether the expression of interest is received in time for exchanges to commence in a particular year will depend on the specific circumstances, including the approach to the implementation of the AEOI Standard taken by the potential exchange partners.

¹⁶ Note that the agreements can take various forms. What is key is that both exchange partners are satisfied that the arrangement in place delivers the outcomes specified in the requirements.

¹⁷ Section 2 of the Model CAA

¹⁸ Section 3 of the Model CAA

¹⁹ Section 4 of the Model CAA

²⁰ Section 4 of the Model CAA

²¹ Paragraph 5 of Section 3 of the Model CAA

Message Error Codes, typically in the 80000 range, being generated once the file is sent); and

- c) validating the prepared file with reference to the File Error related Status Message Error Codes, specifically those in the 50000 range.

Transmitting the information

SR 2.5 Jurisdictions should agree upon, with each exchange partner, transmission methods that meet appropriate minimum standards to ensure the confidentiality and integrity of the data throughout the transmission, including its encryption to a minimum secure standard.²²

SR 2.6 Jurisdictions should prepare and send the information in accordance with the agreed transmission methods and encryption standards.²³

SR 2.7 Jurisdictions should carry out all principal exchanges annually within nine months of the end of the calendar year to which the information relates.²⁴ Where jurisdictions have no information to exchange as no Financial Accounts were reported with respect to an exchange partner, they should send that partner a “nil report/zero data message”, as specified in the CRS XML Schema and the related User Guide.²⁵

Receiving information

SR 2.8 Jurisdictions should have the systems in place to receive information and, once it has been received, should send a status message to the sending jurisdictions in accordance with the CRS Status Message XML Schema User Guide. This includes:

- a) transmitting a status message to the sending jurisdictions within 15 days²⁶;
- b) specifying whether the file was: (i) accepted (which may be with or without record errors), or (ii) rejected (which may be with file errors or with record errors that are recurrent and frequent, or sufficiently grave).²⁷

²² Paragraph 6 of Section 3 of the Model CAA

²³ Paragraph 6 of Section 3 of the Model CAA and, if using the Common Transmission System, the Common Transmission System File Preparation and Encryption User Guide

²⁴ Paragraph 3 of Section 3 of the Model CAA also states that information is only required to be exchanged with respect to a calendar year if both jurisdictions have in effect legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange required (Section 2 of the Model CAA) and the reporting and due diligence procedures contained in the CRS.

²⁵ While nil reporting is not a requirement, it is considered best practice and jurisdictions are strongly encouraged to make use of it. Where using the dedicated Schema is not a possibility, partners can be notified by other means (e.g., by email).

²⁶ While status messages must always be sent, the 15-day-period is not a requirement, although it is considered best practice and jurisdictions are strongly encouraged to adhere to it.

²⁷ As set out in the CRS Status Message User Guide, in summary the relevant error codes are:

- a) File Validation error code (50 000 – 59 999): The File Validations are at the root of the file preparation and are to be sent when the file has not been prepared as required.
- b) Record Validations – CRS data fields (60 000 – 69 999) and Fields used for the correction process (80 000 – 89 999). Where files are rejected with error codes in the 60000 range, feedback should be provided as appropriate along with possible consultation with the sending jurisdictions in accordance with Section 6 of the Model CAA.

Providing corrections, amendments or additions

SR 2.9 Jurisdictions should provide corrections, amendments or additions in a timely manner and in accordance with the requirements, in particular by:

- a) responding to a notification from an exchange partner referred to under Section 4 of the Model CAA in the manner set out in the Commentary to Section 4 of the Model CAA, which includes providing either corrected information or updates within 90 days and every 90 days thereafter; and
- b) in all other cases, sending corrected, amended or additional information received from a Reporting Financial Institution as soon as possible after it has been received.²⁸

Core Requirement 3: Jurisdictions should keep the information exchanged confidential and properly safeguarded, and use it in accordance with the exchange agreement under which it was exchanged

SR 3.1 Jurisdictions should meet the confidentiality and data safeguard requirements, including on the use of the information, referred to in Section 5 of the Model CAA to be able to receive information under the AEOI Standard.

14. As set out above, a jurisdiction must meet the relevant confidentiality and data safeguard requirements in the AEOI Standard in relation to Core Requirement 3 before it can receive information (i.e. to be considered an “Appropriate Partner”). Separate Terms of Reference and a Methodology for the purpose of providing ongoing assurance in this respect have been developed (see note Framework for the full AEOI reviews: Confidentiality and Data Safeguards Assessments – Core Requirement 3).

15. The interaction between the Confidentiality and Data Safeguards Assessments and Core Requirement 3 is articulated in the Methodology for the AEOI Reviews.

The AEOI Review process

16. The implementation of the AEOI Standard, as articulated in these Terms of Reference, is reviewed by the Global Forum for all jurisdictions implementing it through a peer review process. This includes an assessment of whether the necessary requirements are in place in each jurisdiction and whether they operate effectively in practice. These Terms of Reference provide the basis for the peer reviews which are conducted in accordance with the associated agreed processes for the AEOI Reviews.

²⁸ Commentary on Section 2 of the Model CAA



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