

Bermuda

This report analyses the implementation of the AEOI Standard in Bermuda with respect to the requirements of the AEOI Terms of Reference. It assesses both the legal frameworks put in place to implement the AEOI Standard and the effectiveness of the implementation of the AEOI Standard in practice.

The methodology used for the peer reviews and that therefore underpins this report is outlined in Chapter 2.

Overall findings

AEOI legal framework

Bermuda's legal framework implementing the AEOI Standard is in place and is consistent with the requirements of the AEOI Terms of Reference. This includes Bermuda's domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) and its international legal framework to exchange the information with all of Bermuda's Interested Appropriate Partners (CR2).

Overall determination on the legal framework: In Place

Effectiveness of AEOI in practice

Bermuda's implementation of the AEOI Standard is on track with respect to the requirements of the AEOI Terms of Reference to ensure the effectiveness of the AEOI Standard in practice. This includes ensuring Reporting Financial Institutions correctly conduct the due diligence and reporting procedures (CR1) and exchanging the information in an effective and timely manner (CR2). Bermuda is encouraged to continue its implementation process accordingly, to ensure its ongoing effectiveness.

Overall rating in relation to the effectiveness in practice: On Track
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General context

Bermuda commenced exchanges under the AEOI Standard on a non-reciprocal basis in 2017 (i.e. it sends but does not receive information).

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, Bermuda:

- amended its International Cooperation (Tax Information Exchange Agreements) Act 2005;
- introduced International Cooperation (Tax Information Exchange Agreements) Common Reporting Standard Regulations in 2017; and
- introduced 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 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 31 December 2017.

Following the initial Global Forum peer review, Bermuda made various amendments to its legislative framework to address issues identified, the last of which was effective from 18 August 2017.

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

- has the Convention on Mutual Administrative Assistance in Tax Matters in place¹ and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2017; and
- put in place three bilateral agreements.²

Table 1 sets out the number of Financial Institutions in Bermuda that reported information on Financial Accounts in 2021 as defined in the AEOI Standard (essentially because they maintained Financial Accounts for Account Holders, or that were related to Controlling Persons, resident in a Reportable Jurisdiction). It also sets out the number of Financial Accounts that they reported in 2021. In this regard, it should be noted that Bermuda requires the reporting of Financial Accounts based on a prescribed list of exchange partners and some accounts may be required to be reported more than once (e.g. jointly held accounts or accounts with multiple related Controlling Persons), which is reflected in the figures below. These figures provide key contextual information to the development and implementation of Bermuda's administrative compliance strategy, which is analysed in the subsequent sections of this report.

Table 1. Number of Financial Institutions reporting and Financial Accounts reported

	Number
Financial Institutions reporting Financial Accounts in 2021	800
Financial Accounts reported in 2021	149 056

Table 2 sets out the number of exchange partners to which information was successfully sent by Bermuda in the past few years (including where the necessary frameworks were in place, containing an obligation on Reporting Financial Institutions to report information, but no relevant Reportable Accounts were identified). These figures provide key contextual information in relation to Bermuda's exchanges in practice, which is also analysed in subsequent sections of this report.

Table 2. Number of exchange partners to which information was successfully sent

	2018	2019	2020	2021
Number of exchange partners to which information was successfully sent	52	61	60	64

In order to provide for the effective implementation of the AEOI Standard, in Bermuda:

- the Treaty Unit in the Ministry of Finance (the tax authority) has the responsibility to ensure the effective implementation of the due diligence and reporting obligations by Reporting Financial Institutions and for exchanging the information with Bermuda's exchange partners;
- technical solutions necessary to receive and validate the information reported by Reporting Financial Institutions were put in place by requiring Reporting Financial Institutions to register and submit information through a dedicated portal, which is then validated against the schema and other business rules before the file is accepted; and
- the Common Transmission System (CTS) is used for the exchange of the information, along with the associated file preparation and encryption requirements.

It should be noted that the review of Bermuda's legal frameworks implementing the AEOI Standard concluded with the determination that Bermuda's domestic and international legal frameworks are In Place. This has been taken into account when reviewing the effectiveness of Bermuda's implementation of the AEOI Standard in practice.

Findings and conclusions on the legal frameworks

The detailed findings and conclusions on the AEOI legal frameworks for Bermuda are below, organised per Core Requirement (CR) and then per sub-requirement (SR) as extracted from the AEOI Terms of Reference (see Annex C).

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

Bermuda's domestic legislative framework is in place and contains all of the key aspects of the CRS and its Commentary requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (SRs 1.1 – 1.3). It also provides for a framework to enforce the requirements (SR 1.4).

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

Findings:

Bermuda 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.

Findings:

Bermuda 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.

Findings:

Bermuda 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.

Findings:

Bermuda 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

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

Findings:

Bermuda 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.

Findings:

Bermuda 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.

Findings:

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

Recommendations:

No recommendations made.

Assessed jurisdiction's comments on the assessment of its legal frameworks

No comments made.

Findings and conclusions in relation to effectiveness in practice

The detailed findings and conclusions in relation to effectiveness in practice of AEOI for Bermuda are below, organised per Core Requirement (CR) and then per sub-requirement (SR) as extracted from the AEOI Terms of Reference (see Annex C).

CR1 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.

Rating: On Track

Bermuda's implementation of the AEOI Standard is on track with respect to ensuring that Reporting Financial Institutions are correctly conducting the due diligence and reporting procedures and are therefore reporting complete and accurate information. This includes ensuring effectiveness in a domestic context, such as through having an effective administrative compliance framework and related procedures (SR 1.5), and collaborating with exchange partners to ensure effectiveness (SR 1.6). Bermuda is encouraged to continue its implementation process to ensure its ongoing effectiveness.

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:

- a) an effective administrative compliance framework to ensure the effective implementation of, and compliance with, the CRS. This framework should:
 - i. be based on a strategy that facilitates compliance by Reporting Financial Institutions and 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);
 - ii. include procedures to ensure that Financial Institutions correctly apply the definitions of Reporting Financial Institutions and Non-Reporting Financial Institutions;
 - iii. include procedures to periodically verify Reporting Financial Institutions' compliance, conducted by authorities that have adequate powers with respect to the reviewed Reporting Financial Institutions, with procedures to access the records they maintain; and
- b) effective procedures to ensure that Financial Institutions, persons or intermediaries do not circumvent the due diligence and reporting procedures;
- c) effective enforcement mechanisms to address non-compliance by Reporting Financial Institutions;
- d) strong measures to ensure that valid self-certifications are always obtained for New Accounts;
- e) effective procedures to ensure that each, or each type of, jurisdiction-specific Non-Reporting Financial Institution and Excluded Account continue to present a low risk of being used to evade tax; and
- f) 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.

Findings:

In order to ensure that Reporting Financial Institutions correctly conduct the due diligence and reporting procedures, Bermuda implemented all of the requirements in accordance with expectations. The key findings were as follows:

- Bermuda implemented an overarching strategy to ensure compliance with the AEOI Standard developed after conducting a risk assessment that took into account a range of relevant information sources, such as information from the implementation of FATCA and Mandatory Disclosure Rules, information reported under the AEOI Standard, information provided in the annual compliance certification forms and input from exchange partners. Bermuda intends to keep its compliance strategy and risk assessment under review to ensure its effectiveness on an ongoing basis.
- Bermuda has worked effectively to understand its population of Financial Institutions, utilising various relevant information sources, such as the list of regulated entities maintained by the Bermuda Monetary Authority (BMA), the list of Foreign Financial Institution for FATCA purposes and outreach to trust companies. Bermuda is taking action to ensure that Reporting Financial Institutions are classifying themselves correctly under its domestic rules and are reporting information as required. It identified several instances of failures to register and failure to report and followed up as necessary. Bermuda intends to keep its understanding of its Financial Institution population up to date on a routine basis.
- The Ministry of Finance's Treaty Unit, responsible for implementing Bermuda's compliance strategy, appears to have the necessary powers and resources to discharge its functions. With respect to resourcing, Bermuda has assigned the equivalent of 3.5 full time staff to monitor and ensure compliance by Reporting Financial Institutions, which have access to IT providers, systems and tools to conduct risk assessments (e.g. IT infrastructure and software for CRS reporting and exchanges). Bermuda also has additional resources that can assist when needed. Overall, they appear to have effectively implemented an operational plan to verify compliance with the requirements, incorporating appropriate compliance activities.
- Bermuda has implemented desk-based checks of the information reported by Financial Institutions that have been successful in identifying a significant number of cases of non-compliance, including the incorrect submission of undocumented accounts and failure to comply with AEOI Standard rules regarding TINs. In many cases, the issues were rectified by the Financial Institutions after being notified to them and, in others, Bermuda has imposed administrative sanctions. Bermuda also implemented an annual compliance certification form that every Reporting Financial Institution has been required to complete since 2021.
- In terms of more detailed reviews, Bermuda has defined its approach to require certain Reporting Financial Institutions to undergo onsite audits. This can be done by the Treaty Unit or by independent audit firms. The audits include the inspection of the records held and follow guidelines on the required contents of the reviews. The criteria and approval process for the Ministry to approve the independent reviewers have also been established and a significant number of reviews have been conducted.
- Bermuda follows up with Financial Institutions that report undocumented accounts and is ready to take effective action to address circumvention of the requirements if such circumvention is detected. As part of its annual compliance questionnaire, Bermuda plans to check to ensure self-certifications are obtained as required.
- Bermuda plans to keep its jurisdiction-specific lists of Non-Reporting Financial Institutions and Excluded Accounts under review, in coordination with the Pension Commission, to ensure they continue to pose a low risk of being used for tax evasion purposes.

Table 3 provides a summary of the specific activities undertaken, or that are planned to be undertaken, in relation to each of the key parts of the framework described above.

Table 3. Activities undertaken

Activity type	Activities undertaken
Communication and outreach	Bermuda has carried out substantial communication and outreach activities, such as providing online resources, including guidance on a website dedicated to the AEOI Standard, establishing a mailbox where Financial Institutions can contact the Treaty Unit and a technical support helpdesk where its software provider delivers technical assistance to Financial Institutions.
Verifying that Financial Institutions are reporting as required	Bermuda has carried out verification activities to ensure that Financial Institutions are reporting as required, such as outstanding filing analysis and comparison with the lists of regulated entities and of Foreign Financial Institution for FATCA purposes and identified many Financial Institutions incorrectly not reporting. Bermuda is following up on these issues with a view to ensuring future compliance.
Verifying whether the information reported is complete and accurate	Bermuda has conducted a significant number of automated desk-based checks of reported information and identified several issues, such as in relation to the reporting of undocumented accounts and the failure to report TINs. It is following up on these issues to ensure future compliance. Bermuda has also conducted desk-based reviews to verify whether the information being reported is complete and accurate, in particular for Financial Institutions with lower rates of collection of Tax Identification Numbers and dates of birth and that reported in the annual compliance certification forms to not having policies and procedures in place, to verify that the due diligence procedures are being properly applied. Furthermore, Bermuda has required a significant number of in-depth compliance reviews by independent firms. Many of these have already taken place and the Tax Unit has conducted a few additional in-depth reviews. Bermuda accordingly identified many issues, commonly concerning accounts not reported or reported incorrectly. It is following up on these issues with a view to ensuring future compliance.
Enforcement	Following the activities mentioned above, Bermuda has imposed some administrative penalties and sanctions, and plans to continue imposing sanctions for identified cases of non-compliance. It is monitoring the impact of these penalties and sanctions with a view to ensuring future compliance.

In terms of the Financial Account information collected and sent by Bermuda, it was found to include a lower proportion of Tax Identification Numbers with respect to the individuals associated with the accounts when compared to most other jurisdictions. Furthermore, while the collection and reporting of dates of birth is generally higher across jurisdictions, Bermuda nevertheless reported a lower rate of collection of dates of birth when compared to other jurisdictions. These are key data points for exchange partners to effectively utilise the information. Follow-up discussions confirmed that Bermuda is aware of these issues and has taken steps to address them. The level of undocumented accounts in Bermuda appeared to be in line with most other jurisdictions.

Feedback from Bermuda's exchange partners indicated that, compared to what they generally experience when seeking to match information received from their exchange partners with their taxpayer database, they achieved a relatively lower level of success when seeking to match information received from Bermuda. Furthermore, two exchange partners highlighted issues with respect to the information received, such as missing accounts and abnormal variance in account balances.

Based on these findings it was concluded that, overall, Bermuda is meeting expectations in ensuring that Reporting Financial Institutions correctly conduct the due diligence and reporting procedures, including by having in place the required administrative compliance framework and related procedures. It was also noted that there is room for improvement with respect to addressing the issues raised by its exchange partners. Bermuda is therefore encouraged to continue its implementation process accordingly, including by addressing the recommendation made.

Recommendations:

Bermuda should continue to address the issues raised by its exchange partners.

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

- a) 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; and
- b) 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.

It should be noted that, as Bermuda exchanges information on a non-reciprocal basis and does not therefore receive information, it is not required to have in place procedures to notify its exchange partners. SR 1.6 b) has therefore not been assessed in this case.

Findings:

In order to collaborate on compliance and enforcement, it appears that Bermuda implemented a process to either automatically or manually notify Reporting Financial Institutions of issues notified to them (i.e. under Section 4 of the MCAA or equivalent). Bermuda then reviews any corrected data from the Reporting Financial Institutions at least every two months and sends the new/amended data to its partners. While no such Section 4 of the MCAA or equivalent notifications have yet been received, Bermuda has the necessary systems and procedures to process them as required.

Based on these findings it was concluded that Bermuda is fully meeting expectations in relation to collaborating with its exchange partners to ensure that Reporting Financial Institutions correctly conduct the due diligence and reporting procedures. Bermuda is therefore encouraged to continue its implementation process accordingly.

Recommendations:

No recommendations made.

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.

Rating: On Track

Bermuda's implementation of the AEOI Standard is on track with respect to exchanging the information effectively in practice, including in relation to sorting, preparing and validating the information (SR 2.4), correctly transmitting the information in a timely manner (SRs 2.5 – 2.7) and providing corrections, amendments or additions to the information (SR 2.9). The requirements in relation to the receipt of the information (SR 2.8) have not been assessed as Bermuda exchanges information non-reciprocally, so does not receive information. Bermuda is encouraged to continue its implementation process accordingly, to ensure its ongoing effectiveness.

SR 2.4 Jurisdictions should sort, prepare and validate the information in accordance with the CRS XML Schema and the associated requirements in the CRS XML Schema User Guide and the File Error and Correction-related validations in the Status Message User Guide (i.e. the 50000 and 80000 range).

Findings:

One exchange partner highlighted particular issues with respect to preparation and format of the information sent by Bermuda related to a correction file for an unknown record. More generally, one of Bermuda's exchange partners reported rejecting more than 25% of the files received, but not more than

50%, due to the technical requirements not being met. This is a relatively low amount when compared to other jurisdictions. It was noted that Bermuda has already solved the issue raised.

Based on these findings it was concluded that Bermuda is fully meeting expectations in relation to sorting, preparing and validating the information. Bermuda is therefore encouraged to continue its implementation process accordingly.

Recommendations:

No recommendations made.

SR 2.5 Jurisdictions should agree and use, 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.

Findings:

In order to put in place an agreed transmission method that meets appropriate minimum standards in confidentiality, integrity of the data and encryption for use with each of its exchange partners, Bermuda linked to the CTS.

Based on these findings it was concluded that Bermuda is fully meeting expectations in relation to agreeing and using appropriate transmission methods with each of its partners. Bermuda is encouraged to continue to ensure the ongoing effectiveness of its implementation.

Recommendations:

No recommendations made.

SR 2.6 Jurisdictions should carry out all exchanges annually within nine months of the end of the calendar year to which the information relates.

Findings:

Feedback from Bermuda's exchange partners did not raise any concerns with respect to timeliness of the exchanges by Bermuda and therefore with respect to Bermuda's implementation of this requirement.

Based on these findings it was concluded that Bermuda is fully meeting expectations in relation to exchanging the information in a timely manner. Bermuda is encouraged to continue to ensure the ongoing effectiveness of its implementation.

Recommendations:

No recommendations made.

SR 2.7 Jurisdictions should send the information in accordance with the agreed transmission methods and encryption standards.

Findings:

Feedback from Bermuda's exchange partners did not raise any concerns with respect to Bermuda's use of the agreed transmission methods and therefore with Bermuda's implementation of this requirement.

Based on these findings it was concluded that Bermuda is fully meeting expectations in relation to sending the information in accordance with the agreed transmission methods and encryption standards. Bermuda is encouraged to continue to ensure the ongoing effectiveness of its implementation.

Recommendations:

No recommendations made.

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 and the related User Guide.

It should be noted that, as Bermuda exchanges information on a non-reciprocal basis and does not therefore receive information, it is not required to have in place systems to receive the information and provide status messages. SR 2.8 has therefore not been assessed in this case.

Findings:

Not applicable.

Recommendations:

Not applicable.

SR 2.9 Jurisdictions should respond to a notification from an exchange partner as referred to in Section 4 of the Model CAA (which may include Status Messages) in accordance with the timelines set out in the Commentary to Section 4 of the Model CAA. In all other cases, jurisdictions should send corrected, amended or additional information received from a Reporting Financial Institution as soon as possible after it has been received.

Findings:

Bermuda appears ready to respond to notifications and to provide corrected, amended or additional information in a timely manner and no such concerns were raised by Bermuda's exchange partners and therefore with respect to Bermuda's implementation of these requirements.

Based on these findings it was concluded that Bermuda appears to be fully meeting expectations in relation to responding to notifications from exchange partners and the sending of corrected, amended or additional information. Bermuda is encouraged to continue to ensure the ongoing effectiveness of its implementation.

Recommendations:

No recommendations made.

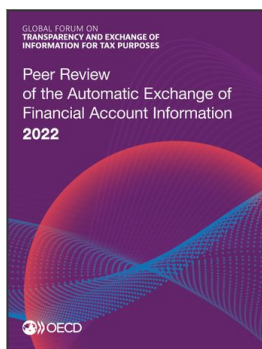
Assessed jurisdiction's comments on the assessment of effectiveness in practice

No comments made.

Notes

¹ Through a territorial extension by the United Kingdom.

² With Guernsey, the Isle of Man and the United Kingdom.



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