

Kuwait

Overall findings

Kuwait's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. While Kuwait's international legal framework to exchange the information with all of Kuwait's Interested Appropriate Partners (CR2) is consistent with the requirements, the domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has significant deficiencies in areas that are fundamental to the proper functioning of the AEOI Standard. More specifically, deficiencies have been identified in Kuwait's enforcement framework.

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

Overall determination on the legal framework: Not In Place

Conclusions on the legal framework

General context

Kuwait commenced exchanges under the AEOI Standard in 2019, when it exchanged information relating to both 2017 and 2018.

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, Kuwait issued Ministerial Decision No. (36) for the year 2017.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 April 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 31 December 2017 and on Lower Value Individual Accounts and Entity Accounts by 31 December 2018.

With respect to the exchange of information under the AEOI Standard, Kuwait 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 2019.

Detailed findings

The detailed findings for Kuwait 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: Not In Place

Kuwait's domestic legislative framework is not in place as required as it does not contain several key aspects of the CRS and the Commentary. Significant deficiencies have been identified in relation to the framework to enforce the requirements (SR 1.4). Most significantly, Kuwait's domestic legislative framework does not provide relevant authorities access to records kept by Financial Institutions, does not incorporate a framework for enforcement to address non-compliance, and does not include strong measures to ensure that valid self-certifications are always obtained for New Accounts.

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

Kuwait 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.

Kuwait 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.

Kuwait 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.

Kuwait does not have a legislative framework in place to enforce the requirements in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. More specifically, Kuwait's legislative framework:

- does not include sanctions on Account Holders and Controlling Persons for the provision of a false self-certification;
- does not provide the relevant authorities with the power to access the records held by Reporting Financial Institutions in relation to the due diligence procedures applied;
- does not provide for sanctions on Reporting Financial Institutions for failing to carry out the due diligence procedures; and
- does not incorporate measures to ensure that self-certifications are always obtained and validated for New Accounts as is required.

These are key elements of the required enforcement framework and are therefore material to the proper functioning of the AEOI Standard.

Recommendations:

Kuwait should amend its domestic legislative framework to include sanctions on Account Holders and Controlling Persons for the provision of a false self-certification.

Kuwait should amend its domestic legislative framework to provide the appropriate authorities with access to the records required to be kept by Reporting Financial Institutions.

Kuwait should amend its domestic legislative framework to include sanctions for failure to comply with the due diligence and reporting procedures.

Kuwait should amend its domestic legislative framework to include strong measures to ensure that valid self-certifications are always obtained for New Accounts in accordance with the requirements.

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

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

Kuwait 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.

Kuwait 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.

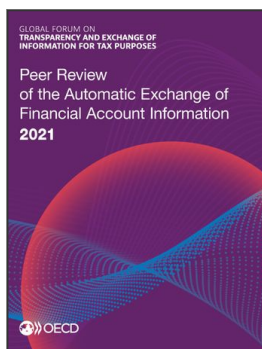
Kuwait's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

No comments made.



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