

Azerbaijan

Overall findings

Overall determination on the legal framework: Not In Place

Azerbaijan's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. While Azerbaijan's international legal framework to exchange the information with all of Azerbaijan'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, there are deficiencies in relation to various definitions relevant to defining Reporting Financial Institutions and Financial Accounts and there are deficiencies relating to the enforcement framework.

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

Conclusions on the legal framework

General context

Azerbaijan commenced exchanges under the AEOI Standard in 2018.

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

- enacted Limits and Regulations for provision of information on financial transactions carried out by legal entities and individuals of foreign states in the territory of Azerbaijan to the competent authorities of those countries approved by the Cabinet of Ministers in the decision No. 211 as amended on 22 June, 2018; and
- made reference to the Law of the Republic of Azerbaijan on the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism for the purposes of the identification of Controlling Persons under the AEOI Standard.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 July 2017. Reporting Financial Institutions were required to complete the due diligence procedures on all Preexisting Accounts by 30 June 2018.

With respect to the exchange of information under the AEOI Standard, Azerbaijan is a Party to the Convention on Mutual Administrative Assistance in Tax Matters and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018.

Detailed findings

The detailed findings for Azerbaijan 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

Azerbaijan'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 relating to the scope of Reporting Financial Institutions required to report information (SR 1.1), the scope of Financial Accounts required to be reported and the due diligence procedures to be applied (SR 1.2) and the framework to enforce the requirements (SR 1.4). Most significantly, Azerbaijan's legislative framework does not include or does not correctly include a range of definitions that are critical to the functioning of the AEOI Standard including the definitions of Investment Entity, Reportable Person, Reportable Jurisdiction Person, Controlling Person and Equity Interest.

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

Azerbaijan has not defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. Most significantly, Azerbaijan's legislative framework does not define Investment Entities in accordance with the requirements and does not have rules to determine the residency of trusts and fiscally transparent entities. The scope of Reporting Financial Institutions is material to the proper functioning of the AEOI Standard.

Recommendations:

Azerbaijan should amend its domestic legislative framework to include the definition of Participating Jurisdiction Financial Institution in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to ensure that the residency of a trust that is a Financial Institution is determined in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to ensure that the residency of a fiscally transparent Financial Institution is determined in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define Investment Entity in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define the terms International Organisation and Pension Fund of a Governmental Entity, International Organisation and Central Bank in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to ensure that a Financial Institution cannot be a jurisdiction-specific Non-Reporting Financial Institutions unless it is defined as such in domestic law.

Azerbaijan should amend its domestic legislative framework to require the term Investment Entity to be interpreted consistently with similar language defining "financial Institution" in the Financial Action Task Force Recommendations.

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.

Azerbaijan has not defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and has not incorporated the due diligence procedures that must be applied to identify them in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. Most significantly, Azerbaijan's legislative framework:

- does not require Controlling Persons with respect to New Entity Accounts to be identified in accordance with the requirements;
- does not define, or does not correctly define, a range of terms including Reportable Person, Reportable Jurisdiction Person, Controlling Person and Equity Interest in accordance with the requirements;
- does not specify the due diligence requirements in accordance with the AEOI Standard when there are changes in circumstances relevant to the status of accounts;
- does not forbid reliance on self-certifications and documentary evidence that are incorrect or unreliable; and
- does not require self-certifications to be provided when determining the status of Controlling Persons of Passive NFEs in all cases where required by the AEOI Standard.

The scope of Financial Accounts and the due diligence procedures to identify them are material to the proper functioning of the AEOI Standard.

Recommendations:

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to always identify and determine the reportable status of Controlling Persons in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define the term Equity Interest in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define Reportable Jurisdiction Person in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define Reportable Jurisdiction in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to ensure that a Reporting Financial Institution is not able to rely on a self-certification or Documentary Evidence if it has reason to know it is incorrect or unreliable.

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to treat a Non-Financial Entity Account Holder as a Passive Non-Financial Entity unless a self-certification from the Account Holder or other permitted information shows it is an Active NFE or Financial Institution.

Azerbaijan should amend its domestic legislative framework to specify when and how a Reporting Financial Institution may use the alternative procedures for Cash Value Insurance Contracts and Annuity Contracts in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to apply the specified procedures if there is a change of circumstance with respect to a High Value Account.

Azerbaijan should amend its domestic legislative framework to specify that, for New Entity Accounts, Reporting Financial Institutions may only rely on a self-certification provided by a Passive NFE Account Holder or its Controlling Person to determine whether the Controlling Person is a Reportable Person.

Azerbaijan should amend its domestic legislative framework to ensure that the definition of “dormant account” is fully incorporated in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to apply the specified procedures if there is a change of circumstance relating to any of the relevant documentation held, not only the original Documentary Evidence obtained.

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to apply the specified procedures if there is a change of circumstance relating to all self-certifications, not only a self-certification obtained upon account opening.

Azerbaijan should amend its domestic legislative framework to fully incorporate the definition of Controlling Persons in accordance with the AEOI Standard, including by incorporating all of the elements set out in the Commentary.

Azerbaijan should amend its domestic legislative framework to ensure that “change of circumstances” is defined in accordance with the AEOI Standard, rather than being restricted to circumstances that lead or may lead to the change of residence for tax purposes.

Azerbaijan should amend its domestic legislative framework to ensure that the standard of knowledge test applicable to Documentary Evidence also applies to any other such documentation, in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to include all of the required categories of Equity or debt interest in the definition of Financial Account, in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define escrow accounts in accordance with the AEOI Standard.

Azerbaijan should amend its domestic legislative framework to define the term Cash Value in accordance with the AEOI Standard.

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

Azerbaijan 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.

Azerbaijan has a legislative framework in place to enforce the requirements in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, Azerbaijan's legislative framework:

- does not contain rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures as required;
- does not contain provisions imposing sanctions on Account Holders and Controlling Persons for the provision of a false self-certification; and
- does not include rules requiring Reporting Financial Institutions to keep records in accordance with the requirements.

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

Recommendations:

Azerbaijan should amend its domestic legislative framework to include rules to prevent Financial Institutions, persons and intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures.

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

Azerbaijan should amend its domestic legislative framework to require Reporting Financial Institutions to maintain records for at least five years from the deadline to report the information, by specifying the start date from which the retention period commences.

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

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

Azerbaijan 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.

Azerbaijan 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.

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

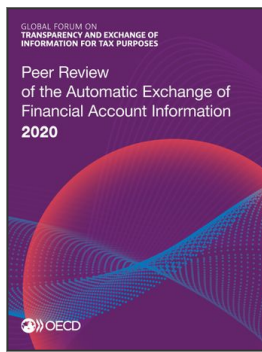
Recommendations:

No recommendations made.

Comments by the assessed jurisdiction

Azerbaijan acknowledges that recommendations have been made in the report and advises that action is being taken to address the recommendations. This is expected to be finalised shortly and Azerbaijan will request a reassessment as soon as these are completed. Azerbaijan notes that in 2017 it voluntarily committed to implementing the AEOI Standard from 1 July 2017 and did so under a very rapid implementation timeframe, successfully delivering the first exchanges in 2018. It remains committed to ensuring successful exchanges with partner jurisdictions.

For the recommendation at Question 64, Azerbaijan wishes to advise that this is partly addressed through a power in its legal framework to impose a sanction on a person who makes a false self-certification, provided that it is informed of the deficiency by a jurisdiction with whom it exchanges information.



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