

AEOI STANDARD AND TAX TRANSPARENCY: A NEW POSITIVE SCENARIO FOR CURAÇÃO

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As of February 2025, Curaçao has been removed from annex II of the 'EU list of Non-Cooperative Jurisdictions for Tax Purposes' or 'EU list'. The EU list has been established to address harmful tax competition by imposing tax standards on non-EU countries and jurisdictions. Mainly because of this initiative, the EU has managed to regain its influential role in international taxation. The list which is published to conclusions adopted by the Ecofin Council is composed of countries which have failed to fulfil their commitments to comply with tax good governance criteria within a specific timeframe, and countries which have refused to do so, the so-called 'annex I' or 'EU black list'.¹ Jurisdictions that do not yet comply with all international tax standards but have committed to implementing reforms are included in annex II: a state of play document ('EU gray list').



The three listing criteria are in short:

1. Tax transparency, which includes exchange of information with EU Member States by implementing OECD standards on Automatic Exchange of Information (AEOI) and Exchange of Information on Request (EOIR).
2. Fair taxation, which implies the idea that countries should not have harmful preferential corporate income tax measures according to the EU Code of Conduct.
3. Implementation of the OECD/G20 BEPS 'minimum standards'.

The first mentioned EU criterion ('tax transparency') is based on the OECD determination in relation to the AEOI. In the fall of 2024, the OECD published its annual update of the results of the conducted peer reviews of the legal frameworks putting into practice the AEOI Standard. The latter indicated – much to relief of Curaçao – that its legal framework implementing the AEOI Standard is in place, and it is consistent with the requirements of the AEOI Terms of Reference. For anyone closely following the AEOI developments and the annual reports, the recent removal of Curaçao from the EU list should not have come as a surprise.

In this contribution, the author will elaborate on the recent progress Curaçao has made in advancing the implementation of CRS, both in terms of its legal framework and the effectiveness in practice. The author will highlight the strategy of Curaçao in implementing the AEOI Standards and bring forward the next steps for Curaçao. However, the essence of AEOI will be briefly flagged first.

THE STANDARD OF AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

It has already been a decade since the AEOI Standard was developed by the OECD to effectively fight tax evasion worldwide. AEOI comprises of a framework for Reporting Financial Institutions (FIs) to identify reportable accounts, to collect certain information on accounts held by so-called 'reportable persons' and to report this information on an annual basis to the local tax authority. The local tax authority will then exchange the collected information with other tax authorities of participating countries of the Multilateral Competent Authority Agreement on Automatic Exchange of Information or 'MCAA', where the reportable persons are resident for tax purposes. The requirements to implement and report financial account information is provided by the so-called Common Reporting Standard (CRS).

OECD'S GLOBAL FORUM AND AEOI

The OECD's Global Forum oversees the monitoring and reviewing the implementation of the AEOI Standard. In 2014, the Global Forum members committed to implementing the AEOI Standard. By 2018, 100 countries started exchanging information and by now, 127 countries have formally committed to implement the standard.² By 2024, tax authorities from 111 jurisdictions have automatically exchanged information on financial accounts.³ Information on over 134 million financial accounts was exchanged automatically in 2023, covering total assets of almost EUR 12 trillion.



Based on a peer review process, the Global Forum ensures all jurisdictions are implementing the AEOI standard into national law and effectively exchanges the required information. As already mentioned, the requirements to implement and report financial account information are set in the CRS. This standard — developed by the OECD — is very similar to the Foreign Account Tax Compliance Act (FATCA) legislation on which FIs worldwide are obliged to report annually to the United States (US) tax authorities on accounts outside the US that may be taxable in the US. CRS provides the due diligence and reporting requirements and the commentaries to the CRS.

IMPLEMENTATION OF CRS BY CURAÇAO

In 2017, Curaçao implemented the CRS in its national legislation (also known as “LB LIBB”). The LB LIBB includes the identification and reporting requirements of CRS. Based on the so-called wider approach, Curaçao is currently exchanging information with all

participating countries of the MCAA.⁴ In short, the AEOI Standard is composed of four main components:

- A Model Competent Authority Agreement (Model CAA)
- The Common Reporting Standard (CRS)
- The Commentaries on the CAA and the CRS
- The CRS extensible mark-up language (SML) Schemas and related User Guides.

LEGAL FRAMEWORK

At the end of 2022, Curaçao had a negative conclusion from the OECD Global Forum’s review due to issues of AEOI: the determination was “Not In Place” for CR1: Domestic legal framework. As Curaçao promptly committed to address this issue, Curaçao has been listed on a gray rather than black list since February 2023.

In general, any amendments made to legal frameworks by the end of June each year can be assessed by the OECD in that year with the results being published in that year's annual report of the OECD. Accordingly, Curaçao amended its legislative framework to address issues identified, the last of which was effective from 25 June 2024.

As already pointed out, the 2024 OECD report indicated that Curaçao's legal framework implementing the AEOI Standard is in place and is consistent with the requirements of the AEOI Terms of Reference. This includes Curaçao'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 Curaçao's Interested Appropriate Partners (CR2). No recommendations were made. As a result of the AEOI determination 'in place' by the OECD, Curaçao is now removed from the EU list of non-cooperative jurisdictions, Annex II or 'gray list'.

By amending its domestic legal and regulatory framework, strengthening compliance and enforcement mechanisms, including expanding relevant authorities' access powers, Curaçao is now on a very promising path. Curaçao introduced sanctions for non-compliance. Having the legal framework in place, Curaçao should now be focusing on the effectiveness in practice of this framework as it will be assessed by the OECD during the peer review process. In other words, Curaçao still needs to demonstrate to be "partially compliant or on track" during the peer review to maintain its status, that is, to be out of any list of non-cooperative jurisdiction.

IMPLEMENTATION AND EFFECTIVENESS OF THE AEOI STANDARD

The AEOI Standard requires every jurisdiction to implement an effective administrative compliance framework. To this end, Curaçao should develop a comprehensive compliance strategy, detailing the key actions officials must undertake to supervise the FIs compliance with due diligence, reporting and record-keeping obligations. Furthermore, Curaçao should ensure that all RFI's in Curaçao are correctly conducting the due diligence procedures and are reporting the relevant information. In practice, the Tax Inspectorate and the Stichting Belastingaccountantsbureau (SBAB) oversee the auditing of the FI's to verify if RFI's are compliant with the reporting and due diligence procedures. On top of that, the Tax Inspectorate is responsible for promoting voluntary compliance through, among other things, awareness-raising and educational activities.





Jurisdictions, like Curaçao, that have been rated as “non-compliant” during the initial “effectiveness peer review” will not receive an onsite visit as part of the peer review of their ongoing implementation of the AEOI Standard until they demonstrate, through an updated Administrative Compliance Framework Questionnaire (ACFQ) along with follow-up conversations as necessary, that they would be expected to be rated either as “partially compliant or on track” during the initial effectiveness peer review. The reason for this is that carrying out an onsite visit to a jurisdiction that either does not have complete policies and procedures in place or that is severely constrained by gaps in its legal frameworks, will not be worthwhile as they will most likely be unable to demonstrate the effectiveness of their implementation of “Core Requirement 1” in any case.

If a jurisdiction does not qualify for an onsite visit in time to meet the calendar of assessments under the second round AEOI effectiveness reviews (which ends in Q2 2025), it may still qualify for an

onsite visit up until Q2 2026 at the latest. Therefore, jurisdictions have been granted another year extension to demonstrate the effectiveness of their implementation of “Core Requirement 1”.⁵

Having a robust legal framework in place (phase I) as of 2024, Curaçao has now shifted its focus to the effectiveness of its compliance framework (phase II) by conducting compliance activities, onsite as well as desk-based audits to verify whether FIs are practically complying with their obligations under the CRS.

FINAL COMMENTS

It is fair to say that Curaçao has made some big leaps to comply with the AEOI standards. Surely, Curaçao has benefitted from the tailored bilateral technical assistance on CRS administrative compliance provided by the Secretariat of the OECD Global Forum. The administrative compliance framework and strategy of Curaçao are currently being updated and adjusted according to the AEOI standards and the CRS framework as set out by the Global Forum of the OECD.

Although the implementation strategy in Curaçao is ongoing, it will be challenging to demonstrate the full compliance with a stable and effective implementation. The capacity restraints are a critical aspect, and it will remain a significant challenge for small jurisdictions to keep up with compliance of the international AEOI standards. Even so, by addressing several recommendations made in the first-round review, it is expected that Curaçao will make some big steps in implementing its compliance strategy. In view of its efforts, it is likely that Curaçao receives a rating higher than “non-compliant”. Yet, it is important to stress that receiving such a rating should not result in complacency and inactivity. For sure, it is essential that Curaçao also start using the information received under CRS to fight tax evasion and avoidance, as well as to promote

domestic resource mobilization. More importantly, CRS should remain an integral and sustainable part of Curaçao’s strategy to comply with the international tax standards, especially to maintain its status out of the EU list of non-cooperative jurisdictions for tax purposes. A promising future without any doubts.



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¹ <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

² 17th Global Forum Plenary Meeting, 26-28 November 2024, Asunción, Paraguay Statement of Outcomes; <https://web-archiv.oecd.org/tax/transparency/documents/2024-global-forum-plenary-meeting-outcomes.pdf>.

³ OECD (2024), Peer Review of the Automatic Exchange of Financial Account Information 2024 Update, OECD Publishing, Paris, <https://doi.org/10.1787/1aa02413-en>.

⁴ <https://minfin.cw/wp-content/uploads/2024/06/FATCA-CRS-Guidance-EN-amended.pdf>

⁵ OECD (2024), Peer Review of the Automatic Exchange of Financial Account Information 2024 Update, OECD Publishing, Paris, p. 9, <https://doi.org/10.1787/1aa02413-en>.