



Global Forum on Transparency  
and Exchange of Information for Tax Purposes



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

## Implementation of the Standard in Practice

ISRAEL





## *Table of Contents*

<b>About the Global Forum</b> .....	5
<b>Executive summary</b> .....	7
<b>Introduction</b> .....	11
Information and methodology used for the peer review of Israel .....	11
Overview of Israel .....	12
Recent developments .....	15
<b>Compliance with the Standards</b> .....	17
<b>A. Availability of information</b> .....	17
Overview .....	17
A.1. Ownership and identity information .....	20
A.2. Accounting records .....	33
A.3. Banking information .....	38
<b>B. Access to information</b> .....	41
Overview .....	41
B.1. Competent Authority’s ability to obtain and provide information .....	43
B.2. Notification requirements and rights and safeguards .....	51
<b>C. Exchanging information</b> .....	55
Overview .....	55
C.1. Exchange-of-information mechanisms .....	56
C.2. Exchange-of-information mechanisms with all relevant partners .....	64
C.3. Confidentiality .....	66
C.4. Rights and safeguards of taxpayers and third parties .....	68
C.5. Timeliness of responses to requests for information .....	69

<b>Summary of determinations and factors underlying recommendations . . . . .</b>	<b>75</b>
<b>Annex 1: Jurisdiction’s response to the review report . . . . .</b>	<b>81</b>
<b>Annex 2: List of Israel’s exchange-of-information mechanisms . . . . .</b>	<b>83</b>
<b>Annex 3: List of all laws, regulations and other material . . . . .</b>	<b>89</b>
<b>Annex 4: People interviewed during the on-site visit . . . . .</b>	<b>91</b>

## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Executive summary

1. In 2014, the Global Forum evaluated Israel for its implementation of the standard in practice. Israel was rated Partially Compliant overall. This supplementary report evaluates the progress made by Israel since then. The conclusion of this report is that Israel is now overall Largely Compliant with the international standard.

2. In the Phase 2 review Israel was assigned the following ratings: Compliant for elements B.2 and C.3, Largely Compliant for elements A.1, A.2, A.3 and C.2 and Partially Compliant for elements B.1, C.1 and C.5. The resulting overall rating for Israel was Partially Compliant.

3. Since the Phase 2 review Israel has implemented several measures to address deficiencies identified in the Phase 2 review which resulted in changes in the ratings of elements A.1, A.3, B.1, B.2, C.1 and C.2.

4. Under element A.1, the Phase 2 report identified a legal gap in respect of companies which may issue bearer shares and in respect of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad. Since the Phase 2 review Israel has amended its law to cancel the possibility to issue bearer shares after September 2016. All holders of bearer shares who do not convert these shares into registered shares by 17 September 2016 cease to be considered shareholders in the company unless they convert their bearer shares. However, if bearer shares are converted after September 2016 the shareholder is not entitled to receive dividends retrospectively for the period after September 2016 when the person was not considered a shareholder. Although there is apparently no limitation to the period in which the holder of a bearer share can convert his/her bearer shares the materiality of the gap is very limited and cannot expand and therefore does not have potential to have negative systemic impact on availability of ownership information in respect of companies in Israel. Further, the AML law has been amended to also cover attorney and accountants providing trustee services. The AML amendment limits the scope of the gap to foreign resident trusts having a trustee resident in Israel and to trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years if the trust is operated by

a resident trustee who is not an attorney or an accountant covered by AML obligations. No issue in respect of practical implementation of the relevant requirements was identified in the Phase 2 review and no change has been encountered during the current review.

5. Under element A.3, at the time of the Phase 2 review the AML law amendment requiring that all documentation attesting transactions must be kept regardless of any threshold was untested in practice. During the two years since the law amendment has been in force the Bank of Israel did not identify any case of violation of the new requirement and according to the information from banks' representatives the amendment did not represent change in banks' practice. Considering the above there is sufficient evidence to conclude that the law amendment is tested in practice and that the information as required by the law is available.

6. Under element B.1, the Phase 2 review identified three areas where improvement was recommended. Since the Phase 2 review Israel has taken steps to address two of the three areas. Israel has amended its tax law to make clear that the tax authority's domestic information gathering powers can be used for exchange of information purposes regardless of domestic tax in interest and that these powers can be used under all Israel's EOI agreements regardless of their form. The use of information gathering powers for exchange of information purposes is linked to certain conditions which appear in line with the standard. Nevertheless as the amendment came into force only in January 2016 practical application of these conditions remains to be sufficiently tested. Further, Israel has made several practical and legal changes to improve access to banking information which appear to have positive impact on accessibility of banking information. Subsequent to these changes the co-operation with banks appears to have significantly improved, however, there is currently insufficient evidence to confirm this. The third issue identified during the Phase 2 review concerns the tax authorities' powers to obtain information from new immigrants, veteran returning residents and the trustees of foreign resident trusts, having a trustee resident in Israel, in respect of foreign source income and remains to be addressed.

7. The legal amendment in respect of access powers for exchange of information purposes has introduced a prior notification requirement which has impact on the assessment of element B.2. According to the new rule the authorised official is required to notify the Israeli resident taxpayer subject of the request of the intention to supply information concerning the taxpayer at least 14 days prior to the supply of the information unless the requesting jurisdiction requested not to notify the taxpayer. The amendment came into force in January 2016 and therefore its application in practice remains to be sufficiently tested.

8. Under element C.1, the Phase 2 report identified three issues out of which two are now addressed. As already mentioned above, since the Phase 2 review Israel has amended its tax law to give the competent authority clear powers to obtain all relevant information pursuant to requests under all exchange of information agreements regardless of their form. Further, Israel signed the Multilateral Convention which significantly broadens its EOI network and brings all Israel's EOI relations in line with the standard. The Phase 2 report concluded that in some cases time taken by Israel to bring its signed EOI agreements into force was more than 36 months and Israel was recommended to address this issue. Since the Phase 2 review Israel signed the Multilateral Convention in November 2015 which is not yet in force and there is not enough evidence that the issue indicated in the Phase 2 report has been addressed.

9. Under element C.2, the Phase 2 report indicated that one peer reported that it had unsuccessfully approached Israel to conclude a TIEA. However, at that time Israel's law did not allow it to conclude international agreements solely for the purpose of exchange of information. As already stated above since the Phase 2 review Israel has amended its law and now can conclude EOI agreements regardless of their form. Further, since the Phase 2 review Israel signed the Multilateral Convention and has now an EOI relation in line with the standard with the peer under the Multilateral Convention. By accession to the Multilateral Convention Israel's treaty network has almost doubled from 54 to 105 partners.

10. All of Israel's EOI agreements contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. Confidentiality rules governing use of information exchanged under agreements providing for relief from double taxation are in line with the standard, however, information obtained under instruments which do not provide for relief from double taxation may be used for other than tax purposes. The applicable confidentiality rules are nevertheless properly implemented in practice to ensure confidentiality of exchanged information in line with the standard. All Israeli EOI relations ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or disclosure of which would be contrary to order public. No issue in these respects has also arisen in practice as confirmed by peers.

11. Israel has made several important changes to address issues identified in the Phase 2 report under element C.5. However, most of these improvements were made after the end of the period under review (i.e. June 2015) and are too recent to have sufficient impact in practice. Nevertheless improvement still needs to be made in particular concerning timeliness of responses and communication between Israel and its EOI partners to avoid

delays caused by clarifications and to streamline the process of providing all relevant information in time and in the requested quality.

12. As a result of this supplementary review, Israel's rating for the 10 essential elements and its overall rating have been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Israel's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Israel has been assigned the following ratings: Compliant for elements A.1, A.3, C.1, C.2 and C.4; Largely Compliant for elements A.2, B.1, B.2 and C.3 and Partially Compliant for element C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Israel is Largely Compliant.

13. Israel's response to the recommendations in this report, as well as the application of the legal framework and practices in exchange of information will be considered in detail in the next round of peer review of Israel which is scheduled to commence in the second half of 2019. A follow-up report on the measures taken by Israel to respond to the recommendations made in the present report will be provided to the Peer Review Group in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.

## Introduction

### Information and methodology used for the peer review of Israel

14. The assessment of Israel's legal and regulatory framework as well as its practical implementation made in this supplementary peer review report was prepared following a request pursuant to paragraph 60 of the Global Forum's *Methodology for Peer Reviews and Non-member Reviews* (version adopted in November 2013). It considers recent changes to the legal and regulatory framework of Israel, as well as to the effectiveness of this framework in practice, based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*.

15. Israel informed the Global Forum Peer Review Group in December 2015 of the steps it had taken to address the recommendations made in its Phase 2 report. Progress was reported mainly on elements B.1, C.1 and C.2 and a request for a supplementary review was made. On the basis of the progress reported, the Peer Review Group agreed that a supplementary review should be launched.

16. The present supplementary report follows the Phase 2 report adopted in October 2014. The Phase 2 report assessed Israel's legal framework as at 8 August 2014 and covered exchange of information practice for the period from 1 July 2010 until 30 June 2013. The present report reviews changes made to Israel's legal and regulatory framework which came into force after the cut off date of the Phase 2 report as well as changes in the practical implementation of that framework since the Phase 2 assessment. The present assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 19 August 2016 as well as information supplied by Israel and peer jurisdictions. The assessment of the exchange of information practice covered a two year review period from 1 July 2013 until 30 June 2015.

17. The assessment was conducted by an assessment team which consisted of two expert assessors and one representative of the Global Forum

Secretariat: Ms. Lorraine Welch, Deputy Chief Parliamentary Counsel, Attorney-General's Chambers, Bermuda; Ms. Sarita de Geus, Senior Tax Policy Advisor, Ministry of Finance of the Netherlands and Mr Radovan Zidek from the Global Forum Secretariat.

18. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Israel's legal and regulatory framework as well as the practical implementation of that framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component of the review, recommendations are made concerning Israel practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Israel overall level of compliance with the standards.

19. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the *Terms of Reference*, which takes into account the conclusions of this supplementary report, can be found at the end of this report.

## Overview of Israel

20. Israel is a relatively small State located in the Middle East region and a population of 8.2 million (May 2014 Central Bureau of Statistics estimate), of which roughly 815 300 reside in the capital city of Jerusalem. Israel lies on the east coastline of the Mediterranean Sea and borders Lebanon, Syria, Jordan and Egypt. Hebrew and Arabic are the official languages; however English and Russian are also widely spoken. The official currency is the New Israeli Shekel (NIS).<sup>1</sup>

21. Israel is a highly developed country with a GDP of EUR 252 billion and GDP per capita of EUR 30 670 in 2015. Service sector produces about 70% of the GDP followed by industry with about 25% and agriculture 2%. The financial services represent about a quarter of the services sector contribution to Israel's GDP.

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1. 1 NIS = EUR 0.2 (August 2016).

22. Israel has a technologically advanced market economy. It depends on imports of crude oil, vehicles, raw materials, and military equipment. Cut diamonds, high-technology equipment, chemicals and medicine are the leading exports. The main trading partners of Israel are the United States, the EU member states and the People’s Republic of China.

23. In 2010, Israel formally acceded to the OECD. Israel is also a member of World Trade Organization, International Monetary Fund and the United Nations. Israel is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and is committed to implement the international standards for transparency and exchange of information for tax purposes.

### ***General information on legal system and the taxation system***

24. Israel is a parliamentary democratic republic with a multi-party system. Israel’s highest legislative body is the 120-seat unicameral Parliament (“Knesset”). Knesset members are elected for a four year term based on the share of total national vote in general elections. The Israeli head of state is the President, elected by the Knesset for a seven year term. Most executive power lies with the Government which is accountable to the Knesset. The Prime Minister, who is the head of government, is appointed by the President on the basis of the general election results. The Prime Minister is responsible for proposing a list of ministers, which is submitted within 28 days to the Knesset for approval.

25. Israel’s legal system is strongly influenced by the common law tradition. The courts have made a significant contribution to the development of Israeli law by means of judicial interpretation. In their decisions, the courts, to some extent, have been influenced by continental law, although English and American law also has persuasive force. Israel has no formal constitution. The main principles of the state’s power and its functioning are stipulated in a number of Basic Laws. Laws are passed by the Knesset. The Government (typically ministers) can issue secondary legislation to implement laws within the limits laid down by the law. Laws and secondary legislation come into force on their promulgation. International treaties have the same legal power as domestic laws approved by the Knesset unless specifically provided by the respective domestic law. Such a specific provision is contained in the Income Tax Ordinance providing a treaty prevails rule stipulating that international agreements prevail in case of conflict over domestic laws concerning issues covered by the international agreement in respect of income taxes including exchange of information.

26. The Israeli taxation system is mainly based on indirect taxation of goods and services and income taxes. As of August 2016 there are in total

about 2.3 million taxpayers registered with the Israel Tax Authority. All taxes are administered by the Israel Tax Authority which is staffed with about 5 500 employees and consists of 26 regional offices, 10 regional offices specialising in immovable property taxes, four regional investigating field offices, a national investigating unit, a national intelligence unit and three regional law enforcement offices.

27. Income tax is levied according to the Israeli Income Tax Ordinance, 5721-1961 (ITO). The ITO contains rules for corporate income tax, individual income tax as well as for the administrative aspects of taxation. As of 2015, corporations in Israel are generally subject to a basic tax rate of 25%. Individuals are subject to progressive personal income tax rates up to 48%. Special rules apply among others with regard to passive source income, rental fees, persons aged over 60, new immigrants and returning residents. Personal and corporate income taxes are levied on the worldwide income of individuals or companies who are Israeli tax residents. Non-residents are taxed on Israeli-source income. An individual is an Israeli tax resident if the “centre of life” of that person is located in Israel (s. 1(a) ITO). A company is considered as Israeli tax resident if it is incorporated in Israel or it is managed and controlled from Israel<sup>2</sup> (s. 1(b) ITO).

28. The standard VAT rate is 17%. Certain goods and services are subject to zero VAT rate including exported and intangible goods and provision of certain services to a non-resident (e.g. in tourism). Financial institutions are subject to profit tax instead of VAT at the same rate as VAT. Employers and employees are subject to national insurance (social security) and pension contribution. The employee’s share of national insurance also includes compulsory health insurance. Employee’s contribution to national insurance is applied at rates from 2% to 12%, employer’s rates are from 3.45% to 7.5%. The government further levies real estate taxes, betterment levy and land betterment levy, customs duties, purchase tax and municipal taxes on real estate.

### *Overview of the financial sector*

29. Israel’s financial sector is dominated by banks. Banks operating in Israel are mainly domestically owned. In July 2016<sup>3</sup>, the banking system in Israel includes 12 banking corporations, four branches of foreign banks, one financial institution and 2 joint service companies. The banking system in Israel is highly concentrated, with five of the largest banking groups (Bank Hapoalim, Bank Leumi, Discount Bank, Mizrahi Bank

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2. Based on the prevailing interpretation, this term should be understood in light of the analogous notion of “place of effective management”.
  3. [www.boi.org.il/en/BankingSupervision/BanksAndBranchLocations/Pages/Default.aspx](http://www.boi.org.il/en/BankingSupervision/BanksAndBranchLocations/Pages/Default.aspx).

and First International Bank of Israel) controlling over 90% of all bank assets. The total banking assets in Israel amount to about NIS 1 469 billion (EUR 347 billion) as of December 2015. A full range of banking services, including private banking, is offered by the banks. The Bank of Israel (Central Bank) is responsible for the supervision of the banking corporations. The Governor of the Central Bank, after consultation with the Licensing Committee, issues among other: (i) a bank license, (ii) a permit to control a banking corporation or a bank holding corporation, or (iii) a foreign bank license. The postal bank is owned by the government and has about 650 branches. It is supervised by the Ministry of Communication.

30. The Tel-Aviv Stock Exchange (TASE) is the only stock exchange operating in Israel. It is supervised by the Israel Securities Authority and offers various products for investors, including the trading of shares, corporate bonds, treasury bills and bonds, index-tracking products and derivatives on shares, indices and currency exchange rates.

31. Participants in the financial system including banks, members of stock exchange, portfolio managers, currency service providers and insurers are subject to AML obligations. Detailed rules for AML procedures and obligations are contained in orders issued by the supervisory authorities<sup>4</sup>. The Mutual Evaluation of Israel with regard to its compliance with the AML/CFT obligations is carried out by MONEYVAL<sup>5</sup>.

## Recent developments

32. An amendment to the Companies Law 5759-1999 was approved in February 2016 by the Parliament that cancels the possibility to issue bearer shares and requires their conversion into registered shares in order to exercise

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4. These orders are: Prohibition of Money Laundering (Obligations of Stock Exchange Members to identify, report and retain lists for the purpose of preventing money laundering and financing terrorism), 5770-2010; Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5761-2001; Order on Prohibition on Money Laundering (Obligations of Identification, Reporting and Keeping Records of the Postal Bank to Prevent Money Laundering and Financing Terrorism), 5771-2011; Prohibition on Money Laundering Regulations (Rules for Use of Information Transferred to the Israel Police Force and the General Security Service for Investigation of Other Offenses and for Transferring it to Another Authority), 5766-2006.
  5. [www.coe.int/t/dghl/monitoring/moneyval/Countries/Israel\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Israel_en.asp).

shareholder rights. The amendment was published in the official gazette on 17 March 2016.

33. A draft bill concerning the application of AML/CFT obligations on DNFBPs was approved by the Parliament in March 2014 and came into force in September 2015.

34. An amendment to the Income Tax Ordinance came into force on 1 January 2016. The amendment enables Israel to conclude international agreements solely for the purpose of exchange of information and clarifies Israel's tax authority information gathering powers in respect of exchange of information. The amendment is analysed in section B.1 and C.1 of this report. Israel also took several measures to improve access to banking information and improve timeliness of provision of requested information which include streamlining the procedure for obtaining banking information and implementation of the new EOI database (see further sections B.1 and C.5).

35. Israel signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended (the Multilateral Convention) on 24 November 2015. The Multilateral Convention was ratified by Israel on 31 August 2016, i.e. after the cut-off date of the review and therefore is not reflected in the text of the report.

36. Israel signed an inter-governmental agreement with the United States to implement FATCA provisions on 30 June 2014. The agreement follows the Model I IGA which provides for reciprocity between the two partners with respect to automatic exchange of information. In March 2016 Israel signed the Competent Authority Agreement with the United States' Internal Revenue Service in order to implement the FATCA agreement with a view to start first exchanges in September 2016. Israel has also committed to start exchanges in accordance with the Common Reporting Standard (CRS) in 2018 and signed the CRS Multilateral Competent Authority Agreement in May 2016.

## Compliance with the Standards

### A. Availability of information

#### Overview

37. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. This section of the report describes and assesses Israel's legal and regulatory framework on availability of information and its implementation in practice.

38. Availability of ownership and identity information in respect of the relevant entities and arrangements is mainly ensured through tax obligations. All companies are required to file ownership information with the tax authority upon registration and subsequently in their tax returns. Further, a person is considered a shareholder of the company upon being entered into the shareholder register. Ownership information in respect of foreign companies is ensured mainly by tax reporting obligations and income source rules. Partnerships must be registered with the tax authority and details of each partner must be furnished upon registration. Any change in this respect must also be registered, ensuring up to date ownership information on partnerships. Associations are required to register and keep an up to date register of its members, and must file a copy of the general meetings and financial reports with the Registrar of Associations.

39. The Phase 2 report identified two legal gaps. Firstly, the Phase 2 report concluded that companies other than those listed on the stock exchange may issue bearer shares and there are insufficient mechanisms to identify all holders of these shares. Secondly, a gap was identified in respect of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents<sup>6</sup> which are vested with assets or income from assets abroad.

40. Since the Phase 2 review Israel has amended its law which cancels the possibility to issue bearer shares after September 2016. All holders of bearer shares who do not convert these shares into registered shares by 17 September 2016 cease to be considered shareholders in the company unless they convert their bearer shares into registered shares and there is apparently no limitation to the period in which they can do so. However, if bearer shares are converted after September 2016 the shareholder is not entitled to receive dividends retrospectively for the period after September 2016 when the person was not considered a shareholder. As the materiality of the issue is limited to 11 companies (0.003% of all companies) and cannot expand it does not have the potential to have negative systemic impact on availability of ownership information in respect of companies in Israel. There has been no change made in Israel's tax law in respect of the second gap concerning trusts, however, the AML law has been amended to also cover attorney and accountants providing trustee services. The AML amendment limits the scope of the gap to foreign resident trusts having a trustee resident in Israel and to trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years if the trust is operated by a resident trustee who is not an attorney or an accountant covered by AML obligations. Nevertheless the limited gap stays and Israel is recommended to address it.

41. The Phase 2 report concluded that the relevant legal obligations are properly implemented in practice to ensure availability of the ownership information. The practical availability of ownership information is mainly ensured through tax filing obligations. There has been no significant change in supervisory or enforcement measures taken by the tax authority to ensure compliance with the crucial requirements since the Phase 2 review. Israel was requested to provide ownership information in 49 cases over the period under review. In all cases the requested information related to companies. There was no case where the requested information was not provided because it was not available. Although certain delays were caused by issues discussed under elements C.1 and C.5.

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6. Veteran returning resident is defined as an individual who became an Israel resident after he/she stayed abroad during at least ten consecutive years (14(a) ITO).

42. The Phase 2 report concluded that Israel's law requires relevant entities and arrangements to keep accounting records in line with the standard with exceptions of accounting records in respect of (i) foreign resident trusts having a trustee resident in Israel, (ii) trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years, and (iii) activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years. There has been no significant change in Israel's legal framework since the Phase 2 review that would have impact on the availability of accounting records. Israel is therefore recommended to address the identified gaps.

43. Availability of accounting information in practice is mainly ensured through supervision and enforcement of tax obligations. The Phase 2 report concluded that accounting record keeping obligations are properly implemented in practice. There has been no change in practice of supervision and enforcement since the Phase 2 review. Israel received 69 requests for accounting information over the reviewed period. There was no case where the requested accounting information was not provided because it was not available with the holder of the information. Nevertheless, in several cases the obtained information and steps needed to obtain it were not properly communicated and its provision took considerable time.

44. The Phase 2 report concluded that the AML/CFT legislation ensures that all records pertaining to the identity of the account holders consistent with the standard are kept by all banks operating in Israel. The AML/CFT laws also require that all transactional documentation on transactions carried out by the bank in the course of business relationships must be kept regardless of any threshold. There has been no change in the legal framework concerning these requirements since the Phase 2 review.

45. Availability of banking information in practice is properly ensured through supervision by the Bank of Israel. There has been no change in the Bank's supervisory policy or practice since the Phase 2 review. The AML law amendment requiring that all documentation attesting transactions must be kept regardless of any threshold came into force in August 2014 and at the time of the Phase 2 review was untested in practice. During the two years since the law amendment is in force the Bank of Israel did not identify any case of violation of the new requirement and according to the information from banks' representatives, the amendment did not represent change in banks' practice. Considering the above it seems that there is sufficient evidence to conclude that the law amendment is tested in practice and that the information as required by the law is available. Over the period under review Israel received 28 requests for banking information. There was no case during the period under review where the requested banking information related to an existing bank account was not available.

## A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

### *Companies (ToR A.1.1)*

46. Israel's law provides for two types of companies under the Companies Law 5759-1999 (CL):

- **Public Companies:** these companies have their shares listed for trading on a stock exchange, or have been offered to the public pursuant to a prospectus as defined in the Securities Law, and are held by the public. There were 557 public companies registered in Israel as of June 2016.
- **Private Companies:** these companies are companies that are not public companies. There were 342 404 private companies registered in Israel as of June 2016.

47. The Phase 2 report concluded that ownership information in respect of companies is required to be available in Israel in line with the standard with the exception of companies which have issued bearer shares. Since the Phase 2 review Israel abolished the possibility to issue bearer shares (see further section A.1.2). There is no further change in Israel's legal framework that would have significant impact on the availability of ownership information concerning companies.

48. A company obtains its legal status upon registration with the Registrar of Companies (s.6 CL). Information on all shareholders of the company and its representatives must be provided to the Registrar upon registration. (ss.8 and 23(a) CL). Private companies are required to report any transfer of shares to the Registrar within 14 days. The report must include identity information on the old and new shareholders. Further, private companies must report annually to the Registrar information including appointments to the board of directors and share transfers (s.299(1)). Public companies must report certain information to the Registrar as well, but this does not include ownership information (s.142 CL). However, ownership information in respect of public companies is available through the register of shareholders required to be kept by the company (s.127). The register of shareholders required to be kept by public and private companies constitutes shareholder rights in respect of the company.

49. All companies are required to register with the tax administration and file annual tax returns irrespective of whether they are economically active or not. Upon registration the company is required to file Form 4436 which must include the details of the directors and shareholders of the

company (ss. 134 and 135 ITO). Companies must also file an annual report in Form 1214 reporting its current shareholders. This ensures that ownership information is available to the tax authority and is kept updated annually. The same registration and filing requirements apply also in respect of foreign companies which become tax residents in Israel or with a permanent establishment there.

50. Certain ownership information is required to be available with AML obligated person such as banking corporations, members of stock exchange, attorneys or accountants if engaged by the company.

51. A shareholder who acts on behalf of another person must be registered in the register of shareholders kept by the company with a reference that he/she acts as a nominee (s. 131 CL). A nominee shareholder is treated as a legal owner of shares in case of a private company and the same tax rules as in case of trustees apply (see further section A.1.4). When a company's shares are listed for trading on a stock exchange in Israel, the nominee is not considered as a shareholder in the company and the shares entered under its name are considered owned by a person for whose benefit the nominee acts who has to be entered into the register of shareholders as well (ss. 132 and 177 CL).

### In practice

52. The main source of ownership information in respect of companies in practice is the information filed with the tax authority. The Phase 2 report concluded that tax filing obligations are properly implemented to ensure availability of ownership information in Israel in line with the standard. There has been no significant change in supervisory or enforcement measures taken by the tax authority to ensure compliance with the crucial requirements since the Phase 2 review.

53. The compliance rate of companies with tax return filing obligations (including filing of annual reports) remains stable. For the tax year 2013 the compliance rate was 89% and for 2014 85%. The tax database automatically identifies companies which fail to register with the tax administration or fail to submit their returns in time. The tax database is connected to the Registrar of Companies and indicates if a company fails to register with the tax administration. If the registration or tax return is not filed within the statutory deadline, the tax office issues a notice informing the taxpayer of his/her obligation, and if the information is not submitted, sanction under s. 188 and s. 216 of ITO applies (see section A.1.6). About 4% of corporate taxpayers are audited per year on a risk based approach. The programme of tax audits includes on-site and off-site inspections. Part of on-site inspections is verification whether the company maintains shareholder register. Information obtained during tax inspections is kept in the respective taxpayer's file. In

2015 the tax authority recruited an additional 160 tax inspectors dedicated to tax audits and operation of business intelligence system conducting risk analysis.

54. As already mentioned above, a company does not legally exist unless registered with the Registrar of Companies. The supervision of companies' filing obligations with the Registrar is the responsibility of the Israel Corporation Authority. Since the Phase 2 review several measures were taken to improve companies' compliance with their filing requirements. The number of companies currently declared in breach of law has increased from 98 926 (31% of all companies) in May 2014 to 178 699 (53% of all companies) in April 2016. If a company is declared in breach of law it is subject to administrative restrictions such as that it cannot open a bank account, receive a loan, register charges on the company's assets or register a new company to a controlling member of a company in breach. Further, the Corporation Authority started imposing administrative fines to active companies declared in breach of law. So far about 200 companies were sent a letter reminding them of their obligations and application of a fine in case of failure to do so within the prescribed deadline. Approximately 79% of the reminded companies (158 companies) filed an annual return following the aforementioned letter and the rest were fined. The programme of application of fines continues and further companies are fined. Since December 2015 an on line filing system has been put in place which streamlines the process of filing and allows better detection of non-compliance. The system is currently still in the process of implementation. As of July 2016, 1.3% of annual returns were submitted online. The compliance rate has increased since the Phase 2 review from 36% to 41% for the year 2015, however, it remains low and currently does not ensure that ownership information is available with the Registrar. Although the ownership information is available with the tax authority based on tax filing obligations Israel is recommended to continue taking steps to improve the availability of ownership information with the Registrar including striking off companies which continuously fail to comply with their obligations.

### *Conclusion*

55. The Phase 2 report concluded that ownership information in respect of companies is required to be available in Israel in line with the standard. Since the Phase 2 review there has been no change in the legal framework that would have relevant impact on availability of ownership information in respect of companies except for abolition of the possibility to issue bearer shares dealt with in section A.1.2. All companies are required to file ownership information with the tax authority upon registration and subsequently in their tax returns. Further, a person is considered a shareholder of the

company upon being entered into the shareholder register. In addition, the Registrar of Companies keeps a register of all companies and the information available includes ownership information for private companies.

56. In practice, ownership information in respect of companies is available on the basis of tax law obligations. Tax law obligations are properly implemented in practice through filing obligations and supervisory and enforcement measures. The requested information is obtained from the tax database or directly from the person concerned if the information contained in the tax database is not sufficient. Israel was requested to provide ownership information in respect of companies in 49 cases over the period under review. There was no case where the requested information was not provided because it was not available. Although three peers indicated issues related to requests for ownership information these issues were not caused by the fact that the requested information was not available but related to difficulties with identification and contacting the holder of the information or to other issues discussed under elements C.1 and C.5.

### ***Bearer shares (ToR A.1.2)***

57. At the time of the Phase 2 review companies were allowed to issue bearer shares. The Phase 2 report concluded that although there are mechanisms in place to identify holders of bearer shares in many circumstances and only three active companies have issued bearer shares in practice there is no mechanism robust enough to ensure availability of information on the owners of bearer shares issued by companies which are not listed on the stock exchange.

58. Since the Phase 2 review Israel has amended its law to address the above gap. The amendment 28 of the Companies Law 5759-1999 cancels the possibility to issue bearer shares after September 2016. Further, according to the amendment all holders of bearer shares who do not convert these shares into registered shares by 17 September 2016 cease to be considered shareholders in the company. A person is required to submit the bearer share to the company. Upon submission of the bearer share the person will be entered into the register of shareholders and receive a registered share in the company. However, the holder of bearer shares may ask the company to convert his/her bearer shares into registered shares even after 17 September 2016 and become a shareholder of the company upon being entered into the register of shareholders. There is apparently no limitation to the period in which the holder of a bearer share can do this and have his/her bearer shares registered. Nevertheless, the shareholder is not entitled to receive dividends retrospectively for the period after September 2016 when the person was not considered a shareholder.

59. During the Phase 2 review, the Israel Corporation Authority reported that there were 11 companies that issued bearer shares. Out of them only three were economically active (0.001% of all companies). Since the Phase 2 review there is no apparent change in the materiality of the issued bearer shares and according to the Israeli authorities the use of bearer shares in Israel remains negligible without systemic impact on availability of the ownership information in respect of companies.

60. Considering that a person is allowed to convert his/her bearer shares into registered shares even after 17 September 2016 without any apparent time limitation it is recommended that Israel takes measures to restrict the possibility of holders of bearer shares to remain anonymous for a potentially unlimited period of time. On the other hand it is noted that the person is not entitled to receive dividends retrospectively for the period after September 2016 and that the materiality of the gap is very limited and cannot expand. The issue therefore does not have potential to have negative systemic impact on availability of ownership information in respect of companies in Israel.

### ***Partnerships (ToR A.1.3)***

61. Partnerships are governed by the Partnership Ordinance (PO). A partnership is defined as “a body of persons engaged in a partnership relationship” (s. 1(a) PO). A partnership relationship is defined as “the relationship between persons managing a business together for the production of profits, excluding the relationship between members of a corporation incorporated under any law” (s. 1(a) PO). Three types of partnerships can be distinguished:

- General partnership: a partnership where all of the partners are liable for the obligations of the partnership, jointly and severally (s. 1(a) PO). There were about 4 560 general partnerships registered in Israel as of June 2016.
- Limited partnership: a partnership where limited partners who brought capital into the partnership are not be liable for the obligations of the partnership in excess of their contribution; however, the partnership must include at least one general partner (s. 1(a) PO). There were about 2 930 limited partnerships registered in Israel as of June 2016.
- Foreign partnership: a partnership established outside of Israel (s. 74 PO). There were about 230 foreign partnerships registered in Israel as of June 2016.

62. The Phase 2 report concluded that ownership information in respect of partnerships is required to be available in Israel in line with the standard.

There has been no change in Israel's legal framework since the Phase 2 review that would have impact on the availability of ownership information concerning partnerships.

63. The main legal regulations ensuring availability of ownership information in respect of partnerships are contained in the Partnerships Ordinance and Income Tax Ordinance. General and limited partnerships must be registered with the Registrar within one month from the date of formation (s. 4 PO). Identification of all partners in limited and general partnerships has to be provided upon registration with the Registrar. The registration notice has to be signed by all the partners (s. 9 PO). If any of the registration details is changed, a notice, signed by all the partners, in which such change shall be specified, must be sent to the Registrar within seven days (s. 9 PO). Generally the same filing rules apply in respect of foreign partnerships. Identification of all partners in foreign partnerships conducting business in Israel must be provided upon registration and any change in the provided information must be reported to the Registrar within 14 days (ss. 75 and 78 PO).

64. Partnerships are considered transparent for tax purposes which means that the partners are taxed separately for their share in the partnership's income (s. 63(a)(1) ITO). Nonetheless, partnerships are obliged to register with the tax authorities no later than on the date they start operating and one of the partners resident in Israel of the partnership at the request of the assessing officer must make and deliver a return of the partnership's income for every year (ss. 63(2) and 134 ITO). If a partnership registered in Israel does not have any partner who is a resident in Israel the annual return has to be filed by a representative (e.g. attorney) of the partnership who is resident in Israel (s. 63(2) ITO). The annual return must contain the names and addresses of the other partners together with the amount of the share of the income to which each partner was entitled (s. 63(2) ITO). These tax provisions equally apply to foreign partnerships becoming tax resident in Israel or carrying on business in Israel through permanent establishment.

### In practice

65. As in the case of companies, the main source of ownership information in practice is the information filed with the tax authority. The Phase 2 report concluded that tax filing obligations are properly implemented to ensure availability of ownership information in Israel in line with the standard. There has been no significant change in supervisory or enforcement measures taken by the tax authority to ensure compliance with the crucial requirements since the Phase 2 review.

66. The tax authority carries out the same supervisory and enforcement measures in respect of partnership as in respect of companies. According

to the Israeli authorities the compliance rate of partnerships with their tax filing obligations remains at the same level as in the Phase 2 review however no exact figure specifically in respect of partnerships is available. The tax database automatically identifies partnerships which fail to register with the tax administration or fail to submit their returns in time. If the registration or tax return is not filed within the statutory deadline the tax office issues a notice informing the taxpayer of his/her obligation and if the information is not submitted sanctions apply (see section A.1.6). In addition, about 4% of corporate taxpayers including partnerships are audited per year on a risk based approach. The programme of tax audits includes on-site and off-site inspections.

67. The registration of partnerships is carried out by the Registrar of Partnerships, which is part of the Israel Corporation Authority. There has been no change in the supervisory or enforcement measures carried out in respect of partnerships since the Phase 2 review. Registration of general, limited and foreign partnerships is organised in the same way as for companies. Information on all general or limited partners is provided upon registration and has to be kept updated. Partnership's registration is not legally constitutive, however, changes in partners of a partnership do not have legal effect unless entered into the register of partnerships and published by the Registrar (s.48 PO). Registered partnerships obtain a certificate of incorporation which is required by banks, government authorities and some private entities (such as real estate agents) before they establish a business relationship with the partnership. As in case of companies, partnerships' compliance rate with filing obligations is rather low and currently does not ensure that updated information on all partners in a partnership is available with the Registrar in all cases. Although the ownership information is available with the tax authority based on tax filing obligations Israel is recommended to continue taking steps to improve the availability of ownership information with the Registrar including striking off non-compliant partnerships. The Israel Corporation Authority is aware of the issue and is already considering measures to improve it which include preparation of new legal regulation of partnerships and regulation of striking off procedure.

### *Conclusion*

68. The Phase 2 report concluded that ownership information in respect of partnerships is required to be available in Israel in line with the standard. There has been no change in the legal framework concerning availability of ownership information in respect of partnerships since the Phase 2 review. All partnerships organised in Israel or carrying on a business in Israel must be registered and upon registration details of all partners must be submitted to the Registrar of Partnerships and to the Israel Tax Authority. Further, all

partnerships carrying out business in Israel are required to file annual tax returns which contain the names and addresses of all partners. Any changes in the information provided to the Registrar of Partnerships must be notified within 7 days in the case of domestic partnerships and 14 days in the case of foreign partnerships.

69. In practice, ownership information in respect of partnerships is available on the basis of tax law obligations in the same way as in respect of companies. Tax law obligations are properly implemented in practice through filing obligations and supervisory and enforcement measures. The requested information is obtained from the tax database or directly from the partnership. Although during the current period under review Israel did not receive any request for ownership information in respect of partnerships availability of such information is confirmed in the domestic context.

### *Trusts (ToR A.1.4)*

70. Israel's law provides for the establishment of trusts under the Trust Law 5739-1979 of 1980 (TL). Trusts established under the Trust Law are not a separate legal entity. A trust is defined as a relationship to any property by virtue of which a trustee is bound to hold the property, or act in respect thereof, in the interest of a beneficiary or for some other purpose (s. 1 TL). Further, although Israel is not a Party to the Hague Convention on the Law Applicable to Trusts a resident person can act as a trustee of trusts established under foreign law. Trusts established under foreign law are not regulated by the Trust Law. There were 1 559 trusts registered with the tax authority for 2014 tax period.

71. The availability of ownership information in respect of trusts is mainly ensured through tax obligations. Tax return filing requirements apply to the Israeli resident trusts, Israeli resident beneficiary trust, family trust and all types of trusts that have income or assets in Israel. Information on the settlors, trustees and beneficiaries must also be filed in a separate form attached to the tax return. Tax reporting requirements apply to all beneficiaries and settlors resident in Israel except for new immigrants and veteran returning residents. Further, a reporting trustee of a foreign resident beneficiary trust must submit information on the trust, even if no tax return is required to be submitted.

72. The Phase 2 report however concluded that there is no tax filing or reporting requirements in case of foreign resident trusts that have no assets or income in Israel and that the tax law exempts the Israeli settlor of trusts who are new immigrants or veteran returning residents from reporting obligations for the first ten years if such a trust has no income or assets in Israel. Consequently, it was recommended that Israel ensures the availability of

identity information in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad.

73. Since the Phase 2 there has been no change in Israel's tax law to address this gap. However the AML rules were amended to cover also attorneys and accountants. The amendment of the Prohibition on Money Laundering Law, 5760-2000 (PMLL) came into force in September 2015. The amendment requires attorneys and accountants to identify their customers when they provide or are asked to provide a business service for a customer as part of their professional activities. Provision of a business service explicitly includes establishment or management of trusts (s. 8B PMLL). Identification of a customer includes carrying out of CDD measures which in the case of trusts requires the obligated persons to identify the beneficial owners of the trust (s. 1 PMLL). This requirement should ensure that information on settlors, trustee and beneficiaries of a trust is available with the obligated service provider. The CDD documentation is required to be kept for at least five years since end of the business relation (s. 8A PMLL). In case of breach sanctions are applicable (s. 11 PMLL).

74. The AML amendment adds another source of legal requirements to keep information on settlors and beneficiaries of trusts however it covers only professional trustees who are attorneys or accountants. Therefore the legal gap identified in the Phase 2 is limited to foreign resident trusts having a trustee resident in Israel and to trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years if the trust is operated by a resident trustee who is not an attorney or an accountant covered by AML obligations. Nevertheless the limited gap stays and Israel is recommended to address it.

### In practice

75. In practice, compliance with tax reporting obligations is monitored and supervised by the Israel Tax Authority in the same way as in the case of companies (see section A.1.1). The Phase 2 report concluded that tax filing obligations are properly implemented to ensure availability of information required to be kept under Israel's law. There has been no significant change in supervisory or enforcement measures taken by the tax authority since the Phase 2 review.

76. According to the Israeli authorities the compliance with trusts' tax filing obligations remains at the same level as during the Phase 2 review. The compliance rate was 67% for tax year 2013 and 61% for tax year 2014. All returns including attachments are checked for completeness and accuracy

before information contained is entered into the tax database. The tax database automatically identifies trusts which fail to register or submit their returns in time. If the registration or tax return is not filed within the statutory deadline the tax office issues a notice informing the taxpayer of his/her obligation and until the information is submitted sanctions under s. 188 and s. 216 of ITO apply (see section A.1.6).

77. The new AML requirements covering attorneys and accountants to conduct CDD measures came into force in September 2015. In the same month a supervisor of these AML obligations was appointed by the Minister of Justice as foreseen by the law. The supervisor located in the Ministry of Justice is authorised to inspect relevant documents and apply sanctions in accordance with the AML rules. In May 2016 the supervisor started to issue letters of demand to lawyers and accountants requesting them to provide information on measures implemented to comply with their AML obligations. Supervision carried out directly by the supervisor is supported by ethical rules of the Israeli Bar Association and the Institute of Certified Public Accountants. The ethical rules determine that infringement of AML rules should trigger disciplinary proceedings and respective sanctions applicable by the professional body. Efficiency of the supervisory system which has been only recently set up however remains to be sufficiently tested in practice especially considering application of enforcement measures. Israel is therefore recommended to monitor implementation of the new AML requirements. It is nevertheless noted that the main source of information is the information required to be filed with the tax authority.

### *Conclusion*

78. Information on settlors, trustees and beneficiaries of trusts is required to be available in Israel mainly based on tax requirements. However, the Phase 2 concluded that a legal gap exists in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years. After the Phase 2 review the AML requirements were amended to cover also attorneys and accountants. The AML amendment adds another source of legal requirements to keep information on settlors and beneficiaries of trusts however it covers only professional trustees who are attorneys or accountants. Therefore the legal gap is now limited to foreign resident trusts having a trustee resident in Israel and to trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years if the trust is operated by a resident trustee who is not an attorney or an accountant covered by AML obligations. Nevertheless the limited gap stays and Israel is recommended to address it.

79. In practice, ownership information in respect of trusts is available on the basis of tax law obligations. Tax law obligations are adequately implemented in practice through filing obligations and supervisory and enforcement measures. The requested information is obtained from the tax database or directly from the trust. Although during the current period under review Israel did not receive any request for ownership information in respect of trusts availability of such information is confirmed in the domestic context. One request for ownership information in respect of a trust was received during the Phase 2 review period and the requested information was provided.

### ***Foundations (ToR A.1.5)***

80. The Israeli legal and regulatory framework does not provide for the establishment of foundations.

### ***Other relevant entities and arrangements***

81. Israel's law provides for establishment of associations. An association is defined under the Associations Law (AL), as an entity created by two or more persons who wish to incorporate as a body corporate for a lawful purpose not aimed at the distribution of profits to its members (s. 1 AL). There were 39 818 associations registered in Israel as of June 2016. Associations are mostly used for establishment of hospitals, universities, theatres, sport clubs or small religious communities.

82. The Phase 2 report concluded that ownership information in respect of associations is required to be available in line with the standard. There has been no change in Israel's legal framework since the Phase 2 review that would have impact on the availability of such information.

83. Associations must be registered with the Registrar of Associations. Upon registration association's founders have to provide among other their names, address and identity numbers of the founders (s. 2 AL). An association must also keep a register of members and register of board members (ss. 18 and 29 AL).

84. The main source of ownership information in respect of associations in practice is the information filed with the Registrar of Associations and the associations themselves. The Phase 2 report concluded that obligations towards the Registrar are properly implemented to ensure availability of such information in line with the standard. There has been no significant change in supervisory or enforcement measures taken by the Registrar. The Registrar of Associations monitors filing obligations and applies sanctions when an association fails to file the required information (see section A.1.6). The Registrar conducts regular on-site inspections during which obligations to maintain a

register of members and provide accurate information to the Registrar are checked. There are about 300 on-site inspections carried out by the Registrar per year and about another 100 third party complaints are checked. Further, associations are required to provide the Certificate of Proper Conduct in several situations including when receiving tax deductible gifts or government support. Information on members of associations is also available at Guidestar website which is a central database of non-profit organisations.<sup>7</sup>

85. To sum up, the legal regulation ensures that ownership information in respect of associations is required to be available based on the obligation to register with the Registrar of Associations and to keep register of members and register of board members. These obligations are properly implemented in practice mainly through supervisory or enforcement measures taken by the Registrar. It is also noted that associations are not aimed to be established for the purpose of distribution of profits to its members and therefore appear to be of limited relevance for exchange information purposes. Accordingly, Israel did not receive any request related to an association during the period under review.

### ***Enforcement provisions to ensure availability of information (ToR A.1.6)***

86. The Phase 2 report concluded that Israel's tax, commercial and AML/CFT rules are sufficiently backed up by enforcement provisions ensuring availability of relevant ownership information. It further stated that availability of ownership information in practice is mainly ensured through supervision and enforcement of tax law obligations requiring persons to provide ownership information upon registration and annually.

87. There has been no change in practice of application of sanctions under the tax law since the Phase 2 review. Non-compliance with the requirements of filing tax returns and other reports to tax authorities are sanctionable with an administrative fine of NIS 380 per month of delay (s. 188 ITO) or with criminal sanction of one year imprisonment, or a fine of NIS 26 100 (EUR 5 220), or both (s. 216(4) ITO). The assessing officer can decline to receive a report which does not include all required information or is unclear. If the report is declined it is considered as not filed and appropriate sanctions apply. These enforcement measures apply to all persons including domestic and foreign companies, partnerships, trustees, settlors or beneficiaries and individuals. In practice, the administrative fine for late or non filing was applied in 49 922 cases in respect of taxable year 2013 and in 28 653 cases in respect of taxable year 2014. The total amount of these fines applied was NIS 136.7 million (EUR 31.9 million) and NIS 56 million

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7. [www.guidestar.org.il/](http://www.guidestar.org.il/)

(EUR 13.1 million) respectively. The lower number of cases where sanctions were applied in respect of tax year 2014 in comparison to tax year 2013 is caused by the fact that the tax year 2014 is still open and enforcement measures in respect of this year are still underway. The criminal fine was applied in 1 750 cases in the tax year 2013 and in 2 581 cases in the tax year 2014. The total amount of criminal fines applied in 2013 and 2014 was NIS 9.3 million (EUR 2.2 million) and NIS 14.5 million (EUR 3.4 million) respectively. Statistics for the tax year 2015 are not yet available. The application of these fines remains on the same level as during the Phase 2 review.

88. Since the Phase 2 review several measures were taken to improve companies' compliance with their filing requirements with the Registrar of Companies. The number of companies currently declared in breach of law has increased from 98 926 (31% of all companies) in May 2014 to 178 699 (53% of all companies) in April 2016. Further, the Corporation Authority started imposing administrative fines to active companies declared in breach of law. So far about 200 companies were sent a letter reminding them of their obligations and application of a fine in case of failure to do so within the prescribed deadline. Approximately 79% of the reminded companies (158 companies) filed an annual return following the aforementioned letter and the rest were fined. Since November 2014 on line filing system is put in place which streamlines the process of filing and allows better detection of non-compliance. No similar enforcement measures are however taken in respect of partnerships and the availability of ownership information in respect partnerships with the Registrar has not improved since the Phase 2 review.

### *Conclusion*

89. The Phase 2 report concluded that Israel's tax law requirements ensuring availability of ownership information in practice are sufficiently backed up by enforcement provisions which are adequately applied by the tax authority. There has been no change in respect of the legal framework and the level of enforcement of these obligations. Enforcement of companies' filing obligations with the Registrar of Companies has been improved since the Phase 2 review however no similar improvement was made in respect of partnerships. It is noted that financial sanctions available under the commercial law or other enforcement measures such as striking off from the register are still not applied in a significant number of cases where the obligated person is in breach of its obligations. Israel is therefore recommended to continue in its efforts addressing the low level of compliance with filing requirements with the Registrar.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
<p>Israel authorises the issuance of bearer shares by companies other than those registered on the stock exchange. There are mechanisms in place to identify holders of those shares in certain circumstances. Only 11 companies have issued bearer shares and only three of them are active.</p>	<p>Israel should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares.</p>
<p>Israeli law does not ensure the availability of identity information in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years <u>if the trust is operated by a resident trustee who is not an attorney or an accountant covered by AML obligations.</u></p>	<p>Israel should ensure the availability of identity information in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad <u>in all cases.</u></p>
Phase 2 rating	
<b><u>Compliant. Largely compliant.</u></b>	

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

### *General requirements (ToR A.2.1)*

90. The Phase 2 report concluded that Israel's law requires relevant entities and arrangements to keep accounting records in line with the standard with exceptions of accounting records in respect of (i) foreign resident trusts

having a trustee resident in Israel, (ii) trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years, and (iii) activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years. There has been no significant change in Israel's legal framework since the Phase 2 review that would have impact on the availability of accounting records.

91. The main accounting rules are contained in the Company Law and tax law. All domestic companies must keep accounts and are obliged to prepare annual financial reports (s. 171 CL). The financial reports of private companies must be prepared in accordance with accepted accounting rules in Israel (s. 172(d) CL) which are in accordance to the Framework for the Preparation and Presentation of Financial Statements (FPPFS) published by the International Accounting Standards Board (IASB) that determine that the objective of financial reports is to provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions (p. 12 FPPFS). Similar rules apply in respect of public companies which are obliged to prepare financial reports in accordance with the Securities Law (s. 171 CL). The Securities Regulations (Preparation of Annual Financial Statements) 5753-1993 (SR) determine that the financial statements of public companies must be prepared in accordance with the accounting rules and must fairly reflect the position of the corporation's business on the balance sheet dates, the result of its activities, the changes in its net worth and its cash flow in the reported years (s. 3 SR).

92. Accounting obligations stemming from the tax law are mainly contained in Income Tax Rules (Bookkeeping) 5733-1973 (ITR). Under the ITR a taxpayer must keep a set of account books in accordance with the provisions of the applicable Schedule depending on the type of business or profession carried on by him (s. 2 ITR). The ITR provides that all taxpayers to whom the provisions of the Schedules apply are obliged to have documentation that would include receipts, a daily intake ledger, cash register, delivery notes, invoices and an inventory list (sections 5 through 10 ITR). These taxpayers are also required to keep account books that should include a cash book (s. 11 ITR), intake and payments book (s. 12 ITR), stock book (s. 13 ITR), goods of entry book (s. 14 ITR) and an order book (s. 15 ITR). The Income Tax Regulations (Returns and Supplementary Returns by Body of Persons) 5724-1963 further require corporate entities to attach to their annual tax return (i) a balance sheet as of the last day of the tax year and a profit and loss account for the tax year, together with an auditor's report; and (ii) an adjustment account of the profit and loss of the income or loss declared in the annual tax return.

93. The above obligations however do not cover persons who are not liable to income tax in Israel or who are not domestic companies. Therefore a gap remains in respect of foreign resident trusts that have no assets or income in Israel. In that case, there is no obligation on a trustee to keep and maintain accounting records of the trust consistent with the standard as trust income derived from non Israeli sources is not taxable in Israel. Similarly, in the absence of any tax return filing requirement or reporting obligations on the trusts created by new immigrants or veteran returning residents which are vested with assets or income from assets abroad, it is unclear that accounting records consistent with the standard will be maintained for those trusts. Foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents are exempt from taxation in respect of foreign source income for a period of 10 years. As there are no obligations to file tax return or keeping account books by such companies in respect of income which is not attributable to a source in Israel, the availability of their accounting records in respect of activities outside of Israel is also not ensured. Israel is therefore recommended to address these gaps to ensure that all relevant entities and arrangements are required to keep accounting records in line with the standard.

### In practice

94. The Phase 2 report concluded that accounting record keeping obligations are properly implemented in practice. There has been no change in practice of supervision and enforcement since the Phase 2 review. Availability of accounting information in practice is mainly ensured through supervision and enforcement of tax obligations.

95. The tax administration conducts desk audits, on-site inspections and uses computer software to detect discrepancies in the provided accounting information or accounting books kept by the taxpayer when inspected. Book keeping requirements are overseen by three departments in the Israeli Tax Authority. The Book keeping department conducted 45 985 on-site inspections in 2013, 44 770 in 2014 and 42 621 in 2015. The main deficiencies related to incomplete invoice details or misreporting of cash receipts. The Assessment department carries out tax audits for the purpose of proper tax assessment. A compulsory part of these tax audits is the audit of accounting records. About 4% of corporate taxpayers are audited per year on a risk based approach. Accounting records are also subject to enquiries of the VAT department. The VAT department performs book keeping audits in the course of the regular VAT audits. The department conducted 4 090 on-site inspections in 2011, 3 900 in 2012 and 3 980 in 2013.

96. If the taxpayer is not compliant with accounting obligations his/her accounting records will be disregarded and the tax assessment will

be based on the assessing officer estimate. A taxpayer whose accounting books were disqualified is not entitled to several benefits such as reduced advance payments or withholding tax rates. Further, sanctions under s.216(5) ITO (see above) and under s.95 of the VAT Law are applied. VAT sanctions for not keeping accounting records in line with the requirements were applied in 543 cases in 2013, in 581 cases in 2014 and in 581 cases in 2015. The total amount of applied fines was NIS 40 million (EUR 9.3 million) in 2013, NIS 35.2 million (EUR 8.2 million) in 2014 and NIS 48.1 million (EUR 11.2 million) in 2015.

### ***Underlying documentation (ToR A.2.2)***

97. As in respect of general accounting requirements, the Phase 2 report concluded that underlying documentation is required to be kept in line with the standard with the above described exception in respect of (i) foreign resident trusts having a trustee resident in Israel, (ii) trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years, and (iii) activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years. There has been no change in Israel's legal framework since the Phase 2 review that would have impact on the availability of accounting underlying documentation.

98. Section 130 of the ITO requires all taxpayers deriving income to “keep account books”. These include underlying documentation such as receipts, invoices, a daily intake ledger, cash register tape, delivery notes and an inventory list (ss. 5 to 10 ITR). Further, taxpayers subject to VAT must fulfil specific requirements regarding documentary evidence of transactions performed (s.66 VAT Law). Among other things, they must keep all documents from which flows of goods and services can be traced, and, more generally, all invoices.

99. Tax obligations to keep accounting underlying documentation are supervised in the same way as general accounting obligations. On-site inspections and tax audits carried out by the tax administration include checking whether accounting underlying documentation is kept. If underlying documentation is not properly kept the taxpayer's tax assessment is based on an estimate and sanctions under s.216(5) ITO and under s.95 of the VAT Law are applied.

### ***5-year retention standard (ToR A.2.3)***

100. The Phase 2 report concluded that the accounting records including underlying documentation are required to be kept for at least five years as required under the standard and there has been no change in the relevant

rules since the Phase 2 review. For tax purposes, account books are required to be kept for seven years from the end of the tax year to which they refer, or for six years after the day on which the return for that tax year was submitted, whichever is later (s. 25(c) ITR). The CL contains a minimum retention period of seven years for accounting records (sections 124 and 173 CL). The same retention period is also prescribed under the VAT Law (s. 75 VAT Law).

101. As during the Phase 2 review none of the tax administration departments supervising obligations to keep accounting records identified a case during the period under review where accounting records were not available in breach of the retention period prescribed by law.

### *Conclusion*

102. The Phase 2 report concluded that Israel's law requires relevant entities and arrangements to keep accounting records in line with the standard with exceptions of accounting records in respect of (i) foreign resident trusts having a trustee resident in Israel, (ii) trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years, and (iii) activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years. There has been no change in Israel's legal framework since the Phase 2 review that would have impact on the availability of accounting records. It is therefore recommended that Israel addresses these gaps to ensure that all relevant entities and arrangements are required to keep accounting records in line with the standard. It is nevertheless noted that Israel did not receive any EOI request during the Phase 2 and current reviewed period requesting information covered by this gap.

103. Israel's legal and regulatory framework continues to be adequately applied to ensure the availability of accounting information when the obligation to maintain such information exists. There has been no case where accounting information was not provided because the requested information was not available. Israel received 69 requests for accounting information over the reviewed period. Five peers reported several requests where the requested accounting information was not provided or was provided after a delay. In most of these cases the requested information related to verification of transactions and required contacting the taxpayer or a third party. In none of these cases the information was not provided because it was not available with the holder of the information. Nevertheless, in several cases the obtained information and steps needed to obtain it were not properly communicated and its provision took considerable time. These issues are further discussed under elements C.1 and C.5.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Israeli law does not ensure the availability of accounting records in respect of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years.	Israel should ensure that accounting records consistent with the standard are maintained for foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad.
Israeli law does not ensure availability of accounting records in respect of activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years.	Israel should ensure availability of accounting records in respect of activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents.

<b>Phase 2 rating</b>
<b>Largely compliant.</b>

**A.3. Banking information**

Banking information should be available for all account-holders.

***Record-keeping requirements (ToR A.3.1)***

104. The Phase 2 report concluded that Israel's law contains requirements to maintain banking information in line with the standard. All banks are prohibited under the Prohibition of Money Laundering (The Banking Corporation's Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5761-2001 (PMLO) to open an account without properly identifying the account holders or authorised signatories. Identification documents and documents attesting transactions must be kept by banks for at least seven years after the account is closed or a transaction has been carried out (s. 7 PMLO). There has been no change in the legal framework concerning these requirements since the Phase 2 review.

105. The Phase 2 report further concluded that these legal requirements are properly implemented to ensure availability of banking information in practice. It was nevertheless recommended that Israel monitors availability of documents attesting the instruction to carry out transactions as the amendment requiring that all documentation attesting transactions without any threshold came into force only in August 2014 and therefore was not sufficiently tested in practice. There has been no change since the Phase 2 review in respect of supervisory practices concerning availability of banking information as required under the reviewed standard.

106. The implementation of AML/CFT rules by banking corporations is supervised by the Bank of Israel (Banking Supervision Department). Each bank is subject to ongoing monitoring through quarterly off-site checks. On-site inspections are based on the results of this monitoring and independent risk analysis. Each bank is subject to on-site inspection annually and in addition it is subject to specific AML focused on-site inspection at least once in every five years. The Banking Supervision Department conducted four AML specific inspections in 2012, four in 2013, two in 2014 and two in 2015. During its supervision, the Bank of Israel identified violations of AML/CFT rules in four cases in 2013, in two cases in 2014 and in one case in 2015. The total amount of sanctions applied was EUR 1.69 million in 2013, EUR 0.72 million in 2014 and EUR 1.27 million in 2015. Based on outcomes of these inspections, there are no major deficiencies found in respect of maintaining transactional and KYC documentation and the level of compliance is, by supervisory authorities, considered very high.

107. As pointed out above, the AML/CFT law amendment requiring that all documentation attesting transactions carried out in the course of business relationships must be kept regardless of any threshold came into force in August 2014 and at the time of the Phase 2 it was untested in practice. Verification of the requirement to keep all documentation attesting transactions forms part of all on-site inspections carried out by the Bank of Israel. During the two years since the law amendment is in force the Bank of Israel did not identify any case of violation of the new requirement. According to the information from banks' representatives, the amendment did not represent a change in banks' practice as they kept documentation related to any transaction for the required period even before the amendment came into force mainly due to practical reasons and their obligations to clients. Considering the above it seems that there is sufficient evidence to conclude that the law amendment is tested in practice and that the information as required by the law is available.

108. Over the period under review Israel received 28 requests for banking information. Two peers indicated that the provision of banking information takes considerable time and that in a few cases Israel's response stated

that the referred person actually does not have a bank account in Israel. As described above, there is no indication that banking information as required under the law is not available in practice. Accordingly, there was no case during the period under review where the requested banking information related to an existing bank account was not available. Nevertheless, exercise of access powers in respect of banking information might have limited provision of certain types of requested information during the period under review as described in section B.1.5. The reported delays in provision of banking information can further be attributed to communication issues and need for improvement in handling EOI requests which are dealt with in sections C.1.1 and C.5.2.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Phase 2 rating</b>	
<b>Compliant. Largely compliant.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<del>The AML/CFT law requires that all transactional documentation carried out in the course of established business relationships must be kept regardless of any threshold. The obligation came into force only recently and is untested in practice.</del>	<del>Israel should monitor the availability of transactional documentation regardless of any threshold and effectively apply enforcement measures where documentation required under AML/CFT rules is not kept.</del>

## B. Access to information

### Overview

109. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities.

110. The Israeli tax administration has broad powers to access information relevant for the tasks of the tax administration from any person and from public authorities. The assessing officer may ask a person for delivery of his return including declaration of the capital and assets and for providing books documents, accounts and returns which the assessing officer deems necessary. The assessing officer is empowered to also require relevant tax information from third parties. These information gathering powers include power to enter any place in which a business or a vocation is carried on or to summon any person who has business relations with the assessee and who he believes can testify on his income. Non-compliance can be sanctioned with administrative as well as criminal penalties.

111. The Phase 2 review however identified three areas where improvement was recommended. Firstly, Israel's access powers for the purpose of exchange of information under international tax agreements were not provided for explicitly and were only applicable to requests made under double tax conventions. Secondly, the tax authorities' powers to obtain information from new immigrants, veteran returning residents and the trustees of foreign resident trusts, having a trustee resident in Israel, in respect of foreign source income were found inadequate. Thirdly, access powers in respect of banking information requested for civil tax purposes were found not sufficiently effective in practice to ensure that all banking information regardless of its type and difficulty to obtain is provided in a timely manner.

112. Since the Phase 2 review Israel has taken measures to address the first and the third issue. In respect of the first issue Israel has amended the ITO to make clear that the tax authority's domestic information gathering powers can be used for exchange of information purposes regardless of domestic tax interest and that these powers can be used under all Israel's EOI agreements regardless of their form. The use of information gathering powers for exchange of information purposes is linked to certain conditions which appear in line with the standard. Nevertheless as the amendment came into force only in January 2016 practical application of these conditions remains to be sufficiently tested and Israel is therefore recommended to monitor their application. In respect of the third issue concerning practical access to banking information, Israel has made several changes which appear to have positive impact on accessibility of banking information. These changes mainly include meetings of the tax authority with banks where streamlined process to provide banking information was agreed and legal amendment of the ITO which gives undisputable legal basis for provision of the requested information despite banks' confidentiality obligations towards their clients. Subsequent to these changes the co-operation with banks has significantly improved according to the Israeli authorities. However, there is currently insufficient evidence to confirm this. It is therefore recommended that Israel monitors efficiency of the recently taken measures and if necessary takes further measures to ensure timely access to banking information as required under the standard. No changes were reported by Israel in respect of the second issue, nevertheless it seems that the legal gap has so far only limited impact on EOI practice. During the current and Phase 2 review period Israel received only one request related to new immigrants or veteran returning residents which was already referred in the Phase 2 report. In this case only information related to income generated in Israel and already contained in the IT database was provided.

113. There are no other significant changes in Israel's legal framework or practice concerning exercise of access powers for exchange of information purposes.

114. As already mentioned above, since the Phase 2 review Israel has amended its law to clarify tax authority's access powers for exchange of information purposes. The amendment also includes prior notification requirement. According to the new rule the authorised official is required to notify the Israeli resident taxpayer subject of the request of the intention to supply information concerning the taxpayer at least 14 days prior to the supply of the information unless the requesting jurisdiction requested not to notify the taxpayer. The amendment came into force in January 2016 and therefore its application in practice remains to be sufficiently tested. Israel is therefore recommended to monitor this. There has been no change in Israel's legal framework concerning appeal rights applicable in the exchange of information context since the Phase 2 review and they remain in line with the standard.

## B.1. Competent Authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

115. Israel’s competent authority for exchange of information for tax purposes is the International Tax Division. The International Tax Division is an organisational part of the Israel Tax Authority designated by the Ministry of Finance as the competent authority.

### *Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)*

116. The tax administration is under a general duty to systematically ensure taxpayers’ and third parties’ compliance with obligations under the ITO and has necessary powers for that purpose. The administration is required and entitled to assess the correct tax liability of the taxpayer and in order to do so has broad powers enabling it to obtain the relevant information. This information can be gathered from a wide variety of persons, sources and by a variety of means in accordance with sections 135-140A of the ITO.

117. The Phase 2 report concluded that the tax authority has broad information gathering powers which allow it access all relevant ownership and accounting information. However it further pointed out that these access powers are inadequate to obtain information on foreign source income from new immigrants, veteran returning residents and the trustees of foreign resident trusts, having a trustee resident in Israel. Israel was therefore recommended to ensure that its authorities have powers to obtain all information from new immigrants, veteran returning residents and trustees of foreign resident trusts which might be subject of an information request from its EOI partners. There has been no change in Israel’s legal framework since the Phase 2 review in this respect and therefore the recommendation is kept.

118. In practice, there has been no change in use of access powers to obtain ownership or accounting information since the Phase 2 review. The main sources of information for the tax administration are:

- the tax database (“SHAAM”) – the main database of the tax administration. It contains information obtained from taxpayers’ tax returns, tax assessments and third party reporting such as information from the Registrar of Companies, the social security authority or the registry of real estates. It is mostly used for the identification of taxpayers, their addresses, reported income, taxes paid, residency etc.;

- the taxpayer's file at the local tax office – includes tax returns, financial reports, communication between the taxpayer and assessing officer, original documentation obtained from the taxpayer or audit reports;
- the taxpayer – the taxpayer is contacted directly only for information which cannot be obtained otherwise. This is the case for accounting underlying documentation such as invoices, shipment bills, contracts or business correspondence;
- banks in respect of banking information.

119. The EOI unit has full access to the IT database and can provide the requested information directly to the requesting competent authority if the requested information is contained therein and is readily retrievable. If the requested information is not in the IT database the EOI unit approaches the assessing officer where the taxpayer's file is kept. If information is not contained in the IT database or in the tax file the Israel Tax Authority uses powers under sections 135-140 of the ITO described above.

120. In comparison to the Phase 2 review, the number of cases where the requested information was already at the disposal of the EOI Unit or of the tax authority has decreased from 69% in the Phase 2 review to 42% during the current review period. Correspondingly, the number of requests where information was obtained from the taxpayer subject to the inquiry increased from 14% in the Phase 2 review to 34% during the current review period.

121. Despite increasing number of cases where information had to be obtained directly from the taxpayer the impact of legal restriction on access to information on foreign source income held by new immigrants, veteran returning residents and the trustees of foreign resident trusts, having a trustee resident in Israel remains low. Over both review periods Israel received only one request related to new immigrants or veteran returning residents which was already referred to in the Phase 2 report. In this case only information related to income generated in Israel and already contained in the IT database was provided. The Israeli authorities further confirmed that they are able to provide information on new immigrants or veteran returning residents which is contained in their tax returns (i.e. identification of the taxpayer and information related to income or assets generated in Israel) or information which can be obtained from third parties in Israel. However, information which is held only by the new immigrants or veteran returning residents cannot be obtained and provided.

### ***Use of information gathering measures absent domestic tax interest (ToR B.1.3)***

122. The Phase 2 report recommended Israel to clarify its laws so that the information gathering powers under the Income Tax Ordinance can be used

for exchange of information purposes without any doubt and pursuant to EOI requests under all Israel's EOI instruments regardless of their form.

123. Since the Phase 2 review Israel amended its law to address this gap. A new section 214C has been introduced into the ITO which states that the tax authority can use its information gathering powers stipulated under sections 135 through 140A of the ITO for the purpose of collecting information pursuant to international agreements in the same manner as for domestic purposes provided that the information can be exchanged in line with Israel's law and the international agreement.

124. A new section 214A of the ITO defines international agreement as an international agreement which provides for double taxation relief on income tax and on every other tax of a similar character or an exchange of information agreement. Exchange of information agreement is further defined as an agreement providing for administrative assistance, including through exchange of information, for the purpose of enforcing the tax laws of Israel or the other party of the agreement (s. 214A ITO). The definition of international agreement includes the Multilateral Convention or a TIEA as also confirmed by the Israeli authorities.

125. Conditions under which information can be exchanged are stipulated in the new section 214B of the ITO. These conditions are that:

- the requested information is requested pursuant to a valid EOI request;
- the requested information can be obtained through domestic administrative measures and practices;
- the exchanged information will be kept confidential;
- the exchanged information will be used only for the enforcement of the tax law of the requesting party;
- exchange of the information is not likely to do harm to the security of the State of Israel, the public peace or public security, or to open investigations, to public policy or to any other essential concern of the State of Israel; and
- the requesting party exchanges information with Israel on a reciprocal basis (s. 214B ITO).

126. The new amendment ensures that the tax authority's domestic information gathering powers can be used for exchange of information purposes regardless of domestic tax in interest under all Israel's EOI agreements regardless of their form. The use of information gathering powers is linked to certain conditions which are expected to be in line with the standard. Nevertheless as the amendment came into force only in January 2016 practical application of these conditions remains to be sufficiently tested and Israel is therefore recommended to monitor this.

127. In practice, Israel received 24 requests over the period under review where the requested information related to a person who has no nexus with Israel for tax purposes. No such request has been declined based on the absence of domestic tax interest. Since the law amendment came into force, i.e. after the period under review, Israel received one request letter related to 34 foreign residents. The request is according to the Israeli authorities handled in the same manner as requests received before the law amendment. No issue of domestic tax interest was indicated by peers.

### ***Compulsory powers (ToR B.1.4)***

128. The Phase 2 report concluded that Israel has sufficient compulsory powers to enforce production of the requested information based on administrative as well as criminal penalties. Since the Phase 2 review there has been no change in Israel's legal framework in this respect.

129. According to s. 215 and s. 216 of the ITO, if a person does not appear, as required by a notification under the ordinance or does not answer a question lawfully put to him is guilty of an offence and is liable to a fine of up to NIS 29 200 (EUR 5 840), to one year imprisonment or to both penalties. Failure to provide the requested information is also considered an administrative offence according to the section two of the Administrative Offences Regulations, 5747-1987, and additional fine between NIS 980 (EUR 196) and NIS 8 500 (EUR 1 700) might be levied. The Minister of Police may also authorise an investigating assessing officer to carry out investigations or searches in order to prevent or to detect offences against the ITO and the authorised officers so appointed are granted certain powers including those vested in a policeman and police officer of the rank of inspector or above under section 2 of the Criminal Law Procedure (Evidence) Ordinance.

130. In practice, sanctions for technical offences including not providing ownership or accounting information were applied in 214 cases in 2012, in 256 cases in 2013 and in 193 cases in 2014. The total amount of fines applied in these years was NIS 4.1 million (EUR 0.82 million), NIS 1.5 million (EUR 0.3 million) and NIS 2.5 million (EUR 0.5 million) respectively. There is no information on any case during the period under review where not providing the requested information led to criminal charges or imprisonment. The same measures are used to compel production of information for exchange of information purposes and in the domestic context.

### ***Secrecy provisions (ToR B.1.5)***

#### ***Financial institutions***

131. There are no specific bank secrecy rules in Israel and such a secrecy stems from the contractual relationship between the bank and its customers

based on the Private Protection Law. Israel's tax administration has the power to directly request relevant tax information from banks and other financial institutions (s. 135A ITO). The Supreme Court has acknowledged <sup>8</sup> that banking secrecy has a unique standing but it does not override disclosure obligation stipulated by the law. An assessing officer is authorised to apply to a bank institution and ask for information regarding accounts and assets which belong to specific clients. Consequently, banks and other financial institutions are required to provide the requested information to the tax administration.

132. The procedure for obtaining banking information varies depending on whether the information is requested for civil or criminal tax purposes. If the information is requested for criminal tax purposes the contact person applies to the magistrate court to issue a warrant to the bank which is then required to provide the requested information (see section C.5.2). Although this is not required by the law it is the preferred way how to access banking information as it is the most efficient. Accordingly, there have been no delays encountered when banking information was requested for criminal purposes and the Phase 2 report concluded that the tax authority can access banking information for criminal purposes in line with standard. There has been no change in Israel's legal framework or tax authority practice in respect of access to banking in criminal cases. During the current period under review Israel received two requests for banking information for criminal tax purposes. In both cases the requested information was provided. In one case the information was provided within 14 days and in the second case within 315 days. The second case related to old records without any recent activity. Accessibility of banking information for criminal purposes has been also confirmed in the domestic context.

133. If the information is requested for civil purposes the information is gathered directly through a contact person in the Intelligence Department of the Israel Tax Authority who handles all requests for banking information without a need for a court warrant. The Phase 2 report concluded that access to banking information for civil tax purposes involves an element of proportionality and does not ensure timely provision of the requested information. At the time of the Phase 2 review banks could object to provide the requested information if the interest of protection of private information of their clients prevails over importance of the information for tax purposes. Although banks have a legal obligation to provide the requested information (s. 135A ITO) in practice the tax administration was frequently tasked to demonstrate proportionality of the request through negotiation with the bank and to proceed in steps to establish the relevance of the requested information.

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8. Supreme Court decision – Civil Appeal, 1917/92 Jacob Skholer vs. Bank Hamizrachi.

134. Since the Phase 2 review several changes occurred which remain to be sufficiently tested but which are expected to have positive impact on accessibility of banking information in civil tax matters:

- In July 2015 the General Director of the Israel Tax Authority held a high level meeting with the Banks Union’s representatives to improve the process and timeliness of provision of banking information for tax purposes including exchange information. It was agreed that requests for information from the tax authority will be considered by banks urgent priority and handled accordingly. In subsequent meetings between the tax authority and bank’s representatives the procedure for obtaining banking information was agreed which confirms the tax authority’s right to access all banking information which is relevant for the tax authority’s tasks and that the practice of negotiation and obtaining information in steps should be abandoned. It was also decided that each bank will nominate a contact person responsible for ensuring timely provision of banking information to the tax authority and that the contact person will be in weekly contact with the tax authority’s requesting the information.
- The tax authority’s access powers for exchange of information were clarified through the legal amendment of the ITO analysed under B.1.3. The new amendment puts beyond doubt the tax authority’s legal power to request information for exchange of information purposes under Israel’s international agreements. According to the Israeli authorities the amendment now gives banks additional assurance of undisputable legal basis allowing them to provide the requested information despite confidentiality obligations towards their clients.
- Israel has committed to automatic exchange of information and took several steps to implement FATCA and the Common Reporting Standard requirements. In June 2014 Israel signed an inter-governmental agreement with the United States to implement FATCA provisions. In order to implement the agreement and allow first exchanges in 2016 several domestic measures were taken to ensure availability of banking information to the tax administration. In this process co-operation between banks and the tax authority has significantly improved and clear understanding of the need for efficient co-operation was established.
- All requests for banking information for domestic and exchange of information purposes are handled by a specialised unit within the Intelligence Department. The unit is now staffed with one additional full time employee increasing the number of staff from two at the time of the Phase 2 review to three.

135. During the period under review Israel received 28 requests for banking information. The average response time remained not satisfactory reaching above a year. This was confirmed also by peers as two peers pointed out the number of pending requests for banking information and long response times. It should be nevertheless noted that some of these requests were complex and required obtaining detailed information in respect of multiple persons.

136. As described above several changes in the legal framework as well as practice have been made since the Phase 2 review which should improve access to banking information for tax purposes. Most of these changes however took place after the review period which ended in June 2015 and therefore remain to be sufficiently tested. According to the Israeli authorities the average response time to requests for banking information received after the high level meeting in July 2015 improved to 83 days. It appears that the recent changes have positive impact on access to banking information and are addressing the issue pointed out in the Phase 2 report. However, there is currently insufficient evidence to confirm this. It is therefore recommended that Israel monitors efficiency of the recently taken measures and if necessary takes further measures to ensure timely access to banking information as required under the standard.

### *Professional privilege*

137. Section 235B of the Income Tax Ordinance empowers the assessing officer to obtain information from legal professionals unless covered by professional secrecy. Section 235A of the ITO defines professional secret as, “communication between a client and an advocate, whether oral or written, which is substantially connected to the professional service rendered by the advocate to the client, including records prepared by the advocate for his own use, on condition that they are substantially connected to the said professional service”. Professional service is limited to services provided in the advocate’s capacity as an advocate, and does not extend to services rendered in another capacity.

138. The Phase 2 report concluded that professional privileges contained in Israel’s law are in line with the international and there has been no change in Israel’s legal framework since then.

139. In practice, the assessing officer requests information from the taxpayer who is obliged to provide the requested information. Cases where the relevant information is held only by an advocate or other admitted legal representative are according to Israel’s authorities not frequent in practice. Although there were about 30 cases during the period under review where information was obtained from a company’s lawyers or accountants none of

them claimed to be operating as admitted legal representatives and therefore covered by legal professional privilege. Accordingly, there was no case where a person refused to provide the requested information because of professional privilege.

*Tax secrecy*

140. Sections 231 to 235 of the ITO set out secrecy provisions concerning the information obtained by Israel Tax Authority. At the time of the Phase 2 review these secrecy provisions were overridden only for the purpose of exchange of information under international agreements providing for double taxation relief. Pursuant to the new section 214B of the ITO exception from the secrecy obligation is now broadened to cover also exchange of information under Israel’s exchange of information agreements, i.e. under all Israel’s international agreements regardless of their form.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Israel's access powers for the purpose of exchange of information under international tax agreements are not provided for explicitly, in all cases, and are only applicable to requests made under double tax conventions.	Israel should ensure that its competent authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements (regardless of their form).
The tax authorities' powers to obtain information from new immigrants, veteran returning residents and the trustees of foreign resident trusts, having a trustee resident in Israel, in respect of foreign source income are inadequate.	Israel should ensure that its authorities have powers to obtain information from new immigrants, veteran returning residents and trustees of foreign resident trusts which might be subject of an information request from its EOI partners.

Phase 2 rating	
<b>Largely compliant. Partially compliant.</b>	
Factors underlying recommendations	Recommendations
Access powers in respect of banking information requested for civil tax purposes are not sufficiently effective to ensure that all banking information regardless of its type and difficulty to obtain is provided in a timely manner.	Israel should ensure that the competent authority can obtain all requested banking information in a timely manner.
<u>The use of information gathering powers for exchange of information purposes is subject to certain conditions which appear in line with the standard. Nevertheless, as they were introduced only in January 2016 their practical application remains to be sufficiently tested.</u>	<u>Israel should monitor application of conditions for use of information gathering powers for exchange of information purposes so that the information is exchanged in line with the standard.</u>
<u>Several changes in the legal framework as well as in practice have been made since the Phase 2 review in order to improve access to banking information for tax purposes. These changes however took place only recently and therefore remain to be sufficiently tested.</u>	<u>Israel should monitor access to banking information for exchange of information purposes and if necessary take further measures to ensure timely access to all banking information as required under the standard.</u>

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

141. As described in section B.1, since the Phase 2 review Israel has amended Income Tax Ordinance to clarify the tax authority's access powers for exchange of information purposes and to ensure that these powers can be used to access under all EOI instrument regardless of their form. The amendment also includes prior notification requirement. According to the new section 214B of the Income Tax Ordinance the authorised official is required to notify the Israeli resident taxpayer subject of the request of the intention to supply information concerning the taxpayer at least 14 days prior to the supply of the information unless the requesting jurisdiction requested not to notify the taxpayer. Accordingly, the requirement

does not require Israel to notify a taxpayer subject of the request (i.e. subject of investigation in the requesting jurisdiction) if the taxpayer is not currently tax resident in Israel. Whether a person is considered a tax resident in Israel is established by the Israeli tax authority based on information at its disposal and in accordance with the applicable tax law. The notification requirement also does not cover the information holder if the information holder is not the Israeli tax resident subject of the request. Nevertheless, the Israeli tax resident subject of the request will be notified regardless of the source of the information to be supplied to the requesting jurisdiction. The template notification notice prepared by the tax authority states that Israel has received an EOI request from a specified jurisdiction and that it is about to respond to the requesting jurisdiction within 14 days unless a court stay order is granted. The notification does not contain reference to the information which is about to be exchanged.

142. The amendment came into force in January 2016 and therefore its application in practice remains to be sufficiently tested. There are a few aspects of the notification requirement which should be monitored in particular. Firstly, it is not tested how the exception from the notification will be applied in practice especially considering communication with the requesting jurisdiction and its awareness of the notification requirement. Secondly, it remains to be tested what impact (if any) will have the new requirement on applicability of appeal rights in the EOI context and information which will be required to be disclosed to the taxpayer during the notification or subsequently. Thirdly, it is not tested what impact will have the notification requirement on timeliness of responses considering the untested use of appeal rights, communication with the requesting jurisdiction and application of the required 14 days period before transmission of the information. Given these untested aspects it is recommended that Israel monitors application of the notification requirement to ensure that it does not unduly prevent or delay effective exchange of information.

143. Since coming into force of the amendment Israel received two EOI requests. In both cases it informed the requesting jurisdiction of the requirement and asked if the jurisdiction requires not to notify the taxpayer. As no response has been received the taxpayer has not been notified and the already obtained information has not yet been transmitted. This approach is however not required by the law or any applicable regulation. Israel is currently in the process of informing all its treaty partners of the notification requirement through letters and emails. The letter to treaty partners includes information that unless requested by the partner the Israeli tax resident subject of the request will be notified. According to the Israeli authorities once all partners are informed, the process of notification will be streamlined so that no confirmation from the requesting jurisdiction whether to notify will be awaited and the taxpayer will be notified unless the requesting jurisdiction has not already indicated otherwise.

144. There has been no change in Israel’s legal framework concerning appeal rights applicable in the exchange of information context. As concluded in the Phase 2 review the Income Tax Ordinance does not allow specific appeal rights against the authorities’ powers to gather information. However, Article 253 of the Civil Law Order Regulation grants general appeal rights to taxpayers to apply to the court against any request, decision or action of authorities. These appeal rights provide the usual safeguards against unlawful action and appear in line with the standard. Their use in practice to oppose exchange of information is according to the Israeli Authorities limited as the law gives to the tax authority clear authorisation to obtain and provide information requested under Israel’s EOI instruments. Accordingly, during the current and the Phase 2 review period there was no case where an action taken to obtain or provide the requested information was appealed.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
<b><u>Largely compliant. Compliant:</u></b>	
Factors underlying recommendations	Recommendations
<u>Under the newly amended Income Tax Ordinance the authorised official is required to notify the Israeli resident taxpayer subject of the request of the intention to supply information concerning the taxpayer at least 14 days prior to the supply of the information unless the requesting jurisdiction requested not to notify the taxpayer. As the amendment came into force only in January 2016 it remains to be sufficiently tested in practice.</u>	<u>Israel should monitor application of the notification requirement to ensure that it does not unduly prevent or delay effective exchange of information.</u>



## C. Exchanging information

### Overview

145. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Israel, the legal authority to exchange information derives from international agreements providing for exchange of information given effect through domestic law. This section of the report examines whether Israel has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

146. Israel has extensive EOI network covering 105 jurisdictions through 55 DTCs and the Multilateral Convention. All these treaties are in force except for DTCs with Germany and the Former Yugoslav Republic of Macedonia (FYROM) and the Multilateral Convention.

147. The main changes concerning Israel's treaty network since the Phase 2 review are that Israel (i) amended its domestic law which now gives the competent authority clear power to obtain all relevant information pursuant to requests under all exchange of information agreements regardless of their form and (ii) signed the Multilateral Convention. Through signing of the Multilateral Convention the number of Israel's EOI partners has almost doubled and all Israel's EOI relations are brought in line with the standard. The Phase 2 report concluded that in some cases time taken by Israel to bring its signed EOI agreements into force was more than 36 months and Israel was recommended to take measures to bring its exchange of information agreements into force expeditiously. Since the Phase 2 review Israel signed the Multilateral Convention in November 2015 which is not yet in force and there is not enough evidence that the issue indicated in the Phase 2 report has been addressed. The Phase 2 recommendation is therefore kept.

148. All of Israel's EOI agreements contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. Domestic confidentiality rules allow use of exchanged information also for other than tax purposes. Information received under agreements providing for relief from double taxation will be treated in line with the

agreement as confidentiality provisions of these agreements prevail over the domestic rules, however, there is no similar rule for information obtained under an instrument which does not provide for relief from double taxation. Consequently, information obtained under these instruments can be used for purposes going beyond the standard. Israel is therefore recommended to address this gap. The Phase 2 report concluded that the confidentiality rules are properly implemented in practice to ensure confidentiality of exchanged information in line with the standard. Since the Phase 2 review there has been no change in Israel's practice regarding confidentiality of exchanged information. All Israeli EOI relations ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or disclosure of which would be contrary to order public. No issue in this respect has also arisen in practice as confirmed by peers.

149. Since Phase 2 review Israel has made improvement in important areas identified in the Phase 2 report as needing improvement including setting up a new EOI database allowing automatic monitoring of deadlines, increasing staffing of the EOI Unit or using more efficient communication tools. However, most of these improvements were made after the end of the period under review (i.e. June 2015) and are too recent to have sufficient impact in practice. Further, certain important areas such as respecting deadlines and efficient communication between Israel and its EOI partners still need improvement in order to ensure that information is provided in a timely manner in all cases. This is also evidenced in long response times during the period under review which are in many cases not compatible with effective exchange of information. It is therefore recommended that Israel addresses these issues.

### C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

150. Israel has an extensive EOI network covering 105 jurisdictions through 55 DTCs and the Multilateral Convention. All these agreements are in force except for two DTCs and the Multilateral Convention. Israel's agreements providing for exchange of information are given effect through the ITO.

#### *Foreseeably relevant standard (ToR C.1.1)*

151. The international standard for exchange of information envisages information exchange on request to the widest possible extent, but does not allow speculative requests for information that have no apparent nexus to

an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance”. It does not allow “fishing expeditions”.

152. All Israel’s 56 EOI agreements provide for exchange of information in line with the standard of foreseeable relevance. Israel’s DTCs with the Netherlands and South Africa contain additional language, providing that competent authorities of the states shall exchange information which authorities have in proper order at their disposal as is necessary for carrying out the provisions of the Convention. The Israeli authorities have advised that they use their access powers to obtain information requested by the Netherlands and South Africa and similar clarification is given by the authorities of the Netherlands<sup>9</sup> and South Africa.<sup>10</sup> It is also noted that Israel has an EOI relation with the Netherlands and South Africa under the Multilateral Convention which is however not yet in force in Israel.

### In practice

153. Concerning practical application of the criteria of foreseeable relevance the Phase 2 report concluded that Israel implements the foreseeable relevance criteria in line with the standard and that information required by Israel to be included in the request follows Article 5 paragraph 5 of the Model TIEA and its commentary. No change has been encountered since the Phase 2 review in Israel’s practice in this respect.

154. Israel has not declined any request over the period under review based on the fact that it does not meet the foreseeable relevance criteria. Clarifications were requested in 32 cases (25% of received requests) out of which nine are still pending clarification from the requesting jurisdiction. The percentage of cases where clarifications were needed remains the same as in the Phase 2 review. The percentage of cases pending responses for clarification is decreased from 54% during the Phase 2 review to 28% showing improvement in co-operation and communication of the clarifications.

155. The reasons for requesting clarifications during the period under review are as follows (in several cases more than one type of clarification was requested in respect of one request):

- lack of sufficient identification of the taxpayer – clarification in this respect was requested in 23 cases. Israel does not require specific identifiers once information provided by the requesting

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9. Global Forum Peer Review Report (Combined: Phase 1 and Phase 2), the Netherlands, paragraph 323.

10. Global Forum Peer Review Report (Combined: Phase 1 and Phase 2), South Africa, paragraph 194.

jurisdiction allows identification of the taxpayer concerned. Cases when identification of the taxpayer was not possible related to persons with common names and without further identification or where the identity information provided by the requesting jurisdiction does not generate any matches in the tax database. A combination of name and address or name and date of birth or passport number is sufficient to identify the taxpayer. If identity of the person cannot be established through the tax database Israel uses other sources such as Registry of Citizens or public sources to identify the person;

- tax purpose of the requested information – clarification of tax purpose was requested in 11 cases. In these cases only the requested information was stated without containing reasons why the information is requested. According to the Israeli authorities incoming requests should contain enough information to allow the assessing officer to understand purpose of the request and information sought so that the relevant information can be identified and effectively obtained. Supporting documentation is not required to be provided if the background information contained in the request is satisfactory to establish the purpose of the request. If the requested information is complex and requires co-ordination of several information gathering measures related to several taxpayers or information sources more background information is needed to properly understand the situation so that the relevant information can be identified and proper information gathering measures taken.
- No specified tax period to which the requested information relates – this clarification was requested in 5 cases. The requested information related to periods which were not specified and therefore it was difficult to identify the requested information.
- Identification of the bank account – such clarification was requested in one case. Israel does not require specific identifiers to be provided in order to access banking information however the provided information has to allow identification of a unique person holding the bank account or of the bank account in which respect the information is requested. Provision of a unique bank account number will suffice to access banking information in respect of the account (provided that the information is requested pursuant to a valid EOI request). In the referred case only the name of the taxpayer was included which, however, in this case did not allow identification of a unique person on whose bank account information was requested.
- Translation – in one case the received request was in other language than English (or Hebrew) and therefore it was not possible for the Competent Authority to process it without a request for translation.

156. One peer indicated that Israel requests too many clarifications in respect of tax purpose for which the information is requested and that Israel requires specific information identifying the taxpayer under investigation such as the passport number of an individual. However, this has not been confirmed as in the referred cases typically only a name common to several taxpayers was provided and the information at the disposal of the tax administration did not suffice to identify the person under investigation. As described above Israel requests explanation of relevance of the information in line with the standard as described in Commentary to Article 5 paragraph 5 of the Model TIEA and no specific identifier of the taxpayer is required. If the required information is not provided Israel tries to substitute it with information already at its disposal. Only when such information cannot be substituted clarification is requested. It is understood that communication between Israel and the peer has recently improved and closer co-operation was established as confirmed by the peer.

157. Considering that the percentage of requests where clarification is needed is still relatively high, Israel is encouraged to continue monitoring consistent approach to requests for clarification and to take measures to ensure that reasons for clarification are in all cases properly communicated to the requesting jurisdiction. This may also contribute to limiting the number of requests where clarification is needed in the future (see further section C.5.2).

### *In respect of all persons (ToR C.1.2)*

158. The Phase 2 report concluded that Israel's DTCs with the Netherlands, South Africa, Germany and Switzerland limit the exchange of information to that necessary for carrying out the provisions of the convention and therefore under these four DTCs information concerning non-residents might not be exchanged and should be renegotiated. Since the Phase 2 review Israel signed the Multilateral Convention and therefore this will not be a concern in practice because Israel will be able to exchange information with these partners in line with the standard under the Convention once it comes into force in both jurisdictions. In addition Israel signed a new DTC with Germany which provides for exchange of information in line with the standard. The DTC is also not yet in force.

159. All other Israel's agreements provide for exchange of information in respect of all persons regardless of their nationality or residence.

160. In practice, one peer raised concerns whether Israel is able to exchange information concerning Israel tax residents. However, no basis for such restriction has been identified in Israel's domestic law (see further section B.1), the applicable EOI instrument or Israel's exchange of information practices. The experienced difficulties to obtain information related to these persons appear to be linked to clarification of relevance of the requested

information as discussed in section C.1.1 and communication issues discussed in section C.5.2. This is also the understanding of the Israeli authorities which confirmed that no such restriction has been encountered in practice except for the one case during the Phase 2 review period described in section B.1. No issue of restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of information has been indicated by other peers.

***Obligation to exchange all types of information (ToR C.1.3)***

161. As stated in section B.1.5 of this report Israel’s domestic law does not contain legal restrictions in respect of access to banking information. Nevertheless, some of Israel’s partners may have domestic restrictions on access to information which in the absence of a provision akin to Article 26(5) of the OECD Model Tax Convention in the respective treaty means that agreements with such a partner does not establish an obligation to exchange all types of information. At the time of the Phase 2 review this was the case with Luxembourg, Singapore<sup>11</sup> and Switzerland. Further, the DTC with the UK includes a language noting that exchange of information is restricted to “information which is at their disposal under their respective taxation laws in the normal course of administration” which impose a restriction on the UK’s ability to respond to a request. Finally, the Protocol to the Israel’s DTC with the Netherlands explicitly states that the obligation to exchange information does not include information obtained from banks or from financial institutions assimilated thereto or equivalent institutions and therefore this DTC is not in line with the international standard.

162. As Israel signed the Multilateral Convention in November 2015 Israel has now an EOI relation in line with the standard with all these treaty partners. It is however noted that the Multilateral Convention is not yet in force in Israel and Switzerland and therefore does not yet provide for practical exchange of information between Israel and its treaty partners.

163. In practice, Israel has never declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. However, during the period under review the average response time remained not satisfactory. Two peers also pointed out the number of pending requests for banking information especially where more detailed banking information was requested. As described in section B.1.5,

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11. Singapore amended its domestic legislation in November 2013 with a view to being able to exchange information to the international standard under all of its DTCs on the basis of reciprocity. This legislation has not yet been reviewed by the Global Forum.

Israel has made several changes in the legal framework as well as in practice to improve access to banking information for tax purposes. Most of these changes however took place after the review period which ended in June 2015 and therefore remain to be sufficiently tested. According to the statistics provided by the Israeli authorities the timeliness of provision of banking information and the tax authority's co-operation with banks has significantly improved after July 2015. Nevertheless as there is not enough evidence to confirm this it is recommended that Israel monitors efficiency of the recently taken measures and if necessary takes further measures to ensure timely access to banking information as required under the standard.

***Absence of domestic tax interest (ToR C.1.4)***

164. The Phase 2 report concluded that Israel's access powers for the purpose of exchange of information under international tax agreements are not provided for explicitly and are only applicable to requests made under double tax conventions. This unclarity had impact on exchange information under all Israel's treaties regardless if it contains Model Article 26(4). As discussed under section B.1.3, since the Phase 2 review Israel has amended its law which now unambiguously provides access powers for exchange of information purposes regardless of domestic tax interest under all Israel's EOI agreements regardless of their form. The use of these powers is nevertheless linked to certain conditions which remain to be sufficiently tested in practice and therefore their application should be monitored.

165. The Phase 2 report further noted that in the absence of a specific provision requiring exchange of information unlimited by domestic tax interest in the respective treaty exchange of information with the treaty partner may be restricted by domestic tax interest if such restriction exists in the domestic law of the partner. This was the case in respect of the DTCs with Singapore and Jamaica. Since then Israel signed the Multilateral Convention and therefore this will not be a concern in practice as exchange of information in line with the standard will be possible with both these partners under the Convention once in force in Israel and Jamaica.

166. In practice, there was no case during the period under review where a request was declined by Israel because of the absence of domestic tax interest and no issue has been reported by peers in this respect either.

***Absence of dual criminality principles (ToR C.1.5)***

167. There are no dual criminality provisions in any of Israeli's EOI agreements. Accordingly, there has been no case when Israel declined a request because of a dual criminality requirement as has been confirmed by peers.

***Exchange of information in both civil and criminal tax matters  
(ToR C.1.6)***

168. The Phase 2 report concluded that Israel's DTCs with the Netherlands, South Africa, Germany and Switzerland provide for the exchange of information only for carrying out the provisions of the convention and therefore have the potential to limit the EOI to information foreseeably relevant for the purposes of civil tax matters only. Since the Phase 2 review Israel signed the Multilateral Convention and therefore this will not be a concern in practice because Israel will be able to exchange information with these partners in line with the standard under the Convention once it comes into force in both jurisdictions. Israel also signed a new DTC with Germany which provides for exchange of information in both civil and criminal tax matters, however it is not yet in force. Further, Israel advises that the absence of express provision allowing use of exchange for tax prosecution purposes does not limit the sharing of information with the authorities prosecuting tax matters and it places no restriction on the use of information by the requesting jurisdiction as far as such disclosure is consistent with the international standard with regard to confidentiality.

169. In practice, there has been no case over the period under review where Israel declined to provide information because the requested information cannot be provided for criminal tax purposes. Israel requires an indication from the requesting jurisdiction whether information is sought for criminal or civil tax purposes only when banking information is requested. If banking information is requested for criminal tax purposes the tax administration uses a court order to obtain the requested information (see further section B.1.5). No peer indicated concerns regarding the exchange of information relevant to criminal tax proceedings.

***Provide information in specific form requested (ToR C.1.7)***

170. There are no restrictions in Israel's domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

171. One peer reported that the requested information is not in all cases provided in the adequate form. The peer reported that in some cases only incomplete supporting documentation was provided and in a few cases incorrect reference numbers were indicated. Israel's authorities acknowledge that in a few cases supporting documentation was not provided as it was not clear whether and to which extent it was requested and considered relevant. The Israeli competent authority took measures to improve its communication with the peer to avoid such situations in the future as was confirmed by the peer. It is nevertheless recommended that Israel monitors quality of its responses

to ensure that all requested information is properly documented and provided in the form requested as far as possible under Israel's administrative practices (see further section C.5.2).

***In force (ToR C.1.8)***

172. In order to bring the exchange of information agreement into force in Israel it must be given notice by order of the Minister of Finance upon its signature and ratification by the Knesset. There has been no change in the process of bringing agreements into force since the Phase 2 review.

173. During the Phase 2 review Israel did not have in force DTCs with FYROM, Malta and Panama. Since then the DTCs with Malta and Panama were brought into force.

174. The Phase 2 report further concluded that although most of the treaties are brought into force expeditiously in some cases time taken by Israel to bring its signed EOI agreements into force was more than 36 months and Israel was recommended to take measures to bring its exchange of information agreements into force expeditiously. Since the Phase 2 review Israel signed the Multilateral Convention in November 2015 which is not yet in force. From the four recently signed DTCs<sup>12</sup> only two are in force after more than two years since their signing. Consequently, there is not enough evidence that the issue indicated in the Phase 2 report has been addressed. It is also noted that the Multilateral Convention will significantly broaden Israel's treaty network by additional 51 jurisdictions and bring all Israel's EOI relations with parties of the Convention in line with the standard. The Phase 2 recommendation is therefore kept.

***In effect (ToR C.1.9)***

175. Israel has enacted domestic legislation necessary to comply with the terms of its EOI agreements. There was also no case during the period under review where Israel was not able to obtain and provide the requested information due to unclear or limited effect of DTCs in Israel's law.

176. Since the Phase 2 review Israel amended its law to give effect also to international agreements concluded solely for administrative assistance and clarified use of access powers for exchange of information purposes (see further section B.1).

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12. DTCs with FYROM, Germany, Malta and Panama.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Israel's access powers for the purpose of exchange of information under international tax agreements are not provided for explicitly, in all cases, and are only applicable to requests made under double tax conventions.	Israel should ensure that its competent authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements (regardless of their form).
Eight of Israel's DTCs are not in line with the international standard.	Israel should continue its programme of renegotiation of DTCs to incorporate wording in line with the OECD Model Tax Convention.
In some cases time taken by Israel to bring its signed EOI agreements into force was more than 36 months.	Israel should take necessary measures to bring its exchange of information agreements into force expeditiously.

Phase 2 rating
<b>Compliant, Partially compliant:</b>

## C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

177. Israel has extensive EOI network covering 105 jurisdictions through 55 DTCs and the Multilateral Convention. Israel's EOI network encompasses a wide range of counterparties, including all of its five major trading partners, all EU member states, all the G20 members and all OECD members.

178. The Phase 2 review noted that Israel could not conclude agreements solely for the purpose of exchange of information which has limited its ability to negotiate agreements with all relevant partners. Since the Phase 2 review Israel has amended its law to be able to enter into agreements for exchange of information regardless of their form and signed the Multilateral Convention. The Multilateral Convention broadens Israel's treaty network by 51 jurisdictions which means that its treaty network has almost doubled since the Phase 2 review.

179. During the Phase 2 review one peer reported that it had approached Israel and indicated its interest in entering into a TIEA. However, at that time Israel's law did not allow it to conclude international agreements solely for the purpose of exchange of information. As already stated above since the Phase 2 review Israel has amended its law and now can conclude EOI agreements regardless of their form. Since Israel signed the Multilateral Convention, Israel and the peer have now EOI relation in line with the standard under the Multilateral Convention.

180. Israel does not consider it a priority to negotiate additional EOI instruments with jurisdictions already Parties to the Multilateral Convention or covered by it through a territorial extension. However, if approached by a jurisdiction which is not a Party of the Multilateral Convention Israel is ready to conclude a bilateral EOI agreement.

181. During the supplementary review peer input on Israel's willingness to enter into EOI agreements regardless of their form was sought and no jurisdiction without EOI relation with Israel has indicated that Israel had refused to enter into or delayed negotiations of an EOI agreement.

#### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
<del>Israel has been approached by at least one jurisdiction to negotiate a TIEA, however, Israel's law does not allow Israel to give effect to agreements solely for the purpose of exchange of information.</del>	<del>Israel should enter into agreements for exchange of information for tax purposes (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.</del>
	<u>Israel should continue to develop its exchange of information network with all relevant partners.</u>
Phase 2 rating	
<b><u>Compliant.</u> Largely compliant:</b>	

### C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

#### *Information received: disclosure, use, and safeguards (ToR C.3.1)*

182. The Phase 2 report concluded that Israel's legal framework ensures confidentiality of the exchanged information in line with the standard.

183. All Israeli's EOI instruments including new DTCs and the Multilateral Convention signed after the Phase 2 review contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements.

184. Israel's domestic law requires officials, taxpayers and third parties to keep confidential all information concerning other persons which they learned in the course of the tax procedure. Information obtained for tax purposes can also be used for revenue statistics, in bankruptcy proceedings and can be provided to the National Insurance Institute (ss.231-235 ITO). A person who breaches confidentiality is liable to six months imprisonment or to a fine of NIS 12 900 (EUR 2 580) (s.234 ITO). Information received from other jurisdictions under an agreement providing for relief from double taxation will be treated in line with the agreement as confidentiality provisions of these agreements prevail over the ITO or any other law in Israel (s.196 ITO). However, there is no similar rule for information obtained under an instrument which does not provide for relief from double taxation such as the Multilateral Convention or a TIEA. Consequently, information obtained under these instruments will be treated only pursuant to Israel's domestic confidentiality rules (ss.231-235 ITO) which allow use of information also for other than tax purposes and therefore go beyond the standard. The use of information for other than tax purposes also does not require prior authorisation of such use by the jurisdiction which provided the information. Israel is therefore recommended to amend its confidentiality rules to ensure that information received under all its EOI instruments is treated in line with the standard.

185. The Phase 2 report concluded that the confidentiality rules are properly implemented in practice to ensure confidentiality of exchanged information in line with the standard. Since the Phase 2 review there has been no change in Israel's practice regarding confidentiality of exchanged information. All EOI requests received from the requesting jurisdiction are handled only by the authorised persons within the EOI Unit. In cases when the requested information cannot be directly obtained by the EOI Unit, the assessing officer is provided by the EOI Unit with a standard letter containing information on the legal basis of the request, a description of the requested

information and background information necessary for providing an adequate response. All persons dealing with information obtained from treaty partners are bound by confidentiality rules and in cases of breach sanctions will apply. Access powers to the EOI database are granted by the director of International Tax Division and are restricted to officials of the EOI Unit. Access to these databases is by an individual login and password allowing identification of the person accessing it. Hardcopies of EOI letters and supporting documentation are kept in EOI Unit's archive placed in a locked cabinet with restricted access. Information obtained in response to Israel's requests is kept in the respective taxpayer's file and can be accessed only by the authorised assessing officer responsible for the respective taxpayer's assessment. A taxpayer's file contains an indication of the source of information therefore information obtained from treaty partners can be distinguished from information obtained from domestic sources and is clearly identifiable. Entry to the tax authority premises is restricted, protected by an electronic code and a security guard is present at all times. No case of breach of confidentiality rules during the current or Phase 2 review was indicated by Israeli authorities and no issue in this respect was reported by peers either.

186. There has been also no change in practice concerning information contained in notices to information holders which contain only a description of the requested information and the name of the requesting jurisdiction. As discussed in section B.1.5 the legal framework and process of access to banking information has been slightly modified to ensure timely access to all types of banking information. The process appears to be simplified and does not require negotiation concerning relevance of the requested information. It is therefore expected that the information disclosed to banks will contain only the information necessary to obtain it as is the case in notices to other information holders described above. Nevertheless as these changes are recent Israel should monitor the scope of information provided to banks in order to access the requested banking information so that only information necessary for obtaining is disclosed.

187. As described in section B.2, since the Phase 2 review Israel introduced notification requirement obliging the tax authority to notify Israeli tax resident subject to the EOI request 14 days prior to transmission of the requested information. The official template of the notification content states that Israel has received an EOI request from a specified jurisdiction and that it is about to respond to the requesting jurisdiction within 14 days unless a court stay order is granted. The notification does not contain reference to the information which is about to be exchanged or information provided by the requesting jurisdiction. The content of the notification appears to be in line with the standard.

*All other information exchanged (ToR C.3.2)*

188. The rights and safeguards described in the previous section apply equally to information provided in a request, information transmitted in response to a request and any background documents to such requests

**Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is in place, <u>but certain aspects of the legal implementation of the element need improvement.</u></b>	
Factors underlying recommendations	Recommendations
Information received under <u>agreements which do not provide for relief from double taxation will be treated only pursuant to Israel's domestic confidentiality rules which allow use of information going beyond the standard.</u>	Israel should ensure that <u>confidentiality rules concerning information received under agreements which do not provide for relief from double taxation are in line with the standard.</u>
Phase 2 rating	
<b>Compliant: <u>Largely compliant.</u></b>	

**C.4. Rights and safeguards of taxpayers and third parties**

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

*Exceptions to requirement to provide information (ToR C.4.1)*

189. The Phase 2 review concluded that Israel's legal framework and practices concerning rights and safeguards of taxpayers and third parties are in line with the standard. There has been no change in this area reported since then.

190. All Israeli EOI relations allow for exception from the obligation to provide the requested information akin to the exemption in article 26 (3) of the OECD Model Tax Convention. As discussed in Part B of this report, the scope of protection of information covered by this exception in Israel's domestic law is consistent with the international standard.

191. Israeli DTCs with the UK and with Sweden do not contain express safeguards that allow the contracting parties to decline to supply information

whose disclosure would be contrary to public policy. This is not consistent with the international standard and it is recommended that Israel renegotiates these two DTCs to bring them up to the standard. However, as Israel signed the Multilateral Convention this is not a concern in practice because Israel can exchange information with these partners in line with the standard under the Convention once it comes into force in Israel.

192. As discussed in section B.1.5, there was no case during the period under review where a person refused to provide the requested information because of professional privilege. Israel also did not decline to provide the requested information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>

### **C.5. Timeliness of responses to requests for information**

The jurisdiction should provide information under its network of agreements in a timely manner.

#### ***Responses within 90 days (ToR C.5.1)***

193. During the Phase 2 review Israel received 139 requests related to direct taxes over the period 1 July 2010 to 30 June 2013. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked). Requests are counted as per request letters regardless of the number of entities to which the request relates. A request is counted as one even if it relates to a number of entities and requests several pieces of information.

	Jul-Dec 2010		2011		2012		Jan-Jun 2013		Total	Average
	num.	%	num.	%	num.	%	num.	%		
Total number of requests received	20	100%	31	100%	59	100%	29	100%	139	100%
Full response: < 90 days	13	65%	12	39%	14	24%	5	17%	44	32%
≤ 180 days (cumulative)	16	80%	16	52%	15	25%	9	31%	56	40%
≤ 1 year (cumulative)	17	85%	19	61%	28	48%	11	38%	75	54%
> 1 year+	0	0%	7	23%	6	10%	0	0%	13	9%
Declined for valid reasons	0	0%	0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide information requested	0	0%	0	0%	0	0%	0	0%	0	0%
Requests still pending at date of review	3	15%	5	16%	25	42%	18	62%	51	37%

194. During the current period under review, i.e. from 1 July 2013 till 30 June 2015, Israel received 128 requests. The following table shows the timeliness statistics in respect of the current period under review using the same methodology as the Phase 2 table.

	Jul-Dec 2013		2014		Jan-Jun 2015		Total	
	num.	%	num.	%	num.	%	num.	%
Total number of requests received	40	100%	62	100%	26	100%	128	100%
Full response: ≤ 90 days	6	15%	5	8%	4	15%	15	12%
≤ 180 days (cumulative)	7	18%	15	24%	9	35%	31	24%
≤ 1 year (cumulative)	14	35%	29	47%	19	73%	62	48%
> 1 year	24	60%	26	42%	1	4%	51	40%
Declined for valid reasons	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	0	0	0	0	0	0	0	0
Requests still pending at date of review	2	5%	7	11%	6	23%	15	12%

195. As the tables show the number of requests received per year is about the same with a mild increase over the years. The time needed to respond to requests has not improved since the Phase 2 review and in most benchmarks has even deteriorated. During both reviews about half of received requests was responded within a year however the number of requests responded within 90 days has declined from 32% during the Phase 2 to 12% in the current review and the number of requests responded within 180 days declined from 40% to 24%. Although most requests related to accounting information and in about half of the cases the information needed to be obtained from the taxpayer or a bank such long response times are not satisfactory and are in many cases not compatible with effective exchange of information.

According to the Israeli authorities the average response time has, however, significantly improved after the period under review as a consequence of the recently introduced measures (see further C.5.2).

196. The main difficulties confronted by the tax authority in obtaining and providing the requested information remain the same as during the Phase 2 review. The main difficulties during the reviewed period related to identification of the holder of the information, to obtaining information from persons which are not contactable and to obtaining banking information (see further section B.1). The Competent Authority uses all available sources of information to identify the relevant persons such as searching the tax database which includes information from the Registrar of Companies, the social security authority or the registry of real estates, using other government IT systems and open sources. In cases where the information holder is not contactable the tax authority repeatedly tries to contact the person using all measures available under the law and appropriate enforcement measures are applied. Negative impact on timeliness of responses had also time needed for clarification of requests (see further section C.1.1 and C.5.2).

197. Twelve percent of all received requests over the period under review are pending at the date of the on-site visit. This represents an improvement since the Phase 2 review where at the time of the on-site visit 37% of received requests were pending. This can be mainly attributed to the changes introduced after the period under review (see further C.5.2) and improved co-operation with Israel's main EOI partner. The following table gives summary of the pending requests:

Reason for pending	Received in	Received in	Received in	Total
	Jun-Dec 2013	2014	Jan-Jun 2015	
Completion of steps by the local tax office involving obtaining information directly from the taxpayer	2	1	2	5
Waiting for clarification from the requesting jurisdiction	0	6	3	9
Waiting for provision of information from banks	0	0	1	1

198. Over the period under review Israel did not systematically provide updates on the status of requests where information cannot be provided within 90 days unless specifically requested. This has also been confirmed by peers. Since implementation of the new EOI database allowing automatic monitoring deadlines in September 2015 and further changes described in C.5.2 Israel started to provide status updates systematically. However as this happened after the period under review it remains to be adequately confirmed in practice.

### ***Organisational process and resources (ToR C.5.2)***

199. The Phase 2 report identified several areas where improvement was recommended. These areas covered mainly (i) stipulating and respecting deadlines for each step of handling EOI requests, (ii) effective monitoring of deadlines followed by reminders in all cases if breached, (iii) formalisation of the process and criteria of assessing incoming requests, (iv) improvement in tools used for official communication between competent authorities and (v) increase of staffing in the EOI Unit.

200. Since the Phase 2 review Israel has made several changes in areas where need for improvement was identified in the Phase 2 report:

- New EOI database became operational in September 2015. The new EOI database is a computerised system providing management tools for handling EOI requests including automatic monitoring of deadlines. The system allows saving all EOI documents and generating alerts and statistics. All incoming requests are entered into the system by the EOI Unit secretary. The information entered in the system includes type of the request (incoming, outgoing), whether it is linked to other request, name of the applicant state, the EOI manager handling the request, date of receipt, the reference number, subject of the request or the tax years to which it relates (range or specific year). The system generates automatic alerts such as if acknowledgment of receipt is not sent, if the EOI Manager have not allocated request to his assistants, if no response is received from the local office or for pending clarification from the requesting jurisdiction. Israel is currently working on introducing alerts for monitoring 90 days after receipt of request. The system also allows producing reports and statistics based on variable criteria such as average response times per requested information or office handling the requests.
- EOI Unit staffing has been improved. The number of assistants in the EOI Unit has doubled from three at the time of the Phase 2 review to the current six. Assistants support work of three permanent employees. The number of permanent employees has not increased since the Phase 2 review however the process for recruitment of two new employees has been started.
- The process of handling incoming request has been formalised through internal guidelines describing each step in handling incoming request from receipt until providing the final response. Each step in handling of requests has to be entered in the EOI database which monitors progress made and generates alerts where the procedure is not followed.

- Since October 2015 the Israeli Competent Authority started to use more efficient tools for communication with its EOI partners. Communication through emails with encrypted attachments is the preferred way of communication. If this is not possible communication is carried out through fax or express post allowing tracking of the delivery. If the requested information is sent by post it is always followed by an email request for acknowledgement.
- The Israeli Competent Authority held several meetings with its main EOI partner to improve their co-operation. As a result better communication was established which allows for faster provision of clarifications (if required) and streamlined communication on the status of requests where information has not yet been provided.

201. To sum up, Israel has made improvement in important areas identified in the Phase 2 report as needing improvement. However, most of these improvements were made after the end of the period under review (i.e. June 2015) and are too recent to have sufficient impact in practice. This is especially the case with full implementation of the new EOI database which appears crucial for monitoring of handling of EOI requests and provision of status updates. It is also important to ensure that the internal deadlines are properly stipulated and communicated by the EOI Unit and respected by the tax offices gathering the requested information. As indicated in section C.1.1 room for improvement still exists in communication between Israel and its EOI partners to avoid delays caused by clarifications and to streamline the process of providing information which is relevant for the investigation in the requesting jurisdiction so that the information is provided in time and in the requested quality. It is therefore recommended that Israel addresses these issues.

***Absence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information (ToR C.5.3)***

202. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no aspects of Israel's EOI agreements, domestic laws or practices that impose additional restrictive conditions on the exchange of information.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>

Phase 2 rating	
Partially compliant.	
Factors underlying recommendations	Recommendations
<p>Israel provided the requested information within 90 days in <u>12%32%</u>, and within one year in <u>48%54%</u>, of requests received over the period under review. <u>It is also noted that R</u>response times increased since the Phase 2 review where <u>32% of requests were responded within 90 days and 54% within one year.</u> over the period under review as Israel was able to respond <u>65% of requests within 90 days in the second half of 2010 and 17% in the first half of 2013.</u></p>	<p>Israel should ensure that internal deadlines for obtaining and providing the requested information are respected to enable it to respond to EOI requests in a timely manner.</p>
<p>Israel does not systematically provide updates to the requesting jurisdiction on the status of requests where the requested information is not provided within 90 days.</p>	<p>Israel should ensure that the requesting authority is updated on the status of the request in cases where it is not in position to respond within 90 days.</p>
<p>Although Israel's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved.</p>	<p>Israel should endeavour to improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.</p>
<p>The new EOI database allowing <u>automatic monitoring of deadlines and generating of status updates became fully operational in September 2015 and therefore its impact on handling EOI requests remains to be sufficiently tested.</u></p>	<p>Israel should monitor provision of <u>status updates so that the requesting authority is updated on the status of the request in cases where Israel is not in position to provide the requested information within 90 days.</u></p>
<p>Israel has recently made <u>several changes to improve its resources and streamline its processes which remain to be tested in practice.</u> However, certain improvements still need to be done especially in respect of <u>communication between Israel and its EOI partners so that the relevant information is provided in time and in the requested quality in all cases.</u></p>	<p>Israel should monitor recently made <u>changes and take further measures as necessary to facilitate effective exchange of information.</u></p>

## Summary of determinations and factors underlying recommendations

Overall Rating
<b>LARGELY COMPLIANT</b>

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>Phase 1 determination: The element is in place.</b>	Israeli law does not ensure the availability of identity information in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years if the trust is operated by a resident trustee who is not an attorney or an accountant covered by AML obligations.	Israel should ensure the availability of identity information in respect of the settlors, trustees and beneficiaries of foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad in all cases.
<b>Phase 2 rating: Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>Phase 1 determination:</b> <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Israeli law does not ensure the availability of accounting records in respect of foreign resident trusts having a trustee in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad for a period of 10 years.	Israel should ensure that accounting records consistent with the standard are maintained for foreign resident trusts having a trustee resident in Israel and for trusts created by new immigrants and veteran returning residents which are vested with assets or income from assets abroad.
	Israeli law does not ensure availability of accounting records in respect of activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents for a period of 10 years.	Israel should ensure availability of accounting records in respect of activities outside of Israel of foreign companies that are managed and controlled in Israel by new immigrants or veteran returning residents.
<b>Phase 2 rating:</b> <b>Largely compliant.</b>		
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>Phase 1 determination:</b> <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	The tax authorities powers to obtain information from new immigrants, veteran returning residents and the trustees of foreign resident trusts having a trustee resident in Israel in respect of foreign source income are inadequate.	Israel should ensure that its authorities have powers to obtain information from new immigrants, veteran returning residents and trustees of foreign resident trusts which might be subject of an information request from its EOI partners.

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 2 rating:</b> <b>Largely compliant.</b></p>	<p>The use of information gathering powers for exchange of information purposes is subject to certain conditions which appear in line with the standard. Nevertheless, as they were introduced only in January 2016 their practical application remains to be sufficiently tested.</p>	<p>Israel should monitor application of conditions for use of information gathering powers for exchange of information purposes so that the information is exchanged in line with the standard.</p>
	<p>Several changes in the legal framework as well as in practice have been made since the Phase 2 review in order to improve access to banking information for tax purposes. These changes however took place only recently and therefore remain to be sufficiently tested.</p>	<p>Israel should monitor access to banking information for exchange of information purposes and if necessary take further measures to ensure timely access to all banking information as required under the standard.</p>
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)</p>		
<p><b>Phase 1 determination:</b> <b>The element is in place.</b></p>		
<p><b>Phase 2 rating:</b> <b>Largely compliant.</b></p>	<p>Under the newly amended Income Tax Ordinance the authorised official is required to notify the Israeli resident taxpayer subject of the request of the intention to supply information concerning the taxpayer at least 14 days prior to the supply of the information unless the requesting jurisdiction requested not to notify the taxpayer. As the amendment came into force only in January 2016 it remains to be sufficiently tested in practice.</p>	<p>Israel should monitor application of the notification requirement to ensure that it does not unduly prevent or delay effective exchange of information.</p>

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>	In some cases time taken by Israel to bring its signed EOI agreements into force was more than 36 months.	Israel should take necessary measures to bring its exchange of information agreements into force expeditiously.
<b>Phase 2 rating:</b> <b>Compliant.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>	Israel should continue to develop its exchange of information network with all relevant partners.	Israel should continue to develop its exchange of information network with all relevant partners.
<b>Phase 2 rating:</b> <b>Compliant.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>Phase 1 determination:</b> <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Information received under agreements which do not provide for relief from double taxation will be treated only pursuant to Israel's domestic confidentiality rules which allow use of information going beyond the standard.	Israel should ensure that confidentiality rules concerning information received under agreements which do not provide for relief from double taxation are in line with the standard.
<b>Phase 2 rating:</b> <b>Largely compliant.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>		
<b>Phase 2 rating: Partially compliant.</b>	Israel provided the requested information within 90 days in 12%, and within one year in 48%, of requests received over the period under review. It is also noted that response times increased since the Phase 2 review where 32% of requests were responded within 90 days and 54% within one year.	Israel should ensure that internal deadlines for obtaining and providing the requested information are respected to enable it to respond to EOI requests in a timely manner.
	The new EOI database allowing automatic monitoring of deadlines and generating of status updates became fully operational in September 2015 and therefore its impact on handling EOI requests remains to be sufficiently tested.	Israel should monitor provision of status updates so that the requesting authority is updated on the status of the request in cases where Israel is not in position to provide the requested information within 90 days.
	Israel has recently made several changes to improve its resources and streamline its processes which remain to be tested in practice. However, certain improvements still need to be done especially in respect of communication between Israel and its EOI partners so that the relevant information is provided in time and in the requested quality in all cases.	Israel should monitor recently made changes and take further measures as necessary to facilitate effective exchange of information.



## **Annex 1: Jurisdiction’s response to the review report<sup>13</sup>**

Israel fully supports the objectives of the Global Forum and is committed towards EOI as an important tool to fight tax evasion. Recent developments, as outlined below, demonstrate this.

An amendment to the Companies Law was approved by the Parliament in February 2016. The amendment cancels the possibility to issue bearer shares, and requires the conversion of existing bearer shares into registered shares, in order to exercise shareholder rights. It should be noted that only 11 companies have issued bearer shares, and most of them are inactive.

An amendment to the Income Tax Ordinance came into force on 1 January 2016. The amendment enables Israel to conclude international agreements solely for the purpose of exchange of information, and clarifies Israel’s Tax Authority information gathering powers in respect to exchange of information.

Israel also took several measures to improve access to banking information, as well as the timeliness of response to requested information. This includes streamlining the procedure for obtaining banking information, and the implementation of a new EOI database.

Israel signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Multilateral Convention was ratified on August 31<sup>st</sup> 2016.

Israel signed an inter-governmental agreement with the United States to implement FATCA provisions on June 30<sup>th</sup>, 2014. The agreement follows Model I IGA. In March 2016, Israel signed the Competent Authority Agreement with the United States’ Internal Revenue Service in order to implement the FATCA agreement. We are currently in the process of transferring the information according to the agreement.

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13. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

Israel has also committed to start to exchange automatic information in accordance with the Common Reporting Standard (CRS) in 2018, and signed the CRS Multilateral Competent Authority Agreement in May 2016.

Israel agrees with outcomes of the review. Recommendations made in the supplementary report will be studied thoroughly, and we will take effective measures to implement them.

## Annex 2: List of Israel’s exchange-of-information mechanisms

The table below contains the list of Israel’s agreements providing for exchange of information in tax matters signed by Israel as of 19 August 2016. These agreements allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention which has not yet come into force in Israel the date when the agreement entered into force indicates the date when it became effective in relation to the other jurisdiction.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	01-12-2013
2	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
3	Anguilla <sup>a</sup>	Multilateral Convention	Extended	01-03-2014
4	Argentina	Multilateral Convention	Signed	01-01-2013
5	Aruba <sup>b</sup>	Multilateral Convention	Extended	01-09-2013
6	Australia	Multilateral Convention	Signed	01-12-2012
7	Austria	Double Taxation Convention (DTC)	29-01-1970	26-01-1971
		Multilateral Convention	Signed	01-12-2014
8	Azerbaijan	Multilateral Convention	Signed	01-09-2015
9	Barbados	Multilateral Convention	Signed	01-Nov-2016
10	Belarus	DTC	11-04-2000	01-01-2004
11	Belgium	DTC	13-07-1972	01-04-1975
		Multilateral Convention	Signed	01-04-2015
12	Belize	Multilateral Convention	Signed	01-09-2013
13	Bermuda <sup>a</sup>	Multilateral Convention	Extended	01-03-2014
14	Brazil	DTC	12-12-2002	21-09-2005
		Multilateral Convention	Signed	01-10-2016

	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
15	British Virgin Islands <sup>a</sup>	Multilateral Convention	Extended	01-03-2014
16	Bulgaria	DTC	18-01-2000	01-01-2003
		Multilateral Convention	Signed	01-07-2016
17	Cameroon	Multilateral Convention	Signed	01-10-2015
18	Canada	DTC	21-07-1975	27-07-1976
		Multilateral Convention	Signed	01-03-2014
19	Cayman Islands <sup>a</sup>	Multilateral Convention	Extended	01-01-2014
20	Chile	Multilateral Convention	Signed	01-Nov-2016
21	China (People's Republic of)	DTC	08-04-1995	01-01-1996
		Multilateral Convention	Signed	01-02-2016
22	Colombia	Multilateral Convention	Signed	01-07-2014
23	Costa Rica	Multilateral Convention	Signed	01-08-2013
24	Croatia	DTC	26-09-2006	01-01-2008
		Multilateral Convention	Signed	01-06-2014
25	Curaçao <sup>b</sup>	Multilateral Convention	Extended	01-09-2013
26	Cyprus <sup>d</sup>	Multilateral Convention	Signed	01-04-2015
27	Czech Republic	DTC	12-12-1993	23-12-1994
		Multilateral Convention	Signed	01-02-2014
28	Denmark	DTC	09-09-2009	29-12-2011
		Multilateral Convention	Signed	01-06-2011
29	Dominican Republic	Multilateral Convention	Signed	Not yet in force in Dominican Republic
30	El Salvador	Multilateral Convention	Signed	Not yet in force in El Salvador
31	Estonia	DTC	29-06-2009	28-12-2009
		Multilateral Convention	Signed	01-11-2014
32	Ethiopia	DTC	02-06-2004	01-01-2008
33	Faroe Islands <sup>c</sup>	Multilateral Convention	Extended	01 06 2011
34	Finland	DTC	08-01-1997	01-01-1999
		Multilateral Convention	Signed	01-06-2011
35	France	DTC	31-07-1995	18-07-1996
		Multilateral Convention	Signed	01-04-2012

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
36	FYROM	DTC	23-08-2012	Not in force
37	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
38	Georgia	DTC	12-05-2010	01-01-2012
		Multilateral Convention	Signed	01-06-2011
39	Germany	DTC	09-07-1962	21-08-1966
		New DTC	21-08-2014	Not yet in force
		Multilateral Convention	Signed	01-12-2015
40	Ghana	Multilateral Convention	Signed	01-09-2013
41	Gibraltar <sup>a</sup>	Multilateral Convention	Extended	01-03-2014
42	Greece	DTC	24-10-1995	06-03-1998
		Multilateral Convention	Signed	01-09-2013
43	Greenland <sup>c</sup>	Multilateral Convention	Extended	01-06-2011
44	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
45	Guernsey <sup>a</sup>	Multilateral Convention	Extended	01-08-2014
46	Hungary	DTC	14-05-1991	13-11-1992
		Multilateral Convention	Signed	01-03-2015
47	Iceland	Multilateral Convention	Signed	01-02-2012
48	India	DTC	29-01-1996	15-05-1996
		Multilateral Convention	Signed	01-06-2012
49	Indonesia	Multilateral Convention	Signed	01-05-2015
50	Ireland	DTC	20-11-1995	24-12-1995
		Multilateral Convention	Signed	01-09-2013
51	Isle of Man <sup>a</sup>	Multilateral Convention	Extended	01-03-2014
52	Italy	DTC	08-09-1995	01-01-1999
		Multilateral Convention	Signed	01-05-2012
53	Jamaica	DTC	29-06-1984	03-09-1985
		Multilateral Convention	Signed	Not yet in force in Jamaica
54	Japan	DTC	08-03-1993	24-12-1993
		Multilateral Convention	Signed	01-10-2013
55	Jersey <sup>a</sup>	Multilateral Convention	Extended	01-06-2014

	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
56	Kazakhstan	Multilateral Convention	Signed	01-08-2015
57	Kenya	Multilateral Convention	Signed	Not yet in force in Kenya
58	Korea	DTC	18-03-1997	01-01-1998
		Multilateral Convention	Signed	01-07-2012
59	Latvia	DTC	20-02-2006	01-01-2007
		Multilateral Convention	Signed	01-11-2014
60	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
61	Lithuania	DTC	11-05-2006	01-01-2007
		Multilateral Convention	Signed	01-06-2014
62	Luxembourg	DTC	13-07-2004	22-05-2006
		Multilateral Convention	Signed	01-11-2014
63	Malta	DTC	28-07-2011	01-01-2014
		Multilateral Convention	Signed	01-09-2013
64	Mauritius	Multilateral Convention	Signed	01-12-2015
65	Mexico	DTC	19-07-1999	01-01-2000
		Multilateral Convention	Signed	01-09-2012
66	Moldova	DTC	23-11-2006	01-01-2008
		Multilateral Convention	Signed	01-03-2012
67	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
68	Montserrat <sup>a</sup>	Multilateral Convention	Extended	01-10-2013
69	Morocco	Multilateral Convention	Signed	Not yet in force in Morocco
70	Nauru	Multilateral Convention	Signed	01-10-2016
71	Netherlands	DTC	02-07-1973	09-09-1974
		Multilateral Convention	Signed	01-09-2013
72	New Zealand	Multilateral Convention	Signed	01-03-2014
73	Nigeria	Multilateral Convention	Signed	01-09-2015
74	Niue	Multilateral Convention	Signed	01-10-2016
75	Norway	DTC	02-11-1966	11-01-1968
		Multilateral Convention	Signed	01-06-2011
76	Panama	DTC	08-11-2012	01-01-2015

	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
77	Philippines	DTC	09-06-1992	27-05-1997
		Multilateral Convention	Signed	Not yet in force in Philippines
78	Poland	DTC	22-05-1991	01-01-1992
		Multilateral Convention	Signed	01-10-2011
79	Portugal	DTC	26-09-2006	18-02-2008
		Multilateral Convention	Signed	01-03-2015
80	Romania	DTC	15-06-1997	01-01-1999
		Multilateral Convention	Signed	01-11-2014
81	Russia	DTC	25-04-1994	01-01-2001
		Multilateral Convention	Signed	01-07-2015
82	San Marino	Multilateral Convention	Signed	01-12-2015
83	Saudi Arabia	Multilateral Convention	Signed	01-04-2016
84	Senegal	Multilateral Convention	Signed	Not yet in force in Senegal
85	Seychelles	Multilateral Convention	Signed	01-10-2015
86	Singapore	DTC	19-05-2005	06-12-2005
		Multilateral Convention	Signed	01-05-2016
87	Sint Maarten <sup>b</sup>	Multilateral Convention	Extended	01-09-2013
88	Slovak Republic	DTC	08-09-1999	23-05-2000
		Multilateral Convention	Signed	01-03-2014
89	Slovenia	DTC	30-01-2007	01-01-2008
		Multilateral Convention	Signed	01-06-2011
90	South Africa	DTC	10-02-1978	27-05-1980
		Multilateral Convention	Signed	01-03-2014
91	Spain	DTC	30-11-1999	20-11-2000
		Multilateral Convention	Signed	01-01-2013
92	Sweden	DTC	22-12-1959	03-06-1960
		Multilateral Convention	Signed	01-09-2011
93	Switzerland	DTC	02-07-2003	22-12-2003
		Multilateral Convention	Signed	Not yet in force in Switzerland
94	Chinese Taipei	DTC	24-12-2009	01-01-2010

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
95	Thailand	DTC	22-01-1996	01-01-1997
96	Tunisia	Multilateral Convention	Signed	01-02-2014
97	Turkey	DTC	14-03-1996	01-01-1999
		Multilateral Convention	Signed	Not yet in force in Turkey
98	Turks & Caicos Islands <sup>a</sup>	Multilateral Convention	Extended	01-12-2013
99	Uganda	Multilateral Convention	Signed	01-09-2016
100	Ukraine	DTC	26-12-2003	01-01-2007
		Multilateral Convention	Signed	01-09-2013
101	United Kingdom	DTC	26-09-1962	13-02-1963
		Multilateral Convention	Signed	01-10-2011
102	United States	DTC	26-01-1993	01-01-1995
		Multilateral Convention	Signed	Not yet in force in the United States
103	Uruguay	Multilateral Convention	Signed	Not yet in force in Uruguay
104	Uzbekistan	DTC	15-09-1998	01-01-2000
105	Viet Nam	DTC	04-08-2009	01-01-2010

*Note:* a. Extension by United Kingdom.

b. Extension by the Netherlands.

c. Extension by Denmark.

d. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people living on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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## **Annex 3: List of all laws, regulations and other material**

### **Commercial laws**

Associations Law, 5740-1980

Companies Law, 5759-1999

Partnership Ordinance, 1975

Trust Law, 5739-1979

Monetary Law, 5771-2011

### **Regulated activities and AML/CFT laws**

Prohibition on Money Laundering Law, 5760-2000

Bank of Israel Law, 5770-2010

Banking Ordinance, 1941

Capacity and Guardianship Law, 5722-1962

Regulation of Investment Advising, Investment Marketing and Investment  
Portfolio Management Law, 5755-1995

Securities Law, 5728-1968

### **Tax laws**

Income Tax Ordinance, 5721-1961

Income Tax Regulations, 5724-1963

Value Added Tax Law, 5736-1975

## **Other relevant laws, regulations and other material**

Administrative Offences Law, 5746-1985

Administrative Offenses Regulations, 5747-1987

Archives Law, 5715-1955

Archives Regulations, 5746-1986

Bar Association Law, 1961

Bar Association Rules, 5731-1971

Capacity and Guardianship Law, 5722-1962

Protection of Privacy Law, 5741-1981

Succession Law, 5725-1965

## **Annex 4: People interviewed during the on-site visit**

### **Israel Tax Authority**

International Tax Division

Tax Registration Division

### **Corporations Authority**

Registrar of Companies

Registrar of Partnerships

Registrar of Public Trusts

Registrar of Associations

### **Representatives of banks**



For more information  
**Global Forum on Transparency and  
Exchange of Information for Tax Purposes**  
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