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TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

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Peer Review Report on the Exchange of Information on Request

MALTA

2020 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Malta 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. 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 reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
CU	The Compliance Unit within the Malta Business Registry
CfR	The Commissioner for Revenue
CID	The Compliance and Investigations Directorate within the Office of the Commissioner for Revenue
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
EU	European Union
FATF	Financial Action Task Force
FIAU	The Financial Intelligence Analysis Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
MFSA	The Malta Financial Services Authority
MBR	The Malta Business Registry
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PMLA	The Prevention of Money Laundering Act

PMLFTR	The Prevention of Money Laundering and Funding of Terrorism Regulations
TIEA	Tax Information Exchange Agreement
TTA	Trusts and Trustees Act
VFA	Virtual Financial Assets

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Malta on the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force as at 30 April 2020 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of EOI requests received and sent during the review period from 1 April 2016 to 31 March 2019. This report concludes that Malta is to be rated overall **Partially Compliant** with the international standard. In 2013 the Global Forum evaluated Malta (the 2013 Report) and concluded that Malta was rated Largely Compliant overall.

2. The following table shows Malta's review results under this report as compared to those in the most recent peer review report previously published in this regard.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2013)	Second Round Report (2020)
A.1	Availability of ownership and identity information	LC	PC
A.2	Availability of accounting information	LC	PC
A.3	Availability of banking information	C	PC
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	C	PC
	OVERALL RATING	**LC**	**PC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. In 2013, Malta was rated Largely Compliant with the international standard of transparency and exchange of information on request. In particular, the legal and regulatory framework was fully in place to ensure the availability and access to information on legal ownership and accounting information of relevant entities and banking information. The main recommendation given to Malta was to ensure that its supervisory and enforcement powers were sufficiently exercised in practice to support the legal requirements established in the Co-operation Regulations, which was a comprehensive legislation in Malta to ensure the availability of ownership and identity information and accounting information in all cases (Elements A1 and A2 were rated Largely Compliant). In addition, share warrants to bearer were possible in Malta, and Malta was recommended to closely monitor their issuance and ensure that ownership information is effectively available for EOI purposes in practice.

4. Since the first round review, Malta has amended its Companies Act to prohibit the issuance of share warrants, but Malta has not taken sufficient measures to appropriately and fully address these recommendations in relation to the enforcement and supervision of the Co-operation Regulations.

Key recommendations

5. One of the key recommendations given to Malta in this report relates to the lack of monitoring and supervision on the implementation of the Co-operation Regulations. As mentioned above, the Co-operation Regulations provide for comprehensive requirements to relevant entities in Malta to ensure the availability of ownership, accounting and banking information. The 2013 Report recommended that Malta continues its efforts to ensure that its supervisory and enforcement powers are sufficiently exercised in practice to support the various legal requirements set out in the Co-operation Regulations as the effectiveness of the Regulations was not able to be tested since it was recently introduced during the last round review period. During this review period, Malta has not taken sufficient measures to address the recommendation given in the 2013 Report. This may cause concerns regarding the availability of ownership, accounting and banking information of all entities in all cases, in particular considering that the annual filings rates of companies and partnerships and the tax filings rates of taxpayers in Malta are very low, and no sufficient enforcement measures have been taken by the Maltese authorities to address those issues. Therefore, Malta is recommended to strengthen its monitoring and supervision activities to effectively address the recommendation given in the first round review.

6. The other issue identified in this report that relates to the availability of ownership information and accounting information is that there were over 10 000 inactive companies registered with the Malta Business Registry (MBR). Malta confirmed actions have been taken to strike off those inactive companies, but since some of the actions were recently taken in 2020, their effectiveness is not able to be tested. In addition, there are over 12 000 inactive companies registered with the tax authorities (CfR). Those inactive companies not only caused concerns regarding the availability of ownership information and accounting information of those companies, but also actually caused failures in practice for Malta to provide the related information to its partners. Therefore, Malta is recommended to take effective actions to reduce the large number of inactive companies to ensure the availability of ownership and accounting information of all companies in Malta.

7. The EOIR standard was strengthened in 2016 to require the availability of beneficial ownership information for relevant entities including trusts. The definition of beneficial owners of trusts in Malta under the Maltese AML legislation (which is also the reference definition of beneficial owners in all other related legislations, excluding the Co-operation Regulations) does not require to identify natural persons as the beneficial owners of the trust where the settlor, protector, and/or trustee of the trust or similar legal arrangement are not natural persons. This is not in line with the standard. However, Malta stated that the definition of beneficial owners of trusts under the Co-operation Regulations are not referenced to the AML legislation, and they also issued new binding guidelines for the Co-operation Regulations, which clarified that the ownership information required to be kept by entities include both legal ownership and beneficial ownership, and only natural persons can be identified as beneficial owners. Therefore, the legal gaps as identified under the AML legislation is remedied by the Co-operation Regulations. Since the guidelines under the Co-operation Regulations were issued quite recently, Malta is recommended to monitor the implementation of the guidelines and ensure their effectiveness in practice.

8. The legal framework for the availability of ownership and banking information is determined to be in place, but the supervisory activities related to the requirements on beneficial ownership of bank account holders appears to be weak in Malta and there is a lack of sufficient monitoring activities to the banks during the current review period, in particular those on banks' obligations to maintain the banking information. Therefore, Malta is recommended to strengthen its enforcement and supervision measures to banks.

9. Since the 2013 Report, the number of requests received by Malta has been sharply increased from 81 to 486. The timeliness of Malta's responses to requests has been deteriorated, which according to Malta is due to various reasons such as shortages in staff resources. Malta is recommended to take

actions to ensure that all requests can be responded within a timely manner and ensure status updates can always be provided to its partners where information can not be provided within 90 days.

Overall rating

10. As Malta was not able to fully address the recommendations given in the 2013 Report regarding elements A1 and A2 and there are no sufficiently strengthened supervision and enforcement measures taken for the implementation of the Co-operation Regulations thus ratings for A1 and A2 in this report are downgraded to Partially Compliant from Largely Compliant. For A3, due to the lack of sufficient monitoring and enforcement measures to banking institutions in Malta during the current review period, element A3 is downgraded from Compliant to Partially Compliant. During this round review, the response timeliness have been greatly deteriorated compared with those in the first round, thus the rating for C5 is downgraded from Compliant to Partially Compliant. Elements B.1, B.2, C.1, C.2, C.3 and C.4 are rated Compliant.

11. In view of the above, the overall assigned rating for Malta is Partially Compliant.

12. This report was approved at the Peer Review Group of the Global Forum on 9 July 2020 and was adopted by the Global Forum on 18 August 2020. A follow up report on the steps undertaken by Malta to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2021 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place		
Partially Compliant	The Co-operation Regulations, which came into force in July 2011, establish comprehensive requirements on the availability of ownership and identity information and penalties for non-compliance. However, the monitoring and supervision work conducted to check whether the Co-operation Regulations are effectively implemented in practice or not are not sufficient, which causes concerns on the availability of ownership and identity information in all cases to all related entities.	Malta should enhance its monitoring and supervision activities to ensure that its supervisory and enforcement powers are sufficiently exercised in practice to support the legal requirements established by the Co-operation Regulations, which ensure the availability of ownership and identity information in all cases.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	There were over 10 000 companies registered with the Malta Business Registry that have not complied with their filing requirements for more than five years during the review period (representing 14% of the companies registered with the Registry). The Malta Business Registry has taken actions to strike off those inactive companies, but their effectiveness is not able to be tested. In addition, there are 12 351 companies registered with the Commissioner for Revenue that have not complied with their filing requirements for more than five years (representing 20% of the companies registered with the Commissioner). Such companies cause concerns on the availability of their ownership and identity information, and in practice gave rise to either delays in providing the information or failure to provide the information.	Malta is recommended to take actions to reduce the large number of inactive companies and monitor their effectiveness in order to ensure availability of the ownership and identity information of all companies in Malta.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant	The Co-operation Regulations, which came into force in July 2011, establish comprehensive requirements on the availability of accounting information and penalties for non-compliance. However, the monitoring and supervision work conducted by the tax authorities to check whether the Co-operation Regulations are effectively implemented in practice or not need to be strengthened, otherwise there may be concerns on the availability of accounting information and underlying documentation in all cases to all related entities.	Malta should enhance its monitoring and supervision activities to ensure that its supervisory and enforcement powers are sufficiently exercised in practice to support the legal requirements established by the Co-operation Regulations, which ensure the availability of accounting information in all cases.
	There were over 10 000 inactive companies registered with the Malta Business Registry (representing 17% of the companies registered with the Registry), The Malta Business Registry has taken actions to strike off those inactive companies, but their effectiveness is not able to be tested. In addition, there are 12 351 inactive companies registered with the Commissioner for Revenue (representing 20% of the companies registered with the Commissioner). Such companies caused concerns on the availability of their accounting information, and in practice gave rise to either delays in providing the information or failure to provide the information.	Malta is recommended to take actions to reduce the large number of inactive companies and ensure their effectiveness in order to ensure availability of the accounting information and underlying documentations of all companies in Malta.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
Partially Compliant	The supervisory activities related to requirements on banking information including beneficial ownership of bank account holders is weak in Malta and there is no systematic monitoring activities on-going with respect to the banks obligations to maintain banking information, in particular the beneficial ownership information of account holders.	Malta is recommended to monitor its strengthened supervision programmes and apply effective sanctions in cases of non-compliance, so that banking information including beneficial ownership information of bank account holders is available in all cases in line with the standard.
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) *(ToR B.1)*		
The legal and regulatory framework is in place		
Compliant		
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 *(ToR B.2)*		
The legal and regulatory framework is in place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Partially Compliant	The Maltese competent authority has not been able to answer incoming requests in a timely manner in many cases during the current review period due to various reasons such as difficulties in acquiring staff and other resources, as a result of which the deadlines, as specified in related regulations and guidance, are not effectively implemented.	Malta should ensure that there are always sufficient staff and other resources available to handle EOI requests, and that the related processes, in particular the deadlines, are effectively implemented in practice to enable it to respond to EOI requests in a timely manner, and consider further what measures could be taken to shorten the response time.
	During the three years under review, Malta did not always provide an update or status report to its EOI partners within 90 days when it was unable to provide a substantive response within that time.	Malta is recommended to ensure status updates can always be provided to its partners where information cannot be provided within 90 days.

Overview of Malta

13. Malta is an archipelago in the centre of the Mediterranean Sea, including the Islands of Malta and of Gozo. Malta has a population of 493 559, and Maltese and English are the official languages.

Legal system

14. Malta achieved independence from the United Kingdom in 1964 and became a member of the European Union (EU) in 2004. Malta is a republic with a parliamentary system of government. Its legal system is largely based on civil law, but with English law influences, particularly in commercial and financial law; however since Malta is an EU member state, EU law has been the major external influence in the development of the Maltese legislation.

15. Ministers of the Maltese government may issue Regulations as subsidiary legislation in accordance with the power that is conferred in the primary legislation. Both primary and subsidiary legislations need to be passed through Parliament and are published in the Government Gazette. Authorities like the MFSA, on the other hand may be empowered by primary legislation to make by-laws which usually take the form of an order or prohibition that are binding. For details, reference can be made to the first round review report (Phase 2) (paragraphs 14-20).

Tax system

16. There is no change to the tax system in Malta since the last review.[1] The two main legislative sources of tax law are the Income Tax Act and the Income Tax Management Act (collectively Income Tax Acts). Any person (whether natural or legal person) who is both domiciled and resident in Malta is subject to tax on a worldwide basis.

1. Refer to paragraphs 28-30 of the 2013 Report.

17. The statutory rate of tax for corporations is 35% and for individuals the rates are progressive, ranging from 15% to 35%. Malta has a full imputation system of taxation. In Malta, there is no withholding tax on dividends paid to non-resident shareholders and no tax is imposed on interest or royalties paid to a non-resident person. Income or gains from holdings participating in foreign companies are exempt from tax and there is no tax on gains realised from transfers of corporate securities by a non-resident as long as the securities are not held in a company whose assets consist principally of immovable property in Malta.

18. Malta has a broad network of partners for exchange of information for tax purposes with 77 Double Tax Conventions (DTCs) and 4 Tax Information Exchange Agreement (TIEA). Malta is also a party to the Convention on Mutual Administrative Assistance in Tax Matters (MAC) and has transposed the EU Council Directives on Administrative Co-operation for tax purposes. In Malta, all EOI instruments have the same effect in domestic courts as an act of the Parliament, and directly supersede any inconsistent domestic laws.

Financial services sector

19. The financial services industry in Malta is a main pillar of the Maltese economy, contributing around 6% of the Gross Value Added. Malta is recorded to have experienced growth in the financial services Gross Value Added equal to 4.1% in 2018. The financial service sector is composed of three sub-sectors: financial activities except insurance and funding account for 64.0%; the insurance, reinsurance and pension funds activities account for 14.2%; and activities auxiliary to financial services and insurance activities account for 21.8%. At the end of 2018, the aggregate value of total assets held by Maltese banks stood at EUR 44.04 billion.[2]

20. As of 31 December 2018, there were 24 credit institutions, 53 financial institutions authorised to provide payment services or to issue electronic money, 435 insurance intermediaries (both licensed individuals and companies), 24 recognised fund administrators, 665 licensed investment funds (including sub-funds), 171 authorised trustees, 10 authorised nominees and 186 regulated company service providers. Since the last review, Malta enacted the "Virtual Financial Assets Act" (VFA Act), so that a VFA agent may provide regulated VFA services.

21. All financial services in Malta are regulated, monitored and supervised by the Malta Financial Services Authority (MFSA).

2. Refer to: https://nso.gov.mt/en/News_Releases/Documents/2020/02/News2020_034.pdf.

22. The Malta Business Registry (MBR) was set up in April 2018. The duties and functions pertaining to the Office of the Registrar of Companies that was housed within the MFSA have now been transferred and absorbed by the MBR, including maintaining a public registry where documents relating to all Maltese companies, partnerships and branches of foreign entities are kept and are made available to the public. The MBR is headed by the Registrar, who needs to ensure compliance with any provisions of the Companies Act through its investigatory powers as accorded by law. The MBR will integrate all the entity registration functions in Malta, including those that currently are with the Registrar for Legal Persons, e.g. foundations and associations.

AML Framework

23. The Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations provide the legal framework of Malta's anti-money laundering laws. The Regulations require every subject person (i.e. the AML obliged persons) to take appropriate steps, proportionate to the nature and size of its business, to identify and assess the risks of money laundering and funding of terrorism that arise out of its activities or business, taking into account risk factors including those relating to customers, countries or geographical areas, products, services, transactions and delivery channels. Subject persons also need to take in consideration any national or supranational risk assessments relating to risks of money laundering and the funding of terrorism. This risk assessment needs to be regularly reviewed and kept up-to-date.

24. The supervisory functions are carried out by the Financial Intelligence Analysis Unit (FIAU), which is responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism, and for the AML/CFT supervision of subject persons in Malta.

25. Malta was evaluated by MONEYVAL in its 5th round of evaluations to assess the compliance with the FATF 2012 Recommendations, and the 5th Round Mutual Evaluation Report (MER) of Malta was adopted by the MONEYVAL Plenary in July 2019. The 5th MER has identified gaps in terms of the supervision and enforcement of the AML laws, and has concluded that Malta has achieved a low level of effectiveness as such. Deficiencies have also been identified in the terms of transparency of legal persons and legal arrangements, in particular on the availability of the beneficial ownership

information.[3] Following this evaluation, Malta has taken various measures, including a nation-wide plan intended to address all the recommendations made by the 5th MER.

Recent developments

26. Since the last review, Malta has implemented both the Directive (EU) 2015/849 (the Fourth AML Directive) and Directive (EU) 2018/843 (the Fifth AML Directive), which increased the transparency in the identification of the beneficial owners to ensure that information on beneficial owners of all entities in Malta are available in Malta.

27. The Co-operation with Other Jurisdictions on Tax Matters Regulations (Co-operation Regulations), the main legislation for EOI in Malta, were amended in 2017 to include an updated definition of beneficial owners to reflect the definition as that in the international tax standard, and then in 2019 Regulation 6 of the Co-operation Regulations concerning applicable penalties for maintenance and submission of information was also revised.[4] Furthermore, binding guidelines for the Co-operation Regulations were issued under Article 96(2) of the Income Tax Act, which clarified and removed doubts on the interpretation of particular provisions found in the Co-operation Regulations that deal with beneficial ownership in relation to entities, trusts and banking information. These guidelines also provided guidance on measures that are to be taken in order to ensure keeping of updated information.

28. Following a consultation document issued by the MFSA on 22 October 2019 and the feedback statement issued thereafter on 9 April 2020, any legal persons, lawyers, accountants, auditors and notaries that carry out relevant financial business or relevant activity under the AML laws will also fall within the company service provider regulatory framework within the remit of the MFSA and they will therefore be subject to licensing and ongoing supervision like all other regulated company service providers ("CSPs") already licensed in Malta. Such supervision would include a review of client company files to ensure that CSPs have obtained and maintained all beneficial ownership details about the company they service. The MFSA also has wide powers to request such information in terms of Article 10 of the Company Service Providers Act, which it can then exchange with other competent authorities, including tax authorities.

3. See the 5th MONEYVAL MER: https://rm.coe.int/moneyval-2019-5-5th-round-mer-malta2/168097396c.
4. See https://legislation.mt/eli/sl/123.127/eng/pdf.

Part A: Availability of information

29. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

A.1. Legal and beneficial ownership and identity information

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

30. Malta has multiple legislative frameworks in place that require the maintenance of legal ownership information of companies, partnerships, trusts, foundations and other relevant entities and arrangements, including the tax laws, company laws and AML laws. In particular, the Co-operation Regulations under the tax laws in force since July 2011 set out comprehensive legal requirements to ensure the availability of ownership and identity information of all entities in all cases. Malta's legal and regulatory framework for A.1 was determined to be in place in 2013.

31. In terms of implementation of the legal and regulatory framework in practice, in 2013 Malta was recommended to continue its efforts to ensure that its supervisory and enforcement powers are sufficiently exercised to support the legal requirements established by the Co-operation Regulations. During the current review period, Malta confirmed that monitoring and supervision activities were carried out as part of the compliance procedures used by the CfR in connection with Malta's full imputation system. However, such compliance procedures need to be enhanced in order to cater more specifically for the requirements under the Co-operation Regulations. Therefore, Malta is recommended to improve and strengthen the monitoring and supervision measures to ensure that the Co-operation Regulations are effectively implemented in practice.

32. In addition, a significant proportion of companies registered with the MBR and with the CfR are inactive. Such inactive companies cause concerns on the availability of their ownership and identity information, and in practice

gave rise to either delays in providing the information requested by peers or failure to provide the information. Malta is recommended to take actions to reduce the large number of inactive companies and ensure their effectiveness in order to ensure the availability of the ownership and identity information of all companies in Malta.

33. During the first round review, share warrants to bearer were possible in Malta, and Malta was recommended to closely monitor their issuance and ensure that ownership information is effectively available for EOI purposes in practice. Since then, Malta has amended the provisions under the Companies Act on the issuance of share warrants to bearer and such warrants are now prohibited. Holders of share warrants were obliged to surrender their share warrants to the company before 1 December 2017 and then the company had to complete the related registrations.

34. The standard was strengthened in 2016 and now requires that information on the beneficial ownership of entities and arrangements be available. The Co-operation Regulations set out a general requirement for all entities to keep legal and beneficial ownership information, but the Regulations also specify that owners for purposes of these regulations include "legal owners", without specifically referencing to beneficial owners. This could give rise to doubts on the interpretation of the relevant provision, but Malta issued new binding guidelines for the Co-operation Regulations in April 2020 to clarify that both legal owners and beneficial owners should be kept by entities. In addition, under the AML legal framework, a legal gap was identified in the definition of the beneficial owners of trusts, where the settlors and other non-beneficiary parties of a trust are not required to be "looked through" with a view to identify the ultimate natural persons who may exert control on the trusts. However, under the Co-operation Regulations, the new binding guidelines provided clarifications on its definition of the beneficial owners of trusts under the Co-operation Regulations, and specified that only natural persons can be identified as the beneficial owners of the trusts. Malta is recommended to monitor the implementation of the new binding guidelines for the Co-operation Regulations and ensure their effectiveness in practice (Annex 1).

35. During the current review period, Malta received 486 requests, 86 of which included ownership information. Malta was able to provide information for the majority of requests, however it failed to provide ownership information in some cases due to unavailability of the ownership information of inactive companies.

36. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The Co-operation Regulations, which came into force in July 2011, establish comprehensive requirements on the availability of ownership and identity information and penalties for non-compliance. However, the monitoring and supervision work conducted to check whether the Co-operation Regulations are effectively implemented in practice or not are not sufficient, which causes concerns on the availability of ownership and identity information in all cases to all related entities.	Malta should enhance its monitoring and supervision activities to ensure that its supervisory and enforcement powers are sufficiently exercised in practice to support the legal requirements established by the Co-operation Regulations, which ensure the availability of ownership and identity information in all cases.
	There were over 10 000 companies registered with the Malta Business Registry that had not complied with their filing requirements for more than five years during the current review period (representing 17% of the companies registered with the Registry). The Malta Business Registry has taken actions to strike off those inactive companies, but their effectiveness is not able to be tested. In addition, there are 12 351 companies registered with the Commissioner for Revenue that have not complied with their filing requirements for more than five years (representing 20% of the companies registered with the Commissioner). Such companies cause concerns on the availability of their ownership and identity information, and in practice gave rise to either delays in providing the information or failure to provide the information.	Malta is recommended to continue to take actions on a regular basis to limit the number of inactive companies in the business register and to reduce the large number of inactive companies in the tax database. Malta should monitor the effectiveness of these actions in order to ensure availability of the accounting information and underlying documentations of all companies in Malta.
Rating: Partially Compliant		

A.1.1. Companies

37. The Maltese law provides for the creation of limited liability companies, which can be public or private, depending on their number of shareholders and their objects. Private companies may be exempt private companies, which are exempt from certain requirements, e.g. only natural persons and exempt companies can be shareholders in an exempt company, but exemptions do not extend to the obligations on maintaining legal ownership and identity information as set out in related laws. There are 33 720 exempted companies as of the end of the review period. Compared with private companies, public companies (e.g. listed companies) have greater disclosure requirements. The total number of companies is stable over the years. As of 31 March 2019, there were 49 258 companies registered with the Registrar, compared to 46 286 companies in March 2013.

38. *Societas Europaea* (SEs) can also be formed in Malta. SEs are public companies regulated by the EU law and any requirements applicable to pubic limited companies apply equally to SEs. As of 31 March 2019, there were 10 SEs registered in Malta.

39. Foreign companies (or "overseas companies" in Malta) may perform any type of business in Malta. They may establish a branch in Malta by setting up a place of business and notify the relevant government authorities as provided in the Companies Act. As of 31 March 2019, there were 731 foreign companies registered in Malta.

40. As discussed in the 2013 Report, Protected Cell Companies (PCCs) and Incorporated Cell Companies (ICCs) are possible in Malta, but are only limited to the business of insurance as defined under Insurance Business Act or of captive insurance in terms of the insurance business (see Paragraphs 68-72 of the 2013 Report). As of the end of the review period, there are 16 PCCs (with 54 cells) and 28 ICCs.

Legal ownership and identity information requirements

41. The legal ownership and identity requirements for companies are found mainly in the Companies Act and the Co-operation Regulations and under the income tax laws, complemented with information available under the AML law, where applicable. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

Legislation regulating legal ownership of companies

Type	Company law	Tax law	AML law
Private company	All	All	Some
Public company	All	All	Some
Societas Europaea	All	All	Some
Foreign companies (tax resident)	Some	All	Some

Companies Law requirements

Legal obligations

42. There is no change of legal obligations for companies to provide legal ownership information to the government authorities in Malta since the last review.[5]

43. In Malta, every company must register with the Malta Business Registry (MBR), which is functioning as the registrar of companies, and all registered information (including the name and residence of the shareholders) and documentation is available to the public on the website of the MBR.[6] No company can come into existence in Malta without the approval of the Registrar, and the certificate issued by the Registrar to each company (including the branches of foreign companies) acts as a proof of existence of the company.

44. Companies must also file annual returns and financial statements with the MBR. The annual returns should include the summary of the share capital of the company, a list of past and present members (shareholders), the names and address of the directors and company secretaries (see the Seventh Schedule of the Companies Act). The financial statements comprise of the balance sheet (which provides an overview of assets, liabilities, and stockholders' equities) as at the last day of the accounting period to which they refer, the profit and loss account for that period, the notes to the accounts and any other financial statements and other information which may be required by generally accepted accounting principles and practice (Article 163 of the Companies Act). Where there are changes to the legal ownership of a company, e.g. a share is transferred, the company must file a notification to the MBR within 14 days according to the Companies Act.

45. Maltese companies must keep a share register of their members. Transfers of shares are valid upon registration by companies in the register

5. Refer to paragraphs 48 to 54 of the 2013 Report.
6. https://registry.mbr.mt/ROC/.

of members. Since the first round review, there was a minor change in the Companies Act, which allows a company to make arrangements for the register of its members to be kept in a dematerialised form or represented in book-entry form as immobilisation with a central securities depositary established in a recognised jurisdiction.[7] In all cases, the company remains responsible for the proper keeping of the register and must keep a copy of all entries relating to registered shareholders held by the depository (Article 123 of the Companies Act).

46. Foreign companies that have branches or a place of business in Malta must deliver to the Registrar a copy of the memorandum and articles constituting the company, together with a list of the directors and company secretaries, or the person vested with the administration and representation of the company, within one month of opening the branch (Article 385 of the Companies Act). The availability of legal ownership at the MBR will depend on whether the laws of the jurisdiction in which the company is formed requires this information (and changes thereto) to be included in the memorandum and articles of the company. Therefore, legal ownership information for foreign companies is not guaranteed to be available under the Companies Act, and even if the ownership information is available in the memorandum and articles of a foreign company, the information may not be up to date.

47. In the case of PCC, since a PCC is a single legal entity even though its assets are segregated into protected cells, the PCC needs to register with the MBR and complete the related filing obligations as that of a company. For ICCs, each cell is a separate company with legal personality, thus each of them should register with the MBR and complete related filing obligations. There is no change in this regards since the last review.

Implementation in practice

48. The MBR was set up in April 2018, which has all the duties and functions pertaining to the Office of the Registrar of Companies (see paragraph 22). The MBR's principal function is that of maintaining a public registry where documents relating to all Maltese companies, partnerships and branches of foreign entities are kept and are made available to the public.

7. According to the Companies Act (Cap. 281), recognised jurisdiction" means: (a) a EU Member State; (b) an EEA State; (c) any country that is a member of the Organisation for Economic Co-operation and Development (OECD); (d) any country that is a signatory of the IOSCO Multilateral Memorandum of Understanding; or (e) any other jurisdiction where the competent authority, as referred to in the Financial Markets Act, has a memorandum of understanding covering securities.

49. Legal ownership information submitted upon registration and any subsequent changes notified to the Registrar are publicly available at the website of the MBR. Although not legally mandated to do so, the MBR keeps this information indefinitely as a matter of practice.

50. According to the statistics provided by the MBR, there were 49 258 companies (including commercial partnerships)[8] registered as at 31 March 2019, excluding inactive companies. The numbers of companies registered with the MBR and of the related filings of annual returns and financial statements in the assessed period are as follows:

Year	Number of companies	Numbers of annual returns	Filing rate of annual returns	Numbers of financial statements	Filing rate of financial statements
1/4/2016-31/3/2017	38 112	27 264	72%	20 627	54%
1/4/2017-31/3/2018	43 461	30 201	69%	23 259	54%
1/4/2018-31/3/2019	49 258	33 574	68%	24 292	49%

51. During the current review period, the average filing rate for the annual returns was 70% and that for the financial statements was 52%, which both are low. This raises concerns on the availability of accurate and up-to-date legal ownership information of companies in the public register.

52. As reported by the MBR, there were about 10 000 inactive companies during the current review period. As per Article 325 of the Companies Act, registered companies that have not filed annual returns and financial statements for five years will be treated as inactive companies, but the MBR indicated that they have changed the time from five to two years in practice and they are in the process of amending the Companies Act in this regard. The MBR is empowered by law to strike them off the register, in accordance with Article 325 of the Companies Act. The MBR may first send to the related company by post a letter inquiring whether the company is carrying on business or is in operation. If there is no response within one month thereafter, the MBR will send to the company by post and publish a notice in the MBR's website that after expiration of three months, the company shall be struck off the register, unless there is cause showing to the contrary or the MBR is satisfied that there are sufficient grounds not to proceed with the striking off. From 2012 to 2016, 4 943 inactive companies were struck off the register. As at March 2019, the MBR had struck off 2 000 of them but there were still about 8 000 inactive companies registered with the MBR.

8. Commercial partnerships including general partnerships and limited partnerships apply the same rules for registration purposes as that of companies. See further discussion in Element A.1.3.

The MBR confirmed that they have taken action on the remaining inactive companies. Following the on-site visit to Malta in November 2019, Malta confirmed that further actions have been taken by the MBR, and by the end of June 2020, 7 834 inactive companies have been struck off as defunct from the register. With regard to the rest of inactive companies, 104 managed to submit the requested documents within the deadline as required by the MBR, thus they are no longer treated as inactive companies, and 34 are still working with the MBR to supplement the documents required by the MBR. Finally, the defunct procedure was halted for 28 companies due to pending court cases. However, those 62 companies have been flagged as inactive by the MBR and the authorities indicate that the striking-off procedure will commence in the next half of the year 2020. Companies that are struck off are treated as liquidated companies which will not exist in any forms and the assets of those companies shall devolve upon the government of Malta, but no details was provided on how this is done in practice. However, where any members or creditors of the company that has been struck off from the register feel that their interest is aggrieved by such decision, they may apply to the court to restore the company within five years from the publication of the striking-off decision (Article 325(4) of the Companies Act). Before a company is reinstated, the related issues of non-compliance must be addressed as required by the MBR and during the current review period, 17 companies have been reinstated. According to Article 325(6) of the Companies Act, notwithstanding that the name of the company has been struck off the register by the defunct procedure, the liability, if any, of every director or other officer of the company and of every member of the company shall continue and may be enforced as if the name of the company had not been struck off the register. Therefore the register of members shall be kept by its officers, which is also confirmed by Malta.

Tax law requirements

Registration obligations

53. Companies must register and file annual tax returns under the tax laws. The obligation covers 1) all companies incorporated in Malta; and 2) foreign companies having a branch or a place of business in Malta, managed and controlled in Malta, or conducting any economic or commercial activity in Malta. Information filed to the CfR includes legal ownership information of the company, i.e. the name, tax identification number and number and class of shares held by every shareholder and any change in ownership.[9]

9. Refer to paragraphs 55 to 57 of the 2013 Report.

54. In addition, the Registrar of Companies forwards the registration information to the Commissioner for Revenue (CfR) and every company that registers with the Registrar is also automatically registered for tax purposes. The CfR will then issue the company a nine-digit tax identification number (in addition to the identification number attributed by the MBR). Malta confirmed that the CfR has direct access to the MBR's database at any given time. Information concerning newly registered companies is automatically passed on by the MBR to the CfR and ownership information including changes thereto that are notified to the MBR is automatically updated to the tax database every three months.

55. The tax filings compliance for companies during the current review period is as follows:

Year of assessment	Numbers of returns received	Numbers of returns required	Filing rate of annual returns
2017	32 216	53 279	60%
2018	32 121	58 531	55%
2019	28 296	62 779	45%

56. During the current review period, the average annual tax filing compliance rate is about 50%, which is low. This gives rise to concerns on the availability of the legal ownership information with the CfR. In practice, however, there is no automatic matching system in place for cross-checking the ownership information filed with the MBR with the legal ownership information filed with the CfR in the annual returns.

57. The CfR reported that as at the end of March 2020, there were 62 779 companies registered with the CfR, i.e. about 12 000 more than in the MBR. In addition, for those 12 351 companies registered with the CfR which had not filed any returns to the CfR for at least five years, identified as inactive companies, the CfR may not be able to provide their legal ownership information. The figures of the CfR and the MBR differ as the CfR counts more inactive companies than the MBR. Malta stated that the difference may be partly due to the fact that some inactive companies still have unpaid balances of tax, interest or penalties, thus still registered in the CfR's system, but they may have been struck off by the MBR.

Obligation to keep ownership information

58. Another important piece of tax legislation is the Co-operation Regulations, which require all entities, including all companies (including foreign companies having branches or permanent establishments) in Malta, to maintain ownership and identity information. According to Regulation 4(1) of the

Co-operation Regulations, any company resident in Malta; created under Maltese law; that has a permanent establishment in Malta; that is a property company or is required to be registered, to be licensed or otherwise authorised in order to conduct business in Malta, must keep updated information that identifies their owners and the level and type of their respective ownership stakes in such company, including information on legal and beneficial owners.

59. Legal ownership information of companies must be kept in Malta in principle. However, such records may be kept in a jurisdiction with which Malta has an arrangement that would permit exchange of ownership information (Regulation 4(5) of the Co-operation Regulations).

60. Ownership information must be kept by the companies for a minimum period of five years from the end of the year in which the relevant acts or operations took place (Regulation 4(13) of the Co-operation Regulations). The Maltese authorities explain that this obligation also applies to person referred to in Regulation 5(1) acting in a professional capacity in relation to any such information or records that he holds in the carrying on of his business. Consequently, a person acting as the liquidator would be obliged to keep such information.

61. As for PCCs and ICCs, as discussed in the 2013 Report, they are required to file separate tax returns for each cell (paragraph 70 of the 2013 Report), from which the related ownership information should be ensured to be available to the CfR (see above table of tax filings compliance in paragraph 51).

Legal ownership information – Enforcement measures and oversight

Companies laws

62. The penalties regimes on companies' failure to keep a register of members, or to register changes of the legal ownership information by transfer of shares with the MBR, and on foreign companies that fail to comply with registration requirements and obligations to registration of alterations with the MBR have not changed since 2013.[10]

63. Where a company ceases to exist, its name is struck off from the MBR, and the liquidator of the company must keep all the documents of the company for ten years from the date of the publication of the company's name being struck from the MBR (Article 50 of the Companies Act). A liquidator, who fails to comply with this is liable to a penalty of EUR 1 165 (Article 342(2) of the Companies Act). The MBR indicated that the Companies Act provides for the obligation of the company to appoint a liquidator by extraordinary resolution. Where the liquidator is not appointed, any director

10. Refer to paragraphs 179 to 183 of the 2013 Report.

of the company winding up its affairs shall apply to the Court for the appointment of a liquidator, and the Court is obliged to appoint a liquidator. This application by any director needs to be made within 14 days from the date for which the general meeting (to appoint the liquidator) was summoned. If the directors fail to apply to the Court within the mentioned time period, they are deemed to be in default and shall be liable to a penalty of EUR 2 329 and for an additional daily penalty of EUR 47 for as long as the default continues (Article 270 of the Companies Act).

64. Enforcement measures also include the filing in court by the MBR of judicial letters and even garnishee orders on the personal bank account of officers of the delinquent company. Within the MBR, the Compliance Unit is dedicated to verification checks when a company is being incorporated or when there is a change ownership information.

65. Penalties have been imposed on companies which fail to comply with the provisions of the Companies Act. The MBR sends reminders to the companies which do not pay the claimed penalties. For those companies that remain non-responsive after a second reminder, the MBR may consider taking further actions, e.g. striking off the companies. During the current review period, the amounts of penalties the MBR had claimed due to late or no filings of annual returns and annual accounts returns, and the related first and second reminders sent are as illustrated in the below table. The MBR confirmed that they are still working on the settlement of the penalties claimed to non-compliant companies, and legal actions will be taken for those that refuse to settle the payment of penalties but no statistics were provided.

Year	Penalties claimed due to non-compliance of annual returns filing	Penalties claimed due to non-compliance of annual accounts filing	First and second reminders sent
1/4/2016-31/3/2017	EUR 57 849	EUR 100 000	8 634
1/4/2017-31/3/2018	EUR 71 8556	EUR 61 332	10 095
1/4/2018-31/3/2019	EUR 85 840	EUR 172 199	6 338

66. As transfers of shares are valid upon registration by companies in the register of members, while the information would be available with the companies concerned, the information in the MBR may be inaccurate for the large number of companies that do not comply with their filing obligations.

Tax laws

67. A taxable entity that fails to submit an annual tax return must pay a penalty, which begins at EUR 50 if it is filed within 6 months, up to EUR 1 500 if it is filed more than 6 months late (Schedule to the Income Tax

Act). The CfR has issued penalties amounting to EUR 2 881 746 in 2017, EUR 2 411 625 in 2018 and EUR 828 033 in 2019 to entities for failure to comply with their obligation to submit their annual tax return during the three years reviewed. The CfR confirmed that about 23% of those issued penalties have been settled by taxpayers and they are still working on collecting the rest of issued penalties. The CfR also confirmed that companies that failed to submit the returns would receive estimated assessments in addition to the penalties.

68. The Co-operation Regulations requires an entity to keep updated information on ownership and identity. Where information is not provided, or is not provided in a timely manner to the tax authorities because the information was not kept or properly updated as required by the Co-operation Regulations, the person that had the duty of keeping or updating the information is liable to a penalty of EUR 19 200 (Regulation 6(2)).

69. In the first round review, considering that the Co-operation Regulations had entered into force during the review period and these sanctions had not been applied yet, Malta was recommended to ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements established by the Co-operation Regulations. Malta confirmed that the on-going supervision is carried out by three separate units i.e. the EOI team, the International Corporate and Taxation Unit (ICTU) and the Compliance and Investigations Directorate (CID) within the CfR.

70. First, when the CID conducts full audits, they would take the implementation of the Co-operation Regulations into account. In the years 2016, 2017 and 2018, the CfR has conducted 145, 210 and 356 full audits to companies (only active companies), and a total amount of over EUR 4 million of omitted taxes were recovered. Malta also stated that the ICTU of the CfR have carried out routine checks on companies in terms of the completeness of tax returns submitted, availability of legal ownership and beneficial ownership information, and for the period under review, a total of 6 405 companies were checked, including:

Period	Companies vetted
April to December 2016	1 984
January to December 2017	1 976
January to December 2018	1 672
January to March 2019	773

71. Malta confirmed that through those checks on active companies as indicated in the above table, no significant issues with the availability of legal ownership information have been identified.

72. Second, a case officer working on a request for information is required to check that all the requirements set out under the Co-operation Regulations are complied with and the relative information submitted with the applicable registries are up to date. During the current review period, penalties under the Co-operation Regulations were imposed in four cases, which were all related to companies. The total amount of penalties imposed was EUR 12 500. While sanctions were imposed in practice, they do not guarantee that information will always be available for exchange of information purposes. This also does not reconcile with the statement in the previous paragraph from the Maltese authorities that tax audits have not encountered any significant issues in the keeping of ownership information, which might suggest a need for reconsidering the targets or handling of routine audits.

Conclusion

73. To sum up, company laws and tax laws require the availability of legal ownership information of companies in Malta. Under the Companies Act, all companies are required to file annual returns and annual financial statements to the MBR, but the annual filings rates during the three years under review is low and no effectively deterrent measures have been taken to address this issue even though the MBR confirmed that it is still work in progress and the team for monitoring and supervision will be expanded. In addition, there were about 10 000 inactive companies registered with the MBR during the current review period, and the MBR has taken actions to strike off all those inactive companies, and Malta confirmed that some of the procedures are still in progress. However, as most of the actions were taken very recently in 2020, their effectiveness in practice cannot be assessed yet. Malta should enhance its monitoring and supervision of the implementation of the Companies Act and ensure the actions taken to inactive companies are effective in practice so that legal ownership information of companies in Malta is always available.

74. The annual tax filing rates for companies registered with the CfR in Malta during the current review period is also low and no effective and sufficient actions have been taken by the CfR to address the non-compliances in annual filings of the companies, in particular to the 12 351 inactive companies registered with the CfR, representing 19.67% of the total number of companies registered with the CfR. Malta is recommended to enhance supervision and enforcement programmes to ensure that all companies registered with the CfR are compliant with the tax laws in terms of annual tax returns, and enforcement measures should be specifically taken in respect of the 12 351 inactive companies.

75. Ongoing monitoring and supervision activities conducted by the CfR specifically for the implementation of the Co-operation Regulations seems not to be sufficient and in practice the enforcement measures (e.g. sanctions) were only taken by the CfR where there was an EOI case and the related taxpayer was not able to provide the information. Malta is recommended to enhance its supervision and monitoring activities to ensure that the Co-operation Regulations are implemented effectively in practice.

76. During the current review period, Malta confirmed they were able to provide legal ownership information of companies in the majority of cases, but they failed to provide information or were only able to provide partial information regarding several inactive companies, where they have exhausted all possible ways to obtain the information. Peers also reported that in two EOI requests, Malta was not able to provide the legal ownership information of companies.

Availability of beneficial ownership information

77. The standard on transparency and exchange of information on request was strengthened in 2016 and now requires that information on the beneficial ownership on companies should be available. In Malta, this aspect of the standard is met through the AML laws, tax laws and company laws. Each of these legal regimes is analysed below.

Legislation regulating beneficial ownership information of companies

Type	AML law	Tax law	Companies law
Private company	Some	All	All
Public company	Some	All	All
Societas Europaea	Some	All	All
Foreign companies (tax resident)	Some	All	Some

Availability of information with persons subject to AML law requirements

78. In Malta, AML legislation comprises the Prevention of Money Laundering Act (PMLA), the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR), Sub-Title IV A of the Criminal Code as well as related implementation procedures issued by the AML authorities. The PMLFTR set out the obligations and procedures that AML subject persons are required to fulfil and implement, including the identification of beneficial owners. Under the Maltese AML laws, any legal persons, lawyers,

accountants, auditors and notaries that carry out relevant financial business or relevant activity[11] are AML "subject persons", i.e. AML obliged persons.

79. In accordance with Article 179(1) of the Companies Act, a company is required to have its financial statements audited and therefore it must engage an auditor who is an obliged person for AML purposes. Certain small companies are exempt from such a requirement to engage an auditor for the financial statements, e.g. their financial statements may be prepared by non-AML obliged persons. These involve companies that satisfy two out of three of the following conditions: (1) balance sheet totals of not more than EUR 46 600; (2) turnover of not more than EUR 90 000; and (3) the number of employees is not more than two (Article 185(2) of the Companies Act). Furthermore, the Income Tax Management Act imposes the obligation of an audit report under Article 19(4)(a). There is an exception to this rule in the case of start-ups. This exception applies in the first two years of the company's life only and provided: (1) the turnover is less than EUR 80 000; and (2) the company is formed by persons that have obtained a certain level of academic qualifications (2nd proviso to Article 19(4)(a) and SL 372.29). Furthermore Malta confirmed that in practice companies would have to engage a local AML obliged person for conducting daily business in Malta.[12] However, for companies that fall under the above-mentioned exceptions and that have not engaged with the local AML obliged persons, their beneficial ownership information may not be available in Malta under the AML legal framework (but they would be captured by the obligations under the Co-operation Regulations below).

80. Subject persons are obliged to carry out customer due diligence when 1) establishing a business relationship; 2) carrying out an occasional transaction; and 3) the subject person has knowledge or suspicion of proceeds of criminal activity, money laundering or the funding of terrorism, regardless of any derogation, exemption or threshold (Regulation 7(5) of the PMLFTR). Reasonable measures by the subject persons need to be undertaken through verifications until the identity of the beneficial owners are divulged and the ownership and control structure of the customer is understood (Regulation 7(1)(b) of the PMLFTR).

81. Regulation 10 of the PMLFTR provides for the scenarios where the Simplified Due Diligence procedures can be applied and Regulation 11 of the PMLFTR provides for the scenarios where the Enhanced Due Diligence procedures should be applied. The Simplified Due Diligence does not constitute

11. Refer to Regulation 2(a) of the PMLFTR for details of "relevant financial business" and "relevant activity".
12. The MBR indicates that 99% of companies have a relationship with a corporate service provider, e.g. lawyer, accountant, etc.

an exemption from all customer due diligence measures as envisaged under Regulation 7, but subject persons may determine the applicability and extent thereof in a manner that is commensurate to the low risk identified. Under both the Simplified and Enhanced Due Diligence procedures, the subject persons must identify the beneficial owners of the customers, unless the customer is a licensed financial institutions meeting the following criteria:(a) there being no adverse information available on the said institution; (b) obtaining evidence that the institution is actually licensed to provide financial services; (c) having an understanding of its activities and customer-base; and (d) ensuring that it is subject to AML/CFT obligations. This would be equally applicable in situations where the licensed financial institution is holding financial instruments through an omnibus or nominee account on behalf of underlying investors. As long as the conditions as above are met, then the subject person can limit itself to identifying and verifying the identity of the customer, without the need to actually establish who are the underlying investors or the beneficial owners of the licensed financial institution.[13]

82. For purposes of the AML framework, the definition of the beneficial owners of companies in the PMLFTR is transposed from the EU AML Directives, which is in line with the international standard. Beneficial owners refer to any natural person(s) who ultimately own or control the customer or the natural person(s) on whose behalf a transaction or activity is being conducted. In the case of a (non-listed) body corporate or a body of persons,[14] the beneficial owner is any natural person(s) who ultimately own or control that body through direct or indirect ownership of 25% plus one or more of the shares or more than 25% of the voting rights or an ownership interest of more than 25% in that body, including through bearer share holdings, or through control via other means (e.g. the right to directly or indirectly appoint or remove the majority of the board of directors of an entity or to appoint or remove the CEO of that entity):[15]

a. provided that a shareholding of 25% plus one share or more, or the holding of an ownership interest or voting rights of more than 25% in the customer shall be an indication of direct ownership when held directly by a natural person, and of indirect ownership when held by one or more bodies corporate or body of persons or through a trust or a similar legal arrangement, or a combination thereof; and

13. Section 4.8 of the FIAU Implementation Procedures (Part 1).
14. Except for a company that is listed on a regulated market which is subject to disclosure requirements consistent with European Union law or equivalent international standards which ensure adequate transparency of ownership information.
15. See section 4.2.2.1(ii) of the FIAU Implementation Procedures (Part 1) on examples of control through other means: https://fiaumalta.org/wp-content/uploads/2020/05/IP-Part-I.pdf.

b. provided further that if, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner has been identified, subject persons shall consider the natural person(s) who hold the position of senior managing official(s) to be the beneficial owners, and shall keep a record of the actions taken to identify the beneficial owner in terms of this paragraph.

83. Where the customer is a company, the subject persons would need to establish who the beneficial owner is and must ensure that the customer provides it with the details of the beneficial owner, including the official full name, place and date of birth, permanent residential address, identity reference number where available and nationality. However, for low-risk situations, subject persons only need to obtain the official full name, date of birth and permanent residential address of the beneficial owner.[16]

84. The "introduced business rules" are catered for under the PMLFTR (Regulation 12), according to which subject persons may rely on another subject person or a third party to fulfil the customer due diligence requirements provided for under the PMLFTR, with the subject persons placing reliance remaining ultimately responsible for compliance with those requirements. The reliance can only be exercised on a third party that is located in another EU Member State or in a reputable jurisdiction.[17] Subject persons relying on a third party are required to take adequate steps to ensure that upon request the introducer immediately provide the identification information and forwards to them relevant copies of the identification and verification data relevant to the customer and the beneficial owner and other relevant documentations required under the PMLFTR (Regulation 12(4)). Malta confirmed that practically there would be a written agreement regulating the reliance relationship, setting out how requests for documentation are to be made and the

16. Refer to section 4.8 of the FIAU Implementation Procedures (Part 1) on Simplified Due Diligence and section 4.3.1(ii) on identification and verification: https://fiaumalta.org/wp-content/uploads/2020/05/IP-Part-I.pdf.

17. A non-reputable jurisdiction is defined in the PMLFTR as any jurisdiction having deficiencies in its national AML/CFT regime or having inappropriate and ineffective measures for the ML/FT prevention, taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted AML/CFT standards or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Article 9 of Directive (EU) 2015/849. One exception with regard to non-reputable jurisdictions relates to branches or majority-owned subsidiaries of persons or institutions established in an EU Member State subject to national provisions implementing Directive (EU) 2015/849 and which comply fully with group wide policies and procedures equivalent to those required under the PMLFTR.

timeframes, and subject persons are recommended to test the said agreement from time to time. In addition, it is important that the agreement caters for situations where the entity being relied upon would terminate its relationship with the customer. Those agreements on reliance of third parties are also subject to the monitoring and supervision by the FIAU as confirmed by Malta.

85. Subject persons are also obliged to apply customer due diligence measures to existing customers, at appropriate times, on a risk-sensitive basis. This includes times when the subject person becomes aware that the relevant circumstances surrounding a business relationship have changed (Regulation 7(6) of the PMLFTR). Likewise, these CDD measures need to be repeated whenever, in relation to a business relationship, doubts arise about the veracity or adequacy of the customer identification information previously obtained (Regulation 7(7) of the PMLFTR). While the PMLFTR indicates that the frequency of updates depends on risk, there is no reference to a specific minimum timeframe regarding updating the beneficial ownership information (but the Co-operation Regulations compensate this weakness; see below).

86. The documentation, data or information, including the beneficial ownership information, are required to be kept by subject persons for a period of five years commencing from the date on which the relevant financial business or relevant activity was completed (Regulation 13(3) of the PMLFTR). This is in line with the requirement of the standard.

Enforcement

87. A breach of any of the obligations imposed by the PMLFTR is subject to administrative sanctions and/or other administrative measures such as remedial actions. Administrative penalties can be divided into three broad bands:

1. an administrative penalty between EUR 250 and EUR 999 in cases of minor breaches and where the circumstances so warrant
2. an administrative penalty of not more than EUR 5 000 000 or 10% of the total annual turnover according to the bank's latest available approved annual financial statements in the case of breaches determined to be serious, repeated or systematic
3. an administrative penalty between EUR 1 000 and EUR 46 500 where the breach would not fall within either 1) or 2) above.

88. In Malta, the supervisory and enforcement function under AML laws are carried out by a government agency, the Financial Intelligence Analysis Unit (FIAU), which monitors the requirements to maintain the beneficial ownership information during the 5-year retention period under the

PMLFTR. Where the subject persons are regulated by the Malta Financial Services Authority (MFSA), monitoring and supervision may be assigned to the MFSA, and/or done together with the FIAU. The main supervisory tool used by the FIAU is the compliance examination, which can take place either on-site or off-site. On-site examinations are normally carried out on subject persons that are considered to have high risks of AML; and off-site examinations involve a desk-based review of the AML policies and procedures or other information that is submitted by the subject persons. In addition, the FIAU may also conduct supervisory meetings to discuss and evaluate certain aspects of the AML obligations; thematic examinations focusing on specific matters across a sector; and ad-hoc examinations because of information received through sources such as other regulatory bodies or media. For supervision, please see element A.3 below.

89. The FIAU is empowered under Regulations 30 and 30A of the PMLFTR to request information including beneficial ownership information from any subject persons, which in turn should provide this information within 5 working days. Should the subject persons not be able to provide the information within such timeframe, they may request for an extension from the FIAU, which decides discretionarily. In order to ensure that subject persons comply with this obligation, the FIAU carries out a quarterly exercise to identify those subject persons who failed to reply within the stipulated timeframe and imposed penalties in case of failure, with a total amount of EUR 327 500 in 2018 and EUR 55 850 in 2019. The amount in 2018 was especially high due to a single case involving a credit institution which was found be incompliant in various aspects. However, the FIAU is not able to indicate how frequently the information requested related to beneficial ownership and therefore to identify which sanctions imposed were actually related to unavailability of beneficial ownership information. Therefore this exercise cannot guarantee that CDD obligations are implemented effectively in practice.

Information available with entities themselves: Tax law requirements in the Co-operation Regulations and BO Register in the Companies Act

Tax law requirements in the Co-operation Regulations

90. The Co-operation Regulations, as amended in 2017, oblige all entities, including companies, "to keep updated information identifying their owners as well as the level and type of their respective ownership stakes in such entities, including information on legal and beneficial owners". This information is to be updated and documented no later than 14 days from the date the entity was notified or from the date the entity becomes aware of there being a new owner (including beneficial owner) or of any change relating to existing

owners (Regulation 4(1)). Publicly traded companies and public collective investment schemes are exonerated from this obligation (Regulation 4(2)).

91. The definition of beneficial owners for companies under the Co-operation Regulations as specified in Regulation 2 is identical to that under the PMLFTR as discussed above, which is in line with the international standard.

92. Information that identifies a beneficial owner must be kept for a minimum period of five years from the end of the year in which the relevant acts or operations took place (Regulation 4(13) of the Co-operation Regulations). Malta explains that this applies where the company is liquidated or is no longer in existence as persons as referred to in Regulation 5(1) acting in a professional capacity in relation to any such information or records that they hold in the carrying on of the business are subject to the obligation of maintaining the beneficial ownership information, including the liquidators.

93. The Co-operation Regulations sets the general obligation for companies to keep information on their beneficial ownership but during the review period it did not provide any guidance to them on how to collect the information and update it. Consequently it was not clear whether companies were allowed to remain in a passive position of waiting for being notified or becoming aware of a change, without any obligation to take periodic positive action to enquire on possible change of beneficial ownership. In addition, under Regulation 4(1), it is specified that in case of a company, partnership and any other body of persons (other than a foundation), the "owner" for purposes of the Co-operation Regulations includes "legal owners". While the Maltese authorities consider that this statement has never given rise to problems of interpretation and that beneficial ownership must be identified, this could be misleading to companies that are not familiar with the AML framework and concepts. As stated in paragraph 27, in order to remove any doubts or concerns, binding guidelines for the Co-operation Regulations have been issued, which specify that companies need to ensure information is updated at least every three months and that "owners" includes beneficial ownership as defined by the Co-operation Regulations. Malta is recommended to monitor the implementation of the newly issued guidelines for the Co-operation Regulations and ensure their effectiveness in practice (Annex 1).

BO Register under the Companies Act

94. Subsequent to the entry into force of Directive (EU) 2015/849 (the "Fourth AML Directive"), Malta passed the Companies Act (Register of Beneficial Owners) Regulations in 2018, to include a legal obligation for companies to maintain beneficial ownership information in Malta, which provides more detail on the obligation of companies and relevant parties. The definition of beneficial ownership for companies is derived from the Fourth

AML Directive and is in line with the standard. Malta confirmed that the competent authority for EOI has full access to these databases.

95. According to Regulation 5 of the Companies Act (Register of Beneficial Owners) Regulations, every company is obliged to obtain and hold adequate, accurate and up-to-date information in respect of its beneficial owners, including:

1. the name, date of birth, nationality, country of residence and an official identification document number indicating the type of document and country of issue of each beneficial owner
2. the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto
3. the effective date on which a natural person became, or ceased to be, a beneficial owner of the company or has increased or reduced his beneficial interest in the company.

96. Under Regulation 6 of the Companies Act (Register of Beneficial Owners) Regulations, when the legal ownership of a company changes, the company must inform the Registrar of this change as well as of related changes (or not) of beneficial owners. The Registrar then updates the register of beneficial owners (Regulation 6(1)).

97. All companies constituted after the Companies Act (Register of Beneficial Owners) Regulations came into force (on 1 January 2018) must deliver the declaration on beneficial owners in the form as set out, to the Registrar for registration, together with the memorandum and articles (if any). Every company that was registered before 1January 2018 had the obligation to comply with the above-mentioned requirements by 30 June 2018 (Regulation 8(1)).

98. There are three forms which are relevant for the filing of beneficial ownership information with the MBR, which can be filed online:

- Form BO1 to be filed upon the constitution of a new company or commercial partnership. The Registrar will not register the memorandum and articles unless the declaration is filed.
- Form BO2 to be filed within 14 days after the date on which a change of beneficial ownership is recorded with the company or commercial partnership; it includes the details of the beneficial owner(s), extent and nature of beneficial ownership as well as a description of the change.
- Form BO3 to be filed by existing companies and other commercial partnerships registered in Malta prior to 1 January 2018. Such existing companies and commercial partnerships were required to set up their own register of beneficial owners by the end of June 2018.

99. The MBR indicated that as at 31 March 2019, beneficial ownership information has been received on 10 310 legal persons including both companies and partnerships – out of 43 461 companies and 1 284 partnerships registered, i.e. about 23% compliance. Considering that the centralised register of beneficial ownership information is relatively new in Malta, the effectiveness of the implementation of the beneficial ownership information registration of companies cannot be fully assessed. Malta confirmed that related investigation and accuracy verification work are still going on at the MBR and the MBR has expanded its team by hiring more staff for this part of work, to ensure that all companies in Malta register accurate and up-to-date beneficial ownership information.

100. As for the Co-operation Regulations, the Companies Act (Register of Beneficial Owners) Regulations set the general obligation for companies to keep information on their beneficial ownership but do not provide any guidance to them on how to collect the information and update it. They seem to be allowed to remain in a passive position of waiting for being notified or becoming aware of a change, without any obligation to take periodic positive action to enquire on possible change of beneficial ownership. There is also no obligation on legal owners or beneficial owners to inform the company of any change. The effectiveness of the measures is therefore uncertain.

Enforcement

101. The practical implementation of the obligations set in the Co-operation Regulation has been discussed in the above for the availability of legal ownership information of companies, which also applies to the case of the availability of beneficial ownership information since 2017. Malta is recommended to enhance its supervision and monitoring activities to ensure that the Co-operation Regulations are implemented effectively in practice.

102. The obligations set in the Company Act (Register of Beneficial Owners) Regulations are monitored by the Compliance and Enforcement Unit (CEU) within the MBR. Breach of the obligations to maintain up-to-date beneficial ownership information is punishable by financial penalties. Every company that fails to hold adequate, accurate and up-to-date information in respect of its beneficial owners, the company and every officer, shareholder and beneficial owners of the company that is in default will be jointly liable to a penalty of EUR 1 000 and a further penalty of EUR 10 for every day during which the default continues (Regulation 5(5) of the Companies Act (Register of Beneficial Owners) Regulations). However, an officer of the company will not be liable if he/she had exercised all due diligence to comply with the provisions of the Regulations and the default was not due to any act or omission or negligence on his/her part.

103. Where there has been a change in beneficial ownership information of a company and the company fails to comply with its obligations under the Regulations, the company and every officer of the company who is in default will be jointly and severally liable to a penalty of EUR 1 000 and a further penalty of EUR 10 for every day during which the default continues (Regulation 6(5) of the Companies Act (Register of Beneficial Owners) Regulations).

104. Where a company that was formed and registered before 1 January 2018 failed to comply with its obligations detailed above within 6 months, the company and every officer, shareholder and beneficial owner of the company who is in default will be jointly and severally liable to a penalty of EUR 1 000 and a further penalty of EUR 10 for every day during which the default continues (Regulation 8(2) of the Companies Act (Register of Beneficial Owners) Regulations).

105. As mentioned above, despite the deadlines for conforming with the regulations being over, due to the relatively recent implementation of the centralised registration of beneficial ownership information of companies, Malta has not imposed any sanctions as specified above, in particular considering that Malta implemented the Fifth EU AML Directive quite recently in late February 2020.

Nominees

106. As discussed in the first round review report (Phase 2),[18] the nominee regime has been phased out and replaced by an authorisation by the MFSA to act as a mandatory in terms of Article 43(12) of the Trusts and Trustees Act. Therefore, the form "nominee" is no longer used in Malta's financial system. The obligations of these companies that are authorised by the MFSA as above discussed in relation to the identity and beneficial ownership are identical to normal companies. Under the Co-operation Regulations, there are also specific requirements for nominees to keep information that identifies the persons for whom he/she acts. Ownership and identity information on shares held by nominees would be available, which is in line with the international standard.

107. Under AML laws, where a person appears to act on behalf of a customer, in addition to identifying and verifying the identity of the customer and its beneficial owner, where applicable, subject persons are to ensure that such person is duly authorised in writing to act on behalf of the customer and will need to identify and verify the identity of that person (Regulation 7(3) of the PMLFTR).

18. Refer to paragraphs 84-89 of the 2013 Report.

Conclusion

108. In Malta, the availability of beneficial ownership information for companies is to be ensured via a multi-pronged approach under the AML laws, tax laws and beneficial ownership registration laws. The definition of the beneficial owners for companies in various laws are in line with the international standard. The AML laws set out clear requirement for subject persons to identify the beneficial ownership information of the companies and maintain such information for at least five years. However, while there is a legal requirement for companies in Malta to engage a local AML obliged person (auditor) under the Companies act and the Income Tax Management Act, there are exceptions to this requirement, even though in practice they may have to do so. Therefore the related requirements under the AML laws may not be able to fully ensure the availability of the beneficial ownership information for all companies in Malta.

109. Even though the Co-operation Regulations set out comprehensive legal requirements for all companies to maintain their beneficial ownership information, the relevant provisions may have left some doubt as to whether companies should keep both legal and beneficial ownership information or only the legal ownership information. This ambiguity has since been cleared through binding guidelines for Co-operation Regulations issued by the CfR in April 2020. In addition, the monitoring and supervisory measures to ensure that the Co-operation Regulations are effectively implemented in practice need to be enhanced.

110. The centralised registration of beneficial ownership information of companies in Malta is a main source in this regard. However, due to the relatively recent implementation of the registration rules and because the related monitoring and supervisory activities of the MBR are still in development, the effectiveness of the implementation of the beneficial ownership registration for companies in Malta cannot be assessed yet. In practice, for EOI purposes Malta confirmed that beneficial ownership information was always obtained from the companies themselves when a request was made thereto, which was the case for all requests during the period under review other that the ones related to inactive companies. However, in order that companies provide information that is accurate and up to date enhanced supervision is required.

111. The Co-operation Regulations and the AML laws both require the taxpayers or subject persons to maintain up-to-date information on beneficial owners, but for the review period it was not clear under the Co-operation Regulations on how often the taxpayers should update the information and even though the AML laws requires the beneficial ownership information to be updated on a risk basis, there is no specific timeframe. Since then, binding guidelines have been issued under the Co-operation Regulations to clarify this matter.

112. To sum up, there are in place legal requirements to ensure the availability of beneficial ownership information of companies in Malta, especially via the Co-operation Regulations and the centralised register, but these legal requirements need to be effectively implemented in practice. Malta is recommended to monitor the implementation of the newly issued binding guidelines for Co-operation Regulations and ensure its effectiveness in practice. Malta should ensure that its supervisory and enforcement measures are sufficiently exercised in practice to support the related legal requirements on keeping the beneficial ownership information under the related legislations.

A.1.2. Bearer shares

Legal rules

113. The 2013 Report noted that bearer shares are not provided for under the Maltese law and do not exist in Malta, but non-listed public companies were able to issue share warrants to bearers under the Companies Act. Malta was recommended to closely monitor the issuance of share warrants to bearers on an ongoing basis and ensure that ownership information is effectively available for EOI purposes in practice.

114. In 2017, Malta amended the Companies Act to prohibit the issuance of new share warrants and mandate the surrender of existing ones, notwithstanding anything contained in the memorandum and articles of association of a company (Article 121 of the Companies Act).

115. Holders of share warrants were obliged to surrender the share warrants to the company which had issued them, before 1 December 2017 (Article 121A(1) of the Companies Act). Upon the surrender of such share warrants the company had to:

> a) cancel any share warrant issued by it;
>
> b) enter in its register of members the name of the persons requesting that their names and addresses be entered in the register of members in lieu of share warrants surrendered.
>
> [...]
>
> – name and address of the member and a statement of the shares held, distinguishing each share by its number (so long as the share has a number), and of the amount paid or agreed to be considered as paid on the shares of the member; and
>
> – the date at which the person was entered in the register as a member.

Where two or more persons hold one or more shares in a company jointly, they are treated as a single member for purposes of the register of members. Unless otherwise provided in the memorandum or articles, the name of only one of such persons is entered in the register of members (Article 123(2) of the Companies Act). However, since companies are subject to the Co-operation Regulations (see Element A.1.1), they shall identify and maintain the beneficial ownership information including in the case where the share is jointly held.

> c) Notify the Registrar of Companies of any changes in the register of members made consequent to this surrender.

116. The definition of "shareholder" no longer includes the words "or the bona fide holder of a share warrant" (Article 2 of the Companies Act), so that no provision relating to "shareholders" will apply to holders of share warrants.

117. After 1 December 2017, companies can no longer recognise any remaining share warrants and such share warrants are deemed to have been cancelled (Article 121(3) of the Companies Act). Malta confirmed that non-compliance with the surrendering mechanism renders the share warrant cancelled, so that presentation of such warrant will not have any legal effect.

Practical implementation and enforcement

118. In practice, the Maltese tax authority had conducted surveys before introducing the prohibition rules in the Companies Act and all the companies responded to the authorities with declarations that they did not have bearer shares. In addition, the Co-operation Regulations provided that a company that has issued share warrants had to inform the competent authority in Malta. The competent authority received no such notification of the existence of share warrants. Consequently, Malta is of the general view that there would not be any outstanding share warrants in Malta. It remains that about 300 companies had the possibility to issue bearer shares in their articles of association. In case some shares had been issued, the companies should also amend their register of members upon the surrender of warrants and their accounting records to take into account the cancelation of warrants not surrendered by the due date. However, if the company doesn't take positive actions, the share warrants that by law are invalid, may continue to appear in the books of the company. In addition to the surveys that have been conducted, Malta should take further actions to ensure that there are no share warrants that still exist in any of the public companies in practice. (Annex 1)

A.1.3. Partnerships

Types of partnerships

119. There are two types of partnerships in Malta, i.e. limited partnerships (LPs) (or partnerships *en commandite*) and general partnerships (partnerships *en nom collectif*). Both have a separate legal personality. LPs can be ordinary, where the contribution of the partners is equal to the proportion of their interest, and limited partnerships where the contributions are divided into shares. The related requirements as discussed in the 2013 Report to constitute a partnership has not been changed since the last review.[19]

120. As of the end of 2018, there are 1 125 LPs and 159 general partnerships.

Identity information

121. All partnerships are subject to the same registration obligations and similar to companies, partnerships must also file annual returns and notify the MBR about ownership changes within one month. All registered information and documentation is available to the public at the website of the MBR, and these records are kept indefinitely in practice.[20]

122. Compliance monitoring to partnerships is carried out by the MBR via routine checks and desktop audits together with that of companies. Partnerships which contravene the above registration and filing obligations are subject to various penalties.[21] The related supervision and enforcement measures and the statistics as discussed in element A.1.1 also referred to partnerships.

123. Partnerships can opt to be treated as companies for tax purposes, and therefore subject to the same requirements as companies under the Income Tax Act, including the requirement to file tax returns, which contain the partners' identity information. Those LPs are automatically registered with the CfR when they register with the MBR. As of the end of the review period, there were 88 partnerships which had opted to be treated as companies for tax purposes.

124. For partnerships which do not opt to be treated as companies for tax purposes (Article 2(1) of the Income Tax Act), income of the partnership is assigned to the partners and must be included on each partner's individual income tax return (Article 27 of the Income Tax Management Act). However, all partnerships must file an income tax return with the CfR, in addition to

19. Refer to paragraphs 99 and 100 of the 2013 Report.
20. Refer to paragraphs 105 and 106 of the 2013 Report.
21. Refer to paragraphs 185 to 189 of the 2013 Report.

each partner's individual income tax return, whether deriving taxable income or not in a particular year.

125. Tax returns of partnerships are submitted to the CfR on paper and contain information on their partners. For all partnerships that opt to be treated as companies for tax purposes, the related supervision and enforcement measures to companies as discussed in element A.1.1 also apply to them.

126. In addition, under the Co-operation Regulations, partnerships are required to keep the ownership and identity information for at least 5 years from the end of the year in which the relevant acts, or operations took place (including where the partnership is liquidated or is no longer in existence), as that of the companies (Regulation 4(1) of the Co-operation Regulations). Under the Companies Act, there are also requirements for liquidators or persons elected by the majority of the partners to keep the information of the partnerships for a period of ten years from the date at which the names of the partnerships were struck off the register. Where there are no liquidators or partners fail to elect such persons, the information of the partnerships shall be delivered to the Registrar (i.e. MBR) within fourteen days after non-acceptance or failure to elect as the case may be, and the Registrar shall keep such information and records for the said period of ten years. Where the liquidators or the persons elected die, their heirs should deliver the said information and records to the Registrar within six months and the Registrar shall keep them for the remainder of the period of ten years. (Article 50 of the Companies Act).

127. In Malta, the availability of identity information of partners in partnerships are mainly ensured by the Companies Act and the Co-operation Regulations. Under the Companies Act, the MBR maintains the identity information of all partnerships registered with them, including the annual returns submitted. However, as the statistics regarding annual filings were included in those for companies, it is not clear how compliant partnerships are in terms of the annual returns. In addition, as the same as that for companies, even though the Co-operation Regulations set out broad requirements for partnerships to maintain the identity information, yet no systematic supervision and enforcement measures have been taken by the CfR in terms of the effective implementation of the Co-operation Regulations in Malta.

128. For partnerships as for companies, Malta is recommended to enhance its supervision and monitoring activities to ensure that the Co-operation Regulations are implemented effectively in practice.

Beneficial ownership

AML laws requirements and implementation

129. As the case of companies, the requirements of availability of beneficial ownership information of partnerships in Malta are met through the AML laws, tax laws and company laws.

130. Under the Maltese AML legislation, since a partnership is "a body corporate or a body of persons", thus the definition of beneficial ownership in respect of companies applies to partnerships (section 2(1)(a) of the PMLFTR). While taking the approach to apply the same rules to partnerships as to companies, the principle that should then be applied to partnerships is that the determination of beneficial ownership should take into account the specificities of their different forms and structures.[22] In Malta, where the beneficial owners of partnership cannot be identified through the rules as that of companies, to the extent that the subject person has exhausted all possible means to identify a beneficial owner and it does not have any suspicions, the AML-obliged person must identify those persons who hold the position of senior managing officials of the partnership as beneficial owners and to identify and verify their identity accordingly. This would involve identifying and verifying the identity of the general partners who effectively manage the partnership (section 4.3.2.3 (v) of the FIAU Implementation Procedures (Part 1).

131. As the case of companies, the documentation, data or information including the beneficial ownership information of partnerships are required to be kept by the subject persons for five years.

132. The implementation and enforcement are carried out to partnerships by the FIAU, together with those of companies. Details on this can be referenced to discussions in element A.1.1 of this report.

Tax laws requirements and implementation

133. As discussed in the case of companies, the Co-operation Regulations oblige all entities including partnerships to keep updated beneficial ownership information (Regulations 4(2) of the Co-operation Regulations), and the definition of beneficial owners under the Co-operation Regulations is identical to that under the PMLFTR. The practical implementation of those rules to partnerships is the same as that of companies. However, as the case of companies, the Co-operation Regulations specified that in case of a partnership, the "owner" for purposes of the Co-operation Regulations includes "legal owners". This provision could be misleading and lead to misinterpretation

22. See paragraphs 16 and 17 of the Interpretive Note to FATF Recommendation 24.

and incorrect application of the general requirements in the Co-operation Regulations to require all entities to keep both legal and beneficial ownership information. As stated in paragraph 27, such ambiguity has since been cleared through binding guidelines issued by the CfR in April 2020. Malta is recommended to monitor the implementation of the newly issued binding guidelines and ensure their effectiveness in practice (see Annex 1).

Company law and implementation (BO registration for partnerships)

134. The Companies Act (Register of Beneficial Owners) Regulations apply to partnerships *en nom collectif* (general partnerships) and partnerships *en commandite* or limited partnerships in the same way they do for a "company" (Regulation 10). The requirements for companies to keep the up-to-date beneficial ownership information and register the beneficial ownership information with the MBR are equally applicable to the general partnerships and limited partnerships.

135. Therefore, the beneficial ownership information of Maltese partnerships will be available through the register of beneficial owners held by the Registrar of Companies. However, as mentioned as the case of companies, due to the relatively recent implementation of the centralised registration of beneficial ownership information, Malta has neither identified any significant non-compliances nor imposed any sanctions to partnerships.

Foreign partnerships

136. Foreign partnerships with income, deductions or credits for tax purposes in Malta or carrying on a business in Malta that fall within the scope of the Income Tax Act, are required to register with the CfR and file tax returns in Malta, which should include the identity information of the partners. As confirmed with Malta, there were 12 foreign partnerships registered with the CfR by the end of the current review period. Foreign partnerships are also within the scope of "entities" under the Co-operation Regulations, so they are required to maintain ownership and beneficial ownership information in the same way as that of domestic partnerships and companies. In terms of the definition of beneficial owners for partnerships, a threshold of 25% of ownership interest or voting rights apply, which conforms to the standard for legal persons. While Maltese partnerships are considered as legal persons, partnerships are considered as legal arrangements in many other jurisdictions, thus Malta should apply a different definition to foreign partnerships and other legal arrangements to ensure that the beneficial ownership information of all foreign partnerships is always available (see Annex 1).

Conclusion

137. To sum up, the availability of the beneficial ownership information of partnerships, including foreign partnerships, is mainly ensured by the Co-operation Regulations (i.e. maintained by the partnerships), and additional sources of beneficial owners of partnerships include the centralised register (i.e. maintained by the MBR) and the related legal framework is in place as such. However, Malta is recommended to enhance its monitoring and supervision of the implementation of the Co-operation Regulations and the new regulations on beneficial ownership registration.

138. During the current review period, Malta has received two requests in relation to the beneficial ownership information of partnerships, which as indicated by Malta have both been answered. There are no concerns raised by peers in this regard.

A.1.4. Trusts

Trusts in Malta

139. Express trusts are recognised and can be created under Maltese law. Maltese laws regarding the formation of trusts apply to any trusts which are governed by the Maltese law, irrespective of whether the settlor and/or beneficiaries are non-resident or whether the assets settled in the trust are located outside of Malta. The main law applicable to the creation of trusts in Malta is the Trusts and Trustees Act (TTA).

140. In Malta, professional trustees or private (non-professional) trustees may administer trusts governed by Maltese or foreign laws. Professional and private trustees are subject to specific provisions under the TTA. As discussed in the first round review report,[23] the professional trustees can be individuals or body corporates (e.g. companies or partnerships), and they are required to obtain prior authorisation from the MFSA. Non-professional trustees, which are individuals acting as private trustees, are not required to be authorised by the MFSA, but must engage a Notary Public in formation of a trust (Article 43A of the TTA). Whenever a private trustee acquires immovable property or shares in a Maltese company, being a non-authorised trustee, such private trustee is required under Article 43(9) of the TTA to appoint a person licensed to act as a trustee in Malta to act as a "qualified person" to ensure that all applicable legislation are complied with by the private trustee, including compliance with AML obligations (Article 43(9)(b) of the TTA). As of 13 August 2019, there were 135 authorised professional trustees in Malta

23. Refer to paragraphs 116 to 123 of the 2013 Report. Those remain applicable as confirmed by Malta.

(including 8 registered trustee companies of Family Trusts), and in total there are 3 529 trusts under the administration of these trustees (data as at 31 August 2018). As estimated by the Notarial Council, there were approximately 20 private trustees in Malta based on the notary business provided in the process of setting up a trust.

141. Trusts do not have an obligation to register in Malta for tax purposes, unless they have income attributable to them, in which case the trust needs to be registered for tax purposes and also for purpose of registration of beneficial ownership. As of March 2019, there were 338 trusts registered with the CfR.

Availability of identity information on trusts

142. In registering a trust for income tax purposes, the trustee must provide details of the settlor and the beneficiaries, including the income tax numbers (where applicable) (Schedule 1, Trusts (Income Tax) Regulations). The annual tax return in relation to a trust must include any change of trustees. While the disclosure in the annual tax return of the identity of settlors and beneficiaries and any change in beneficiaries is optional, this identity information must be kept by all trustees under the Co-operation Regulations. Under the Co-operation Regulations, trustees in Malta must take all reasonable measures to ensure that updated beneficial ownership information (as defined in the Co-operation Regulations) is kept for all express trusts for which they act as trustees, whether the proper law of such trusts is that of Malta or elsewhere. Any persons in Malta who are entrusted with the administration of express trusts have the same obligations (Regulation 4(4) of the Co-operation Regulations). However, as there are only requirements for trusts that have income attributable to them in Malta to register with the CfR, the CfR monitoring and supervision activities may only be limited to those registered trusts.

143. The identity of all parties to a trust is ensured under the AML legislation, which requires all professional trustees to keep information on 1) the settlor; 2) the trustee or trustees; 3) the protector where applicable; 4) the beneficiaries or the class of beneficiaries as may be applicable (Article 2(1)(b) of the PMLFTR) (see below).

Availability of beneficial ownership information of trusts

144. In Malta, there are three main sources for the availability of beneficial ownership information for trusts: beneficial ownership information held by the trustees of the trusts, by the service providers that are AML obliged persons, and by the government authorities under the centralised register of beneficial ownership information of trusts. The AML laws, tax laws and commercial laws all have legal requirements to ensure the availability of the beneficial ownership information of trusts.

AML law requirements and implementation

145. Under the AML law, all subject persons, which include licensed trustees (professional trustees) in Malta, are subject to the customer due diligence obligations, which include requirements to obtain and hold beneficial ownership information about all related parties to a trust. In addition, trustees are required to establish adequate systems for maintaining proper records of the identity and residence of beneficiaries, the dealings and the assets in connection with the trust (Article 43(4) of the TTA). This is complemented by section 3.0 of the Code of Conduct for Trustees (which is issued in terms of the TTA and is binding to all professional and private trustees) which requires that trustees have procedures in place to ensure that proper due diligence is carried out on any potential client, which as a minimum should enable trustees to comply with the AML laws in Malta, and the trustees' policies and procedures should enable trustees to ensure that they know the identity of each settlor, protector, custodian and beneficiaries. In the case of trusts set up by private trustees (non-professional trustees), these would include the intervention of a notary who is also a subject person under the AML laws in Malta, being required to identify the beneficial ownership information of the clients (trusts).

146. The definition of beneficial owners in terms of trust is specified in the AML law, which consist of 1) the settlor; 2) the trustee or trustees; 3) the protector where applicable; 4) the beneficiaries or the class of beneficiaries as may be applicable; and 5) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means (Article 2(1)(b) of the PMLFTR). This definition appears to be in line with the standard.

147. However, according to the AML Implementing Procedures, which is the binding guidance issued by the FIAU, beneficial owners do not necessarily be natural persons in the case of trusts or similar legal arrangements. Where the settlor, protector and/or the trustee are not natural persons, the subject person can limit themselves to consider any body (including legal persons) acting as such as a beneficial owner. Therefore, even though the definition of beneficial owners under the PMLFTR is transposed from the Fourth EU AML Directive, which is in line with the international standard, yet the binding guidance's interpretation is not in line with the international standard, according to which where any of these persons are not natural persons, information in respect of the natural persons who are the beneficial owners of that entity or arrangement should also be available. This may impact the accuracy of the beneficial ownership information maintained by the AML obliged persons in Malta. However, the MFSA confirmed that regular onsite inspections were carried out to professional trustees, including checks to ensure that the trustees have obtained and maintain updated

beneficial ownership information up to the natural persons as the ultimate beneficial owners, including 13 onsite inspections in 2016, 15 in 2017, 20 in 2018, 18 in 2019 (including 7 focused on compliance with reporting of beneficial ownership information of trusts), and 27 in 2020 (including 19 focused on compliance with reporting of beneficial ownership information of trusts). This represents between 10% and 15% of professional trustees every year. The MFSA confirmed that from its supervisory experience of reviewing the files of trusts during onsite inspections, they found the natural persons are always up to natural person. In addition, the FIAU may need to acquire a better understanding of the definition of the beneficial owners within the context of the international standard for exchange of information on request. Malta should provide clarifications on its definition of the beneficial owners of trusts in the AML rules to ensure that only natural persons can be identified as the beneficial owners of the trusts (see Annex 1).

148. The documentation, data or information required to be kept under the AML laws must be kept by the AML subject persons for a period of five years (Regulations 13(2) of the PMLFTR). Upon termination of a trust, the professional trustees, as AML subject persons, must keep all information of the trust from five years from the date of termination to be in line with Regulation 13(2) of the PMLFTR. In the case of trusts with private trustees, the AML subject persons would be the notaries (not the private trustees), to which this provision should equally apply, since notaries will be engaged in the terminations of the trusts for any reason (Article 43A(3)(iv) of the TTA).

149. FIAU is the main authority that carries out such monitoring in terms of AML legislation, and works with MFSA in this regard, which is the regulatory body for the trust sector in Malta.

Register of BO information and implementation

150. To implement the Fourth EU AML Directive, the Trusts and Trustees Act (Register for Beneficial Owners Regulations (the TTA BO Regulations) were promulgated in Malta in January 2018. These regulations apply to express trusts that generate tax consequences,[24] irrespective of the manner in which

24. The term "tax consequences" is clarified in a "Frequently Asked Questions" document published by the MFSA, according to which an express trust is deemed to generate tax consequences when the trustee has incurred a tax liability. If an express trust has not incurred a tax liability in Malta in any particular year, the beneficial ownership information of such a trust needs not be included in the Register. The mere application by a trustee for an income tax number with the CfR is not enough, by itself, to bring the trust within the scope of the Regulations. See https://www.mfsa.mt/wp-content/uploads/2019/01/Trusts-BO-Register-FAQs_21Jun2018.pdf.

the trust is created or elects to be treated for tax purposes (Regulation 2(2) of the TTA BO Regulations). However, through the transposition of the amended Directive (EU) 2018/843 (the Fifth AML Directive) which was completed in February 2020,[25] Malta expects that beneficial ownership information will be available for all express trusts, irrespective of any tax consequence.

151. Under the TTA BO Regulations, a trustee who is authorised or registered to act as such (which does not include a private trustee) needs to submit to the Conduct Supervisory Unit at the MFSA a declaration of BO information in respect of every trust that generates tax consequences within 14 days of a trustee being appointed as a trustee of an express trust (Regulation 3(1) of the TTA BO Regulations). A trustee undertaking these obligations cannot enter the name of any beneficial owner in the declaration of beneficial ownership unless it has carried out customer due diligence obligations according to the PMLFTR (Regulation 3(5) of the TTA BO Regulations). Trustees are required to notify the MFSA of any changes to the beneficial ownership information of trusts within 14 days from when they become aware of such changes. In addition, trustees are required to submit, annually by 31 January, an annual declaration to confirm that there have been no changes to the reported beneficial ownership information for each reported trust, other than any changes already reported. This is a measure to verify on an annual basis, that the data held in the register is accurate up to date (Regulation 5(2) of the TTA BO Regulations). The authorities indicate that all trustees, which have provided some information to the BO register have complied with this obligation, which covers about 10% of trusts during the review period.

152. The Conduct Supervision Unit within the MFSA is responsible for the maintenance and administration of the Register of the beneficial ownership information of trusts and the MFSA is the authority tasked with ensuring that the data submitted is accurate and up to date. With effect from 1 January 2018, trustees in Malta who were appointed as such for trusts which generate tax consequences were required to report the beneficial ownership information of the trusts to the MFSA. For the existing trusts (generating tax consequences) prior to 1 January 2018, the beneficial ownership information had to be reported by 1 July 2018 and is available and accessible to competent authorities and subject persons. Trustees were also required to submit a declaration with respect to those trusts for which the beneficial ownership information was not reported, in order to confirm that such trusts were not

25. To transpose the Fifth EU AML Directive, Malta amended the TTA BO Regulations which now require beneficial owners' registration of all express trusts, regardless of any tax consequences. As this amendment was happened quite recently in late February 2020, the related analysis in this section still focused on the old TTA BO Regulations and the enforcement measures that have been by Malta to implement it.

reported in view of the fact that they were not deemed to generate tax consequences as required by the TTA BO Regulations.

153. As of November 2019, 316 trusts have been registered with beneficial ownership information and trustees indicated that 3 213 other trusts that are administered by authorised trustees are not subject to the requirement, as they do not generate tax consequences.

154. Malta confirmed that by October 2018, the register of the beneficial ownership information of trusts was made available online via the TUBOR portal,[26] whereby free and unfettered access was granted to competent authorities, and search facilities granted to subject persons for the purposes of carrying out due diligence under the PMLFTR. The TUBOR offered a section to provide the information of the settlors where the settlors are corporate entities, without going further to identify the natural persons behind the corporate entities. This may impact the accuracy of the beneficial ownership information reported to the MFSA under this TUBOR platform.

155. Where a trustee authorised or registered in terms of the TTA contravenes or fails to comply with any of the provision of the TTA BO Regulations, the MFSA may impose an administrative penalty of up to EUR 150 000 for each infringement (Regulation 9 of the TTA BO Regulations).

Tax Laws requirements (Co-operation Regulations)

156. While the Co-operation Regulations define the beneficial ownership of trusts, for companies to be able to look through trusts that may appear in their ownership chain or control them, did not appear to include an obligation for trustees to identify the beneficial ownership of trusts. Regulation 4(4) requires the identification of parties to a trust but does not require them to look through the parties which might be legal entities. However, as stated in paragraph 27, binding guidelines have been issued under the Co-operation Regulations that clarified the requirements for trustees to identify the natural persons as beneficial owners of trusts in Malta. Since the binding guidelines were quite recently issued (in April 2020), Malta is recommended to monitor the implementation of the binding guidelines and ensure their effectiveness in practice (see Annex 1).

26. TUBOR refers to Trusts Ultimate Beneficial Ownership Register, https://tubor.mfsa.com.mt/.

Conclusion

157. The availability of identity information and beneficial ownership information on trusts is based on the AML law and the Co-operation Regulations which imposed explicit obligations for subject persons including trustees to maintain the beneficial ownership information. Trusts with private non-professional trustees which are not regulated by the MFSA are still required to engage notaries which are subject persons under AML law, thus the legal framework in Malta is in place to ensure that the beneficial ownership information of trusts is available. However, there is a legal gap in the definition of the beneficial owners of trusts in the AML legislation in Malta, and there is a lack of sufficiently systematic monitoring and supervision activities from the FIAU, the MFSA and the CfR to ensure that the AML law and the Co-operation Regulations are effectively implemented in practice (as identified under A.1.1). As a supplementary source of beneficial ownership information of trusts, the centralised register of beneficial ownership information of trusts set up in Malta currently only covers the trusts that generate tax consequences in Malta even though the coverage has been expanded to all trusts regardless of tax consequences under the quite recent transposition of the Fifth EU AML Directive in February 2020, and there are also concerns on the quality and accuracy of the information reported to the MFSA. The MFSA also confirmed that enforcement actions have been taken since the implementation of the centralised registration of beneficial ownership information of trust, but they were only limited to a small proportion of trusts in Malta (i.e. those generating tax consequences in Malta), and the enforcement and supervision work is still in progress in particular considering the implementation of the 5th EU AML Directive since February 2020 which requires all trusts to be subjected to the centralised beneficial ownership registration rules.

158. Malta should provide clarifications on its definition of the beneficial owners of trusts in the AML rules to ensure that only natural persons can be identified as the beneficial owners of the trusts (see paragraph 147 and Annex 1). Malta is also recommended to enhance the monitoring and supervision of the effective implementation of the Co-operation Regulations.

A.1.5. Foundations

159. Foundations can be formed pursuant to the Maltese Civil Code. They may be private foundations, which are established for the private benefit of beneficiaries, or purpose foundations, which are established exclusively for a charitable, philanthropic, social or other lawful purpose.

160. As at 31 March 2020, there were 589 foundations in Malta, including 223 private foundations and 316 purpose foundations.

Identity information

161. As concluded in the first round review report, the primary and only complete source of identity information in Malta is the foundation itself in application of the Co-operation Regulations. The identity information on founders, administrators, supervisory council members and beneficiaries of foundations would be available as the foundation is required by the Co-operation Regulations to maintain such information. This information must be kept for at least five years, and should be updated no later than 14 days from the date the foundation is notified or becomes aware of any change (Regulations 4(1) and 4(13) of the Co-operation Regulations).[27]

162. Some more limited information on foundations in Malta may also be provided to the Registrar for Legal Persons (RfLP) and to the CfR.[28]

163. As in the case of companies, there is a lack of systematic monitoring and supervision of the effective implementation of the Co-operation Regulations in respect of foundations in Malta.

Beneficial ownership information

164. In Malta, the availability of beneficial ownership information is mainly ensured by the AML law, the centralised beneficial ownership registration requirements, and the Co-operation Regulations. Similar to companies, the administrators of private beneficiary foundations are subject persons for purposes of the Maltese AML legislation. Therefore, the administrators are required to carry out the customer due diligence to identify the beneficial owners of the foundations for which they act as administrators. The related AML requirements are the same as that for companies (refer to section A.1.1). In addition, where a foundation holds financial accounts with other third party financial institutions in Malta, their beneficial ownership information should also be identified and kept by the financial institutions, which are subject persons under the AML law.

165. The implementation of the beneficial ownership registration rules for foundations in Malta further ensure the availability of beneficial ownership information of foundations. Under the Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations) Regulations (BO Registration Regulations for Foundations), every foundation must take all reasonable steps to obtain and at all times hold adequate, accurate and up-to-date information in respect of its beneficial ownership (Regulation 4(1) of the BO Registration

27. Refer to paragraphs 158 to 161 of the 2013 Report.
28. There has been no substantial changes to legal requirements for the availability of identify information on foundations in Malta since the last review. Detailed discussions can be referred to in Paragraphs 142-160 of the 2013 review report.

Regulations for Foundations). These regulations apply to all foundations established a) as a beneficiary foundation for a private interest; or b) as a purpose foundation for the achievement of a social purpose of for the carrying on of any lawful activity on a non-profit making basis. Beneficial ownership information that needs to be identified includes a) the name; b) the date of birth; c) the nationality; d) the country of residence; e) an official identification document number indicating the type of document and the country of issue; f) the role of the beneficial owner in relation to the foundation in terms of the founder, administrator, protector or members of a supervisory council (if any), and any natural person exercising ultimate and effective control over the foundation by any means including any person whose consent is to be obtained; g) in the case of a beneficiary, the nature and extent of the benefit and any changes thereto, as well as, when applicable, an indication as to whether the foundation statute or any other instrument in writing including any suspension of the officer's duty to inform such beneficiary of his/her benefit under the foundation or that he/she forms part of a class of beneficiaries which may so benefit, and in such case, such person shall not be considered to be a beneficiary until such time as he/she is informed of such benefit or receives such benefit; and h) the effective date on which a natural person became, or ceased to be, a beneficial owner of the foundation or, in the case of a beneficiary, the effective date on which his/her beneficial interest in the foundation has increased or been reduced (Regulation 4(1) of the BO Registration Regulation for Foundations).

166. The definition of beneficial owners of foundations is in line with the international standard, which specifically includes (Regulation 2 of the BO Registration Regulations for foundations):[29]

- the founder
- the administrator(s)
- the protector or members of a supervisory council, if any
- the beneficiaries where identified in the relevant foundation instruments as per the regulations, or where individuals benefiting from the foundation have yet to be determined, the class of persons in whose main interest the foundation is set up or operates and when the beneficiary is a legal entity then this term shall also include the ultimate beneficial owner of such legal entity; and

29. The definition of beneficial owners of a foundation under the BO Registration Regulations for Foundations are referenced to the AML framework, including provisions under section 4(iv) on page 124 of the AML Implementation Procedures.

- any other natural person exercising ultimate and effective control over the foundations by any means including any person (other than those already referred to paragraphs a to d of this definition) whose consent is to be obtained; or
- whose direction is binding, in terms of the statute of the foundation or any other instrument in writing, for material actions to be taken by the foundation or the administrators.

167. Beneficial ownership information of every foundation should be provided to the Registrar for Legal Persons in accordance with the BO Registration Regulations for Foundations and will be held by the Registrar for Legal Persons in a Register of Beneficial Owners – Foundations (Regulation 6(1) of the BO Registration Regulations for Foundations). The information must be adequate, accurate and up to date. Where there is a change in the beneficial ownership information of a foundation or any other change occurs as a result of which the particulars in the Register of Beneficial Owners – Foundations in relation to a beneficial owner are incorrect or incomplete, the foundation has to deliver to the Registrar for Legal Persons a notice of the change, providing the information required on any new beneficial owner, updated information including the nature and extent of the beneficial interest held on each of the other beneficial owners and the effective date of changes made. This needs to be delivered within 14 days from the date on which the change is recorded with the foundation. The Registrar for Legal Persons shall enter the said changes in the Register of Beneficial Owners – Foundations. These notices must be signed by at least one officer of the foundation and where the officer is a body corporate, the notices must be signed by at least two persons entrusted with the management and administration (Regulation 7(2) of the BO Registration Regulations for Foundations).

168. If default is made in complying with any dispositions that are mentioned above, the foundation and every officer of the foundation who is in default will be jointly and severally liable to a penalty of EUR 500, and EUR 5 for every day during which the default continues (Schedule to BO Registration Regulations for Foundations). In the case where an officer of the foundation fails to notify the Registrar of any changes in the beneficial ownership of a foundation, the foundation and every officer of the foundation who is in default will be jointly and severally liable to a penalty of EUR 500 and EUR 5 for each day during which the default continues. In all instances contemplating penalties above, an officer of the foundation will not be liable if he/she had exercised all due diligence to comply with the obligations and the default was not due to any act or omission or negligence on his/her part (proviso to Regulations 4(9), 5(3) and 7(5) of the BO Registration Regulations for Foundations). Furthermore, any officer or beneficial owner of a foundation who knowingly or recklessly makes a statement, declaration or otherwise

provides to the Registrar for Legal Persons information on the beneficial ownership of a foundation, that is misleading, false or deceptive in a material particular, will be guilty of an offence and shall be liable on conviction to a fine of not more than EUR 5 000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment (Regulation 12 of the BO Registration Regulations for Foundations).

169. As of 31March 2020, 357 of the total 589 foundations registered with the Registrar for Legal Persons have submitted the beneficial ownership information. But the Registrar for Legal Persons has not done any checks on the data quality and accuracy and no supervision and enforcement measures have been taken on the implementation of the beneficial ownership registration for foundations in Malta. Malta explained that the function of the Registrar for Legal Persons is currently in the process of being transferred to the MBR, and once it is done, the MBR will take systematic actions for beneficial ownership registration of all related entities, including foundations.

170. Under the Co-operation Regulations, foundations as one type of the entities, are also required to keep their owners and beneficial ownership information. The Co-operation Regulations specified that in case of a foundation, the "owner" for purposes of the Co-operation Regulations includes "the founders, the administrators, the members of the supervisory council, the beneficiaries (where applicable) as well as any other persons with the authority to represent the foundation" (Regulation 4(1)). Similar to companies as discussed in A.1.1, this additional statement could be misleading as it did not refer to natural persons that may be the beneficial owners of the foundation. However, as stated in paragraph 27, such ambiguity has been cleared by binding guidelines issued under the Co-operation Regulations by the CfR in April 2020. Malta is recommended to monitor the implementation of the newly issued guidelines and ensure their effectiveness in practice (see Annex 1). In addition, where the foundation is terminated, the last remaining administrator(s) are obliged to keep the related information as per Article 10 of the Second Schedule of the Civil Code.

Conclusion

171. During the current review period, Malta received no requests for information of foundations.

172. There are legal requirements in place under the AML law, the beneficial ownership registration rules and the Co-operation Regulations in Malta to ensure the availability of the identity and beneficial ownership information of foundations in Malta. However, Malta was not able to provide any statistics regarding the implementation of those legal requirements. There are concerns on whether Malta has conducted sufficient monitoring and supervision

activities to ensure that the identity and beneficial ownership information of foundations is always available. Malta is recommended to put a monitoring and supervision programme in place to ensure that the related laws on maintaining the identity and beneficial ownership information of foundations are implemented effectively in practice.

Other relevant entities and arrangements

Associations in Malta

173. Under Maltese laws, associations can be set up, which can include co-operative societies, sports organisations and voluntary organisations. There are no substantial changes to the registration and tax filing requirements of co-operatives and associations in Malta since the first round review.[30] As at 31 March 2019, there were 73 co-operatives and 1 377 associations in Malta.

Legal ownership information

174. Legal ownership and identity information concerning co-operatives and associations is available, mainly because they are required by the Co-operation Regulations to maintain such information (Regulations 2 of the Co-operation Regulations). In addition, the ownership information of co-operatives is publicly available including their registration and financial statements as required by the Maltese law (Article 12 of the Co-operative Societies Act).

175. The related sanctions for non-compliance under the Co-operation Regulations that apply to companies as discussed in element A.1.1 also apply to associations and co-operatives.

Beneficial ownership information

176. For the availability of the beneficial ownership information of co-operatives, as their ownership information (including registration information and financial statements) is publicly available, the beneficial ownership information would be available for EOI purposes.

177. For associations, the availability of beneficial ownership information is mainly ensured by the centralised registration requirements and the Co-operation Regulations. Under the Civil Code (Second Schedule) (Register of Beneficial Owners Associations) Regulations) (BO Registration Regulations for Associations), the definition of beneficial owner specifically

30. Refer to paragraphs 163 to 170 of the 2013 Report.

applies to 1) members; and 2) relevant persons including a) the administrators; b) the protector or members of a supervisory council if any; and c) any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means including any person whose consent is to be obtained or whose direction is binding, in terms of the statue of the association or any other instrument in writing, for material actions to be taken by the administrators thereof (Regulation 2 of the BO Registration Regulations for Associations).[31]

178. Every association is obliged to take all reasonable steps to obtain and hold adequate, accurate and up-to-date information in respect of its beneficial owners. Where an association has been established and/or registered prior to the coming into force of the regulations i.e. first January 2018, the association needs to deliver to the Registrar for Legal Persons a declaration containing the information on all the beneficial owners of the association. This declaration had to be submitted by 30 June 2019 (Regulation 5(1) of the BO Registration Regulations for Associations). In the case of an association that was established on or after 1 January 2018, such association had to deliver to the Registrar for Legal Persons the following documents by 30 June 2019 (Regulation 6(1) of the BO Registration Regulations for Associations):

a. an authenticated copy of its statute; and

b. a declaration containing all the information on beneficial ownership information including all the members and relevant persons of the association, signed by two of the administrators of the association, unless the association has a sole administrator, in which case by such administrator.

179. The association cannot commence activities and be registered unless the Registrar is satisfied that its obligations under the law relating to the

31. This applies to all associations that are established for a private interest or for the achievement of a social purpose or for the carrying on of any lawful activity on a non-profit making basis, irrespective of whether they are registered with the Registrar for Legal Persons or with any other registrar, commissioner, board or entity (including co-operative societies, sports organisations and voluntary organisation in the form of associations). This however does not apply to the below associations (Regulations 3(2) of the BO Registration Regulations for Associations): (a) any association of persons which is regulated by the Companies Act; (b) an association which is established as a condominium association in accordance with the Condominium Act; (c) an association which is a trade union or an employers' association; (d) a voluntary organisation enrolled with the Commissioner for Voluntary Organisations which is in the form of a foundation, trust or temporary organisation (Regulation 3(1) of the BO Registration Regulations for Associations).

Register of Beneficial Owners have been complied with (Regulation 6(2) of the BO Registration Regulations for Associations). The information on the beneficial owners of every association provided to the Registrar for Legal Persons are held by the Registrar for Legal Persons in a Register of Beneficial Owners that is kept for this purpose (Regulation 7(1) of the BO Registration Regulations for Associations). As of December 2019, 747 associations (out of 1 377 associations registered with the Registrar) have submitted their beneficial ownership information. Similar to the foundations, the related data check and supervision work has not been done by the Registrar for Legal Persons and the MBR may take actions in this regard when the transfer is completed.

180. Under the Co-operation Regulations, like companies, partnerships and foundations, co-operative and associations are all entities as specified, thus are required to keep the legal ownership and beneficial ownership information as per Regulation 4.

181. In addition, co-operatives and associations registered in Malta would normally require local bank accounts, thus their beneficial ownership information would also be kept by third party financial institutions in Malta.

Conclusion

182. During the current review period, Malta did not receive any EOI requests related to associations. To conclude, there are legal requirements in Malta to ensure the availability of the legal ownership and beneficial ownership information of associations, but as for foundations, Malta should put a monitoring and supervision programme in place to ensure that the related laws on maintaining the identity and beneficial ownership information of associations, in particular the Co-operation Regulations, are implemented effectively in practice.

A.2. Accounting records

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

183. There are various legal requirements in Malta under the company law, tax law and the trust law to require the availability of accounting information and the underlying documentation in accordance with the standard.

184. The supervision and enforcement of the implementation of the Co-operation Regulations is not adequate. As seen for the availability of ownership information under element A.1, there are similar concerns on this matter for the availability of the accounting information and underlying documentation of all entities in Malta. Therefore, Malta is recommended to

put a systematic monitoring and supervision programme in place and ensure that the Co-operation Regulations are effectively implemented in practice through enhanced enforcement measures.

185. Inactive companies registered with the MBR and the CfR cause concerns on the availability of their accounting information and underlying documentations, and in practice they have given rise to either delays in providing the information requested by peers or failure to provide the information as confirmed by Malta. Malta is recommended to take actions to reduce the large number of inactive companies and monitor their effectiveness in order to ensure availability of the accounting information and underlying documentations of all companies in Malta.

186. During the current review period, Malta received 486 requests, 212 of which related to accounting information.

187. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The Co-operation Regulations, which came into force in July 2011, establish comprehensive requirements on the availability of accounting information and penalties for non-compliance. However, the monitoring and supervision work conducted by the tax authorities to check whether the Co-operation Regulations are effectively implemented in practice or not need to be strengthened, otherwise there may be concerns on the availability of accounting information and underlying documentation in all cases to all related entities.	Malta should continue enhance its monitoring and supervision activities its efforts to ensure that its supervisory and enforcement powers are sufficiently exercised in practice to support the legal requirements established by the Co-operation Regulations, which ensure the availability of accounting information in all cases.

	There were over 10 000 inactive companies registered with the Malta Business Registry (representing 17% of the companies registered with the Registry) during the current review period. The Malta Business Registry has taken actions to strike off those inactive companies, but their effectiveness is not able to be tested. In addition, there are 12 351 inactive companies registered with the Commissioner for Revenue (representing 20% of the companies registered with the Commissioner). Such companies caused concerns on the availability of their accounting information, and in practice gave rise to either delays in providing the information or failure to provide the information.	Malta is recommended to continue to take actions on a regular basis to limit the number of inactive companies in the business register and to reduce the large number of inactive companies in the tax database. Malta should monitor the effectiveness of those actions in order to ensure availability of the accounting information and underlying documentations of all companies in Malta.
Rating: Partially Compliant		

A.2.1. General requirements

188. The standard is met by a combination of requirements in tax laws, company laws, trust laws and other related laws, but their low enforcement does not ensure an adequate level of effectiveness. The various legal regimes and their implementation in practice are analysed below.

Tax laws

189. There is no change to the requirements under the tax laws in Malta for the availability of accounting information of all relevant entities and arrangements.[32] The main legal requirement in this regard is set in the Co-operation Regulations which require all relevant entities and trustees to keep accounting records in accordance with the international standard (Regulation 4(7)). Where information has not been kept in the proper manner, resulting in information not being provided at all or in a timely manner, the person who has a duty to keep such information is liable to a penalty of EUR 19 250 (Regulation 6(2)).

32. Refer to paragraphs 201 to 205 of the 2013 Report.

190. In addition, the Income Tax Management Act requires that every person carrying on a trade, business, profession or vocation must keep proper and sufficient records of his/her/its income and expenditure to enable his/her/its income and allowable deductions to be readily ascertained (Article 19(1)). An entity must in addition keep a profit or loss account or an equivalent annual statement as well as a statement of the assets and liabilities as on the date of the annual account are made, or a balance sheet (Article 19(2)). Any person who contravenes or fails to comply with those requirements is guilty of an offence and liable on conviction to a fine between EUR 23 and EUR 116 (Article 49).

191. Records that are required to be kept must be retained for a period of not less than nine years from the completion of the transaction, acts, or operations to which they relate (Article 19(5) of the Income Tax Management Act). All persons including all entities – companies, partnerships, foundations, trustees, associations and co-operatives – are subject to the same requirements.

192. In terms of the implementation of the Co-operation Regulations in requiring the availability of accounting information, which are the same as those for companies in A.1.1, there are no systematic monitoring and supervision on the effective implementation of the Co-operation Regulations in Malta. As discussed under A.1.1, Malta confirmed that a total of 6 405 companies were checked during the current review period, and those checks included the issues on completeness of tax returns submitted, tax accounting and dividend distributions. Where considered necessary, underlying documentation was requested. Malta confirmed that actions were taken in the case of 667 companies, resulting in penalties amounting to EUR 287 844 for irregularities encountered, and interests were also charged. However, Malta is not able to quantify the penalties especially related to non-compliances on keeping accounting records.

Company laws

193. There are additional requirements to keep accounting records for companies and partnerships in Malta in the company laws, and there are no substantial changes to such requirements since the last review.[33] For failure to comply with any accounting requirements of the Companies Act, the

33. Refer to paragraphs 206 to 213 of the 2013 report. However there is a minor update regarding the small the medium sized enterprises. The simplified annual financial reporting for small and medium sized enterprises was superseded as from financial reporting periods starting 1 January 2016, through the adoption of the General Accounting Principles for Smaller Entities (GAPSME), a special standard that can be used by entities that meet certain criteria in line with the EU Single Accounting Directive 2013/34/EU.

penalty, upon conviction is a fine of up to EUR 11 647 for every officer of the company. If an officer can show that he or she acted diligently and that the default was excusable, he or she can avoid the conviction and penalty (Article 163(6)). As confirmed by the MFSA, whenever the MFSA carries out onsite inspections at Trustees and CSPs who offer directorship services to Maltese entities, one of the checks carried out is whether the Trustees/CSP is preparing financial statements within the timeframes applicable by law. Where gaps are identified, CSPs and Trustees are requested to rectify any such gaps. This would also be taken into account when regulatory action is being considered against a CSP/Trustee. However, no details of those onsite inspections were provided, thus it is difficult to conclude whether those actions were sufficiently relevant.

194. The accounting records must be kept by the companies and partnerships for ten years from the date the last entry was made under the Companies Act (Article 163(5)). Failure to keep such records for the ten year period results in a fine for every officer of the company who is in default of EUR 1 164.69 (Article 163(7)). If default is made in complying with this obligation, the partnership and each general partnership will be liable to a penalty of EUR 1 164.69 (Item 13(7) of the Tenth Schedule).

195. Companies and partnerships are required to file their annual financial accounts with the MBR, which are kept indefinitely, as a matter of practice. This information is publicly available at the MBR. As discussed in element A.1.1, the average annual filing rates of accounts (financial statements) was about 50%, which is low, and may cause concerns on the availability of the accounting information of companies and partnerships by the MBR, as illustrated during the current review period.

Trusts and Trustees Act

196. In addition to the accounting requirements under the Income Tax Management Act and the Co-operation Regulations, persons who operate in or from Malta, including trustees that are resident in Malta must keep accounting records pursuant to the TTA and the Code of Conduct for Trustees which is issued by the MFSA. The Code of Conduct applies to both professional and non-professional trustees. There is no change to such requirements under the TTA since the last round review in Malta.[34]

197. Any person who contravenes or fails to comply with any of the provisions of the TTA, or contravenes or fails to comply with any authorisation, condition, obligation, requirement, directive or order made or given under any of the provisions of the TTA, is guilty of an offence and liable, on conviction,

34. Refer to paragraphs 216 to 220 of the 2013 Report.

to a fine not exceeding EUR 466 000 or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment (Articles 51(1) and (6) of the TTA). In addition, where a trustee contravenes or fails to comply with any of the conditions imposed in an authorisation issued by the MFSA, or contravenes or fails to comply with any directive, obligations, or other requirement made or given by the MFSA, an administrative penalty may be imposed by the MFSA not exceeding EUR 150 000 for each infringement or failure to comply, as the case may be (Article 51(7) of the TTA).

Entities that ceased to exist and retention period

198. Where the name of a company is struck off the register or a company is liquidated, the liquidator is obliged to keep the accounts, accounting records and documents of the company (i.e. all historical accounts information) for a period of ten years from the date of publication of the striking off of the company's name from the register. If the liquidator fails to comply with this obligation he shall be liable to a penalty of EUR 1 165 (Article 324 of the Companies Act). Similar requirements are provided in the Companies Act for partnerships (Article 50 of the Companies Act), where there is no liquidator and the partners fail to elect a person for the purpose by the majority of partners or the person refuses to accept his/her election, the accounting records and documents must be delivered to the Registrar within 14 days of the non-acceptance or failure to elect as the case may be, and the Registrar will keep such records for the said period of ten years.

199. In addition, under the Co-operation Regulations, entities, trustees and other persons that are required to keep information, records or documents under any of the provisions shall keep such information, records and documents for a minimum period of five years from the end of the year in which the relevant transactions, acts or operations took place (including where the relevant entity or trust is liquidated or is no longer in existence) (Article 4(13) of the Co-operation Regulations).

200. As for the enforcement of the above legal rules, there is no sufficient supervision of the implementation of the obligations of keeping records on entities that ceased to exist.

A.2.2. Underlying documentation

201. As concluded in the first round review report, under the Co-operation Regulations, the accounting records required to be kept by entities include the underlying documentations such as invoices, contracts, and the same retention period applies. This is in line with the international standard. Malta confirms that there is no change to such requirements since the last round review.

Availability of accounting information in EOI practice

202. During the current review period, Malta received 212 EOI requests that were related to accounting information. Malta confirmed that they have answered the majority of the requests regarding account information, but there were some failures to provide the accounting information where they were related to inactive companies. One peer also reported that Malta was not able to provide the accounting information in some EOI requests

Conclusion

203. In summary, there are various legal requirements in Malta under the companies law, tax law and the trust law to require the availability of the accounting information and underlying documentation in Malta, in particular the Co-operation Regulations, which set out comprehensive requirements to maintain the accounting information and underlying documentations. However, there have been no systematic monitoring and supervision activities carried out by the CfR since the last round review to check if the Co-operation Regulations were effectively implemented in practice.

204. As discussed in element A.1.1, there were 10 000 inactive companies registered with the MBR during the review period. Malta have taken actions to strike them off, but the effectiveness of these measures could not be tested since some of the actions were recently taken in 2020. In addition, there are 12 351 inactive companies registered with the CfR, which cause concerns on the availability of the accounting information and underlying documentation of those companies. In practice, Malta confirmed that they were not able to provide the accounting information or the underlying documentation of those inactive companies in relation to requests received, some of which the local service providers even have lost contact with. Similar to the case of element A.1.1, the Maltese authorities assured that both the MBR and the CfR are taking actions to address this issue of inactive companies, including the difference between the numbers of inactive companies registered with the MBR and the CfR.

205. Malta is recommended to enhance its monitoring and supervision activities to ensure that accounting information and the underlying documentation are always available through the effective implementation of the Co-operation Regulations. Malta is also recommended to take effective actions to reduce the large number of inactive companies in order to ensure availability of the accounting information and the underlying documentations of all companies in Malta.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

206. As concluded in the first round review report, the combination of the AML laws as well as the regulatory regime for all licensed banks ensures that all records pertaining to accounts as well as related financial and transactional information are available in Malta. As of the end of the review period, there were 24 licensed banking institutions.

207. With respect to the new obligation to maintain information on the beneficial owners of bank accounts, as noted under section A.1, the definition of beneficial owners of legal persons under the AML rules in Malta conforms to the standard but that of trusts allows the banks to treat the non-natural person settlors, protectors or trustees as beneficial owners, which is not in line with the standard. However, under the binding guidelines for Co-operation Regulations issued by the CfR in April 2020, it has been clarified that only natural persons can be identified as beneficial owners of trusts. Since the guidelines were issued quite recently, Malta should take measures to ensure they are effectively implemented in practice (see Annex 1).

208. Under the AML laws, there is no specific timeframe required for banks to review the beneficial ownership information and ensure that it is up to date, but the newly issued binding guidelines for the Co-operation Regulations have clarified the timeframe for periodic review by banks to be conducted at least every 3 months. Malta should ensure that the newly issued legal guidelines are effectively implemented in practice (see Annex 1). The related supervisory activities on beneficial ownership requirements on bank account holders is weak. Malta is recommended to strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that banking information including beneficial ownership information on bank account holders is available in all cases in line with the standard.

209. During the current review period, Malta received 153 requests that were related to banking information – some from banks in Malta and some for banking information held by Maltese entities but from foreign banks. Two peers reported that there were failures experienced with Malta to provide banking information. Malta confirmed that they had tried to communicate with the related individual taxpayers on multiple occasions (where the banking institution was not situated in Malta), but no responses was ever given, or those requests were related to inactive companies, with which subject persons or service providers have lost contact.

210. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified	The supervisory activities related to requirements on banking information including beneficial ownership information of bank account holders are uneven. There is no systematic monitoring activities on-going with respect to the banks' obligations to maintain banking information as required under the Co-operation Regulations, in particular the beneficial ownership information of account holders. Under the AML laws, strengthened actions have been taken by the FIAU and the MFSA, but their effectiveness cannot be assessed during this review period.	Malta is recommended to have in place supervision programmes and apply effective sanctions in cases of non-compliance under the Co-operation Regulations, and also ensure that the actions taken by the FIAU and the MFSA are effective under the AML laws, so that banking information including beneficial ownership information of bank account holders is available in all cases in line with the standard.
Rating: Partially Compliant		

A.3.1. Record-keeping requirements

Availability of banking information

211. Under the Co-operation Regulations, banks are required to retain banking information on all account holders in relation to their banking activities in Malta, including all records pertaining to the accounts as well as to related financial and transactional information (Regulation 4(11) of the Co-operation Regulations). Banking information must be kept for at least 5 years from the end of the year in which the relevant transactions took place (Regulation 4(13) of the Co-operation Regulations).[35]

35. Refer to paragraphs 235 and 236 of the 2013 Report.

212. In addition, under the AML law, banks in Malta are subject persons and are required to retain documents and information for use in any investigation or an analysis of possible money laundering or funding of terrorism (Article 13(1) of PMLFTR). Banks that do not maintain or apply record keeping procedures are liable to an administrative penalty of not less than EUR 1 000 and not more than EUR 46 500 in respect of every separate contravention, and an administrative penalty of not more than EUR 5 000 000 or 10% of the total annual turnover according to the bank's latest available approved annual financial statements[36] in the case of breaches determined to be serious, repeated or systemic (Regulation 21(2) of the PMLFTR).

213. The record retention period applicable under the PMLFTR is 5 years and is equally applicable in relation to information, data and documentation collected to comply with one's CDD obligations as well as to supporting evidence and records necessary to reconstruct all transactions carried out in the course of a business relationship or an occasional transaction (Regulation 13 of the PMLFTR).

Beneficial ownership information on account holders

214. The EOI standard was strengthened in 2016 and now specifically requires that beneficial ownership information be available in respect of all account holders. The Co-operation Regulations require the banks to keep banking information that includes "all records pertaining to the accounts as well as to related financial and transactional information", without clear referencing to beneficial ownership information. In April 2020, Malta issued the guidelines for the Co-operation Regulations to clarify that the banking information must also include the beneficial ownership information of the account holders, and there is also a specific requirements for all banks to conduct the review of the beneficial ownership information at least every three months.

215. Under the AML framework in Malta, banks are subject persons under the AML law in Malta, thus are subject to the same CDD obligations as any other subject persons including the obligations to identify the beneficial ownership information under Regulation 7(1)(b) of the PMLFTR. As discussed in element A.1.4, due to the gap of the definition of beneficial owners of trusts in Malta, the beneficial ownership information of account holders maintained by the banks in Malta may not be accurate. Malta should provide clarifications on its definition of the beneficial owners of trusts in the AML rules to ensure that only natural persons can be identified as the beneficial owners of the trusts (see Annex 1).

36. In detail, Administrative penalties can be divided into three broad bands, as indicated under A.1.1.

216. Whenever a bank is to carry out an occasional transaction or to establish a business relationship with a new customer, it must identify the customer's ownership information (including beneficial ownership) and verify the said identity on the basis of independent and reliable information, data or documentation. Banks are also subject to on-going monitoring obligations under Regulation 7(2) of the PMLFTR, and banks are required to keep any documentation, information and data collected for CDD purpose. In this regard, banks as subject persons are required to review from time to time the information they hold so as to ascertain whether the said information is still current and valid. This should be done on a risk sensitive basis, with higher risk business relationships being reviewed more often than lower risk ones. In addition, should the bank become aware of any change or development in the course of the business relationship, it has to consider whether this requires its information, data or documentation to be updated. However, there is no specific minimum timeframe required for banks to review the beneficial ownership information and ensure that they are up to date.

217. A breach of any of the obligations imposed under the PMLFTR is subject to administrative sanctions and/or the imposition of other administrative measures such as remedial actions. The applicable administration penalties are the same as those regarding the banks' record keeping obligations under Regulation 21(2) of the PMLFTR.

Oversight and enforcement

218. Under the Co-operation Regulations, banks that fail to provide information as required under the Co-operation Regulations because it has not been properly kept or updated as required would be subject to a penalty of EUR 19 250 (Regulation 6(2) of the Co-operation Regulations) imposed by the tax authorities. Under the AML laws, the penalties are imposed by the FIAU through its Compliance Monitoring Committee (CMC) without the need of a court hearing. Findings from on-site or off-site examinations are presented to the bank concerned, allowing it to make submissions regarding the findings before the CMC issues a final determination. As from October 2017, administrative sanctions are subject to appeal before the courts when they exceed EUR 5 000. Final administrative penalties in excess of EUR 10 000 are subject to publication on the FIAU's website.

219. Under the Co-operation Regulations, no information has been provided by the CfR with regards to the enforcement and supervision activities that have been taken regarding banks.

220. Under the AML laws, the FIAU confirmed that supervisory actions have been undertaken, including on-site and off-site assessments, which took into account the different obligations to the obliged persons as required by

the AML laws. This would include a consideration to what extent a subject person is adhering to record keeping obligations. In its daily operations, the FIAU requests beneficial ownership information from banks for AML purposes and indicates having rarely faced issues with the availability of the information.

221. In terms of direct supervision, between 2016 and 2018 a total of 13 on-site examinations were carried out on 10 distinct credit institutions, with 3 of them being subject to a follow-up examination within the same period. Administration measures have been imposed with respect to 4 institutions and the examination work is still ongoing with respect to the other institutions. None of the breaches identified related to beneficial ownership information, except for one case involving a bank that was subsequently fined and had its licence cancelled due to serious breaches including the CDD rules. The FIAU confirmed that they conducted those assessments on a risk-based approach, and a revised and more structured risk-based approach to supervision was adopted by the FIAU in 2019, providing for a sector-specific risk assessment and understanding of the individual subject persons. This extends also to banks. Under this revised approach banks are subject to more intense supervision for compliance with their AML/CFT obligations than other subject persons, including checks that they retain beneficial ownership information on their customers. Given that the National Risk Assessment had identified the banking sector as being inherently high risk, the Supervisory Strategy of the FIAU deals with this sector in an ad hoc manner intended to reflect this higher risk. This revised supervisory strategy was implemented in July 2019 and has resulted in a total of 7 full scope on-site examinations on banks between July 2019 and January 2020. In addition there was an additional on-site examination on a further bank carried out in May 2019 under the previous supervisory methodology adopted by the FIAU. All 7 banks were within the high risk band and are therefore subject to review again within 18 months. However, the statistics maintained by the FIAU do not allow them to state the number or nature of the findings or breaches relative to record keeping breaches identified through supervisory activities. Without statistics on the nature of breaches identified and what action was taken to remediate the underlying cause of these breaches, it cannot be substantiated that all requirements on record keeping under the AML laws are effectively implemented in practice. In addition, the gap on the definition of beneficial owners for trusts also impacts the quality and accuracy of the beneficial ownership information maintained by the banks as required under the AML laws. With regard to the measures taken after July 2019, as they were quite recent and not within the period under review, thus their effectiveness cannot be assessed.

222. To conclude, there are in place legal requirements in Malta to require banks to maintain banking information including the beneficial ownership information, in particular those under the Co-operation Regulations.

However, since the binding guidelines for the Co-operation Regulations were issued by the CfR quite recently, Malta should take measures to ensure that the guidelines are effectively implemented in practice (see Annex 1). In addition, there were no oversight and enforcement activities taken by the CfR for the effective implementation of the Co-operation Regulations. The related supervisory activities on beneficial ownership requirements on bank account holders were weak during the review period under the AML laws. This caused significant concerns as the obligations as specified under the Co-operation Regulations and the AML laws are not effectively implemented in practice. Malta confirmed that there have been measures taken to strengthen the supervisory strategy to banks under the AML laws, but their effectiveness cannot be assessed during this review period. Malta is therefore recommended to monitor its strengthened supervision programmes and apply effective sanctions in cases of non-compliance, so that banking information including beneficial ownership information of bank account holders is available in all cases in line with the standard.

Availability of banking information in EOI practice

223. During the current review period, Malta received 153 requests that were related to banking information. Two peers reported that there were failures experienced with Malta to provide the banking information. Malta confirmed that since the requesting partner could not identify the banks concerned, the EOI unit had tried to communicate with the related individual taxpayers on multiple occasions, but no responses was ever given, or those requests were related to inactive companies, with which all subject persons or service providers have lost contact.

Part B: Access to information

224. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

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).

225. The Maltese competent authority's ability to obtain and provide information is mainly specified in the Co-operation Regulations and the Income Tax Management Act, which have not been amended since the last review. Malta's ability to obtain and provide information remains in line with the standard. No issues were encountered in this regard in practice during the current review period.

226. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

B.1.1 and B.1.2. Access to legal and beneficial ownership and accounting information and access to banking information

The Maltese Competent Authority

227. As specified in the Co-operation Regulations, the competent authority in Malta for information exchange for tax purposes is "the Minister responsible for finance or his authorised representative". The authorised representative is the competent official that has been identified as such, whose name and designation are published on the website of the CfR (Regulation 8 of the Co-operation Regulations). The current authorised representative is the Director General (Legal and International) within the CfR that forms part of the Ministry for Finance and Financial Services and he is the sole point of contact for foreign tax authorities wishing to request information from the Maltese tax authorities.

Access to legal and beneficial ownership and accounting information

228. There is no change to the legal provisions in relation to the access powers of the tax authorities in Malta for EOI purposes.[37] Under the tax laws, the Commissioner of the CfR in Malta has broad powers to access information as often as he/she deems necessary, including providing information to foreign tax authorities where arrangements (including agreements or convention for EOI purposes) between Malta and the respective State or its tax authorities exist for reciprocal exchange of information for tax purposes (Article 10A(1) of the Income Tax Management Act).

229. In addition, the Co-operation Regulations provide that the Commissioner's powers should be interpreted so as to give the widest possible powers to obtain and provide information to the EOI partners (Regulation 5(2) of the Co-operation Regulations). Malta confirmed that there are no limitations on the Maltese CfR's powers with regards to domestic tax interest, criminal tax matters, *de minimis* thresholds or with respect to any taxpayers currently under examination.

230. There are no special procedures to be invoked by the Maltese CfR to exercise their powers. Where information is held by a person or entity subject to the AML laws, the competent authority may recover the information either directly from that person or it may require the FIAU to provide the information if it is held by the FIAU. Where information needs to be provided by the taxpayers or other related information holder under the Co-operation Regulations, the EOI unit of the CfR exercises its power to access the information via issuing an official notice to the concerned parties on the name of CfR. In practice, the EOI unit approached the entities that are subject to maintain the ownership information as required under the Co-operation

37. Refer to paragraphs 255 to 257 of the 2013 Report.

Regulations or the related service providers to seek for the information requested from partners.

Access to banking information

231. For banking information, the Maltese legislation does not specify the type of information required in respect of a request for banking information. Nevertheless, a request for information must include enough information so as to enable the Maltese authorities to conduct the relevant enquiry.

232. In practice, the Maltese CfR gathers banking information both from the taxpayers and directly from the banks. In this regard, the CfRwould need to assess the best method to gather information on a case-by-case basis taking into consideration related identification information provided by the requesting partners. On average, requests take no longer than 30 days and in practice requests for banking information are not treated differently from requests for other types of information (which are also 30 days on average).

B.1.3. Use of information gathering measures absent domestic tax interest

233. In Malta, the powers granted to the Commissioner under Article 10A of the Income Tax Management Act make no distinction between information required to be kept and that not required to be kept. The Commissioner may request information, including underlying documents, from any person, entity or scheme including banks, insurance companies, persons carrying on investment business, collective investment schemes and stockbrokers licensed under the relevant law in Malta. In this regard, the Commissioner is obliged to give notice in writing to the person from whom information is being requested, who is in turn obliged to furnish such information being requested, within a reasonable time stated in the notice. To this extent, if the information is not required to be kept but the information is nevertheless available, such information may be accessed through the same mechanism.

B.1.4. Effective enforcement provisions to compel the production of information

234. Malta has sufficient compulsory powers in place in order to compel information, including fines and imprisonment, which are mainly included in the Income Tax Management Act and the Co-operation Regulations.[38] There is no change in this regard in Malta since the last review.

38. Refer to paragraphs 268 to 271 for details of the penalties provisions in the 2013 Report.

235. In practice, during the current review period, record keepers have not disputed the obligation to keep the information in practice. However, should there be a challenge in court regarding the imposition of penalties under the law, the information holder would be able to obtain an effective judicial remedy.

236. During the current review period, the CfR imposed penalties in four requests to the information holders for failing to provide the information or for having provided it late, with a total amount of EUR 15 000.

237. Malta also stated that in some cases, as the information holders were inactive companies which are the obliged parties to hold the related information under Co-operation Regulations, Malta was not able to impose any penalties to such companies. To impose penalties to companies a default notice and subsequently a demand notice must be served. Since inactive companies have no one representing them in Malta it is difficult to impose such penalties since letters are generally returned undelivered.

B.1.5. Secrecy provisions

Bank secrecy

238. Bank secrecy provisions in the Maltese laws do not impede access to banking information pursuant to a request for information.[39] During the current review period, the Maltese Competent Authority has not encountered any situations where bank secrecy was an impediment to obtaining information.

Professional secrecy

239. The attorney-client privilege standard that would apply to information pursuant to an EOI request is found in Regulation 5(1) of the Co-operation Regulations, and is identical to the international standard (i.e. the OECD Model Tax Convention).[40] During the current review period, there was no such request relating to the information of a person benefiting from professional secrecy.

39. Refer to paragraphs 276 to 281 of the 2013 Report.
40. Refer to paragraph 282 of 2013 Report.

B.2. Notification requirements, 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.

240. In Malta, provisions regarding rights and safeguards including notification requirements are specified in the Co-operation Regulations, as well as the related exceptions to the notification requirements. They are compatible with an effective exchange of information, and there was no issue identified in the first round review for Malta regarding notification requirements or appeal rights. The element was determined to be in place and rated compliant with the standard. Since then there have been no changes in legislation and practice in Malta.

241. During the current review period, Malta confirmed that there was one case where the exception to the application of the notification requirements was made. The Maltese Competent Authority also confirmed that no practical difficulties have been experienced in Malta with regards to the notification requirement or any other rights and safeguards, such as appeal rights.

242. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

243. Rights and safeguards, including notification requirements with exceptions in specific cases, are in place that would not unduly delay or impede exchange of information in Malta. There is no change in this regard since the last review. Malta has rights and safeguards provisions in the Co-operation Regulations, including a notification requirement. Upon receipt of a valid request, the competent authority in Malta must notify the person (or his/her authorised representative) that such person is the subject of a request for EOI. This must take place regardless of whether the Maltese tax authorities have already been in possession of the information, but there is no specific time period within which such notification must take place.

244. In a letter of request made by the Commissioner pursuant to Article 10A of the Income Tax Management Act to a person believed to be

in possession of the information requested, the person is provided with the following details:

- the provision under which the request is being made and the legal obligations of the requested person
- the legal basis of the request for information made by the foreign competent authority
- the applicable legal consequences for failure to comply with such a request.

245. On receipt of a valid request from a requesting authority, the competent authority in Malta shall notify the person (or his/her authorised representative) concerning who the request is made, that a request for information has been received (Regulation 7(1) of the Co-operation Regulations). There are exceptions, including where the requesting authority has specifically requested that no such notification is made; where the competent authority in Malta determines that the request is of a highly urgent nature and that notification could delay the forwarding of information requested; or where the competent authority in Malta determines that such notification is reasonably expected to jeopardise the relevant investigation or audit being carried out in the relevant jurisdiction. The decision to apply an exception to notification cannot be appealed against (Regulation 7(1) of the Co-operation Regulations).

246. During the current review period, there was one request where an exception to the notification requirement was made (i.e. no notification or post-notification was made) as the requesting partner had specifically requested that no such notification is made.

247. The Maltese Competent Authority confirmed that no practical difficulties have been experienced in Malta with regards to the notification requirement or any other rights and safeguards, such as appeal rights.

Part C: Exchanging information

248. Sections C.1 to C.5 evaluate the effectiveness of Malta's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all of Malta's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Malta's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Malta can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

249. Malta has a broad network of EOI agreements in line with the Standard, which increased from 82 partners in 2013 to 143 partners as of end of April 2020, including 129 for which the relationship is in force and exchange of information can take place. The network of EOI instruments of Malta meets the standard. As of 30 March 2020, Malta has signed 81 DTCs and 4 TIEAs (including 4 DTCs which are signed but not in force). Malta is also a Party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the MAC), which entered into force on 1 September 2013, and has transposed the EU Council Directives on Administrative Co-operation for tax purposes. While a few DTCs do not fully meet the standard, the relevant treaty partners are Parties to the MAC and its entry into force closes any gaps. Malta is still making efforts to renegotiate these DTCs and bring them up to the standard.

250. In practice, Malta continues to apply its EOI agreements in accordance with the standard. No issue was identified during the current review period, and no concerns were reported by peers.

251. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

Other forms of exchange of information

252. Malta is a Party to the MAC that entered into force in Malta on 1 September 2013. By virtue of its EU membership, Malta is also a party to Council Directive 2011/16/EU on Administrative Co-operation. Since its adoption this Directive has been amended five times, with the aim of strengthening the administrative co-operation among EU Member States, including:

- Directive 2014/107/EU introduced automatic exchange of financial account information
- Directive 2015/2376/EU on automatic exchange of tax rulings and advance pricing arrangements
- Directive 2016/881/EU on automatic exchange of country by country reports
- Directive 2016/2258/EU ensures tax authorities have access to beneficial ownership information collected pursuant to the anti-money laundering legislation
- Directive 2018/822/EU on automatic exchange of reportable cross border arrangements.

253. Malta has transposed these Directives by the date contemplated in the Directives and has already started the relevant automatic exchange of financial account information, tax rulings and advance pricing arrangements, and the country by country report. The first automatic exchange of reportable cross-border arrangements is expected in 2020.

C.1.1. Foreseeable relevance standard

254. Since the last review, new bilateral EOI agreements (or Protocols) have entered into force including 19 DTCs (or DTC Protocols), with Andorra, Azerbaijan, Barbados, Belgium, Botswana, India, Israel, Kosovo,[41] Liechtenstein,

41. This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Luxemburg, Mauritius, Mexico, Moldova, Monaco, Russia, South Africa, Turkey, Ukraine and Viet Nam, and 1 TIEA with Cayman Islands.

255. Malta's EOI agreements concluded since 2009 use the term "foreseeable relevant", and those concluded before 2009 instead use the term "necessary" or "as may be relevant". The Commentary on Article 26 of the Model Convention considers that the terms "necessary" or "relevant" mean the same thing for exchange of information purposes as the expression "foreseeable relevant". Malta interprets its treaties in accordance with the OECD Commentary and therefore, these treaties may be recognised as conforming to the international standard with regard to foreseeable relevance. During the current review period, all Malta's EOI cases were from MAC signatory jurisdictions and exchanges were on the basis of the related provisions in the MAC.

256. Malta's DTC with Malaysia is specifically limited to exchange of information for purposes of the convention and therefore would not extend to all foreseeably relevant information. In the first round review report, Malta had confirmed that they were renegotiating this DTC with Malaysia. However, since then both Malta and Malaysia became parties to the MAC, thus exchange of information between the two jurisdictions is no longer limited to exchange of information for purposes of the DTC and now extends to all foreseeably relevant information. During the current review period, there were no EOI requests from Malaysia.

Clarifications and foreseeable relevance in practice

257. In applying the standard of foreseeable relevance, Malta requires that the requested information must be clear and specific to allow a definite assessment of the pertinence of the information requested to the ongoing foreign investigation. In this regard, an assessment is undertaken to assess whether the request received is foreseeably relevant.

258. In practice, in Malta the standard of foreseeable relevance is interpreted widely and a "substance over form" approach prevails. Therefore, a lack of foreseeable relevance does not encompass situations where names are spelt differently or information on names and addresses is presented using a different format. Similarly, a request is still considered to be foreseeable relevant where a name or address is not provided, as long as the requesting partner presents sufficient information to identify the taxpayer under investigation or the subject of the request (e.g. a request regarding a bank account number).

259. Clarifications were sought for 23 cases during the period under review, 9 of which related to the foreseeable relevance of the request for information and the rest related to providing more details. In all the cases where clarification was sought in relation to foreseeable relevance the information

requested was subsequently provided with no delay. Malta has not declined any requests for information on the basis that they were not foreseeably relevant, which is confirmed by input received from peers.

Group requests

260. Malta confirmed that none of Malta's EOI mechanisms exclude the possibility of receiving group requests, and the same information regarding foreseeably relevant standard in a non-group request is required in the case of group requests, and the same procedures will be adopted as that of non-group requests. Malta confirmed that they would refer to specifications provided in Article 1 and 5(5) of OECD Model TIEA and accompanying commentary and paragraph 5 relating to group requests of the commentary to Article 26 of the OECD Model Convention when handling group requests.

261. During the current reviews period, Malta had not received any group requests.

C.1.2. Provide for exchange of information in respect of all persons

262. With the entry into force of the MAC, all of Malta's EOI relationship allow for the exchange of information in respect of all persons. Malta and India nonetheless renegotiated their DTC, which came into force in February 2014, and includes the language to specify that EOI is not restricted by Article 1 on persons covered by the DTC and Article 2 on taxes covered. The MAC also compensates the limitation in the DTC with Malaysia, under which exchange of information is limited to exchange of information for purposes of the convention.

263. Malta and its peers both confirmed that no issues have arisen in practice regarding the jurisdictional scope of these EOI agreements with respect to EOI requests concerning residents of either of the contracting states or residents of other third party jurisdictions. There were no EOI requests from Malaysia during the current review period.

C.1.3 and C.1.4. Obligation to exchange all types of information absence of domestic tax interest

264. Thanks to the entry into force of the MAC and EU Council Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation (DAC1), all but four EOI relationships of Malta provide for exchange of all types of information (e.g. held by banks, other financial institutions, nominees, agents and fiduciaries) absent a domestic tax interest, i.e. whether a jurisdiction needs it for its own tax purposes. The treaties with Egypt, Jordan, Libya and Syria do not include provisions similar to paragraphs 4 and 5 to the OECD

Model DTC. The absence of these provisions does not automatically create restrictions on the exchange of information and Malta's domestic laws allow it to access and exchange information without limitation. Since it is unknown whether the same applies to the four partners not covered by the MAC (because they are not member of the Global Forum or have not been reviewed yet and no requests for information were sent), Malta should ensure these EOI relationships meet the standard (see Annex 1).[42]

265. During the current review period, Malta received 28 requests for banking information in respect of persons who were not taxpayers in Malta and Malta had no domestic tax interest in them. In such cases, banking information was requested directly from financial institutions licensed in Malta.

C.1.5 and C.1.6. Civil and criminal tax matters

266. Malta's EOI agreements provide for exchange in both civil and criminal matters and contain no limiting dual criminality provisions.

267. In practice, Malta has provided information in response to all EOI requests for civil and criminal tax matters, and the process of exchanging information is the same, regardless of a criminal tax matter or civil tax matter. No issues have been raised from the peers in this regard.

C.1.7. Provide information in specific form requested

268. Malta's DTC with the United States and the TIEAs with the Bahamas, Bermuda and Gibraltar contain specific references to the form of information. The other DTCs neither provide for nor restrict the form of information that can be provided.

269. Malta confirmed that they have provided information in the specific form requested in the current review period, which was confirmed by the peers input.

42. In the first round review report, it was stated that Malta's DTCs with Austria and Luxembourg did not contain Article 26(5) of the OECD Model Convention while both Austria and Luxembourg had restrictions in their domestic laws that prevented them from exchanging banking information. Since then, Austria, Luxembourg and Malta became Parties to the MAC, and Malta signed a DTC Protocol with Luxembourg (which entered into force on 11 July 2013), thus Malta is now able to exchange information with both countries. In addition, a DTC Protocol with Singapore entered into force on 28 June 2013, which conforms to the standard.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

270. Since 2013, 20 EOI agreements (including new DTCs, DTC Protocols or TIEAs) have been brought into force.[43] The vast majority of Malta's EOI agreements are currently in force with the exception of 4 agreements[44] with Armenia, Curacao, Ethiopia and Ghana that have been signed but not yet entered into force. Domestic procedures have been completed in Malta for those agreements and Malta is waiting for the notification from the counterparties.

EOI mechanisms

Total EOI relationships, **including** bilateral and multilateral or regional mechanisms	**143**
In force	129
In line with the standard	125
Not in line with the standard	4 (Egypt, Jordan, Libya, and Syria)
Signed but not in force	14
In line with the standard	14
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) **not complemented** by multilateral or regional mechanisms	8
In force	7
In line with the standard	3 (Botswana, Kosovo and Viet Nam)
Not in line with the standard	4 (Egypt, Jordan, Libya and Syria)
Signed but not in force	1
In line with the standard	1 (Ethiopia)
Not in line with the standard	0

271. Pursuant to Article 76(4) of the Income Tax Act, the Minister for Finance and Financial Services may make rules for carrying out the provisions of the EOI agreements. Malta has the legislative and regulatory framework in place to give effect to its agreements. In addition, the Co-operation Regulations incorporated relevant implementation measures of the EU

43. Those 20 jurisdictions are Andorra, Azerbaijan, Barbados, Belgium, Botswana, Cayman Islands, India, Israel, Kosovo, Liechtenstein, Luxembourg, Mauritius, Mexico, Moldova, Monaco, Russia, South Arica, Turkey, Ukraine and Viet Nam.

44. Those 4 agreements include the DTC with Armenia signed on 24 September 2019, the DTC with Curacao signed on 18 November 2015, the DTC with Ethiopia signed on 12 April 2019, and the DTC with Ghana signed on 26 March 2019.

Council Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation as well as other measures to implement the EOI agreements signed by Malta with other partners.

272. There have been no changes to the procedures for ratifying the EOI agreements in Malta since the last review, and signature of an agreement is sufficient and a treaty does not have to go through the parliament. The normal timeline for the whole process to be completed is six months to one year. Malta has no cases of delays in this regard.

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

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

273. Malta has a large treaty network including 129 for which the relationship is in force and exchange of information can take place, covering all regional partners, EU member countries and its main trading partners. Malta is a party to the MAC.

274. During the current review period, Malta has continued to expand its bilateral EOI network. It signed DTCs or TIEAs with Andorra, Azerbaijan, Barbados, Botswana, Cayman Islands, Liechtenstein, Mauritius, Moldova, Monaco, Kosovo, Ukraine and Viet Nam and put into force the DTCs or DTC Protocols with Belgium, India, Israel, Luxembourg, Mexico, Russia, South Africa and Turkey. The EOI network of Malta covers 143 jurisdictions. Malta indicated that negotiations for a DTC with a new partner have been started. Amending Protocols with three current partners have been negotiated and are awaiting signature.

275. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction indicated that Malta refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Malta should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

276. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

277. Malta's legal framework and EOI practice with respect to confidentiality have not changed since the last review. All agreements signed by Malta since the last review contain confidentiality provisions that ensure that the information exchanged will be treated as secret and will be disclosed only to persons authorised by the agreements.

278. In practice, the Maltese competent authority has encountered no cases of breach of confidentiality and peers have not raised any concerns in this regard.

279. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.3.1. Information received: disclosure, use and safeguards and C.3.2. Confidentiality of all other information exchanged

280. There is no change to the requirement of confidentiality of information exchanged under EOI in Malta since the last review. All of Malta's EOI agreements contain a confidentiality provision that conforms to the standard. Under the Income Tax Management Act (Article 4(1)), every person who has an official duty or who is employed in the administration of taxes must regard and deal with all documents and information in relation to the Income Tax Act or copies thereof as secret and confidential and every person must take an oath to this effect. In addition, a person who is appointed under or employed in carrying out the provision of the Income Tax Act cannot be required to disclose to any court, tribunal, board or committee of enquiry, anything learned in the performance of his/her duties under the Act, except for implementing the tax act, prosecution of a tax offence or exchange of information.[45] These exceptions conform to the standard.

281. The penalties for any person, who communicates or attempts to unlawfully communicate confidential information is guilty of an offence and on conviction liable to a fine from EUR 232 to EUR 2 325, imprisonment up to 6 months or both (Article 53 of the Income Tax Management Act).

45. Refer to paragraph 338 of the 2013 Report.

282. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. In the period under review, Malta reported that there were no requests where in the requesting partner sought Malta's consent to utilise the information for non-tax purposes and similarly Malta did not request its partners to use information received for non-tax purposes.

Confidentiality in practice

283. There are no substantial changes to the procedures of managing incoming requests in Malta since the last review. The handling and management of EOI requests and processes are solely entrusted to the EOI team within the CfR, which has exclusive access to the physical and electronic files containing EOI requests and related documentation, as well as to the EU CCN mailbox. Where tax auditors are involved in the outgoing requests sent by the EOI team, they will be subject to the same confidentiality requirements as those to the EOI team.

284. Malta advised that communications (including all EOI related information, e.g. information provided by a requesting partner in a request, information transmitted in response to a request and any background documents to such requests) with foreign competent authorities is done through CCN for EU member countries, by secure encrypted email or by register postal mail. Communications with foreign competent authorities through email only contain certain limited information such as the reference number. Any confidential information is not disclosed in the body of the email and any confidential attachments are encrypted. The password to access the attachments is provided to the foreign competent authority after an acknowledgement of receipt of the email is received by the Maltese competent authority. Malta confirmed that communications related to exchanges of information on request received by foreign competent authorities is never disclosed to third parties outside of the office of the CfR.

285. All documents relating to information exchange are physically stored in locked cabinets in the competent authority's office, while soft copies thereof and other electronic files are kept in a separate area of the IT system, which can only be accessed by the EOI team. Following formal approval by the Maltese competent authority, special access rights are granted to each individual that is a member of the EOI team in order to access this area of the IT system. The Competent Authority's office and the office of the rest of the EOI team are situated both in premises that are under continuous surveillance.

286. In addition, Malta adopts a clean desk policy in the office. When working on exchanges of information on request, the only documents that are taken out of secure cabinets are those that the EOI team member necessarily requires for working on a particular request and these are stored in locked cabinet at the end of the day. Information covered by confidentiality maintained in electronic form is stored on a network which is only accessible from the work premises, and when an individual terminates his or her employment, his or her email account is terminated. Furthermore, the obligation of a person employed in the administration of taxes to maintain secrecy continues even after the end of the employment relationship.

287. In terms of the hiring process of the EOI team, various matters are taken into consideration, including experience and academic qualifications, proper conduct, feedback from their superiors and colleagues.[46] New officers joining the EOI team will receive carefully planned on-job training and are closely monitored by senior staff to familiarise themselves with the EOI database and the confidentiality obligations under the Income Tax Management Act.

288. Within the scope of the IT systems, the Malta Information Technology Agency (MITA) has a Security Incident Management Procedure, which applies to any identified security incident that may have an impact on the services offered, and/or data and information held by MITA (including EOI data). A special unit (Security Operations Centre, SOC) deals with all the related incidents as such.

289. Malta confirmed that the office of CfR has not experienced any incidents where security policies were violated. Should this happen in the future, an investigation at the tax administration level would be conducted through an ad hoc board specifically set up for this purpose. The remit of this board will also include recommendations for minimising the repercussions of the particular incident and the avoidance of such in the future. Malta advised that such a breach of confidentiality rules constitutes a criminal offence and the case would be handed over to the police for criminal investigation.

290. There have been no cases in Malta where information received by the competent authority from an EOI partner has been improperly disclosed.

46. Refer to paragraph 340 of the 2013 Report.

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

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

291. The 2013 Report concluded that Malta's legal framework and practices concerning the rights and safeguards of taxpayers and third parties were in line with the standard. There have been no changes in this regard since then.

292. All of Malta's EOI agreements contain a provision equivalent to Article 26(3) of the OECD Model Tax Convention and OECD Model TIEA Article 7 and therefore the rights and safeguards of taxpayers and third parties are respected. In addition, the Co-operation Regulations contain a provision that states that no person may be requested to provide information that would disclose a trade, business, commercial or industrial secret or information which is the subject of attorney client privilege or information, the disclosure of which would be contrary to public policy (Regulation 5(1) of the Co-operation Regulations; see section B1.5 above).

293. Malta confirmed that the Maltese competent authority has to date never encountered practical difficulties in responding to EOI requests due to the application of rights and safeguards or attorney-client privilege.

294. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

295. Malta was rated Compliant with the EOIR standard in C5 in the last review report. It was nonetheless noted that Malta's competent authority was in some instances unable to respond to EOI requests in a timely manner during the earlier part of the review period (July 2009 to June 2012), and it was recommended that Malta monitor the implementation of the internal EOI guidance to ensure that answers to EOI requests are made in a timely manner in all cases. This recommendation seems not to have been properly addressed during the current review period (1 April 2016 to 31 March 2019), as the timeliness of responses has deteriorated significantly. The Maltese

competent authority has not been able to answer the sharply increasing number of incoming requests (from 81 to 486) in a timely manner in many cases. The reasons for delays are varied and include: the increase in requests was rather sudden; difficulties in acquiring staff and other related resources; competing priorities and all these factors happened at the same time during the years 2016 and 2017. The deadlines specified in EOI regulations and guidance were not effectively implemented during most of the review period. While peers were generally satisfied with the responses, some peers raised certain concerns on delays in receiving responses from the Maltese competent authority. Some improvement is noted for the year 2019, although the timeliness is not yet back to the level shown in the first round review. Malta should ensure that there are always sufficient staff to be ready in managing the EOI requests even in case where the team has other commitments, and the related processes, in particular the deadlines, are effectively implemented in practice to enable it to respond to EOI requests in a timely manner, and consider further what measures could be taken to shorten the response time.

296. In the first round review report, it was concluded that Malta had not always provided an update or status report to its EOI partners within 90 days when it was unable to provide a substantive response within that time, and Malta was recommended to monitor its new monitoring system to ensure that it operates effectively. This recommendation has not been properly addressed during the current review period. The recommendation thus remains.

297. During the current review period, Malta sent 6 requests out to partners for EOI purposes, and Malta indicated that in the future, it expects to be more active in making outgoing EOI requests because of the increase of the awareness of the EOI work to the tax auditors.

298. The table of recommendations and rating is as follows:

Legal and Regulatory Framework
This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The Maltese competent authority has not been able to answer incoming requests in a timely manner in many cases during the current review period due to various reasons such as difficulties in acquiring staff and other resources, as a result of which the deadlines, as specified in related regulations and guidance, are not effectively implemented.	Malta should ensure that there are always sufficient staff and other resources available to handle EOI requests, and that the related processes, in particular the deadlines, are effectively implemented in practice to enable it to respond to EOI requests in a timely manner, and consider further what measures could be taken to shorten the response time.
	During the three years under review, Malta did not always provide an update or status report to its EOI partners within 90 days when it was unable to provide a substantive response within that time.	Malta is recommended to ensure status updates can always be provided to its partners where information cannot be provided within 90 days.
Rating: Partially Compliant		

C.5.1. Timeliness of responses to requests for information

299. In the three-year period under review, Malta received 486 EOI requests, which represent a sharp increase from 81 requests received during the last review period. The main EOI partners of Malta were Italy, India, France and Spain. EOI requests received by Malta cover ownership information, including beneficial ownership information (86 requests), accounting information (212 requests), banking information (153 requests) and other types of information in relation to corporations, trusts and individuals.

300. The majority of the EOI requests were from other EU member countries during the current review period. The most significant EOI partners that Malta has had were Italy, India, France, Greece and Spain due to the number of requests received.

301. The following table relates to the requests received during the period under review and gives an overview of response times of Malta in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Malta's practice.

Statistics on response time

		Y1 (April 2016-March 2017)		Y2 (April 2017-March 2018)		Y3 (April 2018-March 2019)		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received[a]	[A+B+C+D+E+F+G]	88	100	218	100	180	100	486	100
Full response: ≤ 90 days		20	23	15	7	39	22	74	15
≤ 180 days (cumulative)		32	36	33	15	115	61	180	37
≤ 1 year (cumulative)	[A]	51	58	103	47	145	78	299	62
> 1 year	[B]	34	39	60	27	5	3	99	20
Declined for valid reasons	[C]	1	1	0	0	0	0	1	< 1
Partial information exchanged and case closed	[D]	0	0	43	20	14	8	57	12
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		21	24	16	7	53	29	90	19
Requests withdrawn by requesting jurisdiction	[E]	0	0	1	< 1	2	1	3	< 1
Failure to obtain and provide information requested	[F]	2	2	0	0	0	0	2	< 1
Requests still pending at date of review	[G]	0	0	11	6	14	8	25	5

Notes: a. Malta counts each written request from an EOI partner as one request, including where it is related to multiple types of information. But where a request involves more than one taxpayer, Malta counts the request for information regarding each taxpayer as one request. This practice has not been changed since the last review (refer to Paragraph 351 of the 2013 Report).

b. The time periods in this table are counted from the date of receipt of the request to the date on which a final and complete response was issued. Requests which were closed off at partial stage due to special circumstances are listed separately.

302. On a total of 486 requests received during the period under review, 15% were answered within 90 days, compared to 32% in the first round review with variations cross years, and 37% were answered within 180 days, compared to 79% in the first round review. The percentage of responses sent in within a year decreased from 98% in the first round review to 62%. Finally, 2% of the requests in the first round were answered over one year; this was increased to 20% in the current review period. To sum up, the response time has generally deteriorated.

303. While the general performance during the current review period is lower than the one in the previous review period, there is an important difference among the three years under review, with serious deficiencies particularly in 2017.

304. Malta stated that there are a few reasons that may have caused the delay in responding the EOI requests:

- Malta took over the presidency of the Council of the EU in the first half of 2017, which took up a lot of resources and time of the EOI team (including the preparation for the presidency in 2016), however the response timeliness started to improve during the end of the current review period after Malta ended its presidency of the Council of the EU.
- There was not enough work space for the EOI team to hire more staff and expand the team. The EOI team had been sharing the office with the MFSA for two years during the review period, but it is confirmed that the EOI team were moved to a new office building with more space in January 2020.
- Some (around 30%) of the requests were related to board minutes or underlying documents (aside from other requested information), information which were not normally held by the authorities, so investigations needed to be carried out, which may have taken a longer time.
- Some of the requests are about information on inactive companies, in which case the Maltese competent authority spent longer time in contacting the third party service providers or the taxpayers.

305. The assessment team is of the opinion that these explanations do not sufficiently justify the deterioration in response times and the 12.1% failures to provide information (11.7% partial information and 0.4% complete failure). The results of the first year under review was already not at the same level as was the timeliness at the end of the previous period; then the presidency of the European Union was not an unexpected event and a slight decrease of performance can be expected during this period. The actual sharp decrease is attributable to difficulties encountered in acquiring resources in time to cater for the sharply increasing number of incoming requests. In addition, the proportion of requests answered within 180 days is also very low while collecting board minutes or underlying documents within six months does not appear usually unsurmountable. Malta stated that the fact that all these factors happened at the same time contributed to these difficulties, and such a deterioration was not due to a lack of commitment towards the international standard.

306. The number of complete failure to provide information is low, with 2 requests, but Malta confirmed that in 57 other requests (11.73% of the total requests received), they were only able to provide partial replies (representing various proportion of the information requested, and the handling of some of which being ongoing). Peers also reported Malta's failure to provide the complete information, which was largely due to the unavailability of ownership information and accounting information as discussed in elements A1 and A2

of this report. Malta clarified that in many cases where they failed to provide the information, it was related to inactive companies or individuals who may have left Malta. Even the third party service providers in Malta were not able to get in touch with them. Even though the Maltese competent authority tried to communicate with the taxpayers on multiple occasions, no responses were provided by the taxpayers.

307. Regarding the 25 requests which are still pending, Malta clarified that some of them were new requests and they have been working on them, and for some, partial replies have been provided. This has been confirmed by some peers.

308. During the current review period, one request was declined because the requesting partner asked for all information on income arising in Malta to all residents of the requesting partner. This was considered to be fishing expedition. The requesting partner did not challenge Malta's position and no input was provided from the peer in this regard.

309. To sum up, timeliness of responses has during the review period deteriorated in Malta since the last review. The Maltese competent authority has not been able to answer incoming requests in a timely manner in many cases during the current review period due to resources constraints and other factors as discussed above. As a result, concerns were expressed by some EOI partners with certain delays in receiving responses from the Maltese competent authority. Malta should ensure that the related deadlines (see discussion in C5.2 of this report and Paragraph 354 of the first round review report) are respected to enable it to respond to EOI requests in a timely manner, and consider further what measures could be taken to shorten the response time.

Status updates and communication with partners

310. In 2013, it was concluded that Malta had not always provided an update or status report to its EOI partners within 90 days when it was unable to provide a substantive response within that time. Malta was recommended to monitor the new monitoring system via the EOI database to ensure that it operates effectively. This recommendation has not been properly addressed during the current review period, as it was still the case that status updates to partners within 90 days were lacking where a substantive response could not be provided, which has also been confirmed by the peers. Malta is recommended to take effective measures to ensure status updates can always be provided to its partners where information cannot be provided within 90 days.

C.5.2. Organisational processes and resources

Organisation of the competent authority

311. There is no change of the organisation of the competent authority in Malta since the last review. The competent authority for EOI purposes is the "Minister responsible for Finance or his authorised representative" as provided in the Co-operation Regulations (Regulations 8). The Maltese competent authority details may be accessed from the link: https://cfr.gov.mt/en/inlandrevenue/itu/Pages/Competent-Authority-Details.aspx.

312. The current authorised representative is the Director General (Legal and International) within the CfR that forms part of the Ministry for Finance and Financial Services and he is the sole point of contact for foreign administrations wishing to request information from Maltese tax authorities in connection to direct taxation. Regular contact with exchange of information partners is mainly done through the EU CCN in case of EU member countries and by registered mail and secure e-mail in the case of other EOI partners.

Resources and training

313. The current EOI team comprises 10 officials (which is doubled compared to the first round review period): the delegated Competent Authority who is the Director General (Legal and International), 1 senior manager, 1 senior analyst, 3 legal analysts, 2 analysts and 2 supporting administrative staff, working on all tax information exchange related matters, including the implementation of Common Reporting Standard, Country-by-Country reporting, the Mandatory Disclosure Rules. The majority of the team staff has legal or accounting education background. Certain members of the EOI team also deal with various other aspects of EOI. Where an audit is required in special cases, officials from the audit team may be allocated for EOI cases. The EOI team may also request for services of the Legal and Technical Unit within the Office of the CfR and the Maltese Attorney General Office for legal advice.

314. In terms of financial resources, the financing for the EOI team is received from the Ministry for Finance and Financial Services (salaries and other logistical resources such as computers). Malta confirmed that the current financial resources meet the set up and the workload of the EOI cases.

315. Malta advised that a software has been developed in 2019 by the International Tax Unit specifically to ease the management and workflow of exchanges of information on request and to monitor the status of such requests. The software is also utilised for statistical purposes.

316. The EOI team has access to and uses several databases to gather information requested by foreign competent authorities. Most of the databases are maintained by the Office of the CfR. The team also has access to the Registry of Companies database for information regarding companies, partnerships and overseas companies which have established a branch or a fixed place of business in Malta; to the databases on ultimate beneficial ownership maintained by the Registrar of Companies, Registrar of Legal Persons and the Conduct Supervisory Unit of the MFSA; to the Trustees Ultimate Beneficial Owner Register (TUBOR) maintained by the MFSA and to the Common Database used by the Department of Civil Registration in the case of individuals.

317. Under the present set-up and taking into consideration the number of requests for information presently being received and submitted, the resources available to the EOI team are considered to be sufficient for the present and foreseeable future.

318. As concluded in 2013, new officers may not undergo any formal training programme in respect of EOI, when joining the EOI team, but they do receive carefully planned on-job training and are closely monitored by senior staff during their initiation period. Staff of the EOI team have attended various trainings or workshops provided by the OECD or the EU.

Incoming requests

Competent authority's handling of the request

319. There is no change to the procedure in relation to the competent authority's handling of the requests in Malta since the last review. As soon as a communication is received by the competent authority, through either regular mail, encrypted email or CCN, the competent authority delegates the case to a member of the EOI team to assist him with any necessary action in compiling the information requested. The case is given a reference number and then details of communications are entered into the EOI database. All cases entered into the database are divided into different fields based on Regulation 9 of the Co-operation Regulations.[47]

320. The EOI cases are then screened to make sure that they meet all the relevant requisites and present no deficiencies, e.g. lack of signature by the foreign competent authority. The standard of foreseeably relevance is specifically checked to ensure that all domestic means were used in the requesting partner before they are sent to Malta.

321. The EOI team also considers whether there are grounds for declining the requests, e.g. information requested is protected by the attorney

47. Refer to paragraph 360 of the 2013 Report for more details.

client privilege. Where there are sufficient grounds to decline a request, the competent authority would engage with the EOI partner and seek clarification before formally declining the request. During the current review period, Malta advised that clarifications were sought from in 23 cases, and they have not caused delays.

322. Where all the information requested is readily available to the EOI team, a final reply must be sent to the foreign competent authority within two months, and if only part of the information is readily available, that information must also be sent within two months. Where the information is not available to the EOI team but may be available from another department within the CfR, assistance is requested from that department, which is also informed of the deadlines to meet. If the information is available to another government authority, a letter is sent by registered postal mail to the government authority. By virtue of article 10A of the Income Tax Management Act, the government authority is given a minimum of 30 days to reply to the letter of request. By way of internal policy, an extension of 15 days may be granted if this is reasonably justified. Finally, where the information is available with an individual person, the EOI team will contact the person directly for collecting the information under the Co-operation Regulations.

323. Malta also confirmed that the same processes are applied where a request for information relates to a criminal investigation.

Verification of the information gathered

324. When a reply is received from the information holder, the EOI team matches its contents with the original letter of request to ensure that the reply is complete and satisfactory. Malta considers that it is the responsibility of the information holder to provide accurate and complete answers to the relevant requests posed by the letter within the stipulated deadlines.

325. If no information or only part of the information is provided by the information holder, the person may be subject to penalties. Moreover, if there is reasonable suspicion that the submitted information is incorrect in such a way that it is misleading or false, criminal proceedings may be initiated against the person, but in practice no such offences have been detected and identified by the EOI team.

326. If the information is deemed to be accurate and complete, an acknowledgement is sent to the information holder. The scope of the acknowledgement is to ensure that the requested party has legal certainty on the termination of its legal obligation to provide information in the concerned EOI case. To the extent that all the information has been received, a final reply is sent to the requesting authority by the competent authority.

Practical difficulties experienced in obtaining the requested information

327. Malta advised that during the current review period, for some cases, they experienced difficulties due to the inability to contact the relevant person that could have provided the information or the intermediaries had lost contact with the taxpayers.

Outgoing requests

328. The standard as strengthened in 2016 introduced inter alia a new requirement relating to the quality of EOI requests made by the assessed jurisdiction.

329. The EOI team has drawn up a general EOI guidance handbook for internal use only, i.e. "Manual on the Implementation of Exchange of Information Provisions for Tax Purposes – Exchange of Information on Request", which provides procedures for processing outgoing requests for information. The Compliance and Investigations Directorate within the CfR may require information outside Malta in undertaking its duties, in which case the Unit may request the Maltese competent authority to obtain such information. In such cases, the EOI team will conduct a preliminary assessment and if all related criteria are met, all necessary information and documentation will be forwarded to the EOI team and then they will send out the requests. For EOI with EU member countries, a standard e-form is used, while for other non-EU countries, the standard form template developed by the OECD is used as guidance, and Maltese competent authority will check if a particular form is required by the related foreign competent authority when sending out EOI requests.

330. In Malta, the same EOI team that is responsible for incoming requests is responsible for outgoing requests. As discussed in the case of incoming requests, trainings are also given to the staff working on outgoing requests with respect to relevant procedures and requirements on outgoing requests.

331. During the current review period, Malta sent six requests, and received two requests for clarifications on two separate cases. In one case, there was a request for more specific detail and in the other Malta was asked whether the EOI request may involve other Maltese taxpayers. There is no particular procedure adopted in Malta in providing clarifications, but Malta confirmed that efforts are made to reply to requests for clarification as quickly as possible.

332. In conclusion, Malta has both appropriate organisational processes and adequate resources in place to ensure that exchange of information takes place in an efficient manner and that timely response are received. However,

Malta should take measures to ensure that the related processes, in particular the timelines as provided in the related rules are effectively implemented in practice, to enable it to respond to EOI requests in a timely manner.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

333. There are no factors or issues identified in Maltese laws that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1:** Since the guidelines under the Co-operation Regulations were issued quite recently, Malta is recommended to monitor the implementation of the guidelines and ensure their effectiveness in practice (paragraphs 33, 92, 132, 155 and 169).
- **Element A.1.2:** In addition to the surveys that have been conducted, Malta should take further actions to ensure that there are no share warrants that still exist in any of the public companies in practice (paragraph 117).
- **Element A.1.3:** While Maltese partnerships are considered as legal persons, partnerships are considered as legal arrangements in many other jurisdictions, thus Malta should apply a different definition to foreign partnerships and other legal arrangements to ensure that the beneficial ownership information of all foreign partnerships is always available (paragraph 135).
- **Element A.1.4:** Malta should provide clarifications on its definition of the beneficial owners of trusts in the AML rules to ensure that only natural persons can be identified as the beneficial owners of the trusts (paragraphs 146, 157 and 214).
- **Element A.3:** Since the guidelines under the Co-operation Regulations were issued quite recently, Malta is recommended to monitor the implementation of the guidelines and ensure their effectiveness in practice (paragraphs 206, 207 and 219).

- **Element A.3:** Malta should provide clarifications on its definition of the beneficial owners of trusts in the AML rules to ensure that only natural persons can be identified as the beneficial owners of the trusts (paragraph 214).
- **Element C.1:** Malta should ensure its EOI relationship with Egypt, Jordan, Libya and Syria meet the standard (paragraph 261).
- **Element C.2:** Malta should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 272).

Annex 2: List of Malta's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partners	Type of agreement	Date signed	Date entered into force
1	Albania	DTC	02 May 2000	23 November 2000
2	Andorra	DTC	20 September 2016	27 September 2017
3	Armenia	DTC	24 September 2019	Not in force
4	Australia	DTC	09 May 1984	20 May 1985
5	Austria	DTC	29 May 1978	13 July 1979
6	Azerbaijan	DTC	29 April 2016	27 December 2016
7	Bahamas	TIEA	18 January 2012	30 October 2012
8	Bahrain	DTC	12 April 2010	28 February 2012
9	Barbados	DTC	05 December 2001	19 June 2002
		DTC Protocol	25 September 2013	30 April 2014
10	Belgium	DTC	28 June 1974	03 January 1975
		DTC Protocol	19 January 2010	31 July 2017
11	Bermuda	TIEA	24 November 2011	05 November 2012
12	Botswana	DTC	02 October 2017	13 November 2018
13	Bulgaria	DTC	23 July 1986	01 January 1988
14	Cayman Islands	TIEA	25 November 2013	01 April 2014
15	Canada	DTC	25 July 1986	20 May 1987
16	China (People's Republic of)	DTC	23 October 2010	25 August 2011
17	Croatia	DTC	21 October 1998	22 August 1999
18	Curacao	DTC	18 November 2015	Not in force
19	Cyprus [a]	DTC	22 October 1993	11 August 1994
20	Czech Republic	DTC	21 June 1996	06 June 1997

	EOI partners	Type of agreement	Date signed	Date entered into force
21	Denmark	DTC	13 July 1998	30 December 1998
22	Egypt	DTC	20 February 1999	07 April 2001
23	Estonia	DTC	03 May 2001	22 January 2003
24	Ethiopia	DTC	12 April 2018	Not in force
25	Finland	DTC	30 October 2000	30 December 2001
26	France	DTC	25 July 1977	01 October 1979
		DTC Protocol	29 August 2008	01 June 2010
27	Georgia	DTC	23 October 2009	30 December 2009
28	Germany	DTC	08 March 2001	27 December 2001
		DTC Protocol	17 June 2010	19 May 2011
29	Ghana	DTC	26 March 2019	Not in force
30	Gibraltar	TIEA	24 January 2012	01 April 2012
31	Greece	DTC	13 October 2006	30 August 2008
32	Guernsey	DTC	12 March 2012	10 March 2013
33	Hong Kong (China)	DTC	08 November 2011	18 July 2012
34	Hungary	DTC	06 August 1991	29 November 1992
35	Iceland	DTC	23 September 2004	19 April 2006
36	India	DTC	08 April 2013	07 February 2014
		DTC	28 September 1994	08 February 1995
37	Ireland	DTC	14 November 2008	15 January 2009
38	Isle of Man	DTC	23 October 2009	26 February 2010
39	Israel	DTC	28 July 2011	08 December 2013
40	Italy	DTC	16 July 1981	08 May 1985
		DTC Protocol	13 March 2009	24 November 2010
41	Jersey	DTC	25 January 2010	19 July 2010
42	Jordan	DTC	16 April 2009	13 October 2010
43	Korea	DTC	25 March 1997	21 March 1998
44	Kosovo	DTC	06 March 2019	20 September 2019
45	Kuwait	DTC	24 July 2002	19 March 2004
46	Latvia	DTC	22 May 2000	24 October 2000
47	Lebanon	DTC	23 February 1999	10 February 2000

	EOI partners	Type of agreement	Date signed	Date entered into force
48	Libya	DTC	28 December 2008	20 May 2010
49	Liechtenstein	DTC	29 September 2013	01 July 2014
50	Lithuania	DTC	17 May 2001	02 February 2004
51	Luxembourg	DTC	29 April 1994	14 February 1996
		DTC Protocol	30 November 2011	11 July 2013
52	Malaysia	DTC	03 October 1995	01 September 2000
53	Mauritius	DTC	15 October 2014	23 April 2015
54	Mexico	DTC	17 December 2012	09 August 2014
55	Moldova	DTC	10 April 2014	17 June 2015
56	Monaco	DTC	27 September 2018	16 May 2019
57	Montenegro	DTC	04 November 2008	23 September 2009
58	Morocco	DTC	26 October 2001	15 June 2007
59	Netherlands	DTC	18 May 1977	09 November 1977
60	Norway	DTC	30 March 2012	14 February 2013
61	Pakistan	DTC	08 October 1975	20 December 1975
62	Poland	DTC	07 January 1994	24 November 1994
		DTC Protocol	06 April 2011	22 November 2011
63	Portugal	DTC	26 January 2001	05 April 2002
64	Qatar	DTC	26 August 2009	09 December 2009
65	Romania	DTC	30 November 1995	16 August 1996
66	Russia	DTC	24 April 2013	22 May 2014
67	San Marino	DTC	03 May 2005	19 July 2005
		DTC Protocol	10 September 2009	15 February 2010
68	Saudi Arabia	DTC	04 January 2012	01 December 2012
69	Serbia	DTC	09 September 2009	16 June 2010
70	Singapore	DTC	21 March 2006	29 February 2008
		DTC Protocol	20 November 2009	28 June 2013
71	Slovak Republic	DTC	07 September 1999	20 August 2000
72	Slovenia	DTC	08 October 2002	12 June 2003
73	South Africa	DTC	16 May 1997	12 November 1997
		DTC Protocol	24 August 2012	17 December 2013
74	Spain	DTC	08 November 2005	12 September 2006

	EOI partners	Type of agreement	Date signed	Date entered into force
75	Sweden	DTC	09 October 1995	03 February 1996
76	Switzerland	DTC	25 February 2011	06 July 2012
77	Syrian Arab Republic	DTC	22 February 1999	16 October 2000
78	Tunisia	DTC	31 May 2000	31 December 2001
79	Turkey	DTC	14 July 2011	13 June 2013
80	Ukraine	DTC	04 September 2013	28 August 2017
81	United Arab Emirates	DTC	13 March 2006	18 May 2007
82	United Kingdom	DTC	12 May 1994	27 March 1995
83	United States	DTC	08 August 2008	23 November 2010
84	Uruguay	DTC	11 March 2011	13 December 2012
85	Viet Nam	DTC	11 March 2011	25 December 2012

Notes: a. 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 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 Union: 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.

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[48] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard

48. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Malta on 26 October 2012 and entered into force on 1 September 2013 in Malta. Malta can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia (entry into force on 1 June 2020), Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde (entry into force on 1 May 2020), Gabon, Kenya, Liberia, Mauritania, Mongolia (entry into force on 1 June 2020), Montenegro (entry into force on 1 May 2020), Oman, Paraguay, Philippines, Togo, Thailand (signature on 3 June 2020),[49]

49. This signature took place after the cut-off date of the present report and therefore this EOI relationship is not taken into account in the core text of the report.

United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

EU Directive on Mutual Administrative Assistance in Tax Matters

Malta can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 30 April 2020, Malta's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2016 to 31 March 2019, Malta's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Malta's authorities during the on-site visit that took place from 11 to 15 November 2019.

List of laws, regulations and other materials received

Accounting Profession Act

Banking Act

Central Bank Act

Civil Code

Civil Code (Second Schedule) (Registration of Beneficial Owners – Associations) Regulations

Civil Code (Second Schedule) (Registration of Beneficial Owners – Foundations) Regulations

Commercial Code

Commission for the Administration of Justice Act

Companies Act (amended in 2017)

Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations

Companies Act (Register of Beneficial Owners) Regulations

Cooperation with Other Jurisdictions on Tax Matters Regulations (Co-operation Regulations)

Co-operative Societies Act

Financial Institutions Act

General Accounting Principles for Smaller Entities Act

Income Tax Act

Income Tax Management Act

Insurance Business Act

Investment Services Act

Malta Financial Services Authority Act

Notarial Professional and Notarial Archives Act

Prevention of Money Laundering Act

Prevention of Money Laundering and Funding of Terrorism Regulations 2017

Professional Secrecy Act

The CfR Manual for the Implementation of Exchange of Information

Trust and Trustees Act

Trust and Trustees Act (Register of Beneficial Owners) Regulations

Authorities interviewed during on-site visit

The Commission for Revenue

The Financial Intelligence Analysis Unit

The Malta Business Registry

The Malta Financial Services Authority

The Registrar for Legal Persons

Representatives from the notaries association, accountancy board, Institute of Financial Services Practitioners (IFSP), and Malta Institute of Taxation (MIT)

Current and previous review(s)

This report provides the outcome of the third peer review of Malta's implementation of the EOIR standard conducted by the Global Forum. Malta previously underwent EOIR peer reviews in 2011 and 2013 conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2011 review evaluated Malta's legal and regulatory framework as at August 2011. The 2013 review evaluated Malta's legal and regulatory framework as at March 2013 as well as its implementation in practice.

Information on each of Malta's reviews is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Ms Melisande Kaaij from the Ministry of Finance of the Nettherlands, Mr Colin Chew Koo Chung from the Inland Revenue Authority of Singapore, and Ms Amy O'Donnel from the Global Forum Secretariat	n.a.	December 2011	March 2012
Round 1 Phase 2 (2013 Report)	Ms Melisande Kaaij from the Ministry of Finance of the Nettherlands, Mr Colin Chew Koo Chung from the Inland Revenue Authority of Singapore, and Ms Renata Fontana from the Global Forum Secretariat	July 2009 to June 2012	March 2013	November 2013
Round 2	Ms Mette Katrin Oien from the Ministry of Finance of Norway, Ms Pooja Haly from the Ministry of Finance of India and Mr Colin Yan from the Global Forum Secretariat	April 2016 to March 2019	30 April 2020	August 2020

Annex 4: Malta's response to the review report[50]

Malta would like to thank the Assessment Team, the Global Forum Secretariat and the Peer Review Group members for their work and contributions during this review.

Malta agrees with many aspects and ratings of this review but respectfully disagrees with those ratings that have been determined as Partially Compliant regarding Elements A.1, A.2, A.3 and C.5. Whilst Malta acknowledges that there is room for improvement on the practical aspects addressed in the report, Malta feels that not enough recognition has been given to (i) work carried out in addressing issues encountered; (ii) processes that are actually in place (particularly on banking supervision); (iii) the particular circumstances that Malta faced during the review period (particularly the sudden significant increase in requests in 2016); and (iv) the overall picture in relation to exchange of information in practice as corroborated by peer inputs including main exchange partners.

Malta considers as incorrect remarks on a lack of supervision and enforcement under Elements A.1, A.2 and A.3. Apart from actions in this regard taken by the Commissioner for Revenue, actions are taken by the Financial Intelligence Analysis Unit (FIAU) and the Malta Financial Services Authority (MFSA).

On Elements A.1 and A.3 in particular, Malta has provided sufficient data to substantiate its position that credit institutions are subject to adequate supervision, that credit institutions retain information on their customers' beneficial owners, and that this information is made available to authorities upon demand and in a timely manner. It is pertinent to note that as part of its supervision, the MFSA verifies that accurate and up to date beneficial ownership information is held with respect to client companies serviced by Corporate Service Providers (CSPs), and as indicated in the report, approximately 99% of companies in Malta make use of the services of such CSPs, who are regulated by the MFSA. Furthermore, trustees are also subject to

50. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

the same level of supervision by the MFSA and during the course of onsite inspections, the MFSA verifies that accurate and up to date beneficial ownership information is held with respect to all parties to the trust, always treating the natural persons behind any corporate structures as beneficial owners. As to supervision of banks, the MFSA's prudential supervisory approach is in line with European supervisory standards. Through the course of its conduct supervision, and in alignment with the FIAU's supervisory work, the MFSA checks the beneficial ownership information held at banks and can also attest to the accuracy of information held by such banks. Whenever there was the need to take enforcement action for failure to collect beneficial ownership information, the FIAU did so in an effective manner. Malta cannot therefore agree with statements to the effect that "[w]ithout statistics on the nature of breaches identified and what action was taken to remediate the underlying cause of these breaches, it cannot be substantiated that all requirements on record keeping under the AML laws are effectively implemented in practice" or that the effectiveness of the new supervisory strategy cannot be effectively assessed.

Finally, on Element C.5, Malta feels that the report does not give sufficient weight to the sudden increase (by more than 500%) in requests received at the beginning of the review period. Malta acted to address this significant increase but the particular circumstances Malta faced at the time made it difficult to be timely in responding to requests for information. The report acknowledges the improvement in timeliness during the last 12 months of the review period which clearly shows that Malta did indeed take action to be able to respond in a timely manner. In this respect, Malta considers that the rating given in relation to this Element does not give the appropriate weight to the particular circumstances and action taken by Malta.

Despite the outcome of this round of review, Malta reiterates its commitment to the Global Forum standards on tax transparency on exchange of information on requests and will work to address the recommendations identified in the report.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request MALTA 2020 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2020 Peer Review Report on the Exchange of Information on Request of Malta.

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