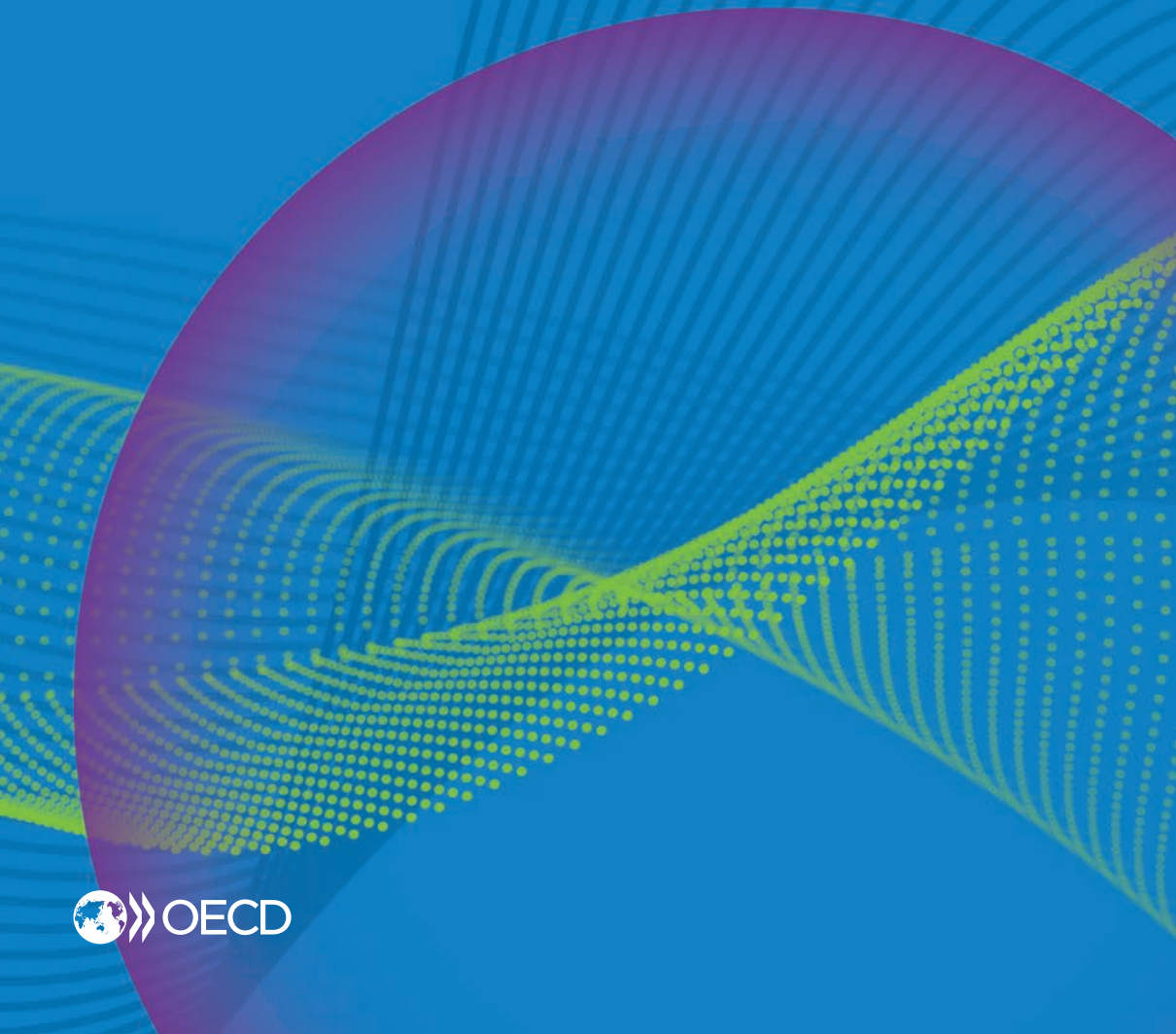
GLOBAL FORUM ON

TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

MALTA

2024 (Second Round, Supplementary Report)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Malta 2024 (Second Round, Supplementary Report)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST



This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) on 1 March 2024 and adopted by the Global Forum members on 27 March 2024. The report was prepared for publication by the Global Forum Secretariat.

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Please cite this publication as:
OECD (2024), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Malta 2024 (Second Round, Supplementary Report): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/8145f488-en.

ISBN 978-92-64-52535-1 (print)
ISBN 978-92-64-31925-7 (PDF)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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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/CFT) 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/CFT 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

AML	Anti-Money Laundering
AML Regulations	Prevention of Money Laundering and Funding of Terrorism Regulations
CBAR	Centralised Bank Account Register
CCN	Common Communication Network, the digital platform used for exchange of information among EU Member States
CDD	Customer Due Diligence
CID	Compliance and Investigations Directorate of the Malta Tax and Customs Administration
CSP	Corporate Service Providers
DAC	EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation, as in force
DTC	Double Taxation Convention
EOI	Exchange of information
EOIR	Exchange of Information on Request
EU	European Union
EUR	Euro, the official currency in Malta
FIAU	The Maltese Financial Intelligence Analysis Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
ICC	Maltese Incorporated Cell Companies
MBR	Malta Business Registry
MFSA	Malta Financial Services Authority

MTCA	Malta Tax and Customs Administration
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PCC	Maltese Protected Cell Companies
RBO Regulations	Companies Act (Register of Beneficial Owners) Regulations
Reg.	Regulation
RfLP	The Maltese Registrar for Legal Persons, whose functions are carried out since 2020 by the Registrar of Companies
SCC	Maltese Securitisation Cell Companies
ROC	Register of Companies kept by the Malta Business Registry
TIEA	Tax Information Exchange Agreement
TT ACT	Trusts and Trustees Act
TTA BO Regulations	Trusts and Trustees Act (Register for Beneficial Owners) Regulations
TUBOR	The Maltese Trusts Ultimate Beneficial Ownership Register kept by the Malta Financial Services Authority

Executive summary

1. This supplementary report analyses the implementation of the standard of transparency and exchange of information on request ("the standard") in Malta in the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force on 11 December 2023 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of exchange of information (EOI) requests received and sent during the period from 1 July 2019 to 30 June 2022 (period under review).

2. This report supplements the findings and analysis in the report that had assessed Malta's legal and regulatory framework as in 2020 and the practical application of that framework, in particular in relation to EOI requests processed during the period from 1 April 2016 to 31 March 2019 (the 2020 Report). The 2020 Report rated Malta overall "Partially Compliant" with the standard. Since then, Malta has made progress in the implementation of the standard in practice, which led to Malta requesting a supplementary review in September 2021. This request was accepted by the Peer Review Group of the Global Forum and has resulted in the present supplementary report.

3. This report concludes that Malta is rated overall **Largely Compliant** with the standard.

Comparison of ratings for the Second Round Report and Supplementary Report

Element		Second Round Report (2020)	Supplementary Report (2024)
A.1	Availability of ownership and identity information	Partially Compliant	Largely Compliant
A.2	Availability of accounting information	Partially Compliant	Partially Compliant
A.3	Availability of banking information	Partially Compliant	Largely Compliant
B.1	Access to information	Compliant	Largely Compliant
B.2	Rights and Safeguards	Compliant	Compliant
C.1	EOIR Mechanisms	Compliant	Compliant
C.2	Network of EOIR Mechanisms	Compliant	Compliant
C.3	Confidentiality	Compliant	Compliant
C.4	Rights and safeguards	Compliant	Compliant
C.5	Quality and timeliness of responses	Partially Compliant	Largely Compliant
	OVERALL RATING	**Partially Compliant**	**Largely Compliant**

Note: the four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant

Progress made since previous review

4. Since the 2020 Report, Malta has introduced new compliance monitoring powers under the Co-operation with Other Jurisdictions on Tax Matters Regulations (Co-operation Regulations, in Reg. 4a), continued the substantial work in striking-off inactive companies from the register of companies, and enhanced co-operation among supervisory authorities. That has led to some improvements in the supervision and enforcement of the relevant requirements related to the availability of relevant information.

Key recommendations

5. Some new recommendations have been issued in relation to improvements needed in the legal and regulatory framework, in particular to ensure:

- that nominee shareholders disclose their nominee status to the legal entity and, where necessary. to the financial authority
- the determination of beneficial ownership takes into account the specificities of Protected Cell Companies and Securitisation Cell Companies
- that the information in the Register of Beneficial Ownership consistently meets the definition of beneficial owner under the standard
- the availability of accounting records and access in a timely fashion when entities and arrangements keep them outside of Malta

- the availability of accounting records for at least five years in case a Maltese company redomiciles outside of Malta
- that a process is in place allowing exchanging information in criminal tax matters concerning a person in Malta from whom information is to be accessed
- that the application of the provisions safeguarding trade, business, industrial, or commercial secret is carefully weighed to ensure effective exchange of information.

6. Moreover, as observed in the 2020 Report, it remains the case that in practice, supervision and enforcement actions by the relevant authorities should be enhanced to ensure the availability of identity, ownership information and accounting records in all cases in line with the standard. For banking information, the overall supervision carried out is now considered adequate. However, due to the fact that no specified frequency for updating beneficial ownership information is applied by banks and/or enforced by the authorities, Malta is recommended to ensure that up-to-date beneficial ownership information on all bank accounts is available.

Exchange of information in practice

7. Malta has substantial experience in exchange of information on request (EOIR), with the volume of exchanges also increasing over the years. From 1 July 2019 to 30 June 2022, Malta received 606 requests for information (as compared to 81 requests and then 486 requests received during the previous review periods) and sent 14 requests to its EOI partners. EOI partners are generally satisfied with the quality of the responses provided by Malta, but highlighted issues on their timeliness and, in some cases, that only partial information could be provided.

8. Malta has established processes to deal with EOIR and it is working at improving them. The 2020 Report found that Malta's competent authority faced challenges in timely handling of incoming requests, due in particular to resource limitations. To address this, Malta was recommended to ensure sufficient staff and resources, as well as effective processes, to enable timely responses to EOI requests and to consistently provide status updates to its partners when unable to provide substantive responses within 90 days. While recognising the progress made by the Maltese competent authority in improving its efficiency and responding to EOIR requests in a timely manner, these recommendations have been only partly addressed during the current period under review and are therefore maintained for the substantial part.

Overall rating

9. Malta has been assigned a rating for each of the ten essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, in view of recommendations made in respect of the legal and regulatory framework and its practical implementation. On this basis, Malta has been assigned the following ratings: Compliant for Elements B.2, C.1, C.2, C.3 and C.4, Largely Compliant for Elements A.1, A.3, B.1 and C.5 and Partially Compliant for Element A.2. Malta's overall rating is Largely Compliant based on a comprehensive consideration of Malta's compliance with the individual elements.

10. This report was approved at the Peer Review Group of the Global Forum on 1 March 2024 and was adopted by the Global Forum on 27 March 2024. 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 of the Global Forum in accordance with the Methodology for enhanced monitoring as per the schedule in Annex 2 of the methodology. The first such self-assessment report from Malta will be expected in 2026, and subsequently once every two years.

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 (Element A.1)		
The legal and regulatory framework is in place but needs improvement	Nominee shareholders do not have to disclose the nominator information and/or their nominee status to the legal entity. Without this disclosure, the legal entity would not know whether the shareholder is a nominee, and this can prevent it from maintaining and reporting accurate information.	Malta is recommended to ensure that mandataries who act as nominee shareholders disclose their nominee status to the legal entity and, where necessary, to the Malta Financial Services Authority.
	Securitisation Cell Companies have registration and reporting requirements with the Business Registry as for regular companies and this does not ensure the availability of legal ownership information for each individual cell. It is also unclear whether shareholding information on the individual cells level would be always available at the level of the company. The beneficial ownership of Protected Cell Companies and Securitisation Cell Companies based on control through ownership and/or voting rights is determined by considering all its shareholders, including those who may be holding shares only in the cells, but there is no requirement to identify the beneficial owners of each separate cell. However, the standard expects the identification of beneficial owners of both the company and the individual cells it houses.	Malta is recommended to ensure that legal and beneficial ownership information in line with the standard is available for all companies, including Protected Cell Companies and Securitisation Cell Companies.

Determinations and ratings	Factors underlying recommendations	Recommendations
	The Register of Beneficial Ownership is the key source of information in Malta, but filing exemptions affect companies with shareholders that are all natural persons known to the Register of Companies, leading to an assumption by the Malta Business Registry that these legal owners are the sole beneficial owners. This approach does not align with the beneficial owner definition under the standard, as it overlooks those exerting control through means other than ownership, raising concerns about the Register's completeness and accuracy.	Malta is recommended to improve its Register of Beneficial Ownership framework to ensure that the information contained consistently meets the definition of beneficial owner under the standard, thereby enhancing its reliability.
EOIR Rating Largely Compliant	The Co-operation Regulations, which came into force in 2011, establish comprehensive requirements on the availability of legal and beneficial ownership and identity information and penalties for non-compliance. However, the supervision and enforcement actions conducted by the tax authorities are insufficient to ensure compliance with the Co-operation Regulations, and thus the availability of legal and beneficial ownership and identity information in all cases for all relevant entities. Companies and partnerships are required to file legal and beneficial ownership information with the Business Register. However, the compliance rates and the scope of the companies that are required to file beneficial ownership information do not ensure that the information is available, accurate and up to date in all cases. Supervisory activities primarily focused on ensuring compliance with the filing requirements, with sanctions issued that resulted in low collection rates. The lack of consideration for beneficial ownership exercised through means other than ownership for companies and partnerships exempted from filing requirements raises doubts also on the effectiveness of the controls that are conducted for the information filed and for the information to be maintained by the entities themselves.	Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of legal and beneficial ownership and identity information in all cases in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Companies are required to engage a local auditor, designated as an AML-obliged person, for auditing purposes. However, the limited number of auditors relative to the number of companies needing their financial statements audited raises questions about their ability to serve as a reliable source of beneficial ownership information.	
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2)		
The legal and regulatory framework is in place but needs improvement	The Maltese legislation indicates that accounting records can be kept outside Malta, as long as they are kept in a jurisdiction with which Malta has an EOI instrument that would permit exchange of such records, and in such a way that it may be submitted without difficulty to the tax authority. If an entity or arrangement does not comply with the notice from the Maltese Competent Authority and no director is any longer in Malta, the only course of action that can be taken by the latter would be applying sanctions on the entity and/or to the directors. In the cases where the entity is inactive with no or minimal presence in Malta, sanctions are unlikely to have the expected deterrence and enforcement results, and it is highly unlikely that the requested information would be available to the authorities in all cases. Even if the Maltese Competent Authority could request the information to the third-party jurisdiction where the accounting records are expected to be held, it is not ensured that they could be exchanged with the requesting jurisdiction, as they would be treaty-protected information, and the third-party jurisdiction might not have an EOI mechanism with the requesting jurisdiction or may not authorise its provision by Malta to the third-party jurisdiction.	Malta is recommended to ensure the availability of accounting records and access in a timely fashion when entities and arrangements keep them outside of Malta.

Determinations and ratings	Factors underlying recommendations	Recommendations
	While it is possible for Maltese companies to redomicile outside of Malta without having to undergo a liquidation procedure, it is not clear if there are requirements to ensure availability of accounting records in Malta for at least five years in case a Maltese company redomiciles outside of Malta.	Malta is recommended to ensure availability of accounting records for at least five years in case a Maltese company redomiciles outside of Malta.
EOIR Rating Partially Compliant	The Co-operation Regulations, which came into force in 2011, establish comprehensive requirements on the maintenance of accounting records and penalties for non-compliance. However, the supervision and enforcement actions conducted by the tax authorities are insufficient to ensure compliance with the Co-operation Regulations and thus the availability of accounting records in all cases for all relevant entities. Companies and partnerships are required to file financial statements with the Business Register, but the compliance rates do not ensure that the information is available in all cases, and the supervisory activities focused on ensuring compliance with the filing requirements, with sanctions issued that resulted in low collection rates.	Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of accounting records in all cases in line with the standard.
Banking information and beneficial ownership information should be available for all account-holders (Element A.3)		
The legal and regulatory framework is in place but needs improvement	While, in accordance with the Co-operation Regulations, banks are obligated to retain information for a minimum of five years, including in the event of liquidation or cessation of existence or operations, it is unclear who will bear the responsibility for retaining such information if a domestic bank ceases to exist or a foreign bank ceases operations in Malta.	Malta is recommended to ensure the availability of banking information for at least five years when a bank ceases to exist or operate in the country.

Determinations and ratings	Factors underlying recommendations	Recommendations
	For accounts held by Protected Cell Companies and Securitisation Cell Companies, the determination of beneficial owner only takes place at the level of the company. However, the standard expects the identification of beneficial owners of both the company and the individual cells it houses.	Malta is recommended to ensure that beneficial ownership information in line with the standard is available for all account holders, including Protected Cell Companies and Securitisation Cell Companies.
EOIR Rating Largely Compliant	The frequency for updating beneficial ownership information specified in the Co-operation Regulations is not observed in practice by banks and not enforced by the Maltese authorities, and there is no specified frequency of updating beneficial ownership information in the AML law, so there could be situations where the beneficial ownership information on bank accounts is not kept up to date.	Malta is recommended to ensure that up-to-date beneficial ownership information on all bank accounts is available 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) (Element B.1)		
The legal and regulatory framework is in place	When the criminal tax matter in a request for information relates to the person who is also the information-holder in Malta, Malta would not be able to access the information from such person. The issue has not occurred in practice.	Malta is recommended to enable access and exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought.

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating Largely Compliant	Malta has imposed penalties to taxpayers or information holders in only a limited number of cases where a Tax Administration notice requesting information was not complied with. The difficulties in enforcing the requirements often arise when the entity no longer has representation in Malta, a circumstance that usually leads to the failures of the notification procedure that is a prerequisite for the application of sanctions. In such instances, the Tax Authority informs the Business Registrar, triggering an evaluation by the latter on whether the company results in an inactive status under the Company Law. In such a case, the Business Registrar initiates a defunct procedure. The Tax Administration would not further specifically follow-up on the outcomes. If the company does not result in an inactive status under the Company Law, no enforcement action is taken. Therefore, even when the measure of striking off the entity was implemented, it may not be effective for the purposes of the standard, as information would still not be obtained where the entity has no longer physical presence in Malta.	Malta is recommended to ensure that effective sanctions are consistently applied in practice in case of non-compliance by the taxpayer or information holder with the request by the Competent Authority to provide information.
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 (Element B.2)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determinations and ratings	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (Element C.1)		
The legal and regulatory framework is in place	When the criminal tax matter in a request for information relates to the person who is also the information-holder in Malta, Malta would not be able to access the information from such person and thus exchange it with the requesting partner jurisdiction. The issue has not occurred in practice.	Malta is recommended to enable access and exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought.
EOIR Rating Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (Element C.2)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4)		
The legal and regulatory framework is in place		

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating Compliant	During the period under review, Malta received two requests concerning the minutes of the board of directors' meetings of the companies and indicating their foreseeable relevance for such documents. The information was requested to the companies, that responded that all the information contained in the minutes of the board of directors meeting was confidential and therefore could not be provided. The Maltese Competent Authority did not conduct an independent assessment to determine whether such documents were confidential, solely relying on the taxpayer's assertions, and informed the requesting jurisdiction that such documents could not be provided.	Malta is recommended to ensure that the instances where the application of the provisions safeguarding trade, business, industrial, or commercial secret invoked by the taxpayer are carefully weighed to ensure effective exchange of information.
The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5)		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating Largely Compliant	Malta has not been able to fully respond to incoming EOI requests in a timely manner in several cases during the period under review, as the deadlines specified in regulations and guidance were not effectively implemented and there was a 14% of partial or total failures to provide the information requested.	Malta is recommended to monitor and adjust where needed the processes in place to ensure that all EOI requests are fully answered in a timely manner.
	During the period under review, Malta did not always provide an update on the status of the request to its EOI partners within 90 days when it was unable to provide the information requested within that timeframe.	Malta is recommended to always provide status updates to its EOI partners within 90 days where the information requested cannot be provided within that timeframe.

Overview of Malta

11. Malta is a country located in southern Europe, approximately at the centre of the Mediterranean Sea. Malta achieved independence from the United Kingdom in 1964 and became a member of the European Union (EU) in 2004. Maltese and English are the official languages. The Maltese Economy is a highly industrialised and service-based economy. As of 2022, Malta had a population of 523 417 inhabitants and a nominal Gross Domestic Product amounting to 17.7 billion dollars of the United States.[1] The euro (EUR) is the legal currency in Malta since 2008.

Legal system

12. Malta is a republic with a parliamentary system of government. Its legal system is largely based on civil law, but with influences from the law of the United Kingdom, particularly in commercial and financial domains.

13. Ministers of the Maltese government may issue Regulations as subsidiary legislation in accordance with the power that is conferred to them 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 Malta Financial Services Authority (MFSA), on the other hand may be empowered by primary legislation to make by-laws which usually take the form of an order or a prohibition that are binding.[2] 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.

1. Source of the figures: World Bank https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MT and https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=MT (links consulted on 7 July 2023).
2. See the 2013 Report, paragraphs 14-20, for further details on the Maltese legal system.

Tax system

14. The administration of taxes in Malta is conducted by the Malta Tax and Customs Administration (MTCA), formerly named Office of the Commissioner for Revenue (OCfR) until July 2023.

15. The two main sources of the Maltese tax law are the Income Tax Act and the Income Tax Management Act.

16. Natural and legal persons that are resident and domiciled in Malta are subject to income tax in Malta on a worldwide basis. Natural persons are tax resident in Malta for a given year if they are present in Malta for more than 183 days in that year, or if they go to Malta on that year to establish their residence there, regardless of the duration of their stay in Malta on that year (tax domicile). Companies incorporated in Malta are considered to be tax resident and domiciled in Malta, whereas companies incorporated outside of Malta are considered tax resident in Malta only if the management and control of the company are exercised in Malta. While the term "management and control" is not defined in Maltese tax law; in practice, the MTCA takes into account whether the board meetings of the company are held in Malta, whether general meetings are held in Malta, and whether any other decisions of the company are taken in Malta. If a foreign company is treated as tax resident in Malta, it is subject to tax on income arising in Malta and foreign income (excluding capital gains) received in Malta. The same applies to individuals who are resident but not domiciled in Malta. The income tax rate is progressive for individuals, ranging from 15% to 35%, whereas the rate for corporations is 35%. Malta has a "full imputation" system to avoid economic double taxation, whereby dividends distributed to individuals out of taxed profits carry an imputation credit of the tax paid by the company on the profits themselves. In Malta, no withholding tax is applied 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.

17. Malta has a broad network of partners for exchange of information for tax purposes with 81 Double Tax Conventions (DTCs) and 4 Tax Information Exchange Agreements (TIEAs). Malta is also a party to the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) and has transposed the EU Council Directives on Administrative Co-operation for tax purposes.

18. An important piece of tax law for the purposes of the implementation of the standard in Malta are the Co-operation with Other Jurisdictions

on Tax Matters Regulations ("Co-operation Regulations"), enacted in July 2011 and amended several times thereafter. The Co-operation Regulations apply to all entities in Malta and set requirements on the availability of information (including ownership information, accounting records and banking information), the access by the Maltese competent authority to such information and its exchange with partner jurisdictions.[3] On the requirements on availability of information, the Co-operation Regulations often supplement other legal sources and address the gaps contained in them for the purposes of the standard, as described in more detail in Part A of this report.

19. Further details of the Maltese tax system can be found in the 2013 Report.

Financial services sector

20. The financial services industry in Malta is a main pillar of the Maltese economy, contributing around 11% of Malta's Gross Domestic Product in 2021. Malta is recorded to have experienced growth in the financial services Gross Value Added equal to 4.3% in 2021. At the end of 2021, the total assets of all licensed banks in Malta stood at EUR 40.96 billion.

21. As of 31 December 2021, there were 22 banks (credit institutions), 52 financial institutions authorised to provide payment services or to issue electronic money, 683 insurance entities (both licensed individuals and companies), 24 recognised fund administrators, 665 licensed investment funds (including sub-funds), 131 authorised trustees, and 216 regulated company service providers. Since the last review, Malta enacted the Virtual Financial Assets Act, allowing virtual financial assets agents to provide regulated financial services.

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

23. The Malta Business Registry (MBR), set up in April 2018, maintains 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.[4] The MBR is headed by the Registrar of Companies, who is tasked to ensure compliance with any provisions of the Companies Act through its investigatory powers as accorded by law. As from August 2020, the Registrar of Companies also exercises the functions of Registrar for Legal Persons (RfLP), integrating the entity registration functions for foundations and associations.

3. Refer to paragraphs 28-30 of the 2013 Report.
4. Previously, these duties and functions were carried out by the Office of the Registrar of Companies within the MFSA.

Anti-money laundering framework

24. The Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations (AML Regulations) provide the legal framework of Malta's anti-money laundering laws. The AML 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. AML-obliged persons must also take in consideration any national or supranational risk assessments relating to risks of money laundering and the funding of terrorism.

25. 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 supervision of AML-obliged persons in Malta.

26. Malta is a member jurisdiction of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). The Fifth Round Mutual Evaluation Report of Malta was adopted by the MONEYVAL Plenary in July 2019, with a rating of Largely Compliant for Recommendations 10 (Financial Institutions: Customer due diligence), 22 (Designated Non-Financial Businesses and Professions: Customer due diligence) and 25 (Transparency and beneficial ownership of legal arrangements); Partially Compliant for Recommendation 24 (Transparency and beneficial ownership of legal persons), and a moderate level of effectiveness for the Immediate Outcome 5 (Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments).[5] The Report identified gaps in the supervision and monitoring of the AML laws, and concluded that Malta has achieved a low level of effectiveness as such (Immediate Outcome 3). Deficiencies identified in transparency of legal persons and legal arrangements relate in particular to the availability of the beneficial ownership information. Based on the findings of its Mutual Evaluation, Malta has been placed under enhanced follow-up as well as under Increased Monitoring ("grey list").

5. See the 5th MONEYVAL Mutual Evaluation Report of Malta: https://rm.coe.int/moneyval-2019-5-5th-round-mer-malta2/168097396c (accessed on 20 November 2023).

27. Malta initiated a nation-wide plan to tackle the recommendations in the 5th Mutual Evaluation Report. The National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism (established with Regulations S.L. 373.02 of 2018; including among others the MTCA and the FIAU, but not the MBR) was tasked to take the necessary actions.[6] The first Enhanced Follow-up Report was adopted by the MONEYVAL in April 2021.[7] As a result, Malta has been re-rated with upgrades on several Recommendations, including Recommendation 24 now Largely Compliant. In June 2022 Malta was removed from the Increased Monitoring, while it still remains under enhanced follow-up.

Recent developments

28. The main relevant developments occurred in Malta's legal and regulatory framework since the adoption of the 2020 Report are the following:

- the introduction of "compliance monitoring" procedures in the Co-operation Regulations (see paragraph 91)
- changes to the Corporate Service Providers framework, removing the exception to the licensing of warranted professionals (see paragraph 119).

6. https://www.ncc.gov.mt/ (accessed on 12 January 2024).
7. https://rm.coe.int/moneyval-2021-7-fur-malta/1680a29c70 (accessed on 20 November 2023).

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 records 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 in place a legal and regulatory framework requiring the maintenance of legal and beneficial ownership and identity information of all relevant entities and arrangements. This framework is multi-pronged and encompasses tax laws, company laws and AML laws. Most notably, the Co-operation with Other Jurisdictions on Tax Matters Regulations (Co-operation Regulations) set out comprehensive legal requirements to ensure the availability of ownership and identity information. Malta's legal and regulatory framework for Element A.1 was determined to be in place in the 2020 Report while certain aspects are considered needing improvement in the present report, notably on the disclosure of the status of nominee shareholders and on the specificities of Protected Cell Companies and Securitisation Cell Companies to be taken into account for the determination of the respective beneficial owners.

31. As regards the implementation of this framework in practice, both the 2013 Report and the 2020 Report recommended Malta to increase its efforts to ensure that its supervisory and enforcement powers were sufficiently exercised, with particular regard to the Co-operation Regulations which came into force in July 2011 and are enforced by the Malta Tax and Customs Administration (MTCA). During the period under review, Malta carried out some supervisory and enforcement activities, but the compliance framework still needs to be further enhanced, to ensure compliance with the requirements in the Co-operation Regulations – notably the ones which were introduced to fill the gaps present in other legal frameworks. Therefore,

Malta is recommended to improve and strengthen the supervision and enforcement measures on the Co-operation Regulations to ensure the availability of ownership and identity information in all cases.

32. The 2020 Report also observed that a significant proportion of companies registered with the Malta Business Registry (MBR) and with the MTCA were inactive, and this caused concerns regarding the availability of their ownership and identity information. Malta was thus recommended to take actions and monitor their effectiveness to reduce the number of inactive companies. The MBR has taken substantial actions to strike off all those inactive companies and corresponding actions have been implemented by the MTCA. This recommendation therefore stands addressed.

33. Not covered in the 2020 Report, it is observed that nominee shareholders do not have to disclose the nominator information and/or their nominee status to the legal entity. Without this disclosure, the legal entity would not know whether the shareholder is a nominee, and this can prevent it from maintaining and reporting accurate information. Malta is therefore recommended to ensure that nominee shareholders disclose their nominee status to the legal entity.

34. Malta has also introduced a Register of Beneficial Ownership, that complements other sources of beneficial ownership information. Its framework, however, should be improved to ensure that the information contained consistently meets the definition of beneficial owner, thereby enhancing its reliability.

35. During the current period under review, Malta received 606 requests, 266 of which included ownership information. Malta was able to provide information for the majority of such requests, however it failed to provide beneficial ownership information 9 cases related to inactive companies (see paragraph 167).

36. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Nominee shareholders do not have to disclose the nominator information and/or their nominee status to the legal entity. Without this disclosure, the legal entity would not know whether the shareholder is a nominee, and this can prevent it from maintaining and reporting accurate information.	Malta is recommended to ensure that mandataries who act as nominee shareholders disclose their nominee status to the legal entity and, where necessary, to the Malta Financial Services Authority.

Deficiencies identified/Underlying factor	Recommendations
Securitisation Cell Companies have registration and reporting requirements with the Business Registry as for regular companies and this does not ensure the availability of legal ownership information for each individual cell. It is also unclear whether shareholding information at cell level would be always available at the level of the cell company. The beneficial ownership of Protected Cell Companies and Securitisation Cell Companies based on control through ownership and/or voting rights is determined by considering all its shareholders, including those who may be holding shares only in the cells, but there is no requirement to identify the beneficial owners of each separate cell. However, the standard expects the identification of beneficial owners of both the company and the individual cells it houses.	Malta is recommended to ensure that legal and beneficial ownership information in line with the standard is available for all companies, including Protected Cell Companies and Securitisation Cell Companies.
The Register of Beneficial Ownership is the key source of information in Malta, but filing exemptions affect companies with shareholders that are all natural persons known to the Register of Companies, leading to an assumption by the Malta Business Registry that these legal owners are the sole beneficial owners. This approach does not align with the beneficial owner definition under the standard, as it overlooks those exerting control through means other than ownership, raising concerns about the Register's completeness and accuracy.	Malta is recommended to improve its Register of Beneficial Ownership framework to ensure that the information contained consistently meets the definition of beneficial owner under the standard, thereby enhancing its reliability.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
The Co-operation Regulations, which came into force in 2011, establish comprehensive requirements on the availability of legal and beneficial ownership and identity information and penalties for non-compliance. However, the supervision and enforcement actions conducted by the tax authorities are insufficient to ensure compliance with the Co-operation Regulations, and thus the availability of legal and beneficial ownership and identity information in all cases to for all relevant entities. Companies and partnerships are required to file legal and beneficial ownership information with the Business Register. However, the compliance rates and the scope of the companies that are required to file beneficial ownership information do not ensure that the information is available, accurate and up to date in all cases. Supervisory activities primarily focused on ensuring compliance with the filing requirements, with sanctions issued that resulted in low collection rates. The lack of consideration for beneficial ownership exercised through means other than ownership for companies and partnerships exempted from filing requirements raises doubts also on the effectiveness of the controls that are conducted for the information filed and for the information to be maintained by the entities themselves. Companies are required to engage a local auditor, designated as an AML-obliged person, for auditing purposes. However, the limited number of auditors relative to the number of companies needing their financial statements audited raises questions about their ability to serve as a reliable source of beneficial ownership information.	Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of legal and beneficial ownership and identity information in all cases in line with the standard.

A.1.1. Availability of legal and beneficial ownership information for companies

37. In Malta, the Companies Act provides for the creation of limited liability companies ("companies"). As of 30 December 2022, there were 50 713 companies (including general and limited partnerships)[8] registered with the MBR, compared to 49 258 on 31 March 2019 and 46 286 in March 2013.[9] Based on the information directly provided or published by Maltese authorities, it was not always possible to ensure throughout this report an exact correspondence between the stock of companies on a given date and the number of companies incorporated or dissolved in a given period. This challenge arises partly because data on companies and partnerships in the Register of Companies was sometimes provided collectively, and due to discrepancies between different sources of data provided, notably the MBR and the MTCA (see paragraph 73).

38. Maltese companies (including general and limited partnerships)[10] can be either public or private, depending on their objects and the number of shareholders.

- Public companies typically have more than 50 shareholders and have greater disclosure requirements than private companies. As of December 2022, 688 public companies existed.
- Private companies can have the status of exempt companies (Article 211 of the Companies Act), which exempts them from certain requirements (e.g. that a person cannot be both a director and company secretary), but exemptions do not extend to the obligations on maintaining legal ownership information. As of December 2022, 50 025 private companies existed, of which 34 521 (or two thirds) were exempted companies (they were 33 720 in March 2019).

39. Cell Companies can be established based on specific regulations. In particular, Protected Cell Companies (PCCs) and Incorporated Cell Companies (ICCs) can be established pursuant to the Insurance Business Act. They operate exclusively in the insurance sector (see paragraphs 68-72 of the 2013 Report),[11] and are subject to licensing, regulation and supervision

8. General partnerships and limited partnerships apply the same rules for registration purposes as that of companies, see further discussion in Element A.1.3. Maltese authorities could not extract aggregate data that solely relates to companies.
9. Source: 2020 Report and 2013 Report respectively.
10. See footnote 8.
11. A PCC is a single legal entity, even though its assets are segregated into protected cells, and needs to register with the MBR and complete the related filing obligations following the same procedures as for a company. The creation by a PCC of a cell does not create, in respect of that cell, a legal person separate from the

by the MFSA. The regulations provide that these companies must include the expression "Protected Cell Company" or "Incorporated Cell Companies" (or their respective acronyms) in their name.[12] As of 30 June 2022, there were 16 PCCs. No ICCs were licensed as of 16 November 2023.

40. Similarly, Securitisation Cell Companies (SCCs), which can be established pursuant to the Securitisation Act, are legal entities structured in two parts: the cell company, and an unlimited number of cells. Each SCC has a single board of directors and one set of memorandum and articles of incorporation.[13] One of the key features of an SCC is that by setting up different cells, the company may be used for multiple securitisation transactions, and the securitisation assets can originate from different and unrelated originators. SCCs must give notice to the MFSA before they commence their business (Article 18), but they are not subject to authorisation by the MFSA itself, unless they intend to issue financial instruments to the public on a continuous basis (Article 19). Each SCC must include the expression "Securitisation Cell Companies" or "SCC" in its name (Reg. 5(1) of the Securitisation Cell Companies Regulations). In addition, Reinsurance Special Purpose Vehicles (RSPV) may be formed as companies, and can take the form of SCCs. As of 30 November 2023 there were 22 SCCs and 95 Cells. However, as the Securitisation Act does not require securitisation vehicles to inform the MFSA when they cease operations, these statistics may include inactive SCCs and/or Cells. No RSPV were formed as of 16 November 2023.

41. *Societas Europaea* are companies conceived in the framework of EU law.[14] For those that are formed in Malta, any requirements applicable to Maltese public limited liability companies equally apply to *Societas Europaea*. Therefore, the rules applicable to companies as referred to in this Report are also applicable to *Societas Europaea*. As of 30 June 2022, there were 8 *Societas Europaea* registered in Malta.

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company (Reg. 3(2) of the Companies Act (Cell Companies Carrying On Business Of Insurance) Regulations). For ICCs, each cell is a separate company with legal personality. Thus cells must register with the MBR and complete related filing obligations (Reg. 10 of the Companies Act (Incorporated Cell Companies Carrying On Business of Insurance) Regulations, see paragraph 49).

12. Companies Act (Cell Companies Carrying on Business of Insurance) Regulations and Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations.
13. Similar to PCCs, a SCC is a single legal entity and the creation by a SCC of a cell does not create, in respect of that cell, a legal person separate from the company (Reg. 4(3) of the Securitisation Cell Companies Regulations).
14. Art. 9(1)(c)(ii) of the Council Regulation (EC) No. 2157/2001.

42. Foreign companies (referred to in Maltese legislation as "overseas companies") 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 30 June 2022, there were 603 foreign companies registered in Malta.

43. The number of newly registered companies over the years maintains the same order of magnitude and is mainly represented by limited liability companies.

Newly incorporated or registered companies per year

	2019	2020	2021	2022	Total
Companies (public or private limited liability companies)	4 245	3 396	3 362	2 740	13 743
Societas Europaea	2	2	1	-	5
Foreign companies	87	40	41	30	198

Source: MBR Annual Reports.

Legal ownership and identity information requirements

44. The legal ownership and identity requirements for companies are mainly found in the Companies Act and the Co-operation Regulations under the tax law, complemented with requirements 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.

Companies covered by legislation regulating legal ownership information[15]

Type	Company Law	Tax Law	AML Law
Companies (public or private)	All	All	Some
Societas Europaea	All	All	Some
Foreign companies (tax resident)	Some	All	Some

15. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

Companies Law requirements

45. No major change has occurred since the 2020 Report in the legal obligations for companies in Malta to keep and provide legal ownership information to the government authorities.[16]

46. The MBR, headed by the Registrar of Companies, is the Maltese agency that maintains the Register of Companies (ROC). Maltese companies need to be registered in the ROC to come into existence and commence their business, and the certificate issued by the Registrar to the companies acts as a proof of their existence (Articles 68 and 77 of the Companies Act). Every company in Malta must be registered in the ROC. The general information (including the name and residence of the shareholders, the registered office address) and all the documentation submitted to the ROC is made available to the public on the website of the MBR.

47. Maltese companies must file annual returns (as well as financial statements, see paragraph 279) with the MBR which include: a summary of the share capital of the company, a list of past and present members (shareholders) and the names and address of the directors and company secretaries (Seventh Schedule of the Companies Act). Besides the annual return, companies must notify the MBR within 14 days following the registration of a transfer of shares *inter-vivos*, within one month in case of transmission *mortis causa* (Form T) and within one month also in case the company issues new shares (Form H) (Articles 103 and 120(3) of the Companies Act). The deadline for meeting these requirements extends to 90 days in case of companies whose shares are admitted to listing on a regulated market.

48. Maltese companies are also required to keep a register of their shareholders. Transfers of shares are valid upon registration by companies in the register of shareholders. A company can make arrangements for its register of shareholders 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,[17] but in any case, the company

16. See paragraphs 42-47 of the 2020 Report, in turn referring to paragraphs 48 to 54 of the 2013 Report.

17. According to the Companies Act, "recognised jurisdiction" means:

   a. an 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 International Organisation of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding

remains responsible for the proper keeping of the register and must keep a copy of all entries relating to registered shareholders held by the depositary (Article 123(3A) of the Companies Act).

49. PCCs and SCCs must register with the MBR and fulfil the related filing obligations as it applies to regular companies, meaning that the requirements explained in paragraph 47 also apply to them. However, under the Maltese legislation, each individual cell of these companies can issue its own shares ("cell shares"), with the proceeds becoming part of the cellular assets attributable to that specific cell (Article 10 of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations and Article 8 of the Securitisation Cell Companies Regulations). In addition, there is no specific provision indicating any connection between ownership of the cell shares and ownership of the shares of the cell company (e.g. on a *pro rata* basis), the emphasis being rather on ensuring the separation of patrimonies and segregation of assets and liabilities between the cell company and each of its cells. Each individual cell can thus have distinct shareholders from those of the cell company. Therefore, the filing obligations with the MBR, being limited to the legal ownership information of the company, do not ensure availability of legal ownership information for each individual cell.

50. The MFSA, with respect of PCCs, has details of the initial (direct and indirect) ownership structure on both the cell company and the individual cells, as this is gathered in the application form during the licencing process. A PCC is required to inform and obtain the prior approval of the MFSA whenever there are any proposed changes in the "qualifying shareholding" of the core or any of its cells (Chapter 2 of the Insurance Rules, Section 2.5.1).[18] In such an event, the company would have to resubmit its ownership structure. Therefore, direct and indirect shareholding information for both the cell company and the individual cells would be available with the MFSA, except for cases where there have been only changes in shareholdings other than those "qualifying". Maltese authorities indicated that also in case of changes in shareholdings other than those "qualifying", PCCs would generally inform them on a voluntary basis, and changes in the legal ownership would be recorded accordingly, but no supporting statistics have been provided. SCCs are only subject to a notification process with the MFSA, for example when establishing a new cell.

51. For PCCs, the compliance requirement involves that MFSA would have a large amount of legal ownership information, even though not

e. any other jurisdiction where the competent authority, as referred to in the Financial Markets Act, has a memorandum of understanding covering securities.

18. "qualifying shareholding" is defined in the Insurance Business Act as a direct or indirect holding representing 10% or more of the share capital or of the voting rights.

full legal ownership information, and that the cell company is required to maintain information on the shares issued by the individual cells to comply with such requirements. For the case of SCCs, there is no corresponding information to be provided to the MFSA and it is also unclear whether shareholding information at cell level would be always available at the level of the cell company, as the Regulations do not explicitly include shareholder information as part of the information required to be maintained for each cell.[19] In the case of ICCs, where each cell possesses individual legal personality, each cell must register with the MBR and fulfil the related filing obligations (as detailed in paragraph 47). **Malta is recommended to ensure that legal ownership information in line with the standard is available for all companies, including Securitisation Cell Companies**.

52. Foreign companies which establish branches or a place of business in Malta must file with the MBR, within one month from the establishment in Malta, 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 (Article 385 of the Companies Act). The availability of legal ownership at the MBR depends on whether the laws of the jurisdiction in which the company is formed require such 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, and even where the ownership information is available, it may not be up to date, as foreign companies are not required to file the annual returns with the MBR (see however paragraph 66 for tax obligations).

53. Upon ceasing operation and initiating the winding-up process, a company must appoint a liquidator by extraordinary resolution (Article 270 of the Companies Act). In case the liquidator is not appointed, any director must apply to the Court, which will appoint a liquidator ex officio. Only advocates, certified public accountants, auditors or persons that are registered with the Registrar as fit and proper to exercise the function of liquidator can act as such (Article 305(1) of the Companies Act).

54. The company is struck-off the ROC at the end of the liquidation procedure (Articles 264 and 275). Once the company is struck off from the ROC, it loses its legal personality and ceases to exist (Article 4(4)). The liquidator is required to keep all the company's documents, including the register of shareholders, for ten years from the date the company is struck off from the ROC (Article 324(2)). Maltese authorities have indicated that

19. Reg. 9(2)(c) of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations and Reg. 7(2)(c) of the Securitisation Cell Companies Regulations.

this last provision is interpreted as requiring the company to maintain any changes that occur in the register of shareholders until the company is struck off from the ROC.

55. It is possible for Maltese companies to relocate (redomicile) outside of Malta without a liquidation procedure, and for foreign companies to redomicile in Malta (Continuation of Companies Regulations and Cross-border Conversions of Limited Liability Companies Regulations). The table below summarises the number of companies which relocated outside and inside Malta in the years 2019 to 2022.

	2019	2020	2021	2022	Total
Companies relocated outside of Malta	83	52	109	70	314
Companies relocated in Malta	101	63	68	39	271

Source: MBR Annual Reports.

56. Even in case of relocation outside of Malta, information about the legal owners of the company would remain in any case with the MBR (see however supervision and enforcement measures in paragraphs 83 et seq. and considerations in paragraph 97).

Companies Law implementation in practice

57. The MBR was established in 2018 (see paragraph 23) with the principal function of maintaining the public registry where documents relating to all Maltese companies, partnerships and branches of foreign entities are kept. Legal ownership information submitted upon registration and any subsequent changes notified to the MBR are publicly available on its website.[20] There is no statutory obligation for the MBR to retain information for a designated period following the dissolution of a company. As a matter of practice, the MBR retains such information "indefinitely", meaning that, lacking any specific legal or regulatory requirements, the information is maintained as long as necessary based on a determination by the Registrar, taking into consideration the purpose for which the information was originally obtained.[21] While it appears unlikely that legal ownership information would be deleted before five years from the dissolution of the company, Malta should ensure that the legal ownership information filed with the MBR is maintained for a minimum of five years after the date on which the company is dissolved or otherwise ceases to exist (see Annex 1).

20. https://register.mbr.mt/app/home (link checked on 22 November 2023).
21. See also the privacy policy of the web portal https://mbr.mt/privacy-policy/ (accessed on 5 February 2024).

58. During the period under review, the average filing rate for the annual returns was around 80%, as detailed below.

Year	Number of companies	Number of annual returns	Filing rate of annual returns
2019	49 258	33 574	68%
2020	44 454	41 821	94%
2021	47 740	38 803	81.28%
2022	50 713	38 528	75.97%

59. The MBR sends reminders for the yearly filing obligations either by e-mail, when there is an e-mail address in the system (as it is the case for most companies), or by mail (post) otherwise.

60. This rate of compliance does not ensure full availability of information with the MBR, even though it represents an increase from the 70% compliance rate on average as reflected in the 2020 Report.[22] Of concern is also the decreasing compliance rate since 2020. 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 ROC may be inaccurate for the significant number of companies that do not comply with their filing obligations. The availability of accurate and up-to-date legal ownership information of companies in the ROC thus remains a concern.

Inactive companies

61. At the time of the 2020 Report, there were about 10 000 companies in the ROC that were inactive, meaning that they had not filed annual returns and financial statements for at least five years.[23] The MBR has addressed this issue thoroughly, carrying out substantial striking-offs, mainly ex-officio, especially in the two-year period 2020-21. The figures are summarised in the table below.

	2019	2020	2021	2022	Total
Companies struck off the ROC	890	11 289	4 767	713	**17 659**

62. This extensive striking-off exercise has not, in the medium term, led to a decrease in the overall number of existing companies, as it was counterbalanced by the incorporation of new companies (see paragraphs 37 and 43).

22. See paragraph 50 of the 2020 Report.
23. See paragraph 52 of the 2020 Report. As per the Companies Act (Article 325), companies are considered "inactive" if they have not filed annual returns and financial statements for five years.

63. As explained by Maltese authorities, the ex-officio striking-off process, called "defunct procedure" and based on the provisions of Article 325 of the Companies Act, unfolds as follows. Where a company fails to submit the required documents (annual returns, financial statements or the annual beneficial ownership information, see paragraph 147) for five years, lacks any director or company secretary, or no longer maintains a valid registered office (see also paragraph 118), the MBR contacts the company in writing, inquiring whether it is operational and conducting business and requesting to submit any outstanding documents. If no response is received within one month, the MBR notifies the company and its officers about the initiation of the defunct procedure. Additionally, creditors are notified through the publication of a notice on the MBR's portal and in a local daily newspaper. At this stage, the MBR also informs relevant public authorities, including the MTCA and the FIAU, via email. The MBR proceeds to strike off the company from the ROC three months after these notifications if no objection is received during this period from the company itself, creditors or public authorities.

64. Once a company is struck off, the MTCA, the FIAU and the banks in Malta are informed of the event. The assets of the company are to be devolved upon the government of Malta, any (Maltese or foreign) bank account will be closed, and the funds held therein transferred to an account at the Central Bank of Malta created for this purpose and administered by the MBR. Any movable properties of the defunct company are also to be transferred to the government. In this connection, as it was the case for the 2020 Report,[24] no details were provided by Maltese authorities on how the funds and assets of the company would be devolved to the Government and/or on the overall sum transferred to the Governmental account at the Central Bank of Malta. Representatives of the banking sector interviewed during the on-site visit indicated that the deposits in the bank account of struck-off companies would be set aside until a person entitled from the struck-off company comes to withdraw them. The process for the devolvement of funds from foreign bank accounts is unclear. Maltese authorities indicated that the money transfers to the account administered by the MBR represented a "substantial amount" and that in many cases the struck-off companies were "empty", meaning they had no assets as they were for example created for a business or for a tender that eventually did not materialise. It remains that there is no evidence from this review that the devolution of assets of struck-off companies to the government is actually implemented.

65. Within five years from the publication of the striking-off decision, former members and creditors of the struck-off company can apply to the court to have it reinstated (Article 325(4) of the Companies Act). Before a company is

24. See paragraph 52 of the 2020 Report.

reinstated, the MBR would require the pending documents to be filed (including annual returns where the case), fines to be paid and other issues of non-compliance to be addressed. 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 continues. There were 171 applications (amounting to less than 1%) made to the court to reinstate companies that were struck off from the ROC ex-officio in the period 2019-22, with 54 applications that were pending as of 9 October 2023. As of 30 June 2022, there were 383 inactive companies registered with the MBR. For these companies, the defunct procedure has been initiated but had creditors/interested parties who opposed the striking-off or had other ongoing cases (e.g. suspicious transaction reports being investigated by the FIAU).

Tax Law requirements

66. Companies must register and file annual income tax returns with the MTCA. The requirement covers both Maltese companies and 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 to be filed with the MTCA 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.[25] Contrary to what is reported in the 2013 Report (paragraph 70), PCCs, ICCs and SCCs are not required to file separate tax returns for each cell. They have no specific categorisation in the MTCA database and for reporting purposes, but the MTCA would be able to know their nature of cell companies because their name must include a reference to this characteristic (see paragraphs 39-40). Nevertheless, it is not ensured that all their legal owners, including legal owners of the single cells, would have to be reported and are actually reported in practice (see paragraph 49 for the requirements *vis-à-vis* the MBR). **Malta is recommended to ensure that legal ownership information in line with the standard is available for all companies, including Protected Cell Companies and Securitisation Cell Companies**.

67. In addition to the information submitted by the companies themselves, the MBR forwards the company registration information to the MTCA, so that every new company that registers with the MBR is automatically registered for tax purposes. The MTCA will then issue the company a nine-digit tax identification number (in addition to the identification number attributed by the MBR). Besides these notifications, the MTCA has direct access to the ROC and other MBR's databases (see also paragraph 331).

25. See also paragraphs 55 to 57 of the 2013 Report.

No systematic reconciliation to verify the consistency between information reported by the companies to the MTCA and information in the ROC is conducted, but *ad hoc* checks on specific companies can be done by the MTCA at any given time where needed.

68. An important piece of tax law for the purposes of the implementation of the standard in Malta are the Co-operation Regulations, which apply to all entities in Malta.[26] According to Reg. 4(1) of the Co-operation Regulations, companies must keep updated information that identifies their owners and the level and type of their respective ownership stakes, including information on legal and beneficial owners.

69. In principle, legal ownership information of companies must be kept in Malta. However, such information may be kept in a jurisdiction with which Malta has an arrangement that would permit exchange of ownership information (Reg. 4(5) of the Co-operation Regulations). This provision might pose limitations of the ability of the Competent Authority to gather information from the company in a timely manner (see also considerations under Element A.2 in paragraph 271), but it is important to note that the same information has to be filed with the MTCA and with the MBR (see paragraph 47).

70. 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 (Reg. 4(13) of the Co-operation Regulations). The Maltese authorities explain that this obligation also applies to persons referred to in Reg. 5(1) acting in a professional capacity in relation to any such information or records that they hold in the carrying on of their business. Consequently, a person acting as liquidator would be obliged to keep such information.

Tax Law implementation in practice

71. Tax filings compliance for companies during the period under review is as follows:

Year	Number of taxpayers	Number of tax returns filed	Filing rate of tax returns
2019	62 477	37 865	60.61%
2020	64 889	37 433	57.69%
2021	66 919	35 297	52.75%
2022	58 365	31 567	54.09%

26. Meaning, pursuant to Reg. 2, any entity that fulfils one of the following conditions: is resident in Malta; is created under Maltese law; has a permanent establishment in Malta; is a property company or a property partnership; is required to be registered, to be licensed or otherwise authorised in order to conduct business in Malta.

72. For the period 2019-22, the average annual tax filing compliance rate was about 56%, which is low, even though it represents an increase from the 53% average rate in the period covered in the 2020 Report (see enforcement actions in paragraphs 89-90).[27] This gives rise to concerns on the availability of the legal ownership information with the MTCA. In practice, 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 MTCA in the annual returns.

73. The 2020 Report observed that, at the end of March 2020, there was a discrepancy of more than 12 000 companies between the number of companies registered with the MTCA and the companies registered with the ROC, which was partly explained by the fact that some companies that had been struck-off the ROC (and had thus lost legal personality, see paragraph 53) still had taxes, interests or penalties in arrears and were thus still registered in the MTCA's system. A reconciliation has been made in the meantime, with the MTCA taking "parallel actions" following the striking-off of companies from the ROC. This involved an update in the status of the struck-off companies in the MTCA database, changing their classification from "alive and active" to "struck off as defunct". Maltese authorities informed that this reconciliation exercise is now conducted on an annual basis.

Anti-money laundering requirements

74. As further analysed below (paragraph 106 et seq.), the Maltese AML law requires AML-obliged persons to perform customer due diligence (CDD), which includes the identification, where applicable, of the beneficial owners, and the taking of reasonable measures to verify their identity so that the AML-obliged persons are satisfied of knowing who the beneficial owners are. This includes, in the case of a company, taking reasonable measures to understand the ownership and control structure of the customer (Reg. 7(1)(b) of the AML Regulations).[28] Some legal ownership information would thus be available with AML-obliged entities, but this would not ensure that all companies are covered (see paragraph 105) nor that the full ownership structure of a company is available.

27. See paragraph 55 of the 2020 Report.

28. The FIAU Implementing Procedures pose additional requirements and guidance. For example, in the case of companies with multi-tier and complex structures, they indicate it would be useful to maintain a chart showing the ownership structure to the extent that would be required to determine who the beneficial owner is, and with sufficient details to allow its determination.

Nominees

75. As analysed in the 2020 Report,[29] the nominee regime has been phased out and replaced by an authorisation by the MFSA to act as a mandatary in terms of Article 43(12) of the Trusts and Trustees Act (TT Act).[30] Therefore, the "nominee" form is no longer used in Malta's financial system.

76. Providing nominee shareholding services is now a licensed activity, with no exceptions, whatever the number of mandates and whether the person acts in a professional or other capacity. Three pieces of legislation apply.

77. Under the TT Act, the MFSA gathers information about the number (but not the identity) of clients to which each licensee provides mandatary services through annual regulatory returns. The mandatary is required to maintain information about the clients and the MFSA has wide powers to request it at any time, and the identity of client is routinely checked during regulatory inspections (Article 47 of the TT Act).

78. As of 17 October 2023, there were 18 licensed entities authorised solely to provide mandatary services under Article 43(12)(a) of the TT Act and 113 trustees who were authorised to act as mandataries in the management of securities (and/or immovable property), in accordance with the same legal provisions, for a total of 131 entities authorised to provide such services. From the regulatory submissions received by the MFSA for the year ending 2022, authorised persons reported a total of 2 557 fiduciary relationships.

79. Article 32 of the TT Act stipulates that trustees are required to disclose their status when engaging in transactions and dealing with third parties. The MFSA considers that this applies to mandataries. However, this interpretation does not extend to an obligation for mandataries to disclose their nominee status to the company, and so there is no supervisory framework that ensures this obligation is complied with.

80. Under the Co-operation Regulations, the MTCA has the power to obtain information from any person acting in an agency or fiduciary capacity, including nominees and trustees (Reg. 5). Ownership and identity information on shares held by nominees would be available with the nominees

29. Refer to paragraph 106 et seq. of the 2020 Report and to paragraphs 84-89 of the 2013 Report.

30. The term mandatary (spelled "mandatory" in the TT Act) is not defined in the TT Act, but various provisions in the act put it in relation to the activity of holding relevant property or securities for another person. The MFSA clarified that for mandatary pursuant to the TT ACT is intended a person who acts in a fiduciary capacity in the holding of shares or any other similar instrument issued by a company or other partnerships and/or immovable property for another person.

(mandataries) themselves. The MTCA would not be in a position to ascertain upfront whether a mandatary is acting in such capacity, but it could consult the list of licensed persons on the MFSA web portal to verify if a given subject has been licensed and the license is compatible with providing such a service.[31]

81. 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, AML-obliged persons must 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 (Reg. 7(3) of the AML Regulations).

82. In conclusion, information on the mandate arrangement (including identity of the mandataries and principals) would be available with the mandataries themselves, with the MFSA upon request and with the AML-obliged persons where applicable. There is however no requirement for the mandataries to disclose their status to the company or to the MFSA in relation to the detention of shares. Therefore, to ensure the availability of accurate legal and beneficial ownership information of legal entities with shareholdings involving nominee/mandataries arrangements, **Malta is recommended to ensure that mandataries who act as nominee shareholders disclose their nominee status to the company and, where necessary, to the MFSA**.

Supervision and enforcement measures pursuant to the Company Law

83. For the Company Law requirements, the penalties regime on companies' failure to keep a register of members, or to register changes of the legal ownership with the MBR, and on foreign companies that fail to comply with registration requirements and obligations of registration of alterations with the MBR have not changed since the previous reviews.[32]

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

31. Financial Services Register – MFSA: https://www.mfsa.mt/financial-services-register/ (accessed on 5 February 2024).
32. See paragraphs 62 and 198 (as regards liquidators) of the 2020 Report and paragraphs 179-183 of the 2013 Report.

85. The MBR has imposed penalties on companies which failed to comply with the provisions of the Companies Act as summarised in the following table.[33]

		2019	2020	2021	2022	Total
Penalties due to non-compliance of annual returns filing	Number of penalties issued	102 607	105 246	98 337	107 569	413 759
	Penalty amounts issued (EUR)	2 350 633	2 535 512	2 356 729	2 381 552	9 624 426
	Penalty amounts collected (EUR)	733 093	592 739	421 778	234 947	1 982 557
Penalties regarding late filing of notification of transfer of shares (Form T)	Number of penalties issued	728	364	302	332	1 726
	Penalty amounts issued (EUR)	22 917	16 897	13 241	23 941	76996
	Penalty amounts collected (EUR)	18 541	11 630	8 642	18 668	57 481
Penalties regarding late filing of return of allotment of shares (Form H)	Number of penalties issued	52	18	26	27	123
	Penalty amounts issued (EUR)	1 763	445	889	921	4 018
	Penalty amounts collected (EUR)	1 349	445	594	713	3 101

86. The vast majority of penalties issued relate to non-compliance with annual returns filing, with an average collection rate of only 21%, which has been decreasing over the years, possibly because the collections procedures carry over the years. No explanation was given by Maltese authorities on the causes of this low collection rate. Instances of non filing of returns of transfer of shares or allotment of shares is typically identified during MBR verifications on the beneficial ownership information by companies. In such cases, the MBR requests the respective forms to be filed and issues sanctions. While the number of sanctions related to filing of shares transfer and allotment is much lower compared to the annual return filings, they exhibit a higher success rate in collection.

87. Besides the application of penalties, the MBR strikes off ex officio inactive companies (see paragraphs 62-65), and restricts a person from being appointed as director or company secretary of a proposed commercial partnership or an existing company if they are or have been a director or secretary of an existing Maltese company in relation to which they did not fulfil the obligations for three times within a period of two years, and they are still in default as to one or more of such breaches (Article 142(4) of the Companies Act). As seen above (paragraph 64), when a company is dissolved ex-officio, its assets are supposed to be devolved to the government of Malta, but there is a lack of clarity regarding how and to what extent

33. The MBR can impose multiple penalties on a single company based on the number of breaches committed (e.g. for late filing or non-filing of separate requirements). For this reason, the number of penalties imposed by the MBR for a given year might be greater than the overall number of companies existing in Malta in that year.

this process has been implemented in practice. Other enforcement actions include the rejection by the MBR of the incorporation of new companies proposed by directors and shareholders involved in other non-compliant Maltese companies (302 such cases occurred in the year 2020, 470 in 2021 and 526 in 2022).

Supervision and enforcement measures under the Tax Law

88. For the Tax Law requirements, a "taxable entity" (company, partnership, trust or foundation) that fails to submit an annual tax return must pay a penalty, which begins at EUR 50 if it is filed within six months and may go up to EUR 1 500 if it is filed with a delay of more than six months (Schedule to the Income Tax Act).

89. The table below summarises the penalties issued and collected (about a third of the total) by the MTCA to entities for failure to comply with their obligation to submit their annual tax return during the years 2019 to 2022.

Penalties for non-compliance in filing tax returns	2019	2020	2021	2022
Number of penalties issued	13 034	11 684	12 469	7 355
Penalty amounts issued (EUR)	4 962 376	3 885 492	2 725 241	991 058
Penalty amounts collected (EUR)	1 856 632	1 337 286	856 791	327 099
	(37.4%)	(34.4%)	(31.4%)	(33%)

90. Companies that failed to submit tax returns may receive estimated tax assessments in addition to the penalties. This is an additional incentive for compliance, which however remains low (see paragraph 72).

91. The Co-operation Regulations were updated in 2021 to introduce "compliance monitoring" procedures with Reg. 4a. This regulation allows the MTCA to request information and carry out controls on the compliance with the requirements posed in the Co-operation Regulations even when there is no EOI request as a trigger. The MTCA may request any person (at a verified email address or to the registered address) to provide within a reasonable time of no less than 20 days, information necessary to verify that such person is complying with the obligations set out in the Co-operation Regulations. Where any of the information requested is not submitted timely, the person is liable to a penalty between EUR 500 and EUR 19 250, which may be remitted in whole or in part if the MTCA considers that the detected default was justifiable.

92. The compliance monitoring is conducted by the EOI Team within the MTCA (see paragraph 439). The dedicated staff amounted to one

full-time equivalent in 2021 and two full-time equivalent in 2022. In 2021 and 2022, it carried out desk-based controls (sending of questionnaires) on about 1 430 entities (for the great majority companies, but also some partnerships and foundations) on their requirements to keep legal and beneficial ownership information as well as accounting records (see paragraphs 137 and 290). In 2022, the controls focused on entities with foreign majority shareholding, as they are more subject of EOI requests and thus classified as high risk for the purposes of compliance with the Co-operation Regulations.

Year	Entities vetted pursuant to Reg. 4a	Composition	Compliance rate	Sanctions issued	Sanctions collected
2021	439	371 companies; 40 partnerships and 28 foundations	85%	Not available	Not available
2022	990	Entities with foreign majority shareholding	84%	EUR 265 000	EUR 159 700

93. The monitoring exercise conducted to verify compliance with the maintenance of available and updated legal (as well as beneficial) ownership information involved requesting the entities to provide such information and cross-checking it with information from the MBR. If the information provided differs from what is being reported with the MBR, a clarification is requested from the entity/taxpayer to explain such discrepancies and to regularise their position where necessary. The Maltese authorities indicated that most of the 15% non-compliance/discrepancies found relate to companies that failed to notify updates to the MBR. For the year 2022, notifications of penalties were sent to 38 entities and the total amount of penalties imposed amounted to EUR 265 000. In addition to the imposition of such administrative penalties, other supervisory and enforcement actions involved withholding of tax refunds to the entity's shareholders (under Malta's imputation system of taxation) if such an application is filed while the matter is unsolved, and the passing of details to the MBR for further supervisory actions.

94. In addition, Maltese authorities have highlighted that, during domestic tax audits conducted by the Compliance and Investigations Directorate (CID) of the MTCA for the fulfilment of the domestic tax requirements, the requirements under the Co-operation Regulations are also examined. However, these are full-scope tax audits and the frequency or extent of the verifications of compliance with the Co-operation Regulations was not detailed. In the period 2019 to 2022, the CID conducted tax audits on approximately 7 400 entities, with a compliance rate ranging between 89% and 95%. No information was provided on the sanctions issued in the case of non-compliance during this period.

Domestic tax audits conducted in Malta

Year	Entities subject to tax audit	Compliance rate	Sanctions issued
2019 (1 July to 31 December)	1 447	94%	Not available
2020	1 878	95%	Not available
2021	2 611	90%	Not available
2022 (1 January to 30 June)	1 446	89%	Not available

95. The enforcement measures and oversight on the availability of ownership information pursuant to the AML Law are described in the section on beneficial ownership (see paragraph 124 et seq.).

Conclusions

96. In conclusion, company law and tax law require the availability of legal ownership information of companies in Malta, complemented to some extent by the AML requirements. Under the Companies Act, all companies are required to file annual returns to the MBR.

97. However, the annual filings rates with the MBR remain low. The MBR has taken actions to strike off all inactive companies, but further measures should be taken to address non-compliance. The filing rates for annual tax returns remains similarly low and no effective and sufficient actions have been taken by the MTCA to address the non-compliances in annual filings of the companies.

98. Ongoing supervision and enforcement activities conducted by the MTCA specifically for the implementation of the Co-operation Regulations remains limited, as it was observed already in the 2013 and the 2020 Reports. This persistent lack of sufficient supervision appears to be attributable to the fact that while, on the one hand, the Co-operation Regulations address the gaps contained in other legal sources for the purposes of the standard (see paragraph 18) on the other hand they also require a replication of supervisory functions by the MTCA (in the case of legal ownership, in addition to the MBR), without sufficient resources devolved to it in practice (see also paragraph 447).

99. In any case, the lack of sufficient supervision and enforcement is mitigated by the fact that legal ownership information would be available with the companies, as transfers of shares are valid upon registration by companies in the register of members (see paragraph 48), but this source of information would no longer be available in case the company redomiciles outside of Malta (see paragraph 55). **Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of**

legal ownership and identity information in all cases in line with the standard.

Availability of legal ownership information in EOIR practice

100. During the period under review, Malta received 266 EOI requests related to ownership information. Malta's statistics do not differentiate between legal and beneficial ownership information being requested, but it indicated that all the requests concerning legal ownership information were positively responded to.

101. Peers of Malta reported having received in general satisfactory responses on ownership information. Some peers also reported that requests for ownership information were not responded in a timely fashion in some cases and were eventually withdrawn. Another peer reported that the responses provided by Malta were not fully satisfactory and required a follow-up that was provided by Malta with a subsequent additional response.

Availability of beneficial ownership information

102. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In Malta, this aspect is met through a multi-pronged approach made of the AML laws, tax laws and company laws. Both tax and company laws pose requirements on the companies themselves. Each of these legal regimes and their implementation are analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	AML Law	Tax Law	Company Law/Beneficial Ownership Register
Companies (public or private)	Some	All	Some
Societas Europaea	Some	All	All
Foreign companies (tax resident)	All[34]	All	None

34. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Terms of Reference, Element A.1.1, Footnote 9).

AML Law requirements

103. The Maltese AML legal framework includes the Prevention of Money Laundering Act, the Prevention of Money Laundering and Funding of Terrorism Regulations (AML Regulations) as well as related implementation procedures issued by the AML authorities (such as the FIAU). In particular, the AML Regulations set out the obligations and procedures that subject persons (AML-obliged persons) are required to fulfil and implement, including the customer due diligence (CDD) on their clients and the identification of beneficial owners.

104. Pursuant to the AML Regulations, an AML-obliged person is any legal or natural person that carries out "relevant activity" (such as lawyers, auditors, external accountants, tax advisors, notaries, trust and company service providers, creation, operation or management of companies, trusts, foundations or similar structures) or "relevant financial business" (Reg. 2(1)(a)).

105. It is not ensured that the AML framework would cover all relevant companies in Malta. In accordance with the Companies Act and the Income Tax Management Act, companies are generally required to have their financial statements audited and thus must engage an auditor who is an AML-obliged person (some exceptions apply to this requirement, see paragraphs 273 and 278 under Section A.2 for details). Furthermore, Malta indicated that in practice companies would have to engage a local AML-obliged person (banks, Corporate Service Providers, notaries, etc.) for conducting daily business in Malta. However, for the very limited number of companies that fall under an exception to engage an auditor (see paragraph 273) and that have not engaged with any other AML-obliged persons, their beneficial ownership information would not be available in Malta under the AML legal framework.

106. AML-obliged persons are required to carry out CDD measures on their clients, including the identification of the beneficial owners, and the taking of reasonable measures to verify their identity and to understand the ownership and control structure of the customer (Reg. 7(1)(b) of the AML Regulations). Moreover, where the customer is a body corporate, a body of persons or any other form of legal entity incorporated in Malta or another EU Member State, or a trust or similar legal arrangement administered in Malta or another EU Member State, that is subject to the registration of beneficial owner information, the AML-obliged person must also obtain proof that such beneficial ownership information has been duly registered with the MBR or with the corresponding designated beneficial ownership register.

107. The AML Regulations provide for the scenarios where the Simplified CDD procedures can be applied, and where Enhanced CDD procedures should be applied (Reg. 10 and 11). The application of Simplified CDD does

not constitute an exemption from all CDD measures, but the AML-obliged person may determine the applicability and extent thereof in a manner that is commensurate to the low risk identified. Under both the Simplified and Enhanced CDD procedures, the AML-obliged persons must identify the beneficial owners of the customers, unless the customer is a licensed financial institution meeting certain criteria.[35]

108. The definition of beneficial owner in AML Regulations (Reg. 2(1)) is transposed from the EU AML Directives, and is in line with the standard:

> beneficial owner means any natural person or persons who ultimately own or control the customer or the natural person or persons on whose behalf a transaction or activity is being conducted.

109. In the case of a "a body corporate or a body of persons",[36] thus including companies, Reg. 2(1)(a) specifies that:

> the beneficial owner shall consist of any natural person or persons who ultimately own or control [it] through direct or indirect ownership of 25% plus one or more of the shares or more than 25% of the voting rights or [has] an ownership interest of more than 25% in that body corporate or body of persons, including through bearer share holdings, or through control via other means (…).
>
> (…) [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.

35. The criteria are there being no adverse information available on the said institution; obtaining evidence that the institution is actually licensed to provide financial services; having an understanding of its activities and customer-base; and ensuring that it is subject to AML 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 are met, the AML-obliged person can limit itself to identifying and verifying the identity of the customer, without the need to establish who are the underlying investors or the beneficial owners of the licensed financial institution. (Section 4.8 of the FIAU Implementation Procedures (Part 1)).

36. Except for a company that is listed on a regulated market which is subject to disclosure requirements consistent with EU law or equivalent international standards which ensure adequate transparency of ownership information.

> (…) [I]f, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner [pursuant to the above criteria] has been identified, [the AML-obliged person] shall consider the natural person or persons who hold the position of senior managing official or officials to be the beneficial owners, and shall keep a record of the actions taken and any difficulties encountered to determine who the beneficial owner is (…).

110. Malta's authorities clarify that the definition of beneficial ownership must be applied simultaneously. In other words, identifying a beneficial owner based on the ownership of shares or voting rights exceeding 25% does not preclude the possibility of other individuals being considered beneficial owners due to the control they exert over the corporate entity through other means, and vice versa.

111. Where the customer is a company, the AML-obliged persons must 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, AML-obliged persons only need to obtain the official full name, date of birth and permanent residential address of the beneficial owner.[37]

112. In the case where the client is an ICC, or a cell thereof, there is an obligation for AML-obliged entities to determine who is the beneficial owner of the customer, the ICC or its cell, as the case may be, applying thereto the definition above. Conversely, in the case of PCCs and SCCs, the customer can only be the cell company (see also paragraph 146). The FIAU Implementing Procedures require in any case that the AML-obliged person undertake appropriate checks and gather information to be able to understand the ownership and control structure, and determine who is the customer's beneficial owner. No specific guidance is provided on the identification of beneficial owners of cell companies, taking into account their specific form and structure.

113. AML-obliged persons may rely on another AML-obliged person or a third party to fulfil the CDD requirements provided for under the AML Regulations, with the AML-obliged persons placing reliance remaining ultimately responsible for compliance with those requirements (Reg. 12 of the AML Regulations). The reliance can only be exercised on a third party that is located in another EU Member State or in a "reputable jurisdiction".[38]

37. 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.

38. A non-reputable jurisdiction is defined in the AML Regulations as any jurisdiction having deficiencies in its national AML regime or having inappropriate and

AML-obliged persons relying on a third party are required to take adequate steps to ensure that "upon request" the introducer immediately provides 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 AML Regulations (Reg. 12(4)).

114. In practice, the FIAU requires the identification information immediately at the on-boarding stage, while for the relevant documentation there must be a contractual undertaking that the party being relied upon is to make it available upon request within a specific timeframe. AML-obliged persons are also recommended to test the said agreement from time to time. In addition, it is expected 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 reviewed by the FIAU as part of its supervision and enforcement activities.

115. AML-obliged persons are also required to apply CDD measures to existing customers, at "appropriate times", on a risk-sensitive basis, including when the following circumstances occur (Reg. 7(6) of the AML Regulations):

- It becomes aware that the relevant circumstances surrounding a business relationship have changed.
- It has a legal duty to contact the customer for the purpose of reviewing and updating any information relating to the beneficial owners, including when the subject person has such a duty in terms of the Co-operation Regulations.

116. 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 (Reg. 7(7) of the AML Regulations). The AML Regulations indicate that the frequency of updates of CDD information depend on risk, and there is no reference to a specific minimum timeframe regarding updating the beneficial

ineffective measures for the money-laundering and terrorism financing prevention, taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted AML 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 AML Regulations.

ownership information, but the binding guidelines to the Co-operation Regulations include such specified frequency (every three months, see paragraph 139).

117. The documentation, data or information, including the beneficial ownership information, are required to be kept by AML-obliged persons for a period of five years commencing from the date on which the relevant financial business or relevant activity was completed (Reg. 13(3) of the AML Regulations).[39] This is in line with the requirement of the standard.

Corporate Service Providers

118. In Malta, a Corporate Service Provider (CSP) is any person operating in or from Malta which, by way of business,[40] provides services to third parties for:

- formation of companies or other legal entities
- acting as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities
- provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.

119. Pursuant to the Company Service Providers Act, a CSP must be licensed and is supervised by the MFSA. While until 2020 there was an exemption from licensing for advocates, notaries, accountants and other warranted professionals performing CSP activities, Act L of 2020 has removed

39. The FIAU Implementing Procedures stipulate that where an AML-obliged person ceases to operate as such (conduct "relevant financial business" or "relevant activity") and the retention period has not yet lapsed, the record retention period will continue to run until it lapses in full and irrespective of this cessation. If, in addition to ceasing its operations the entity also ceases to exist (or in case of individuals, die), no provisions or retention obligations were specified.

40. Maltese authorities explained that, in practice, as reflected in the MFSA rulebook, a service is considered "by way of business" if it is provided by a person who either:

- holds themselves out as providing company services inter alia by soliciting the services on offer to members of the public
- provides company services on a regular and habitual basis and receives directly or indirectly remuneration or other benefits for the provision of these services.

In relation to the regular and habitual basis, the Guidance issued by the MFSA provides explanations and examples, based on which any person holding more than two (in the case of directorship) or three (in the case of company secretary) CSP roles will be considered to be providing such services by way of business and will require authorisation.

such exception, and warranted professionals are now required to be licensed to act as CSPs.[41] Following this reform, the MFSA authorised a total of 158 CSPs between 2021 and 2022, which has led to a significant increase in the number of licensed CSPs:

Year (as of 31 December)	2020	2021	2022
Number of authorised CSPs	171	216	299

120. Maltese authorities also reported that during the years 2020 to 2022, 49 CSPs voluntarily surrendered their authorisation, 118 applications for authorisation were withdrawn upon guidance from the MFSA and 1 application was refused.[42] The authorities also noted that many professionals engaging in these activities only occasionally chose to cease these activities rather than apply for a licence (with accompanying obligations).

121. The regulatory framework requires that CSPs have adequate systems and controls in place, encompassing compliance with AML legislation (as well as record keeping requirements). These requirements are supervised by the MFSA, in co-ordination with the FIAU (as authority supervising the compliance with the AML legislation). Any AML concerns arising during MFSA supervision, particularly in terms of CSPs' due diligence practices, are communicated to the FIAU for necessary action. Conversely, if the FIAU discovers substantial AML breaches in its oversight of CSPs, the MFSA is notified. In this context, the MFSA has the authority, as stipulated in Article 6(fA) of the Company Service Providers Act, to revoke the authorisation of a CSP in response to systematic breaches.

122. As part of the MFSA's supervisory interactions with CSPs, the latter are required to furnish the MFSA with client lists, encompassing both active and inactive clients, including those with lost contact. The MFSA, in its recommendations to CSPs, advises for inactive or lost-contact clients the prompt engagement with the MBR, proposing the initiation of the defunct process. This proactive step is advocated to mitigate reputational risks associated with maintaining such clients. The CSPs are expected to inform the MBR by means of a "disassociation" letter (3 278 such letters were received from CSPs during the period 2020 to 2023). This document is also uploaded on the MBR portal to give public notice, but the CSP's address remains

41. "Warranted professionals" refers in Malta to individuals who are authorised, through the issuance of a warrant, to practise the individual professions of advocate, notary public, legal procurator, accountant or auditor in Malta. Such warrant is granted by a competent body in terms of applicable law regulating that particular profession.

42. There is a discrepancy of 19 CSPs in the variation of the numbers over time provided by Malta, and this discrepancy has not been explained.

associated with the company until it is replaced with a new one. Additionally, when the MFSA identifies a significant number of inactive or lost contact clients of a CSP, it triggers an escalation of the CSP's risk profile in its monitoring system, leading to heightened scrutiny through offsite and onsite supervision. The MFSA does not allow a CSP to surrender its licence as long as its address appears as registered office of companies in Malta.

123. While these approaches seem promising in terms of maintaining current information on registered offices and potentially facilitating the early identification of unresponsive companies at risk of being classified as inactive, there is insufficient data to affirm their impact for meeting the standard's requirements (refer to paragraphs 97 and 349).

Anti-money laundering law – Supervision and enforcement measures

124. A breach of any of the obligations imposed in the AML Regulations is subject to administrative penalties (Article 21) and/or other administrative measures (such as remedial actions). Administrative penalties can be imposed as follows:

- between EUR 1 000 and EUR 46 500 per breach
- between EUR 250 and EUR 999 per breach in cases of minor breaches and where the circumstances so warrant
- of not more than EUR 1 million or, where the benefit derived from the breach can be quantified, not more than twice the amount of the benefit so derived, in the case of serious repeated or systematic breaches
- of not more than EUR 5 million or 10% of the total annual turnover according to the latest available approved annual financial statements for AML-obliged persons which are financial institutions, including banks, deemed to have committed serious, repeated or systematic breaches of AML-obligations.

125. The supervisory and enforcement functions under AML laws are carried out by the FIAU. Where the AML-obliged persons are regulated by the MFSA, supervision and enforcement may be assigned to the MFSA and/or co-ordinated between the MFSA and the FIAU.

126. The main supervisory tool used by the FIAU is the compliance examination, which can take place either on-site or off-site and is based on a risk analysis. On-site examinations are normally carried out on AML-obliged 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 AML-obliged person. The FIAU makes use of three types of compliance examinations:

- Targeted examinations focus on one or a limited set of aspects of the AML-obliged subject's AML systems and controls (e.g. a category of customers).
- Thematic examinations assess the application of a specific theme/obligation or set of obligations within a group of AML-obliged subjects.
- Full-scope examinations look at the implementation of all AML obligations by an AML-obliged subject, covering the entire spectrum of risks and activities.

127. The FIAU may also conduct supervisory meetings to discuss and evaluate certain aspects of the AML obligations and ad-hoc examinations because of information received through sources such as other regulatory bodies or media.

128. The FIAU has conducted targeted examinations on beneficial ownership in cases where it considered there was a higher likelihood of a beneficial ownership-related breach. These examinations are typically initiated when discrepancies in the beneficial ownership data are identified by the various functions within the FIAU (48 such discrepancies were noted as of December 2021, with additional 10 in 2022). Thirteen targeted examinations were launched in 2021 and 8 in 2022. All 21 examinations have been concluded and in 5 cases, breaches were determined, including breaches of beneficial ownership in 4 cases. The overall amount of the penalties for breaches in beneficial ownership for these 4 cases was of EUR 2.7 million.

129. The FIAU has launched a series of thematic examinations on CSP's as "selected gatekeepers" (given their role in providing services for the incorporation and management of companies and other relevant entities) in the AML framework, to assess the extent to which they comply with their beneficial ownership obligations. A first round of thematic examinations focused on beneficial ownership was launched in September 2021 and completed in January 2022. A second round of such examinations was launched in the latter half of 2022. These included checks carried out by FIAU officials on a wide range of information provided by the AML-obliged person in respect of every corporate customer that forms part of a chosen sample, to assess compliance with beneficial ownership obligations. The checks were supported by improvements in the FIAU's record keeping procedures in relation to beneficial ownership-related findings. These improvements involved cataloguing different types of breaches based on past experience, resulting in breaches being classified into 16 categories. These improvements have been adopted by the FIAU for any type of inspection that includes in its scope beneficial ownership checks, and therefore not limited solely to the thematic examinations focused on beneficial ownership.

130. Under the beneficial ownership-focused thematic examinations carried out between September 2021 and January 2022, a total of 40 CSPs were examined, and 933 customer relationships were tested in the process (90% of the 933 corporate client files tested as part of the thematic review on foreign-owned Maltese legal entities). Of the 40 inspections, 12 were concluded without any administrative measures and 16 have led to remedial directions by FIAU. In another 12 cases, potential breaches were found in connection with 98 customers and warranted the issuance of a potential breaches letter and a referral to the Compliance Monitoring Committee within the FIAU. Enforcement action was taken in all but one instance. The FIAU also summarised the results of this round of thematic examinations in a document made available to AML-obliged persons and the general public.[43]

131. In the second round of thematic examinations focusing on beneficial ownership, 25 CSPs were examined. Out of these, 12 were found to be fully compliant. Seven resulted in remediation letters, addressing minor or moderate issues, such as inadequate verification of the beneficial owner's residential address, late acquisition of beneficial owner address verification documents, or the absence of a requirement in the CSP's policies and procedures to obtain proof that beneficial ownership information had been filed with the designated registry, even though checks were conducted in practice. Six cases have been referred to the Financial Intelligence Analysis Unit (FIAU)'s Enforcement Section due to serious findings, such as the failure to independently verify the customer's ownership and control structure. The latter cases are still pending, and no penalties have been issued yet.

132. Among these thematic examinations, 33 of them were conducted on auditors, accounting for 14% of the auditors' population (there are 236 auditors in Malta as per the FIAU records), focusing on those who serviced a large number of customers (covering approximately 35% of the financial statement audit activities in Malta). These examinations identified three cases with significant shortcomings in fulfilling beneficial ownership identification and verification obligations, which the FIAU sanctioned.

133. The table below presents the monetary amount of sanctions imposed by the FIAU on CSPs for AML breaches by year.

43. https://fiaumalta.org/wp-content/uploads/2023/11/Compliance-with-Beneficial-Ownership-Obligations-by-CSP.pdf (accessed on 20 November 2023).

Sanctions imposed by the FIAU on CSPs for AML breaches (monetary values)

	2019	2020	2021	2022	Total per type
Sanctions following compliance examinations (EUR)	-	396 388	112 500	433 798	942 686
Sanctions for failure to carry out periodic reporting or for late submissions (EUR)	-	88 900	13 680	4 800	107 380
Sanctions for failure to reply or late reply to requests for information (EUR)	34 650	101 700	152 950	2 550	291 850
Total per year (EUR)	34 650	586 988	279 130	441 148	1 341 916

134. The sanctions seem to involve substantial amounts, primarily derived from the outcome of the examinations conducted. As a result, these sanctions experience significant fluctuations from year to year, contingent upon the outcomes of the examinations.

135. The MFSA, besides being the authority responsible for the prudential supervision of CSPs, also plays a role in overseeing compliance and enforcing measures related to AML, acting as an agent for the FIAU. Supervision by the MFSA involves both offsite and onsite activities.

- Offsite supervision entails engaging with CSPs through desktop reviews of data, particularly information obtained from regulatory submissions such as annual compliance returns and financial statements. Additionally, the MFSA utilises intelligence and collaborates with other competent authorities. This data contributes to the MFSA's risk scoring mechanism, enabling risk-based supervision.
- Onsite supervision involves a risk-based approach, conducting activities that include the request and review of essential documents related to the regulated business. These activities may involve interviews with officers and a review of a sample of client files.

Tax Law requirements under the Co-operation Regulations

136. There is no requirement for companies to provide, in the tax return or otherwise, beneficial ownership information to the MTCA.

137. The Co-operation Regulations require all entities (see definition in footnote 26), 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. Such 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" (Reg. 4(1)). Publicly traded companies and public collective investment schemes are exonerated from this obligation (Reg. 4(2)). The definition of beneficial owners for companies under the Co-operation Regulations (Reg. 2) is identical to that under the AML Regulations (see above, paragraph 108), which is in line with the standard. Information must be kept for a minimum period of five years (Reg. 4(13)). The authorities indicated that while they received many queries from companies in the early years of implementation of the obligation (in 2017-18), practitioners and companies are now familiar with their obligations and queries relate to control through means other than ownership and more technical questions (e.g. usufruct, pledge of shares). Guidance was issued and information sessions were organised.

138. The Co-operation Regulations do not provide any guidance to companies on how to collect the beneficial ownership information and keep it up to date, thus not clarifying whether companies are allowed to remain in a passive position of waiting for being notified. There is no requirement either on the beneficial owners to disclose such status to the companies. The Maltese authorities indicated that they have not received queries on this aspect, but this does not ensure that companies are correctly collecting and keeping up to date beneficial ownership information (see also considerations about supervision and enforcement, paragraph 164).

139. The Guidelines on the Co-operation Regulations note that:

> Regulation 4 provides in various instances that updated information is required to be kept. Persons having this obligation are required to take reasonable measures in order to update this information. Such measures may vary from one person to the next, however, it is expected that measures are taken at least every 3 months to ensure that the required information is kept updated.

140. This requirement, however, has not been monitored or enforced by the MTCA, nor is there any other evidence to suggest that it is observed in practice. Furthermore, representatives of banks interviewed during the onsite visit showed a lack of awareness of the existence of the requirement and indicated practices that were incompatible with it.

141. The 2020 Report observed that the Co-operation Regulations indicate in case of a company (as well as partnership, and any other body of persons except foundations) that the "owner" included "legal owners" and binding Guidelines on the Co-operation Regulations had been issued to remove any doubts about whether also beneficial ownership was included in the requirements. Malta received an in-text recommendation on the monitoring of the implementation of the Guidelines, to ensure their effectiveness in practice. The Co-operation Regulations have been amended and it is now

clarified that "owners" include for companies (and other entities) both legal owners and the beneficial owners (Reg. 4(1)(a)).

142. The Co-operation Regulations were updated in 2021 to introduce "compliance monitoring" procedures with Reg. 4a. The supervision and enforcement of the provisions in the Co-operation Regulations has been discussed in the above in relation to the availability of legal ownership information (see paragraphs 91-95), which also applies to availability of beneficial ownership information. **The conclusions reported in paragraph 98 on the lack of sufficient supervision also apply to beneficial ownership**.

Company Law Requirements and the Register of Beneficial Owners

143. The Companies Act (Register of Beneficial Owners) Regulations (RBO Regulations), enacted in 2018, implement the Directive (EU) 2015/849 (Fourth AML Directive). The RBO Regulations apply to Maltese companies, except for companies meeting any of the two conditions outlined in Reg. 2(3):

- when the company is listed on a regulated market
- when the shareholders are all natural persons who are disclosed to the RoC, provided that none of the said natural persons is acting as trustee or in any other fiduciary capacity.

144. Pursuant to Reg. 5, every company is obliged to obtain and hold adequate, accurate and up-to-date information in respect of its beneficial owners (Reg. 5).[44] This provision applies only to companies subject to the RBO Regulations (as identified under Reg. 2(3)). General, non-binding guidance to companies (and commercial partnerships), in the form of frequently asked questions, has been issued by the MBR in 2020.[45] The non-binding guidance indicates that every company must obtain adequate and up to

44. This includes:

- 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.
- The nature and extent of the beneficial interest held by each beneficial owner and any changes thereto.
- 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.

45. https://mbr.mt/wp-content/uploads/2020/10/Guidance-document-on-the-Register-of-Beneficial-Owners-of-Commercial-Partnerships.pdf (accessed on 30 January 2024).

date beneficial ownership information, but this does not take into account the scope of the RBO Regulations and the exclusions in Reg. 2(3). Maltese authorities assert that this requirement extends to all companies, regardless of the exceptions in Reg. 2(3), but they have not furnished any practical evidence to substantiate this assertion.

145. For the definition of beneficial owner, the RBO Regulations (Reg. 2(1)) refer to the definition in the AML Regulations (see paragraphs 108-109), which is in line with the standard.

146. As seen for the AML requirements (see paragraph 112), in case of ICCs, each cell has separate legal personality and therefore would have to be considered separately from the incorporated cell company for the determination of beneficial ownership. According to the MBR, for PCCs and SCCs, the beneficial ownership of the company should be determined by considering all the shareholders of the company, including those who may be holding shares only in the cells. Maltese authorities clarify that the rationale behind this is rooted in the fact that the creation of a cell does not give rise to a distinct legal entity. However, there is no rule or guidance requiring identifying the beneficial owners of each separate cell, since those who hold a majority or relevant shareholding at the level of the cell would not necessarily hold a (majority or relevant) shareholding at the level of the company. As the standard expects the identification of those who meet the definition of beneficial owner of both the company and the individual cells it houses, **Malta is recommended to ensure that beneficial ownership information in line with the standard is available for all companies, including PCCs and SCCs**.

147. Under Reg. 6(1) of the RBO Regulations, when the beneficial ownership of a company changes, the company must inform the MBR of this change within 14 days. The Registrar then updates the Register of Beneficial Owners (Reg. 6(1)). On a yearly basis (on each anniversary of its registration), the company must also file a return showing any change in detail on beneficial owners or confirm that no change took place (Reg. 6a). Public authorities (including the MTCA, the FIAU and the MFSA), to the extent that this requirement does not interfere unnecessarily with their functions, and AML-obliged persons must report any discrepancies they find between the beneficial ownership information available to them and the beneficial ownership information held in the register of beneficial owners kept by the Registrar (Reg. 12(3)). The Registrar must take any appropriate actions to resolve such discrepancies and, where necessary, update the beneficial ownership information in the register.

148. The competent authority for EOI has full access to the Register of Beneficial Owners (see paragraph 331), which is also connected to the EU platform on Beneficial Ownership Registers Interconnection System (BORIS).

149. The following table summarises the compliance rate of companies with the yearly returns.

Year	Number of companies required to file pursuant to the RBO Regulations*	Number of Beneficial Ownership yearly returns filed	Filing rates of Beneficial Ownership yearly returns filed
2019	-	-	-
2020	19 705	8 484	43.10%
2021	21 250	19 651	92.47%
2022	22 602	20 155	89.17%

* This number does not include the companies that are exempted from the application of the RBO Regulations pursuant to Reg. 2(3).

150. The Annual Beneficial Ownership yearly return requirement is effective from 16 June 2020 and must be filed within 42 days from the date of anniversary of the company. This explains the lower number of filings for 2020. When taking into account the total number of Maltese companies, amounting approximately to 50 000 companies in the years 2021-22, those which have filed beneficial ownership information pursuant to the RBO Regulations were about 40-41%, those which failed to comply with the filing requirements were 3-5% and those which were not required to file due to exemptions were about 55-57%.

151. The exemptions from the filing requirement predominantly apply to companies whose shareholders are exclusively natural persons already disclosed to the RoC. The Maltese authorities have clarified that under such circumstances there is no legal provision for the determination or filing with the MBR of beneficial ownership information. Despite this, the MBR considers it holds beneficial ownership information for most of the Maltese companies (excluding the 3-5% non-compliant with the annual return filings). For companies that have submitted their yearly returns, the Register reflects the beneficial ownership information as filed. For the companies exempted from filing due to their shareholding structure, the Register notes this specific shareholding structure and refers to it for the beneficial ownership information of the company. Consequently, no statutory obligation exists for either the companies or the MBR to identify beneficial owners in such scenario, relying instead on a (implicit) legal presumption. This does not fully apply the definition of beneficial owner, as it does not take into consideration any beneficial owners exercising control through means other than ownership (which is nevertheless contemplated in the form for the filing of the yearly requirement, Schedule A to the RBO Regulations, and described and exemplified in the MBR's non-binding guidance). This situation means that the accuracy of the beneficial ownership information

in the Register, which is also interconnected with other corresponding EU registers (see paragraph 148), is not guaranteed in all cases. **Malta is recommended to improve its Register of Beneficial Ownership framework to ensure that the information contained consistently meets the definition of beneficial owner under the standard, thereby enhancing its reliability**.

152. The Maltese authorities consider that beneficial owners exercising control through means other than ownership is addressed, for the companies excluded from reporting under the RBO Regulations, by the fact that the clause "in a trustee or a fiduciary capacity" in Reg. 2(3) (see paragraph 143) would cover most situations where companies have beneficial owners who exercise control through means other than ownership. This is not in line with the standard as control through other means is not fully covered, and raises doubts on the effectiveness of the controls that are conducted for the information filed and for the information to be maintained by the entities themselves.

153. As observed for the case of the Co-operation Regulations, the RBO Regulations set the general obligation for companies to keep information on their beneficial ownership and report it to the MBR, 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. Any natural person who has reasonable cause to believe themselves to be a beneficial owner of a company is required to provide the relevant information to the company without delay (Reg. 5(2)). However, as observed in paragraph 144 companies under the definition of the RBO Regulation does not include all companies in Malta, thus this requirement would not apply to the beneficial owner of those companies. The effectiveness of the measures is therefore uncertain.

154. The obligations set in the RBO Regulations are monitored by the Compliance and Enforcement Unit within the MBR. Breach of the obligations to maintain up-to-date beneficial ownership information is punishable by financial penalties. When a company 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 (Reg. 5(5) of the RBO Regulations). However, an officer of the company will not be liable if they 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 their part.

155. 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 (Reg. 6(5) of the RBO Regulations).

156. 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 (Reg. 8(2) of the RBO Regulations).

157. In practice, the MBR carries out two layers of controls:

- The MBR's Registry of Companies Unit carries out prima facie formal verification of the information filed, i.e. checks on whether the person indicated exists (a certified true copy issued by a licensed professional of the identification document is always requested) and/or holds shares in the company concerned. They also consult and cross-check other companies registered in Malta with the same companies in their structure and also corresponding foreign registers (e.g. the Companies House of the United Kingdom) when there are foreign companies involved in structures.
- The MBR's Compliance Unit is in charge of the substantial verification of the information filed and carries out onsite inspections at the registered office of companies, on the basis of a risk-based approach, and verifies the information submitted against the internal records of the company to ascertain that beneficial owners were properly identified.

158. In the period 2020-22 a significant number of on-site inspections was conducted by the MBR, as per the following table:

	2020	2021	2022
Number of on-site inspections on companies by the MBR	828	1 529	1 693

159. In particular, Maltese authorities explained that in the last quarter of 2021 the MBR's Compliance Unit focused on 315 companies classified as high-risk. In 2022, the MBR started inspections on companies which were classified as medium-high risk. Of the 1 587 medium-high risk companies inspected, 7 companies were detected as having disclosed incorrect beneficial owners.

160. The results of the inspections are summarised as follows:

	2020-21	2022
Suspicion of Beneficial Ownership concealment	13	6
Suspicion of AML but with correct Beneficial Owner	22	1
Different Beneficial Owner identified	14	7

161. Non-compliant companies were requested to submit the correct beneficial ownership to the Register of Beneficial Owners, and until the correct information is submitted to the MBR, a notice is put on the Register on the fact that the beneficial ownership information is being investigated. Penalties were also applied to the companies found non-compliant. The MBR, as a result of the onsite inspections, also reported to the FIAU all the companies where suspicion of beneficial ownership concealment or suspicion of money laundering activity was identified.

Cases and penalty amounts in relation to different Beneficial Ownership identified

		2020	2021	2022
Different Beneficial Owner identified/Potential different Beneficial Owner	Number of penalties	1	29	18
	Penalty amounts (EUR)	10 000	1 276 750	654 200
	Penalty amounts collected (EUR)	10 000	73 800	45 400
Different Beneficial Owner identified by the company (self-declared)	Number of penalties	0	3	36
	Penalty amounts (EUR)	0	15 000	141 281
	Penalty amounts collected (EUR)	0	2 550	84 534

Conclusion

162. In Malta, the availability of beneficial ownership information for companies is ensured via a multi-pronged approach under the beneficial ownership registration laws, the tax laws and the AML laws. The definition of the beneficial owners for companies in the various legal sources is in line with the standard.

163. The centralised registration of beneficial ownership information of companies in Malta is a main source in this regard. However, due to inherent design choices, a significant proportion of companies (55-57% of the total, even though those with simpler corporate structure) lack a designated party responsible for identifying the beneficial ownership information in the register, and a component of the method for the identification of beneficial ownership is not applied. Consequently, the Register of Beneficial Owners cannot be considered a source reliable in all cases.

164. Even though the Co-operation Regulations set out comprehensive legal requirements for all companies to maintain their beneficial ownership information, they lack some specific guidance on how these requirements are to be complied with (see paragraph 138) and the monitoring and supervisory measures to ensure that they are effectively implemented in practice need to be enhanced (see paragraph 98). The Co-operation Regulations require all companies to maintain up-to-date information on beneficial owners, but it is not clear under the Co-operation Regulations how often the taxpayers should update the information. The binding Guidelines issued under the Co-operation Regulations clarify this matter, but this provision is not observed nor enforced in practice. This second source of information cannot be considered a reliable source in all cases either.

165. The AML laws set out requirement for AML-obliged persons to identify the beneficial ownership information of the companies and maintain such information for at least five years. While there is a legal requirement for companies in Malta to generally engage an auditor, who is an AML-obliged person, under the Companies Act (see paragraph 278) and the Income Tax Management Act (see paragraph 273), their limited numbers (in proportion to the number of companies whose financial statements they are expected to audit) casts doubts (see also paragraph 281) on the fact that they can represent a reliable source of beneficial ownership information. Auditors were never used as a source of beneficial ownership information for EOIR purposes. For other AML-obliged persons, there is no legal requirement for all companies in Malta to engage them on a continuous basis.

166. To sum up, there are in place legal requirements to ensure the availability of beneficial ownership information of companies in Malta with the Register of Beneficial Owners, the companies themselves and their AML-obliged service providers, but these legal requirements need to be effectively implemented in practice to ensure that the information is available and up to date in all cases. **Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of beneficial ownership in all cases in line with the standard**.

Availability of beneficial ownership information in EOIR practice

167. During the period under review, Malta received 266 EOI requests that were related to ownership information. For nine of these requests, beneficial ownership information could not be provided as it turned out it was not available in Malta. Malta indicated that some of these requests were related to companies that were inactive at the time of the request. Some other companies were not classified as inactive at the time the EOIR request was received, but they did not respond to the request by the MTCA. They were reported to the MBR in case they did not comply with the requirement

(see also section B.1.4, paragraph 346 et seq.). Malta also confirmed that all these companies were eventually struck off.

168. As seen above (paragraph 101), peers of Malta reported having received in general satisfactory responses to ownership information. Some peers also reported that requests for ownership information were not responded in a timely fashion in some cases and were eventually withdrawn. Another peer reported that the responses provided by Malta were not fully satisfactory and required a follow-up that was provided by Malta with a subsequent additional response.

A.1.2. Bearer shares

169. Bearer shares are not provided for under the Maltese law and do not exist in Malta, as noted in the 2013 and 2020 Reports. However, until 2017, non-listed public companies could issue share warrants to bearers under the Companies Act. In 2017, Malta amended the Companies Act to prohibit the issuance of new share warrants and mandate the surrender of existing ones (Article 121A of the Companies Act). As a result, as from 1 December 2017, any share warrant which had not been surrendered "[shall] no longer be recognised by the company and such share warrants shall be deemed to have been cancelled". In addition, the Co-operation Regulations provided that a company that had issued share warrants had to inform the MTCA (called Office of the Commissioner for Revenue at the time).[46]

170. In practice, the MTCA had conducted surveys before introducing the prohibition rules in the Companies Act and all the companies responded with declarations that they did not have bearer shares. The Competent Authority received no notification of the existence of share warrants pursuant to the Co-operation Regulations. Consequently, Malta is of the general view that there would not be any outstanding share warrants in Malta.

171. The 2020 Report considered that if the company did not take positive actions, the invalid-by-law share warrant may still continue to appear in the books of the company and thus included an in-text recommendation for Malta to take further actions to ensure that there are no share warrants that still exist in practice in any of the public companies.

172. Even though Malta has not taken any further actions, any share warrants not surrendered by 1 December 2017 are *de jure* deemed to have been cancelled and companies can no longer recognise them. The in-text recommendation is therefore removed. During the period under review, Malta received no request related to share warrants to bearers.

46. See also paragraphs 113-117 of the 2020 Report.

A.1.3. Partnerships

Types of partnerships

173. Partnerships in Malta are governed by the Companies Act. A partnership has legal personality distinct from that of its members, which continues until its name is struck off the register, whereupon the partnership ceases to exist (Article 4 of the Companies Act). There are two types of partnerships: general partnerships (partnerships *en nom collectif*) and limited partnerships (partnerships *en commandite*). In general partnerships, all the partners are jointly and severally liable for all the obligations of the partnership, whereas in limited partnerships only the general partner(s) (of which there must have at least one) is liable for all the obligations of the partnership and limited partners are only liable up to their unpaid contributions (where the case). Limited Partnerships can be ordinary, where the contribution of the partners is proportional to their interest, or with contributions divided into shares. The requirements to constitute a partnership have not changed since the last reviews.[47] As of 31 August 2023, there were 1 299 General Partnerships and 216 Limited Partnerships.

Identity information

174. Partnerships are subject to the same registration obligations as companies and are required to notify the MBR about ownership changes. The key distinction in this respect is that in the case of partnerships, the notification must be done within one month (Article 19(3) of the Companies Act), as opposed to the 14 days required for companies (see paragraph 47). Another distinction is that, contrary to what was indicated in the 2020 Report, partnerships are not required to file annual returns with the MBR. All registered information and documentation are available to the public on the MBR's website, and these records are kept "as long as necessary" in practice (see paragraph 57). Malta should ensure that the legal ownership information filed with the MBR is maintained for a minimum of five years after the date on which the company is dissolved or otherwise ceases to exist (see Annex 1).

175. Under the Companies Act, there are requirements for liquidators or persons elected by the majority of the partners to keep the documents and accounting records of the partnerships for a period of ten years from the date at which the names of the partnerships were struck off the register. Maltese authorities indicated that the term "documents" is intended as all records held at the partnership's registered office. This includes the identity information on the partners and the beneficial ownership information. Where there are no liquidators or partners fail to elect such persons, the

47. See also paragraphs 99 and 100 of the 2013 Report.

information of the partnerships must be delivered to the MBR within 14 days, which must keep it for the said ten-year period. Where the liquidators or the persons elected die, their heirs should deliver the said information and records to the MBR within six months and the MBR shall keep them for the remainder of the ten-year period (Article 50 of the Companies Act).[48]

176. The compliance monitoring of the requirements is carried out by the MBR via routine checks and desktop audits, as for the case of companies. Partnerships which contravene the above registration and filing obligations are subject to various penalties.[49] The supervision and enforcement measures as discussed in Element A.1.1 (see paragraphs 83-87 above) also refer to partnerships.

177. For tax purposes, partnerships can opt to be treated as companies, and thus be subject to companies' requirements under the Income Tax Act, including the requirement to file yearly tax returns. In this case, the tax return must contain the partners' identity information. Those partnerships are automatically registered with the MTCA when they register with the MBR. As of 30 June 2022, there were 108 partnerships which opted to be treated as companies for tax purposes. 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 (see paragraph 91 et seq.) also apply to them.

178. For partnerships which do not opt to be treated as companies for tax purposes (Article 2(1) of the Income Tax Act), their income is assigned to the partners and must be included in each partner's individual income tax return (Article 27 of the Income Tax Management Act). A return of the income of the partnership has to be provided to the MTCA upon request. Maltese authorities indicated that such requests are rare in practice, as the focus of the controls typically lie on the income assigned to the partners that are included in their own tax returns. Contrary to what was reported in the 2020 Report, partnerships which do not opt to be treated as companies for tax purposes are not required to file an income tax return with the MTCA.

179. Foreign partnerships with income, deductions or credits for tax purposes in Malta or carrying on business in Malta that fall within the scope of the Income Tax Act, are required to register with the MTCA and file tax returns in Malta, which must include the identity information of the partners. As of 30 June 2022 there were 12 foreign partnerships registered with the MTCA.

180. In addition, under the Co-operation Regulations, partnerships are required to keep the ownership and identity information and maintain it for

48. Maltese authorities informed that there were no cases where this occurred in the years 2019 to 2022, but there were instances in the past.

49. See also paragraphs 185 to 189 of the 2013 Report.

at least five 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 (Reg. 4(1)).

Beneficial ownership information

181. The requirements of availability of beneficial ownership information of partnerships in Malta are met through the AML laws, tax laws and company laws.

AML laws requirements and implementation

182. As partnership in Malta have legal personality, the definition of beneficial ownership applicable to "a body corporate or a body of persons" applies to them (section 2(1)(a) of the AML Regulations, see paragraph 109). Pursuant to the standard, the determination of beneficial ownership should take into account the specificities of their different forms and structures.[50]

183. The 2020 Report considered that, "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". This consideration was taken from instructions in the FIAU Implementation Procedures, that still apply.[51]

184. While, in principle, the definition of beneficial owner does not preclude the specificities of partnerships (general partners generally having control over the partnership regardless of whether their ownership interest is more than 25%), the guidance in the FIAU Implementation Procedures might lead to ambiguities to the extent that:

- It implies that being a general partner is in principle not a likely ground for control (thus not taking into account the specificity of the forms and structure of partnership), so that the AML-obliged person could either only rely on control through ownership or, lacking any other suspicion, on the identification of the senior managing official(s) as beneficial owner(s).

50. Refer to paragraph 14 of the Interpretive Note to the Financial Action Task Force (FATF) Recommendation 24. https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf (link checked on 24 July 2023).

51. FIAU Implementation Procedures (Part 1), Section 4.3.2.3 (v).

- In case of general partners who are legal persons, there could be a discrepancy between those that would be identified as beneficial owners based on these Procedures (the person acting as senior managing official in the partnership) and the actual beneficial owners (the beneficial owners of the legal persons who are general partners).

185. Malta should clarify its guidance and monitor the application in practice of the method for identification of beneficial owners for partnerships (see Annex 1).

186. The supervision and enforcement are carried out by the FIAU (see paragraph 124 et seq. above).

Tax laws requirements and implementation

187. The Co-operation Regulations require all entities, including partnerships, to keep updated beneficial ownership information (Reg. 4(2)), and the definition of beneficial owners therein corresponds to the one in the AML Regulations. The practical implementation of those rules to partnerships is the same as for companies.

188. Foreign partnerships are also within the scope of "entities" under the Co-operation Regulations, so they are required to maintain identity and beneficial ownership information in the same way as that of domestic entities and arrangements.

189. In terms of the definition of beneficial owners for partnerships, a threshold of 25% of ownership interest or voting rights applies as partnership are legal persons, but is applied simultaneously to the trigger of control through other means, which would capture all general partners. The 2020 Report included an in-text recommendation for Malta to 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, as they might not have legal personality.[52] However, the Co-operation Regulations, in the case of legal entities such as foundations and legal arrangements similar to trusts, indicates that the beneficial owner shall consist of the natural person or persons holding equivalent or similar positions to those referred to in paragraph 219, which appears to address the concern about the identification of the beneficial owners of trusts or foreign partnerships that are legal arrangements. However, as there has been no specific supervision on this aspect, the in-text recommendation in the 2020 Report is adjusted with a focus on its practical implementation and supervision. Malta should ensure that the beneficial owners of relevant foreign partnerships are identified in accordance with the form and structure of each partnership in practice (see Annex 1).

52. See paragraph 135 of the 2020 Report.

Company law and implementation (beneficial ownership registration for partnerships)

190. The RBO Regulations apply to Maltese partnerships (both general and limited) (Reg. 10). Consequently, the requirements to keep up-to-date beneficial ownership information and register it with the MBR are equally applicable to them. The definition of beneficial owner refers to the AML Regulations (see paragraphs 143 and 182).

191. Therefore, the beneficial ownership information of Maltese partnerships is available through the Register of Beneficial Owners held by the MBR. The supervision and enforcement carried out by the MBR is the same as for companies (see paragraph 147 et seq. above).

Conclusions

192. In conclusion, the availability of identity information of partners in partnerships in Malta is mainly required 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 through the annual returns submitted. However, even though the Co-operation Regulations set out requirements for partnerships to maintain the identity information, no sufficient supervision and enforcement measures have been taken by the MTCA in terms of the effective implementation of the Co-operation Regulations.

193. The availability of the beneficial ownership information of partnerships is required by the Co-operation Regulations (maintained by the partnerships themselves, including relevant foreign partnerships) and the RBO Regulations (including a reporting requirement to the MBR). Given that the supervisory measure taken do not ensure information is available in all cases, **Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of beneficial ownership and identity information in all cases in line with the standard**.

Availability of information on partnerships in EOIR practice

194. During the period under review, Malta has received four EOIR requests in relation to partnerships and they were successfully responded to. The information requested included the formation deed as well as economic and financial information (income and taxes, banking information, property ownership). There were no concerns raised by peers in relation to the availability of information on partnerships.

A.1.4. Trusts

195. Express trusts (trusts) are recognised in Malta and can be created under Maltese law. The Trusts and Trustees Act (TT Act) is the main law applicable to the creation of trusts in Malta and applies to any trust governed by the Maltese law, regardless of whether the settlor and/or beneficiaries are resident in Malta or whether the assets settled in the trust are located in Malta.

196. Maltese professional trustees or private (non-professional) trustees may administer trusts governed by Maltese or foreign laws. Professional trustees can be individuals or body corporates (such as companies or partnerships). They are required to obtain prior authorisation from the MFSA,[53] and must submit an annual return to the MFSA on the extent of their activity. Non-professional trustees, which are individuals that fulfil certain conditions,[54] are not required to be authorised by the MFSA, but must engage a notary in the formation and termination of a trust (Article 43A of the TT Act), be the trust governed by Maltese or foreign law. Moreover, when acquiring immovable property or shares in a Maltese company in the name of the trust, non-professional trustees are required to appoint a professional trustee to act as a "qualified person" to ensure that all applicable legislation is complied with, including compliance with AML obligations (Article 43(9)(b) of the TT Act). As of January 2023, there were 113 authorised professional trustees (including 9 registered trustee companies of Family Trusts), which were administering approximately 3 434 trusts (as per the Trusts Ultimate Beneficial Ownership Register, TUBOR, see paragraph 212). The MFSA estimates that there were approximately 36 non-professional trustees in Malta, based on the notary business provided in the process of setting up a trust.

197. For tax purposes, trusts are required to register with the MTCA only if they have income attributable to them. Resident trusts are subject to income tax on their worldwide income. As of 30 June 2022, there were 395 trusts registered with the MTCA.

Requirements to maintain identity information in relation to trusts

198. Four sets of rules apply for the identification of parties to a trust.

199. First, the MFSA issued a binding Code of Conduct for both professional and non-professional trustees.[55] While non-professional trustees are

53. See also paragraphs 116 to 123 of the 2013 Report. Those remain applicable, as confirmed by Malta.

54. In particular, they must: be related to the settlor, by consanguinity or affinity, or have known the settlor for at least ten years; not be remunerated, even indirectly, except as permitted by any rules issued by the MFSA; not hold themselves out as a trustee to the public; not act habitually as trustee, in any case in relation to more than five settlors at any time.

55. issued pursuant to Article 52 of the TT Act.

not subject to licensing by the MFSA, the authority has the power to request information from them and to impose sanctions in case of non-compliance (Article 1(2) and 51(7)(a) of the TT Act). However, these powers have not been tested in practice. Section 3.0 of the Code of Conduct requires all trustees to 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.

200. Second, the AML legislation requires all professional trustees to keep information on the settlor; the trustee(s); the protector where applicable; the beneficiaries or the class of beneficiaries as may be applicable (Article 2(1)(b) of the AML Regulations) (see paragraph 206 et seq.).

201. Third, in registering a trust for income tax purposes (see paragraph 197), the trustee must provide details of the settlor and the beneficiaries, including their 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 trustee(s). 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 resident trustees under the Co-operation Regulations (see below). However, as only trusts that have income attributable to them in Malta are required to register with the MTCA, the MTCA supervision and enforcement activities would be limited to only those registered trusts.

202. Fourth, under the Co-operation Regulations, trustees in Malta "shall take all reasonable measures to ensure that updated information is kept that identifies the settlor, other trustees, the protector (if any) and beneficiaries" of trusts (whether the proper law of such trusts is that of Malta or elsewhere) (Reg. 4(4) of the Co-operation Regulations).

203. While the MFSA, AML and tax obligations apply to sub-categories of trusts, the Co-operation Regulations do not distinguish between professional and non-professional trustees or depending on the level of income, and thus the provisions are applicable to both, i.e. to all relevant trusts according to the standard as also confirmed by the MTCA.

Availability of beneficial ownership information of trusts

204. In Malta, there are three sources for beneficial ownership information on trusts: the Trust Ultimate Beneficial Ownership Register (TUBOR); the trustees of the trusts; the other service providers that are AML-obliged persons.

AML law requirements and implementation

205. Under the Maltese AML laws, all AML-obliged persons (including professional trustees), are subject to CDD obligations, which include requirements to obtain and hold beneficial ownership information about all parties related 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 TT Act).

206. As regards the definition of beneficial owner in the AML Regulations (see paragraph 108), for the case of trusts it is specified (Reg. 2(1)(b)) that this shall consist of:

> (i) the settlor or settlors;
>
> (ii) the trustee or trustees;
>
> (iii) the protector or protectors, where applicable;
>
> (iv) the beneficiaries or the class of beneficiaries as may be applicable; and
>
> (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

207. The FIAU Implementing Procedures, which are binding AML guidance, provide additional requirements on the methods of identification of beneficial owners.

208. While the definition is in line with the standard, the 2020 Report observed that the Implementing Procedures indicated that in case the trust's settlor, protector or the trustee were not natural persons, the AML-obliged subjects could limit themselves to consider any body (including legal persons) acting as such as a beneficial owner. Malta was thus advised to clarify its definition of beneficial owner of a trust to ensure that only natural persons could be identified as such.[56] In May 2021 the FIAU amended Sections 4.3.2.4 and 4.3.2.5 of Part I of the Implementing Procedures to address this gap.[57] A representative of the Institute of Financial Services Practitioners also confirmed during the onsite visit that corporate participants in a trust are looked through in practice. However, a footnote in the Implementing Procedures (no. 42 at page 75) still provides for such an exception for trusts and similar arrangements, which may lead to confusion about the applicable requirements. Malta should resolve the contradiction in

56. See 2020 Report, paragraphs 147, 207 and 215.
57. See also the clarifications issued on the FIAU website on 20 May 2021 https://fiaumalta.org/news/amendments-to-sections-4-3-2-4-and-4-3-2-5-of-the-implementing-procedures-part/ (accessed on 20 November 2023).

the FIAU Implementing Procedures relating to the identification of beneficial owners of trusts and similar legal arrangements (see Annex 1).

209. In addition, the FIAU Implementing Procedures indicate that "should it result that a corporate trustee can only act as such following licensing, authorisation or registration by supervisory authorities in a reputable jurisdiction, and the said process involves meeting fit and proper requirements, the subject person is not obliged to identify the beneficial owners of the corporate trustee given that the corporate trustee would here be acting in a professional capacity and would not be controlling a trust in which it has a personal interest". It follows that in the case of a foreign professional trustee, the beneficial owner would not all be identified in all cases. While the gap appears rather limited in scope, Malta should ensure that all beneficial owners of trusts are identified, also in the case of presence of foreign professional trustees (see Annex 1).

210. The documentation, data or information required under the AML Regulations must be kept by the AML-obliged persons for five years (Reg. 13(2)). Upon termination of a trust, the professional trustees, as AML-obliged persons, must keep all information of the trust for five years from the date of termination (Reg. 13(2)). In the case of trusts with non-professional trustees, the notaries (not the trustees) would be the AML-obliged persons, to which such provision would equally apply, as notaries must be engaged in the terminations of the trusts with non-professional trustees (Article 43A(3)(iv) of the TT Act).

211. The FIAU is the main authority that carries out monitoring in terms of AML legislation, and works with the MFSA in this regard, which is the regulatory body for the trust sector in Malta (see paragraph 196).

Register of Beneficial Ownership information of trusts

212. The Trusts and Trustees Act (Register for Beneficial Owners) Regulations (TTA BO Regulations) introduced, in January 2018, the requirement for professional trustees to report beneficial ownership information of "trusts that generate tax consequences"[58] they administer to the Trusts Ultimate Beneficial Ownership Register (TUBOR) maintained by the MFSA. There were about 300 trusts registered in 2019. This requirement was extended, in July 2020, to all the trusts they administer, irrespective of the manner the trust is treated for tax purposes (Reg. 2(2)). The requirement was also extended to trusts whose trustees are resident or established outside of the EU, where such trustee establishes a business relationship, as

58. See 2020 Report, footnote 24 to paragraph 150 for the meaning of "tax consequences" in this connection.

defined in the AML Regulations, or acquires real estate, in Malta (Reg. 3A). As a result, the number of registered trusts increased and as of 20 October 2023, 3 428 trusts have been reported to the TUBOR.

213. The remaining exception relates to non-professional trustees.

214. Under the TTA BO Regulations, professional trustees must submit to the MFSA a signed declaration of beneficial ownership in respect of the trust:

- within 14 days of being appointed as trustee of the trust (Reg. 3(1))
- within 14 days from becoming aware of changes to the beneficial ownership of the trust (if the change relates to a change in trustee, it is the new trustee that has the duty to notify the MFSA of such change) (Reg. 5(1))
- annually, by 31 January, confirming that there have been no changes to the reported beneficial ownership information for each reported trust in the previous calendar year, other than changes already reported (Reg. 5(2)).

215. The TUBOR is operational from October 2018, and since then full access is granted to competent authorities (including the MTCA, Reg. 6(a)(iv), see also paragraph 331), whereas search facilities were granted to AML-obliged persons for the purposes of carrying out due diligence under the AML Regulations. In 2020, access rights have been extended to any person who can demonstrate a "legitimate interest" (Reg. 6A), as defined by applicable legislation.

216. The definition of beneficial owner in the TTA BO Regulations broadly corresponds to the one in the AML Regulations (see paragraph 206), which is also directly referred to, providing more details on the last category.

> "beneficial owner" shall have the meaning assigned to it under the [AML Regulations], specifically as applicable to trusts, and for the purposes of these regulations shall be specifically applied to the following:
>
> (a) the settlor;
>
> (b) the trustee(s);
>
> (c) the protector, if any;
>
> (d) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and
>
> (e) any other person exercising ultimate and effective control over the trust by any means, including any person (other

than those already referred to in paragraphs (a) to (d) of this definition) whose consent is to be obtained, or whose direction is binding in terms of the trust instrument or of any other instrument in writing, for material actions to be taken by the trustee.

217. Where the trustees, settlors or protectors are corporate entities, the non-binding guidance on reporting obligations do not require to go further to identify the natural persons behind the corporate entities.[59] This is not in line with the standard and affects the accuracy of the beneficial ownership information in the TUBOR. When the beneficiaries of a trust are body corporates, the trustee is also required to report on TUBOR the individuals holding more than 25% of the shares or voting rights or other ownership interests, including through bearer shares or through control with other means. In case there is none, the designation/capacity of the directors/ senior managing officials behind the body corporate beneficiary.

218. However, in case these are Maltese corporate entities, the information on their beneficial owners would be with the MBR (see paragraph 147 et seq.). Moreover, trustees, as AML-obliged persons, would be in any case required to carry out CDD under AML laws, to obtain and maintain up to date information on all the parties to the trust, including settlors and protectors, and to identify and verify the identity of the natural person ultimate beneficial owner for any body-corporate settlor as well.

Tax Laws requirements

219. The Co-operation Regulations, which apply to all trustees resident in Malta, acting in either a professional or non-professional capacity, require the identification of beneficial owners of trusts, consisting of (Reg. 4(4)(b)):

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, where applicable;

(iv) the beneficiaries, or the class of beneficiaries as may be applicable; and

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

220. The definition does not specify whether it is necessary to look through parties of the trusts that are not natural persons but the binding

59. MFSA Register of Beneficial Owners of Trusts Frequently Asked Questions (Version 4.0 of 25 January 2023).

guidelines issued under the Co-operation Regulations clarify the requirements for trustees to identify the natural persons as beneficial owners of trusts in Malta.

Conclusions

221. The availability of identity information and beneficial ownership information on trusts is ensured by the AML law and the Co-operation Regulations, which impose explicit obligations for AML-obliged persons including trustees to maintain the beneficial ownership information. Trusts with non-professional trustees which are not regulated by the MFSA are still required to comply with the Co-operation Regulations and to engage notaries, which are AML-obliged persons under AML law, for specific transactions, thus the legal framework in Malta is in place to ensure that the beneficial ownership information of trusts is available.

Oversight and enforcement

222. In the 2020 Report, since the binding guidelines to the Co-operation Regulations were recently issued at the time (in April 2020), Malta was invited to monitor their implementation and ensure their effectiveness in practice. This monitoring does not appear to have occurred and there is a lack of systematic supervision and enforcement activities from the MTCA to ensure that the Co-operation Regulations are effectively implemented in practice (as identified under A.1.1). The enforcement actions performed in application of the AML law and the TUBOR compensate however the lack of monitoring of the guidelines to the Co-operation Regulations.

223. The FIAU supervises professional trustees, as AML-obliged persons, with full-scope examinations that cover AML obligations in their entirety, including CDD requirements on beneficial ownership, and with thematic reviews. A total of 23 supervisory activities were conducted on trustees in the years 2021-22.

224. The MFSA is responsible for the maintenance and administration of the TUBOR, including ensuring the accuracy and currency of the data submitted to it.

225. Where a professional trustee contravenes or fails to comply with any of the provisions of the TTA BO Regulations, the MFSA may impose an administrative penalty of up to EUR 150 000 for each infringement (Reg. 9). The MFSA noted that the obligation for trustees to sign the annual confirmation compels them to investigate the matter before confirming the absence of change of the beneficial ownership of the trusts.

226. To ensure it has a broad overview of the trust population in Malta, every year the MFSA compares the number of trusts for which each trustee submits information to the TUBOR with the number of trusts reported in the MFSA annual return.

227. Then, the MFSA undertakes checks for all trust beneficial ownership forms submitted. The Trust BO Forms are not automatically uploaded on the online register, but are reviewed, vetted and approved by MFSA officials. They cross-check the information against available databases, to ensure completeness and consistency (for instance whether the nationality reported corresponds with the passport details). They also check that the information is in line with applicable legislation. Any shortcomings found results in MFSA staff rejecting the submissions and requiring clarifications and resubmission of corrected forms. Maltese authorities indicated that, on average, approximately 10% of submissions are rejected, and the MFSA requires that errors are rectified within a few days, a requirement that has been complied with by trustees.

228. The MFSA introduced and periodically updates enhancements through automated features to the TUBOR to improve the quality of data reported.

229. In addition, onsite supervision is performed on a risk basis to verify the beneficial ownership information reported.

	2019	2020	2021	2022
Thematic inspections on (professional) trustees carried out by the MFSA (excluding those triggered by discrepancy reporting)	7	23	19	10

230. The trustees subject to thematic inspections carried out in 2019 were selected based on the high number of trusts they reported, or based on intelligence gathered when performing AML controls. These inspections include more in-depth controls, for instance of the letter of wishes, to check that all beneficiaries are reported. The majority of such inspections found that trustees were compliant or largely compliant, but significant breaches were found in two cases, and enforcement action was taken.

231. The MFSA conducts regular reconciliations between the number of trusts reported in trustees' annual compliance returns and those reported on the TUBOR. Moreover, during supervisory inspections of trustees, the MFSA requests the list of clients, including a list of trusts administered by the trustees. If any trusts are found to be not reported on TUBOR, the MFSA investigates the matter further and takes enforcement actions as necessary.

232. Based on the findings of the thematic inspections, the MFSA published a Circular to trustees to carry out a gap analysis and identify any

areas where they were not compliant, and to ensure that the necessary remedial action was taken.[60]

233. The MFSA has issued administrative penalties to 3 trustees in relation to 20 trusts, amounting to a total of EUR 62 000. These penalties were fully collected.

234. The monitoring and supervision on professional trustees carried out by the MFSA appears consistent with ensuring availability of identity and ownership information in practice.

235. The enforcement actions conducted by the FIAU against notaries (as AML-obliged persons) for failure to comply with their AML obligations also has an impact on the availability of identity and ownership information of trusts in Malta. Between 2020 and 2023 the FIAU has imposed administrative penalties and/or other measures on eight notaries. In very few cases action was taken regarding breaches involving trusts, whether managed by professional trustees or not. The breaches related to issues with the identification and verification of trust parties, resulting in the inability to determine the beneficial owners of the corporate structure in question. Taking into account the limited number of non-professional trustees, and the conditions to allow them to administer a trust (see paragraph 196), the approach taken is consistent with ensuring the availability of identity and ownership information in practice also for non-professional trustees.

Availability of information on trusts in EOIR practice

236. During the period under review, Malta has received two EOIR requests in relation to trusts, which included beneficial ownership information, accounting records and administrative documents, banking information, trust deed and property information. There are no concerns raised by peers in this regard.

A.1.5. Foundations

237. In Malta, foundations can be formed pursuant to the Civil Code. They can be either private foundations, established for the private benefit of beneficiaries, or purpose foundations, established exclusively for a charitable, philanthropic, social or other lawful purpose. On 25 May 2023, there were 318 foundations in Malta (there were 589 of them on 31 March 2020), of which 160 were private and 158 were purpose foundations.

60. https://www.mfsa.mt/wp-content/uploads/2019/10/Circular-Thematic-TUBOR.pdf (accessed on 20 November 2023).

Identity information

238. The primary and only complete source of identity information on foundations in Malta are the foundations themselves in application of the Co-operation Regulations, pursuant to which foundations are required to maintain identity information on founders, administrators, supervisory council members and beneficiaries. This information must be kept for at least five years, and should be updated and documented no later than 14 days from the date the foundation is notified or becomes aware of new beneficial owners or of any change in the existing beneficial owners (Reg. 4(1) and 4(13)).[61]

239. Some supervision on compliance with the Co-operation Regulations has been carried out by the MTCA on 28 foundations. No information was provided on the specific controls made on foundations and their outcomes. This does not allow to conclude that systematic and sufficient supervision and enforcement of the effective implementation of the Co-operation Regulations in respect of foundations in Malta has occurred.

240. Some limited information on foundations in Malta is also available with the Registrar for Legal Persons (RfLP), which since August 2020 is part of the MBR (pursuant to the modification introduced with Act No. XLVII of 2020), and to the MTCA as observed in the previous reviews.[62]

Beneficial ownership information

241. In Malta, the availability of beneficial ownership information is required by the AML law, the requirements on centralised beneficial ownership registration, and the Co-operation Regulations.

242. Administrators of foundations are AML-obliged persons (see paragraph 104) and are thus required to carry out the CDD to identify the beneficial owners of the foundations for which they act as administrators (see paragraph 106 et seq.). Similarly, where a foundation holds bank accounts in a bank in Malta, the bank, as an AML-obliged person, should identify its beneficial owners and keep the information.

243. In addition, under the Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations) Regulations (Foundations BO Regulations), 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 (Reg. 4(1)). The Foundations BO Regulations apply to both private and purpose foundations.

61. See also paragraphs 161-163 of the 2020 Report, in turn referring to paragraphs 158-161 of the 2013 Report.

62. See paragraph 162 of the 2020 Report, in turn referring to in paragraphs 142-160 of the 2013 Report.

244. The definition of beneficial owners of foundations is in line with the standard, which specifically includes (Reg. 2):[63]

- 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 also includes the ultimate beneficial owner of such legal entity
- any other natural person exercising ultimate and effective control over the foundation by any means, including any person (other than those already listed above) 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.

245. The Foundations BO Regulations (Reg. 6(1)) also require foundations to submit beneficial ownership information to the RfLP, which maintains a Register of Beneficial Owners – Foundations. 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 are incorrect or incomplete, the foundation has to provide the updated information to the RfLP within 14 days (Reg. 7(2)).

246. In case of non-compliance with the requirements 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 Foundations BO Regulations). Furthermore, any officer or beneficial owner of a foundation who knowingly or recklessly makes a statement, declaration or otherwise provides to the RfLP 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, to imprisonment for a term not exceeding six months or to both (Reg. 12).

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

247. Malta has not indicated how many of the 318 foundations registered with the RfLP have submitted their beneficial ownership information.

248. No substantial checks are conducted by the RfLP on the quality and accuracy of the data submitted and no supervision and enforcement measures have been taken on the implementation of the beneficial ownership registration for foundations in Malta.

249. Under the Co-operation Regulations, foundations are required to keep their owners and beneficial ownership information (Reg. 4), for a minimum period of five years from the end of the year in which the relevant acts or operations took place (Reg. 4(13)). The Co-operation Regulations specify that in case of a foundation, the "owner" 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" (Reg. 4(1)(b)). As observed in the 2020 Report, this additional clause could be misleading as it does not refer to natural persons that may be the beneficial owners of the foundation. However, such ambiguity has been cleared by binding Guidelines issued under the Co-operation Regulations. Malta had received in the 2020 Report an in-text recommendation to monitor the implementation of the Guidelines and ensure their effectiveness in practice and for this aspect this recommendation remains current (see Annex 1).

250. When a foundation is terminated, the last remaining administrator(s) is(are) required to keep the related information for ten years as per Article 10 of the Second Schedule of the Civil Code.

Conclusions

251. While there are legal requirements in place to ensure the availability of the identity and beneficial ownership information of foundations, Malta has not provided elements suitable to demonstrate the effective implementation of those legal requirements. There are thus doubts on whether Malta has conducted any supervision and enforcement activities to ensure that the identity and beneficial ownership information of foundations is always available. **Malta is recommended to put a supervision and enforcement programme in place to ensure the availability of identity and beneficial ownership information of foundations in all cases in line with the standard**.

Availability of information on foundations in EOIR practice

252. During the period under review, Malta has received no EOIR request in relation to foundations. There are no concerns raised by peers in this regard.

Other relevant entities and arrangements

Co-operatives and associations

253. Under Maltese laws, co-operative societies (co-operatives) and associations can be set up. There are no substantial changes to the registration and tax filing requirements of co-operatives and associations in Malta since the 2013 and 2020 Reports.[64] On 30 June 2022 there were 70 co-operative societies and 1 806 associations in Malta (they were 73 and 1 377 respectively on 31 March 2019).

Legal ownership information

254. 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 (Reg. 2). In addition, the ownership information of co-operatives, including their registration and financial statements is open to inspection by the public (Article 12 of the Co-operative Societies Act) by visiting the co-operative board's premises. These documents can be consulted by the public during such time and against payment of such fees as the Minister shall from time to time prescribe by regulations made under the Co-operative Societies Act. However, it is uncertain whether any regulations prescribing the time for which consultation must be ensured have been enacted. Nonetheless, Maltese authorities assert that such information must be retained indefinitely by the co-operative board.

255. The sanctions for non-compliance with 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

256. For both co-operatives and 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 (Associations BO Regulations), the definition of beneficial owner specifically applies to (Reg. 2 of the Associations BO Regulations):

- Members
- relevant persons including:
  - the administrators
  - the protector or members of a supervisory council if any

64. See also paragraphs 163-170 of the 2013 Report.

- 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 statute of the association or any other instrument in writing, for material actions to be taken by the administrators thereof.[65]

257. Associations are required to take all reasonable steps to obtain and hold adequate, accurate and up-to-date information in respect of their beneficial owners. Where an association has been established and/or registered prior to the coming into force of the regulations, i.e. 1 January 2018, the association had to submit to the RfLP a declaration containing the information on all the beneficial owners of the association by 30 June 2019 (Reg. 5(1) of the Associations BO Regulations). Associations that were established on or after 1 January 2018 had to deliver to the RfLP the following documents by 30 June 2019 (Reg. 6(1) of the Associations BO Regulations):

- an authenticated copy of its statute
- 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.

258. A new association cannot commence activities and be registered unless the RfLP is satisfied that its obligations under the law relating to the Register of Beneficial Owners have been complied with (Reg. 6(2) of the Associations BO Regulations). The information on the beneficial owners of every association provided to the RfLP is held by the RfLP in a dedicated Register of Beneficial Owners (Reg. 7(1) of the Associations BO Regulations). As of 30 June 2022, 1 272 associations (i.e. 70% of the 1 806 associations registered with the Registrar) had submitted their beneficial ownership

65. 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 RfLP 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 (Reg. 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 (Reg. 3(1) of the BO Registration Regulations for Associations).

information. Similar to foundations, no supervision or controls have not been done by the RfLP.

259. Under the Co-operation Regulations, co-operatives and associations are required to keep the legal ownership and beneficial ownership information (Reg. 4), for a minimum period of five years from the end of the year in which the relevant acts or operations took place (Reg.4(13)).

260. Finally, co-operatives and associations registered in Malta may generally (but not necessarily) have local bank accounts, thus their beneficial ownership information would also be kept by banks in Malta.

Conclusions

261. In conclusion, there are legal requirements in Malta to ensure the availability of the legal ownership and beneficial ownership information of associations. As for foundations, **Malta is recommended to put a supervision and enforcement programme in place to ensure the availability of identity and beneficial ownership information of co-operatives and associations in all cases in line with the standard**.

Availability of information on co-operatives and associations in EOIR practice

262. During the period under review, Malta did not receive any EOI request related to co-operatives or associations, nor peers raised any concerns in this regard.

A.2. Accounting records

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

263. There are legal requirements in Malta under the tax law, company law and the trust law on availability of accounting records, but access to them in a timely fashion is not ensured when entities and arrangements keep them outside of Malta. Furthermore, it is not clear whether there are requirements to ensure availability of accounting records in Malta for at least five years in case a Maltese company redomiciles outside of Malta.

264. The supervision and enforcement of the implementation of these legal requirements remain inadequate. Therefore, Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of accounting records.

265. While the 2020 Report also included a recommendation for Malta to take actions to reduce the large number of inactive companies, as analysed under Element A.1, this recommendation stands now addressed.

266. During the current period under review, Malta received 289 EOI requests related to accounting information.

267. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
The Maltese legislation indicates that accounting records can be kept outside Malta, as long as they are kept in a jurisdiction with which Malta has an EOI instrument that would permit exchange of such records, and in such a way that it may be submitted without difficulty to the tax authority. If an entity or arrangement does not comply with the notice from the Maltese Competent Authority and no director is any longer in Malta, the only course of action that can be taken by the latter would be applying sanctions on the entity and/or to the directors. In the cases where the entity is inactive with no or minimal presence in Malta, sanctions are unlikely to have the expected deterrence and enforcement results, and it is highly unlikely that the requested information would be available to the authorities in all cases. Even if the Maltese Competent Authority could request the information to the third-party jurisdiction where the accounting records are expected to be held, it is not ensured that they could be exchanged with the requesting jurisdiction, as they would be treaty-protected information, and the third-party jurisdiction might not have an EOI mechanism with the requesting jurisdiction or may not authorise its provision by Malta to the third-party jurisdiction.	Malta is recommended to ensure the availability of accounting records and access in a timely fashion when entities and arrangements keep them outside of Malta.

Deficiencies identified/Underlying factor	Recommendations
While it is possible for Maltese companies to redomicile outside of Malta without having to undergo a liquidation procedure, it is not clear if there are requirements to ensure availability of accounting records in Malta for at least five years in case a Maltese company redomiciles outside of Malta.	Malta is recommended to ensure availability of accounting records for at least five years in case a Maltese company redomiciles outside of Malta.

Practical Implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
The Co-operation Regulations, which came into force in 2011, establish comprehensive requirements on the maintenance of accounting records and penalties for non-compliance. However, the supervision and enforcement actions conducted by the tax authorities are insufficient to ensure compliance with the Co-operation Regulations and thus the availability of accounting records in all cases for all relevant entities. Companies and partnerships are required to file financial statements with the Business Register, but the compliance rates do not ensure that the information is available in all cases, and the supervisory activities focused on ensuring compliance with the filing requirements, with sanctions issued that resulted in low collection rates.	Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of accounting records in all cases in line with the standard.

A.2.1. General requirements

268. There are legal requirements in Malta under the tax law, company law and the trust law on availability of accounting records.

Tax Law

269. Accounting obligations are set both in the Co-operation Regulations and in the Income Tax Management Act.

270. The Co-operation Regulations require all entities (see definition in footnote 26), trustees as well as individuals engaged in a trade, business, profession or vocation to keep accounting records in accordance with the standard (Reg. 4(7)).

271. Accounting records can be kept in Malta or abroad, as long as they are kept in a jurisdiction with which Malta has an EOI instrument that would permit exchange of such records (Reg. 4(10)), and in such a way that it may be submitted without difficulty to the MTCA following a request made pursuant to the provisions of article 10A of the Income Tax Management Act (Reg. 4(12)). If an entity or arrangement does not comply with the notice from the Maltese Competent Authority and no director (or equivalent) is present in Malta, the only course of action that can be taken by the latter would be applying sanctions on the entity and/or to the directors. In the cases where the entity is inactive with no or minimal presence in Malta, sanctions are unlikely to have the expected deterrence and enforcement results, and it is highly unlikely that the requested information would be available to the authorities in all cases. Even if the Maltese Competent Authority could request the information via EOIR to the third-party jurisdiction where the accounting records are expected to be held, it is not ensured that they could be exchanged with the requesting jurisdiction, as they would be treaty-protected information, and the third-party jurisdiction might not have an EOI mechanism with the requesting jurisdiction or may not authorise its provision by Malta to the third-party jurisdiction. The need to gather accounting records (or other types of information) held outside of Malta to respond to an incoming EOI request has never occurred in practice. **Malta is recommended to ensure the availability of accounting records and access in a timely fashion when entities and arrangements keep them outside of Malta**.

272. The Income Tax Management Act requires that every person carrying on a trade, business, profession or vocation must keep proper and sufficient records of their income and expenditure to enable their income and allowable deductions to be readily ascertained (Article 19(1)). These records include 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)). Records 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, are subject to the same requirements.

273. 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.[66] The number of companies that have benefitted from this waiver during in the years 2019 to 2022 was 21, so all Maltese

66. This exception applies in the first two years of the company's life to the extent that the turnover is less than EUR 80 000, and the company is formed by persons that have obtained a certain level of academic qualifications (2nd provision to Article 19(4)(a) and Audit Report Waiver and Deduction Rules (SL 372.29)).

companies except for the 21 that benefitted from the exception were required to have an audit report under the Income Tax Management Act.

274. Any person who contravenes or fails to comply with those requirements is liable on conviction to a fine between EUR 23 and EUR 116 (Article 49(1)). These sanctions do not appear dissuasive, and this might be one reason for the low level of compliance (see also paragraphs 71-72). In case the non-compliance with accounting records requirements also leads to non-payment of income tax, an additional tax equal to 1% of the unpaid tax is also applicable for each calendar month or part thereof during which such tax remains unpaid (Article 44 of the Income Tax Management Act).

Company Law

275. 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.

276. The Companies Act (Article 181) requires directors to lay before the company, for their approval in general meeting, copies of the annual accounts of the company for that period. If default is made in complying with this provision or if the annual accounts do not comply with the provisions of this Act, every director of the company is liable to a penalty and, for every day during which the default continues, to a further penalty.

277. 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 1 165 (Article 163(7)).

278. 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. Smaller companies are exempted from this requirement, if they satisfy at least two of following three conditions (Article 185(2) of the Companies Act):

- balance sheet totals not exceeding EUR 46 600
- turnover not exceeding EUR 90 000
- not more than two employees.

279. Companies are also required to file their annual financial statements with the MBR. Financial statements comprise the balance sheet (which provides an overview of assets, liabilities, and stockholders' equities) as on 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). This information is publicly available at the MBR, and is kept indefinitely, as a matter of practice. Malta should ensure that the accounting records filed with the MBR are maintained for a minimum of five years after the date on which the company is dissolved or otherwise ceases to exist (see Annex 1).

280. The average annual filing rates of financial statements was about 70%, which is low (even though it represents a significant increase from the 50% observed in the 2020 Report) and may cause concerns on the availability of the accounting records of companies and partnerships by the MBR.

Year	Number of companies	Number of financial statements filed*	Filing rate of financial statements
2019	49 258	n.a.	n.a.
2020	44 454	30 535	68.69%
2021	47 740	34 640	72.56%
2022	50 713	34 576	68.16%

*The number of financial statements filed reported in this table is an estimate based on the filing rate, as Malta only provided the filing rates.

281. The MBR officials explained that one of the reasons for the remaining low compliance rate with annual filing of accounts is the obligation to have the accounts audited. While the thresholds in the company law (see paragraph 276) would not require many small businesses to file audited accounts, the tax obligations are more stringent (see footnote to paragraph 273), and companies prefer to file the same set of (audited) accounts with both the MBR and MTCA. This puts extra pressure on the few auditors in Malta (236, meaning that each auditor has to audit 211 companies per year on average). Finally, the MBR nonetheless notes a positive evolution of attitude in small, family-run companies, which used to be more prone to negligence.

282. For failure to comply with any accounting requirements of the Companies Act, the penalty, upon conviction is a fine of up to EUR 11 647 for every officer of the company. If an officer can show that they acted diligently and that the default was excusable, the conviction and penalty can be avoided (Article 163(6)).

283. As seen under Element A.1 (see paragraph 55), it is possible for Maltese companies to redomicile outside of Malta without having to undergo a liquidation procedure. The MBR would ensure that the financial statements have been filed before the company is continued outside of Malta. It is not clear, however, whether there are requirements to ensure availability

of other accounting records in Malta for at least five years when a Maltese company redomiciles outside of Malta. **Malta is recommended to ensure availability of accounting records for at least five years in case a Maltese company redomiciles outside of Malta**.

Trustees and Corporate Service Providers

284. In addition to the general 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 TT Act 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 (see paragraph 199). There is no change to such requirements under the TT Act since the last round review in Malta.[67]

285. Any person who contravenes or fails to comply with any of the provisions of the TT Act, 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 TT Act, is guilty of an offence and liable, on conviction, to a fine not exceeding EUR 466 000 or to a term of imprisonment not exceeding 4 years, or to both such fine and imprisonment (Articles 51(1) and (6) of the TT Act). 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 TT Act).

286. As indicated by the MFSA, during onsite inspections at trustees and CSPs who offer directorship services to Maltese entities, one of the checks that can be performed is to ascertain whether the trustees/CSPs are preparing financial statements within the required timeframes. Where gaps are identified, CSPs and trustees are requested to rectify any such deficiencies. This would also be taken into account when regulatory action is being contemplated against a CSP or trustee. However, as no details on these onsite inspections were provided, it is difficult to determine the extent of their relevance. In September 2020, the MFSA also published a circular to companies and individuals offering directorship services, reminding them of their obligations to comply with the Companies Act requirements, including relating to the submission of financial information to the MBR.[68]

67. See paragraphs 216 to 220 of the 2013 report.
68. https://www.mfsa.mt/wp-content/uploads/2020/09/Circular-addressed-to-Companies-and-Individuals-providing-Directorship-Services.pdf (accessed on 20 November 2023).

Companies that ceased to exist and retention period for entities and arrangements

287. When a company is liquidated and struck off the ROC, the liquidator is required to keep the accounting records and documents of the company for a period of ten years from the date of publication of the striking off of the company's name from the register (Article 324(2) of the Companies Act). The liquidator who fails to comply with this obligation is liable to a penalty of EUR 1 165 (Article 324(3) and eleventh schedule). Similar requirements are provided for partnerships (Article 50). 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.

288. 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 must 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 (Reg. 4(13)). While it is unclear from the Co-operation Regulations who would have the obligation when the entity or trust is no longer in existence, the Maltese authorities consider that reference is to be made to the liquidator as described in the previous paragraph.

A.2.2. Underlying documentation

289. Under the Co-operation Regulations (Reg. 4(7)), the accounting records required to be kept by entities include the underlying documentation such as invoices, contracts, etc. The requirements and five-year retention period apply to the underlying documentation. This is in line with the standard.

Supervision and enforcement of requirements to maintain accounting records

290. The supervision and enforcement activities carried out by the MTCA to ensure the effective implementation of the Co-operation Regulations, including in requiring the availability of accounting records, and the tax audits in relation to the domestic tax obligations in the period 2019-22 are described in Section A.1.1, see paragraphs 88-94. As it is concluded therein, these activities are not sufficient to ensure that accounting records are available in all cases in line with the standard.

291. The MBR monitors compliance with any provisions of the Companies Act through its investigatory powers accorded by law (please refer to paragraphs 83-87). During the years 2019-22, the following penalties were issued and collected for non-compliance with the obligations of companies and partnerships to prepare and submit to the ROC their annual accounts:

		2019	2020	2021	2022	Total
Penalties to the company for non-compliance of annual accounts filing	Number of penalties issued	252 221	320 641	280 373	391 618	1 244 853
	Penalty amounts issued (EUR)	6 137 441	7 591 983	8 092 954	9 413 491	31 235 869
	Penalty amounts collected (EUR)	2 528 619	2 424 750	2 808 969	2 134 727	9 897 065
Penalties to directors for non-compliance with the requirement to submit the annual accounts for approval by the company in general meeting	Number of penalties issued	3 820	2 764	4 022	4 044	14 650
	Penalty amounts issued (EUR)	561 265	463 440	693 699	750 499	2 468 903
	Penalty amounts collected (EUR)	408 820	309 915	479 950	430 885	1 629 570
Penalties to the directors for non-compliance of annual accounts filing	Number of penalties issued	248 401	317 877	276 351	387 574	1 230 203
	Penalty amounts issued (EUR)	5 576 175	7 128 543	7 399 255	8 662 993	28 766 966
	Penalty amounts collected (EUR)	2 119 799	2 114 835	2 328 934	1 703 756	8 267 324

292. Similar to what is observed for annual filing requirements (see paragraph 86), the vast majority of penalties issued relate to the non-compliance with annual returns filing, for which the percentage of collection is particularly low, of 30% on average, and decreasing over the years, possibly because the collection procedures carry over the years. The number of penalties issued to companies and their directors is very big in number (of the same order of magnitude of the total number of companies in Malta, see paragraph 37), but it does not appear to lead to any significant improvement in the filing rate for the subsequent year (refer to paragraph 280).

293. Based on the considerations above, it is concluded that there is still no sufficient supervision and enforcement actions in Malta to ensure compliance with the requirement to keep accounting records. **Malta is recommended to enhance its supervision and enforcement actions to ensure the availability of accounting records in all cases in line with the standard**.

Availability of accounting records in EOIR practice

294. During the period under review, Malta received 289 EOI requests related to accounting records and provided it in 230 (or 80%) of them. In the 59 instances where accounting records could not be provided, similar to the cases involving beneficial ownership information (see paragraph 167), Malta indicated that some of these requests were related to companies that were inactive at the time of the request, while some other companies, though not classified as inactive when the EOIR request was received, failed to respond to the MTCA and were reported to the MBR (see paragraph 350). Malta also confirmed that all these companies were eventually struck off.

295. Peers were generally satisfied with the responses provided from Malta, but several peers confirmed that the information could not be provided or that there were delays in the provision of accounting information, that in some cases led to the withdrawal of the request by the requesting jurisdiction.

A.3. Banking information

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

296. As observed in the 2013 and 2020 Reports, the combination of the AML laws with the regulatory regime for all licensed banks ensures that all records pertaining to bank accounts, including beneficial ownership, as well as related financial and transactional information, must be available in Malta. The implementation of supervisory measures has demonstrated a significant improvement compared to observations in the 2020 Report. This progress indicates that the Phase 2 recommendation regarding the availability of banking information, including beneficial ownership details of bank account holders, is now largely addressed. The enhanced supervisory measures established by the FIAU have contributed to this positive development, whereas the lack of supervision under the Co-operation Regulations, which was the focus of the recommendation in the 2020 Report, still persists but the consequences of this lack of supervision is now circumscribed mainly to the updating of the beneficial ownership information.

297. As regards the beneficial ownership information on the bank accounts, the AML laws do not specify a timeframe for banks to review it and ensure that it is up to date. The binding guidelines to the Co-operation Regulations require, since 2020, that the updating of information required to be kept pursuant to the Regulations themselves (including beneficial ownership information by banks) has to be conducted at least every three months. As this legal requirement was new, in the 2020 Report Malta was recommended to put in place supervision programmes and apply effective

sanctions in case of non-compliance with the Co-operation Regulations. However, the current review found that this provision is not observed in practice by banks nor has been enforced by the MTCA or the FIAU. Therefore, while in principle the legal framework requires the updating of information at least every three months, it remains the case that bank-account beneficial ownership information might not always be kept up to date. Malta is thus recommended to ensure that up-to-date beneficial ownership information on all bank accounts is available in line with the standard. Moreover, as observed under Element A.1, the specificities of PCCs and SCCs should be taken into account for the determination of the beneficial owners of the bank account they hold.

298. During the current period under review, Malta received 319 requests related to banking information.

299. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/ Underlying factor	Recommendations
While, in accordance with the Co-operation Regulations, banks are obligated to retain information for a minimum of five years including in the event of liquidation or cessation of existence or operations, it is unclear who will bear the responsibility for retaining such information if a domestic bank ceases to exist or a foreign bank ceases operations in Malta.	Malta is recommended to ensure the availability of banking information for at least five years when a bank ceases to exist or operate in the country.
For accounts held by Protected Cell Companies and Securitisation Cell Companies, the determination of beneficial owner only takes place at the level of the company. However, the standard expects the identification of beneficial owners of both the company and the individual cells it houses.	Malta is recommended to ensure that beneficial ownership information in line with the standard is available for all account holders, including Protected Cell Companies and Securitisation Cell Companies.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/ Underlying factor	Recommendations
The frequency for updating beneficial ownership information specified in the Co-operation Regulations is not observed in practice by banks and not enforced by the Maltese authorities, and there is no specified frequency of updating beneficial ownership information in the AML law, so there could be situations where the beneficial ownership information on bank accounts is not kept up to date.	Malta is recommended to ensure that up-to-date beneficial ownership information on all bank accounts is available in line with the standard.

A.3.1. Record-keeping requirements

300. As of 10 November 2023, there were 19 banks licensed in Malta.[69]

Availability of banking information and new Centralised Bank Accounts Register

301. 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 and to related financial and transactional information (Reg. 4(11)).

302. In addition, banks in Malta are AML-obliged 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 (Reg. 13(1) of AML Regulations). The record retention period applicable under the AML Regulations is five 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 during a business relationship or an occasional transaction (Reg. 13 of the AML Regulations).

303. Banks that do not maintain or apply record-keeping procedures are liable to remedial actions and an administrative penalty between EUR 1 000 and EUR 46 500 in respect of every separate contravention, and an administrative penalty of not more than EUR 5 000 000 or 10% of

69. Source: MFSA Financial Services Register https://www.mfsa.mt/financial-services-register/ (accessed on 20 November 2023).

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 systemic (Reg. 21(2) of the AML Regulations).

304. The Centralised Bank Account Register (CBAR), established through the Centralised Bank Account Register Regulations of October 2020 as part of the implementation of the EU AML directives, is a database managed by the FIAU, containing information on all bank accounts and deposit boxes held in banks licensed and operating in Malta. Banks must report information to the CBAR on a weekly basis. The data to be reported includes the date of opening and closure of accounts, account details, account holders, signatories and beneficial owners of legal entities and arrangements, irrespective of whether they are registered in Malta. As of October 2023, 1.8 million bank accounts (identifiable by their International Bank Account Number, IBAN) were reported in the CBAR, decreasing from 2.2 million in May 2023. Similarly, during the same period, the number of deposit boxes in Malta reported to the CBAR decreased from 6 000 to 1 400. The CBAR is directly accessible by the MTCA (see paragraphs 331 and 340).

305. Pursuant to the Co-operation Regulations, banks as other entities and arrangements, must keep information for at least five years from the end of the year in which the relevant transactions took place, including where the bank is liquidated or is no longer in existence (Reg. 4(13)).[70] It is however not specified who would have the requirement to retain such information if the bank ceases to exist or a foreign bank ceases to operate in Malta. There are several procedures for the liquidation or bankruptcy of banks that apply alternatively. The procedure outlined in the Banking Act does not explicitly include provisions to ensure the availability of all banking information for at least five years after dissolution. The procedure in the Controlled Companies (Procedure for Liquidation) Act requires the "books and other documents of the company" to be delivered to the Registrar of companies (Article 15(2)) but it only applies to a subset of the banks in specific circumstances. Banks can also be liquidated following the provisions in the Companies Act, and in such cases, the general provisions seen in Section A.1.1 (see paragraph 53) would apply. However, this does not explicitly guarantee that all banking information would be retained for five years. **Malta is recommended to ensure the availability of banking information for at least five years when a bank ceases to exist or operate in the country**.

70. See also paragraphs 235 and 236 of the 2013 Report.

Beneficial ownership of bank accounts

306. The Co-operation Regulations require banks to keep banking information that includes information on the beneficial owners of the accounts.

307. As AML-obliged persons, banks must perform CDD including the obligations to identify beneficial owners under Reg. 7(1)(b) of the AML Regulations.

308. With particular regard to the identification of beneficial owners of account holders that are trusts, as the small inconsistencies and gaps identified in the FIAU Implementing Procedures (see paragraph 207) are also applicable to banks, Malta should resolve the contradiction in the FIAU Implementing Procedures relating to the identification of beneficial owners of trusts and similar legal arrangements and ensure that all beneficial owners of trusts are identified also in the case of presence of foreign professional trustees (see Annex 1).

309. 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. Representatives of the banking sector indicated that they also check the information collected against the data in the MBR Register of Beneficial Owners. In case of discrepancy, the bank informs the client and the MBR. The representatives of the banking sector indicated that it happens in practice that a bank refuses a client. Examples provided related to prospective clients with adverse media reporting, or with a complex corporate structure that the compliance officer could not understand, some banks being more conservative/prudent than others.

310. Banks are also subject to on-going monitoring obligations under Reg. 7(2) of the AML Regulations, and banks are required to keep any documentation, information and data collected for CDD purpose. In this regard, banks, as AML-obliged 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 must be done on a risk 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, in case nothing triggers an update.

311. For PCCs and SCCs, as seen in paragraph 112, the determination of beneficial owner only takes place at the level of the company. However,

the standard expects the identification of beneficial owners of both the company and the individual cells it houses (see also paragraph 146). **Malta is recommended to ensure that beneficial ownership information in line with the standard is available for all account holders, including PCCs and SCCs**.

312. The Co-operation Regulations (Reg. 4(11)) require banks in Malta to ensure that information that identifies the beneficial owners of the accounts is kept on all account-holders in relation to their banking activity in Malta. The Guidelines to the Co-operation Regulations issued in 2020 include a specific requirement for banks to conduct the review of the beneficial ownership information at least every three months, although these provisions do not appear to be observed nor enforced in practice (see also paragraphs 139 and 319 et seq.).

Oversight and enforcement

Monitoring of compliance with the anti-money laundering obligations

313. Under the AML laws, the FIAU undertook supervisory actions, including on-site and off-site assessments, which took into account the different AML obligations.

314. All banks have been so far subject to at least one full-scope examination, which entails that all supervisory examinations have taken into account and considered how banks are complying with the totality of their AML obligations arising from the AML Regulations, including those related to the determination and identification of beneficial ownership (Section 7 of Appendix 15 to the FIAU Supervisory Manual, which sets out the examination methodology, includes an explicit requirement to assess how AML-obliged persons are complying with their beneficial ownership and record-keeping procedures). Therefore, all banks have been assessed at least once by the FIAU to determine adherence to the said obligations. Maltese authorities further explained that in such examinations the FIAU does not only ensure that reporting entities comply with their obligations under the AML Regulations, but also checks whether there are any discrepancies between the beneficial ownership as identified by the bank and the beneficial ownership as declared on the Registers of Beneficial Ownership held by the MBR (for legal persons) and by the TUBOR (for trusts).

315. Penalties are imposed by the FIAU through its Compliance Monitoring Committee 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 FIAU Compliance Monitoring

Committee issues a final determination. Administrative sanctions are subject to appeal before the courts when they exceed EUR 5 000. The administrative penalties and other measure imposed by the FIAU are subject to publication on the FIAU's website.[71]

316. The CBAR Section of the FIAU, which currently comprises a Senior Manager and three other officers, runs validation rules and checks to ensure the correctness and completeness of the data and information reported by the banks and financial institutions. Some of the validation rules and checks are automatically applied at pre-submission stage, the failure of which would not allow the submission to be made until such time as the institution addresses the same. Other checks are run from time to time by the CBAR Section to specifically ensure the correctness of beneficial ownership data and information. In August 2021, the FIAU developed an in-house data analysis model to compare, in bulk, beneficial ownership information reported on CBAR against beneficial ownership information reported to the MBR (and shared in bulk by the MBR with the FIAU). From a first run of this exercise, by September 2021, 102 potential discrepancies relative to 54 companies were identified and communicated to the MBR for action. Maltese authorities clarified that a potential discrepancy may not necessarily entail that different beneficial owners are being reported, as it may only consist in a difference in particular data elements such as in the address of the individuals behind a company or their identification document number due to different documents having been provided.

317. More in general, between 2019 and 2022 the FIAU conducted two targeted examinations and three full examinations of banks that included controls on the requirements on beneficial ownership for clients. It identified breaches in the compliance with CDD requirements connected to

71. https://fiaumalta.org/enforcement-process/#Administrative-Measures (accessed on 20 November 2023).

Following changes introduced through Act I of 2020, any administrative penalty or other measure imposed by the FIAU is subject to publication on the FIAU's website. Contrary to what indicated in paragraph 218 of the 2020 Report, publication takes place independently of whether an administrative penalty is actually imposed or otherwise, the amount of any administrative penalty imposed, or whether the subject person exercises the right of appeal or otherwise.

The penalty's amount only influences whether public notice thereof takes place anonymously or otherwise, as where no administrative penalty is imposed or is otherwise imposed but it does not exceed EUR 50 000 publication takes place anonymously. In addition, where an AML-obliged person decides to appeal from an administrative penalty imposed by the FIAU, the FIAU must update the publication accordingly. Appeals remain limited to decisions through which the FIAU imposes administrative penalties above EUR 5 000.

beneficial ownership, the most notable of which originated from a control of the information submitted to the CBAR and led to an administrative penalty of EUR 2.6 million as it was found that the bank had not determined the beneficial ownership of a number of corporate customers.[72] This was the only one targeted examination that led to the imposition of an administrative penalty in relation to breaches of beneficial ownership obligations. The other targeted examination included minor shortcomings on beneficial ownership which have been subsequently remediated.

318. A summary of the overall supervision and enforcement actions by the FIAU on banks for the period 2019-22 is summarised below.

	2019	2020	2021	2022
Full Scope reviews	8	8	1	1
Targeted reviews (incl. those on beneficial ownership)	-	-	1	3
Number of remediation letters	0	0	0	7
Number of Directives to banks	1	4	4	5
Number of penalties to banks	2	3	6	5
Penalty applied (EUR)	3 719 300	726 634	8 134 418	1 163 867

Lack of monitoring of compliance with the Co-operation Regulations

319. Under the Co-operation Regulations, the compliance monitoring procedures (Reg. 4a, see paragraph 91) provide that the MTCA may request banks to provide within a reasonable time of no less than 20 days, information necessary to verify that such person is complying with the obligations set out in the Co-operation Regulations. Where any of the information requested is not timely submitted to the MTCA, the person is liable to a penalty between EUR 500 and EUR 19 250, which may be remitted in whole or in part if the MTCA considers that the default in respect of which the penalties have been imposed were justifiable.

320. Malta's authorities indicated that no supervision activities have been taken regarding banks under the Co-operation Regulations. The reason for this was that that banks do not constitute a high risk because:

- There is supervision by other regulatory authorities such as the MFSA and the FIAU.
- Banks comply with requests for information in the framework of EOIR.

72. https://fiaumalta.org/wp-content/uploads/2021/12/Publication-Notice-17122021.pdf (accessed on 20 November 2023).

321. The rationale for not monitoring compliance by banks with the Co-operation Regulations is based on the general overlap with the obligations set in the AML framework. However, the overlap is not complete, which means that the obligations that are set only in the Co-operation Regulations are not supervised at all. In practice, this led to an incomplete implementation of the standard on the updating of beneficial ownership information.

322. Under the AML laws, there is no specified timeframe required for banks to review the beneficial ownership information and ensure that it is up to date, absent a specific trigger. This is compensated in principle with the provision in the Guidelines to the Co-operation Regulations for banks to conduct the review of the beneficial ownership information at least every three months (see also paragraph 139). There is indeed a link between the two provisions, whereby the AML Regulations (Reg. 7(6)(b)) refer to the legal duty, for the AML-obliged person, to "contact the customer for the purpose of reviewing and updating any information relating to the beneficial owners", including when such duty arises under the Co-operation Regulations. However, this provision is not observed in practice by banks, nor is it enforced by the MTCA or the FIAU. In practice, banks apply the AML risk-based approach and most banks update information on their clients including beneficial ownership 12 to 18 months for high-risk (e.g. clients with complex structures, politically exposed persons, certain business sectors or links with certain jurisdictions), every 2 to 3 years for medium-risk and every 5 years for low risk (which usually covers individuals and small businesses).

323. Without the requirement and the application of a specified frequency for updates of beneficial ownership information held on their customers, there might be cases where beneficial ownership information held by the bank is not up to date. **Malta is recommended to ensure that up-to-date beneficial ownership information on all bank accounts is available in line with the standard**.

Availability of banking information in EOIR practice

324. During the period under review, Malta received 319 EOI requests pertaining to banking information and fully provided it in 296 (or 93%) of them. In the 23 cases where complete banking information could not be provided, Malta specified that details regarding account ownership, account balances, and information about the persons who opened and operated the account were consistently provided. The unattainable information pertained to underlying documentation submitted during the account opening process. All these cases were linked to a single bank, which had its licence revoked by the MFSA and subsequently underwent a liquidation process which is ongoing at the time of writing.

325. Peers were generally satisfied with the responses provided from Malta, some jurisdictions, however, indicated delays in the provision of bank information, that in some cases led to the withdrawal of the request by the requesting jurisdiction. Another peer indicated that the response provided was not satisfactory upfront and required a follow-up for clarifications.

Part B: Access to information

326. 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 EOIR.

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).

327. The Maltese Competent Authority's powers to obtain and provide information are mainly specified in the Co-operation Regulations and the Income Tax Management Act, which have not changed for the relevant parts since the 2020 Report. Malta's ability to obtain and provide information is broadly in line with the standard, but some limitations would arise in case of EOI requests related to criminal tax matters, if the person subject to criminal tax investigation in the requesting jurisdiction is also the information holder in Malta. This circumstance has not arisen in practice yet. Conversely, some issues have been encountered in practice during the period under review in gathering information in relation to companies that had been struck-off the ROC or to compel the production of the information in case the taxpayer or information holder did not comply.

328. The conclusions remain as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/Underlying factor	Recommendations
When the criminal tax matter in a request for information relates to the person who is also the information-holder in Malta, Malta would not be able to access the information from such person. The issue has not occurred in practice.	Malta is recommended to enable access and exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Malta has imposed penalties to taxpayers or information holders in only a limited number of cases where a Tax Administration notice requesting information was not complied with. The difficulties in enforcing the requirements often arise when the entity no longer has representation in Malta, a circumstance that usually leads to the failure of the notification procedure which is a prerequisite for the application of sanctions. In such instances, the Tax Authority informs the Business Registrar, triggering an evaluation by the latter on whether the company results in an inactive status under the Company Law. In such a case, the Business Registrar initiates a defunct procedure. The Tax Administration would not further specifically follow-up on the outcomes. If the company does not result in an inactive status under the Company Law, no enforcement action is taken. Therefore, even when the measure of striking off the entity was implemented, it may not be effective for the purposes of the standard, as information would still not be obtained where the entity has no longer physical presence in Malta.	Malta is recommended to ensure that effective sanctions are consistently applied in practice in case of non-compliance by the taxpayer or information holder with the request by the Competent Authority to provide information.

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

Maltese Competent Authority

329. The Competent Authority for EOI purposes in Malta is "the Minister responsible for finance or his authorised representative". The Co-operation Regulations (Reg. 8) indicate that the authorised representative is the competent official that is identified as such and whose name and designation are published on the website of the MTCA. The current authorised representative for EOIR (as well as the other forms of EOI, see paragraph 373) is a designated Chief Tax Officer within the MTCA, that forms part of the Ministry for Finance and Employment.[73] This (delegated) Competent Authority is the head of the Maltese EOI Team (see paragraph 439).

General access powers

330. There are no substantial changes to the legal provisions in relation to the access powers of the MTCA for EOIR purposes.[74]

331. The EOI Team has direct access to the documentation that is electronically submitted by taxpayers to the MTCA (including income tax returns), to the ROC, the Register of Beneficial Owners (see paragraph 148) and the other databases of the MBR, to the TUBOR held by the MFSA (see paragraphs 215 and 450), to the Centralised Bank Account Register (CBAR) held by the FIAU (see paragraph 304) and to the department of Civil Registration (containing information of the individuals residing in Malta, e.g. acts of birth, marriage, civil union, death, passports, visas etc.).

332. For information not directly accessible, pursuant to Article 10A(1) of the Income Tax Management Act, the MTCA has broad powers to access information from any person and "when and as often as he deems necessary", in order to provide it to foreign tax authorities where an EOI arrangement exists between Malta and the respective State.[75] In addition, the Co-operation Regulations clarify that Article 10A of the Income Tax

73. https://cfr.gov.mt/en/inlandrevenue/itu/Pages/Competent-Authority-Details.aspx (accessed on 20 November 2023).

74. See paragraphs 228-230 of the 2020 Report, in turn referring to paragraphs 255-257 of the 2013 Report.

75. The terms "arrangement" includes, as clarified in Reg. 2 of the Co-operation Regulations:

   a. Any agreement, convention protocol or EU Directive pursuant to which Malta may co-operate on tax matters with another jurisdiction through the exchange of information; and

Management Act has to be interpreted so as to give the widest possible powers to obtain and provide information to the EOI partners (Reg. 5(1)).

333. No special procedure has to be invoked by the MTCA to exercise its powers. Malta confirmed that there are no limitations on the MTCA's information-gathering powers with regards to domestic tax interest (see also paragraphs 384-385), criminal tax matters (see also paragraphs 386-387), *de minimis* thresholds, persons acting in an agency or fiduciary capacity (e.g. fiduciaries or trustees) or with respect to taxpayers for which a tax examination is ongoing.

334. The MTCA (Competent Authority or tax auditors of the Compliance and Investigation Directorate, see paragraph 451) exercises the power to access the information from a taxpayer or third-party information holder by issuing an official notice to them on the name of the Commissioner.

335. In terms of time limits to provide the information, Article 10A(1) of the Income Tax Management Act establishes that the notice has to give "reasonable time" to the information holder, of no less than 20 days (the time limit was 30 days until 2021). Extra time can be provided, as may be reasonable, where following representations made by the information holder, the Commissioner is satisfied that for reasons that are beyond the control of such requested person, information cannot be submitted within the time limit specified in the original request made by the MTCA (Reg. 4(12) of the Co-operation Regulations). In practice, Maltese authorities indicated that the information holders are generally given 20 days in the original notice to provide the information requested. Requests for extension are not frequent, generally related to the need to compile extensive amounts of information. When an extension is granted, this is typically of two weeks.

Access to legal and beneficial ownership and accounting information

336. The Competent Authority can gather beneficial ownership information from the relevant register (ROC or TUBOR), from the entity or arrangement itself or from an AML-obliged person. In particular, for information held by an AML-obliged person, the Competent Authority may gather it either directly from that person or from the FIAU (in case the FIAU is already holding it).

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b. Any administrative agreement or memorandum of understanding reached between the competent authority of Malta and the competent authority of another jurisdiction with which an arrangement referred to in paragraph (a) of this definition is in place, provided that such administrative agreement or memorandum of understanding is not contrary to the said arrangement.

For the term "State", Maltese authorities clarified that in practice the provisions apply to any party with which Malta has an EOI agreement, including jurisdictions with no State status.

337. In practice, to provide ownership information to its exchange partners the Maltese Competent Authority consult first the ROC, then the information in tax returns and finally the entities themselves where necessary. For accounting records, the Competent Authority approaches the entities themselves or the related service providers, unless the request only relates to the financial reports.

Access to banking information

338. The Maltese legislation does not specify any elements that are required on the side of the requesting jurisdiction to fulfil an EOI request for banking information. In practice, it is expected that such an EOI request includes elements that are sufficient to allow the Competent Authority to conduct the information gathering process, e.g. the bank account number and/or the identification of the account holder.

339. In practice, the Maltese Competent Authority gathers banking information from the taxpayers or directly from the banks. In this regard, the Competent Authority would assess the best method on a case-by-case basis, taking into consideration the elements provided by the requesting partner. Besides this, Maltese authorities indicated that in terms of processing, requests for banking information are not treated differently from other requests and it takes on average seven days to gather the information. Feedback from peers does not support such timing for requests involving banking information, as some indicated delays in the provision of bank information which led in some cases to the peer withdrawing the request as the information was no longer usable (see paragraph 325). Maltese authorities observed that the case at issue involved the special circumstance that the bank was undergoing a special administration procedure (the administrator had been appointed by the MFSA, the bank is under liquidation process at the time of writing) and this involved administrative delays.

340. The Maltese Competent Authority has also access to the CBAR (which contains data on bank accounts since 2020, see paragraph 304). This source of information has been rarely used in practice during the period under review, as the EOI requests generally referred to tax periods where the CBAR was not implemented, and the Maltese Competent Authority could not exclude that a bank account existing during the period involved in the request had been closed before the setup of the CBAR. On the other hand, the use of the CBAR has significantly reduced the time needed to identify the relevant bank(s) when this information is not provided in the EOI request: with the name of the person or entity, the EOI Team checks the database instead of sending enquires to all banks before sending the notice for information to the relevant one.

Access to information related to criminal tax matters

341. The Maltese Competent Authority applies the same access powers and procedures, regardless of whether the EOI request received relates to a civil or criminal tax matter. As a result, there is a specific situation where Malta would not be able to access and provide the information, i.e. when the foreign criminal tax matter in an EOI request relates to the person who is also the information-holder in Malta.

342. In Malta, the MTCA has no power to investigate criminal tax matters (for either domestic or EOIR purposes). When a tax audit reveals suspicion of tax evasion of an amount such as to constitute a criminal tax offence, the case is transmitted to the police. The rights of silence and non-self-incrimination only exist in the criminal procedure and not in the tax procedure and information collected by tax auditors cannot be used in a criminal court case in Malta.

343. The feature of the Maltese legal system has not affected EOIR to date, as incoming requests on criminal tax matters have never targeted a person in Malta. They rather relate to persons in the requesting jurisdiction which have links with Malta (e.g. the shareholder of a Maltese company, or a business partner of a Maltese company). The only gathering measures not permitted would be asking questions or documents directly to the person who is under criminal investigation in the requesting jurisdiction, whereas the Competent Authority would still be able to exchange information directly available to the MTCA, present in public databases or held by third-party information holders. In addition, in most requests on criminal tax matters, the requesting jurisdiction asks Malta not to inform the concerned taxpayer and this indirectly offsets in practice the domestic procedural limitation. However, as the requesting jurisdiction would not necessarily ask for the concerned taxpayer not to be informed, **Malta is recommended to enable access and exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought**.

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

344. The powers granted to the MTCA under Article 10A of the Income Tax Management Act make no distinction between information required to be kept and not required to be kept. Thus, if the information is not required to be kept but is nevertheless available in Malta, such information may be accessed through the same mechanism described above.

345. During the period under review, Malta received 122 EOI requests in respect of persons who were not taxpayers in Malta and Malta had no

domestic tax interest in obtaining the information. These requests related to banking information, information on gains from crypto-currency accounts and on gains from gaming companies. In all such cases, the information was gathered from the respective information holder and provided to the requesting jurisdiction (see also paragraph 385).

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

346. Malta has 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 (Reg. 6). In particular, the Co-operation Regulations provides that where information is not provided, or is not provided in a timely manner to the MTCA because it 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 19 250 (Reg. 6(2)).[76]

347. In practice, during the period under review, taxpayers and information holders who were requested to provide information to respond to an EOI request have not disputed the obligations to keep and provide the information.

348. The MTCA imposed penalties to the taxpayer or third-party information holder in 6 cases for failing to provide the information or for having provided it late (82 cases during the review period, see paragraph 428), for a total amount of EUR 46 000, of which EUR 9 500 (or 21%) were collected. Therefore, Malta imposed penalties only in a limited number of cases where a MTCA notice requesting information (see paragraph 334) was not complied with.

349. Maltese authorities explained that to impose penalties, a default notice and, subsequently, a demand notice must be served. However, due to the frequent situation where inactive companies (or companies that prove non-compliant with the notice requesting information) have no (longer) representation in Malta, letters are often returned undelivered. Consequently, penalties are often not applied in case of non-compliance, often due to issues related to notification. Maltese authorities also noted that this type of situation has become less frequent since 2021 (see also table under paragraph 426 on the failures to provide the requested information). Nevertheless, Reg. 51 of the Co-operation Regulations provides that "where the notice [including default or demand notices] is not made because the taxpayer could not be found or for

76. There is no change in this regard in Malta since the previous reports. For details of the penalty provisions, refer to paragraphs 268 to 271 of the 2013 Report.

other reasons attributable to him and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department, then such notice shall also be deemed to have been duly notified". Such provision is not applied in practice.

350. The Maltese authorities indicated that in cases of failure of notification, the Competent Authority would only inform the MBR of the circumstance, so that the MBR could investigate the matter and carry out the defunct procedure in case the inactive status under the Company Law of the non-compliant company is confirmed (see paragraph 62 et seq.). The MTCA does not further specifically follow-up on the issue. There is no tracking of how many entities that did not comply with an EOIR-related notice requesting information have had a defunct procedure initiated, and how many of them have then been struck-off the ROC (but periodic reconciliations are made between the companies registered with the MTCA and the ROC, see paragraph 73). Consequently, if the company does not result in an inactive status under the Company Law, no enforcement action is taken. In addition, even if the measure of striking-off the entity were a direct consequence of non-compliance with the notice to provide information, it may not be effective for the purposes of the standard, as information would still not be obtained where the entity has no longer physical presence in Malta. **Malta is recommended to ensure that effective sanctions are consistently applied in practice in case of non-compliance by the taxpayer or information holder with the request by the MTCA to provide information**.

B.1.5. Secrecy provisions

Bank secrecy

351. Bank secrecy provisions in the Maltese laws do not impede access to banking information pursuant to a request for information.[77] This was confirmed by the representatives of the banking sector during the onsite visit.

352. During the period under review, the Maltese Competent Authority often gathered information from banks and has not encountered any situations where bank secrecy was an impediment to obtaining information.

Professional secrecy

353. The attorney-client privilege standard that would apply to information pursuant to an EOI request is found in Reg. 5(1) of the Co-operation

77. See also paragraph 238 of the 2020 Report, in turn referring to paragraphs 276-281 of the 2013 Report.

Regulations, and is identical to the standard (i.e. the OECD Model DTC).[78] During the period under review, Maltese authorities indicated there was no case that required gathering information from a person benefiting from professional secrecy to respond to an EOI request.

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.

354. 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 and second round review for Malta regarding notification requirements.

355. There are no appeal rights applicable under the tax law to a decision of the Competent Authority to gather and exchange information with a partner jurisdiction. Maltese authorities explained that appeals are possible under the administrative law, wherein the Court will determine whether the MTCA acted beyond the scope of its authority when requesting such documentation. No court proceedings of this kind have occurred to date.

356. 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.

357. Malta indicated that the exceptions to the application of the notification requirements were applied routinely during the current period under review. 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.

358. The conclusions remain as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Malta are compatible with effective exchange of information.

78. See also paragraph 239 of the 2020 Report, in turn referring to paragraphs 282 of 2013 Report.

Practical Implementation of the Standard: Compliant

The application of the rights and safeguards in Malta is compatible with effective exchange of information.

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

359. Rights and safeguards in place, including notification requirements with exceptions in specific cases, do not unduly delay or impede exchange of information in Malta. Malta has rights and safeguards provisions in the Co-operation Regulations, including a notification requirement.

360. Upon receipt of a valid EOI request, the Competent Authority in Malta must notify the person (or his/her authorised representative) that such person is the subject of an EOI request (Reg. 7(1) of the Co-operation Regulations). The notification has to be made regardless of whether the MTCA is already in possession of the requested information and, according to the EOI Manual, it has to take place within 14 days from receipt of the request.

361. 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.

362. As a matter of practice, even though this is not required pursuant to the Co-operation Regulations, the MTCA informs also the person concerning whom the request is made about the identity of the requesting jurisdiction (in this connection, see also paragraph 409).

363. Exceptions to the notification are foreseen, 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 (Reg. 7(1)). The requirement of notification and the exceptions to it are mentioned by Malta in the Global Forum Competent Authorities secure database (see also paragraph 437).

364. During the period under review, Malta applied the exception to the notification requirement in 125 instances, either at the request of the partner jurisdiction (65 cases) or at the initiative of the MTCA (60 cases), for instance when the individual concerned was not known to the MTCA.

365. The application of the exception to the notification requirement does not affect the type and extent of information disclosed to the third-party information holder, as outlined in paragraph 361. Moreover, there is no anti-tipping off provision for EOIR purposes that would prevent the third-party information holder to inform the person subject to an EOI request about the existence of such request, including in cases where an exception to the notification was requested by the requesting jurisdiction. On the other hand, the peers did not raise any concern regarding the application of the notification requirement and the related exceptions in Malta, and Maltese authorities are not aware of any instances where tipping off has occurred. Therefore, the details disclosed to the information holder do not appear to have impeded effective EOIR. In any case, Malta should monitor that the person subject to an EOI request is not unduly notified by the third-party information holder (see Annex 1).

366. 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. During the period under review, taxpayers and information holders who were requested to provide information to respond to an EOI request have not disputed the obligations to keep and provide the information (see paragraph 347). However, should there be a challenge in court regarding the imposition of penalties under the law, the taxpayer or information holder would be able to obtain an effective judicial remedy.

Part C: Exchange of information

367. 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 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.

368. Malta has a broad network of EOI agreements, which increased from 143 partners in 2020 to 151 partners as of December 2023, thanks to new jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). No new bilateral EOI agreement has been concluded by Malta since the 2020 Report.

369. The network includes 145 partners for which the relationship is in force and EOIR can take place. As of 30 June 2023, Malta has signed 81 DTCs and 4 TIEAs (of which 3 DTCs are not in force). In addition, Malta is a Party to the Multilateral Convention, which entered into force in Malta on 1 September 2013. Malta has also transposed the EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (as in force, the DAC) that provides for EOI among EU Member States.

370. The network of EOI instruments of Malta meets the standard. In particular, while a few DTCs do not fully meet the standard, most of the concerned treaty partners are parties to the Multilateral Convention and its application addresses any such gaps. The limitations identified under Element B.1 on the ability to gather information when the foreign criminal tax matter in an EOI request relates to the person who is also the information-holder in Malta, may impede Malta's ability to respond to an EOI request concerning criminal tax matters.

371. Apart from this consideration, which has not manifested in practice, Malta has continued to apply its EOI agreements in accordance with the standard. No concerns were reported by peers.

372. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/ Underlying factor	Recommendations
When the criminal tax matter in a request for information relates to the person who is also the information-holder in Malta, Malta would not be able to access the information from such person and thus exchange it with the requesting partner jurisdiction. The issue has not occurred in practice.	Malta is recommended to enable exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought.

Practical Implementation of the Standard: Compliant

No issues have been identified that would affect EOIR in practice.

Other forms of exchange of information

373. Besides EOIR, Malta carries out with other EU Member States and relevant EOI partners spontaneous exchange of information, automatic exchange of financial account information (Common Reporting Standard) since 2017, of cross-border tax rulings and advance pricing arrangements since 2017, and of the Country-by-Country reports since 2018.

C.1.1. Standard of foreseeable relevance

374. Malta's EOI agreements concluded after 2012 use the term "foreseeably relevant" in relation to information to be exchanged, whereas those concluded before use the terms "necessary" or "as may be relevant". The Commentary on Article 26 of the OECD Model DTC considers that the terms "necessary" or "relevant" have the same meaning for EOI purposes as the expression "foreseeably relevant". Malta indicated it interprets its DTCs in accordance with the Commentary and therefore, these DTCs may be recognised as conforming to the standard with regard to foreseeable relevance.

Clarifications and foreseeable relevance in practice

375. In applying the standard of foreseeable relevance, Malta expects that the requested information be clear and specific and that the request

allows a definite assessment of the pertinence of the information requested to the ongoing investigation in the requesting jurisdiction.

376. In practice, Malta interprets the standard of foreseeable relevance widely and with "substance over form" approach. Therefore, a lack of foreseeable relevance does not arise, for example, in situations where names are spelt differently or information on names and addresses is presented using a different format. Similarly, a request is considered foreseeably 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. in case of a request regarding a bank account).

377. Clarifications were sought for 35 cases during the period under review (see also paragraph 442), 11 of which related to the foreseeable relevance of the information requested, including on the foreseeable relevance of specific questions within an EOI request. In all the cases where clarification was sought in relation to foreseeable relevance, the information requested was subsequently provided. Malta has not declined any requests for information on the basis that they were not foreseeably relevant (see paragraph 434), which is also supported by input received from peers (in some cases, this involved a limitation on the scope of the information covered by the request and provided by Malta).

Group requests

378. Malta confirmed that none of Malta's EOI mechanisms exclude the possibility of receiving group requests. The Co-operation Regulations provide a definition of group request in line with the standard (Reg. 2),[79] and specify that effective co-operation with other jurisdictions ensured by the regulations includes EOIR relating to group requests (Reg. 3). For group requests from EU Member States, to substantiate the foreseeable relevance of the request the requesting authority is required to provide at least the following information to the Maltese competent authority (Reg. 12, as per Article 5a(3) of the DAC):

- a detailed description of the group
- an explanation of the applicable law and of the facts based on which there is reason to believe that the taxpayers in the group have not complied with the applicable law

79. a request for information on a group of taxpayers, without naming such persons individually: provided that such request does not constitute a fishing expedition, that is to say the request is not in the form of a speculative request that has no apparent nexus to an open inquiry or investigation.

- an explanation on how the requested information would assist in determining compliance by the taxpayers in the group
- where relevant, facts and circumstances related to the involvement of a third party that actively contributed to the potential non-compliance of the taxpayers in the group with the applicable law.

379. These requirements are also covered in the EOIR Manual (see paragraph 445), that does not differentiate between requests from EU Member States and from other partner jurisdictions. Maltese authorities confirmed that, in practice, no such differentiation would be made when analysing the foreseeable relevance of an incoming group request.

380. The representatives of the banking sector interviewed during the onsite visit confirmed that their banks would consider legitimate and respond to a request for banking information from the MTCA pursuant to the Co-operation Regulations even if the account holders would not be individually identified in the request, to the extent that they would be able to identify them based on the information included in the request.

381. During the current period under review, Malta has not received any group requests.

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

382. All of Malta's EOI relationship allow for the exchange of information in respect of all persons.

383. Malta indicated that no issues have arisen in practice in providing information on subjects that were not nationals or resident in either of the jurisdictions. No peer reported any issue in this respect.

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

384. All but three 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. In particular, DTCs not complemented by the Multilateral Convention (with Egypt, Libya and Syria) do not include provisions similar to paragraphs 4 and 5 to the OECD Model DTC. The absence of such 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. The EOIR peer review of Egypt established that its domestic laws (after the changes occurred in December 2022) allow the Egyptian Competent Authority to access and exchange banking information and that Egypt does not interpret its treaties to require

domestic tax interest. Since it is unknown whether the same applies to Libya and Syria (because they are not members of the Global Forum, have not been reviewed and no requests for information were sent that might shed light on this aspect), Malta should ensure these EOI relationships meet the standard (see Annex 1).

385. During the current period under review, Malta received 122 EOI requests in respect of persons who were not taxpayers in Malta and Malta had no domestic tax interest in obtaining the information. These requests related to banking information, information on gains from crypto-currency accounts and on gains from gaming companies. In all such cases, the information was gathered from the respective information holder and provided to the requesting jurisdiction.

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

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

387. In practice, the processes for gathering and exchanging information are generally the same when a request relates to a civil tax matter or a criminal tax matter (see paragraphs 448-452). However, the limitations identified under Element B.1 (see paragraphs 341-343), when the foreign criminal tax matter in an EOI request relates to the person who is also the information-holder in Malta, may impede Malta's ability to respond to an EOI request concerning criminal tax matters. **Malta is recommended to enable access and exchange of information in line with the standard in case of requests on criminal tax matters concerning the person in Malta from whom information is sought**.

388. Malta has provided information in response to EOI requests for both civil and criminal tax matters during the review period. No issues have been raised from peers in this regard.

C.1.7. Provide information in specific form requested

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

390. Malta confirmed that they have provided information in a specific form when requested in the current period under review, which was confirmed by the input from peers.

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

391. All of Malta's bilateral EOI agreements are currently in force except for three DTCs concluded respectively with Curacao, Ethiopia and Ghana. For all of these agreements, Malta completed its domestic procedures and is awaiting the notification from the respective counterpart. Malta can exchange information with Curacao and Ghana pursuant to the Multilateral Convention. Since the 2020 Report, the DTC with Armenia (signed in September 2019) has been brought into force in November 2021.

392. Malta has a legal and regulatory framework in place to give effect to its EOI agreements. Pursuant to the Income Tax Act (Article 76(4)), the Minister for Finance and Employment may make rules for carrying out the provisions of the EOI agreements. The Co-operation Regulations incorporated relevant implementation measures of the DAC as well as other measures to implement the EOI agreements signed by Malta with other partners.

393. There have been no changes to the procedures for ratifying EOI agreements in Malta since the previous EOIR peer reviews: subsequent to signature, the agreement is translated into Maltese, and it is published in the Government Gazette. After publishing, a period of 28 days is foreseen for comments or objections to be raised, after which the partner is notified through diplomatic channels that the domestic procedures have been concluded in Malta. The whole process is completed between 6 months and 1 year.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**151**
In force	145
In line with the standard	143
Not in line with the standard	2[a]
Signed but not in force	6[b]
In line with the standard	6
Not in line with the standard	-
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	**5**[c]
In force	4
In line with the standard	2
Not in line with the standard	2[a]
Signed but not in force	1[d]
In line with the standard	1
Not in line with the standard	-

Notes: a. With Libya and Syria.

b. The DTC with Ethiopia has not yet entered into force. Also, the Multilateral

Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Philippines, and Togo.

c. With Egypt, Ethiopia, Kosovo,* Libya and Syria.

d. with Ethiopia.

* 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.

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

394. Malta has a large treaty network of 151 jurisdictions, including 145 for which the relationship is in force and exchange of information can take place. The network covers all regional partners, EU Member States and its main trading partners. Malta is a party to the Multilateral Convention.

395. No new bilateral EOI agreement has been concluded by Malta since the 2020 Report.

396. No Global Forum members indicated, in the preparation of this report, 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).

397. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Malta covers all relevant partners.

Practical Implementation of the Standard: Compliant

The network of information exchange mechanisms of Malta covers all relevant partners.

C.3. Confidentiality

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

398. Malta's legal framework and EOI practice with respect to confidentiality have not changed since the 2020 Report. All agreements signed by Malta contain confidentiality provisions that require that the information exchanged be treated as secret and disclosed only to persons authorised by the agreements.

399. The confidentiality requirements continue to be applied. In practice, the Maltese Competent Authority has not experienced cases of breach of confidentiality, and peers have not raised any concerns in this regard.

400. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Malta concerning confidentiality.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified and the confidentiality of information exchanged is effective.

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

401. 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 their duties under the Act, except for implementing the tax act, prosecution of a tax offence or exchange of information (Article 14(3) of the Income Tax Management Act).[80] These exceptions conform to the standard.

402. 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, to imprisonment up to 6 months, or to both (Article 53 of the Income Tax Management Act). Furthermore, the obligation of a person employed in the administration of taxes to maintain secrecy continues even after the end of the employment relationship.

80. See also paragraph 338 of the 2013 Report.

403. 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 EOIR 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 cases wherein 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. However, this circumstance is covered in the EOIR Manual (see paragraph 445), which indicates that information obtained throughout the EOIR process may be used for non-tax purposes, provided that it meets the conditions set out in the respective EOIR agreement, and in such instances the Foreign Competent Authority needs to be duly notified and respective permissions obtained. Maltese authorities have explained that they would grant an authorisation to a partner jurisdiction if it aligns with the possibility of using tax information for the same purposes in Malta. Similarly, if Malta intends to use EOIR information for purposes other than tax purposes, it would seek permission from the partner jurisdictions, providing detailed information on the intended purpose and to whom information would be forwarded.

Confidentiality in practice

404. The handling and management of EOI requests and processes are entrusted to the delegated Competent Authority (see paragraph 329) and to the EOI Team she directs (see paragraph 439 et seq.). The office of the EOI Team has been relocated in January 2020 in new premises, in the same building where the MBR is headquartered. The building is under surveillance and the offices can only be accessed upon identification. The office of the EOI Team is situated is an open space shared with other teams of the MTCA, but not open to the public or to visitors. While this can raise questions about disclosure of EOIR information to officials who are not in the EOI Team, some safeguards are in place to avoid any such occurrence. In particular, the MTCA adopts a clean desk policy in the office. While EOIR-related documents are nowadays mainly in digital form, the existing physical documents, including working printouts of EOIR requests, are physically stored in locked cabinets in the office of the EOI Team. When members of the EOI Team are working on EOIR, the only documents that are taken out of locked cabinets are those that the officer needs for working on a particular request and these are stored in locked cabinets at the end of the day. Once the case is closed, the information is archived in a secured archive accessible from the office. EOI information is archived in a separated, locked area within the archive. Finally, when EOI Team members wish to discuss a particular case, they have closed meeting rooms available.

405. The EOI Team has exclusive access to the correspondence with foreign competent authorities, done through EU Common Communication Network (CCN) with EU Member States and by secure encrypted email with non-EU partner jurisdictions. Registered postal mail is still sometimes used, in particular when sending voluminous data and numerous attachments. In such a case, replies and attachments are sent through an encrypted USB flash drive enclosed in the mail. In communications with foreign competent authorities, only limited and non-confidential information, such as the reference number of the request, is included in a letter or in the body of an email. All confidential information is contained in the encrypted attachments, whose password is provided to the requesting competent authority upon acknowledgement of receipt of the response email/mail.

406. Malta confirmed that communications related to EOIR received from foreign competent authorities are never disclosed to third parties outside of the MTCA. Information from EOIR is also excluded from access pursuant to Freedom of Information due to the secrecy provisions in Article 4 of the Income Tax Management Act.[81]

407. Tax auditors of the Compliance and Investigation Directorate (CID) of the MTCA are involved in the gathering of information to answer incoming requests (see paragraph 451), or in outgoing requests sent by the EOI Team and the responses thence received (see paragraph 459). They are subject to the same confidentiality requirements as the EOI Team. In this case, the documents are shared through a shared folder between a member of the EOI Team and two tax auditors that act as co-ordinators in relation to EOIR, who in turn make these documents available with another shared folder to the relevant auditor working on the case.

408. EOI correspondence from and to foreign Competent Authorities, including any attachment, is treaty-stamped on every page in case of physical documents. However, as reported in paragraph 405, physical documents are no longer the primary method for exchanging information. There is no tax-treaty labelling for documents and information sent and received by Malta in digital format. The Maltese competent authority's letters and the electronic forms used for EOIR with other EU countries (but not the documents attached thereto) include an indication about the legal basis for the exchange and the limitation of the use of information. Moreover, the operational processes limit the risks of any breach of confidentiality obligations for information in incoming requests, as only auditors that are acquainted with EOI are generally involved in the information gathering process. Malta should in any case ensure that in practice, all information and documents

81. As also explained on the website of the MTCA: https://cfr.gov.mt/en/cfr/Pages/Freedom-of-Information.aspx (accessed on 20 November 2023).

obtained from EOIR exchange partners are clearly identified as subject to confidentiality provisions under the EOI Instrument (see Annex 1).

409. As seen under Element B.2 (paragraph 360), a notification procedure exists in Malta whereby the "person concerning whom the request is made" has to be informed that the EOI request has been received (Reg. 7(1) of the Co-operation Regulations). As a matter of practice, this person is also informed about the identity of the requesting jurisdiction, even though this is not specified in the Co-operation Regulations. Malta should not disclose to the person concerning whom the request is made information that is not required for the purposes of the notification (see Annex 1).

410. Digital information covered by confidentiality is stored on a network which is only accessible from the office premises. In particular, EOI information is kept in a dedicated area of the IT system, which can only be accessed by the EOI Team. Following formal approval by the Maltese Competent Authority, specific access rights are granted to members of the EOI Team.

411. In terms of the hiring process of the MTCA (including for the EOI Team), various matters are taken into consideration, including experience and academic qualifications, proper conduct, feedback from their superiors and colleagues.[82] New officers joining the EOI Team receive 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. When an employee terminates their employment with the MTCA, their email account is closed.

412. The information technology infrastructure and systems are operated centrally by the Malta Information Technology Agency (MITA), with a general policy on security for all the public administration (including the MTCA).[83] This includes a Security Incident Management Procedure, which applies to any identified security incident that may affect the services offered, and/or data and information held by Maltese public administrations (including EOI data held by the MTCA). A special unit (Security Operations Centre) of the MITA deals with all the related incidents as such.

413. Malta confirmed that the office of MTCA has not experienced any incidents where security policies were violated, and in particular there have been no cases where information received from an EOIR partner has been improperly disclosed. In the event this would happen in the future, an investigation within the MTCA would be conducted through an ad hoc board specifically set up for this purpose, whose remit also includes the issuing of

82. See also paragraph 340 of the 2013 Report.
83. https://mita.gov.mt/wp-content/uploads/2020/07/GMICT_P_0016_Information_Security.pdf (link checked on 6 July 2023).

recommendations for minimising the repercussions of an incident and the avoidance of such in the future. Malta advised that a breach of confidentiality rules also constitutes a criminal offence and the case would be handed over to the police for criminal investigation.

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.

414. The 2020 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 of the legal framework in this regard.

415. All of Malta's EOI agreements contain a provision equivalent to Article 26(3) of the OECD Model DTC or to Article 7 of the OECD Model TIEA requiring the rights and safeguards of taxpayers and third parties be respected. In addition, the Co-operation Regulations require 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 (Reg. 5(1) see paragraph 353).

416. During the period under review, Malta received two EOI requests from a peer that were requesting, among other things, the minutes of the board of directors' meetings of the companies, in order to determine their residence for tax purposes (place of effective management). While the information requested was provided for the most part, in relation to the minutes of the board of directors meeting, the companies informed the Maltese Competent Authority that all the information contained therein was confidential and therefore they could not be provided. The Competent Authority considered the response provided by the companies and concluded that, given the reported commercial secrecy, no further action could be taken in these two instances, and communicated to the peer that such documents could not be provided. In these instances, it seems that the Maltese Competent Authority did not conduct an independent assessment to determine whether such documents were confidential and whether they were entirely confidential. Instead, it relied solely on the taxpayer's assertions.

417. The Commentary to Article 26 of the OECD Model DTC provides that before invoking the treaty provision about secrecy, a jurisdiction should carefully weigh if the interests of the taxpayer really justify its application (paragraph 19). Otherwise, the Commentary notes, an overly broad interpretation would in many cases render ineffective the EOI. Additionally, the

Commentary considers that a trade or business secret is generally understood to mean facts and circumstances that are of considerable economic importance and that can be exploited practically and the unauthorised use of which may lead to serious damage, and that in most EOI cases no issue of trade, business or other secret will arise. **Malta is recommended to ensure that the instances where the application of the provisions safeguarding trade, business, industrial, or commercial secret invoked by the taxpayer are carefully weighed to ensure effective EOI**.

418. Beside the cases above, the Maltese Competent Authority indicated that it has not encountered to date any other practical difficulties in responding to EOI requests due to the application of rights and safeguards or attorney-client privilege.

419. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Malta in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: Compliant

Deficiencies identified/Underlying factor	Recommendations
During the period under review, Malta received two requests concerning the minutes of the board of directors' meetings of the companies and indicating their foreseeable relevance for such documents. The information was requested to the companies, that responded that all the information contained in the minutes of the board of directors meeting was confidential and therefore could not be provided. The Maltese Competent Authority did not conduct an independent assessment to determine whether such documents were confidential, solely relying on the taxpayer's assertions, and informed the requesting jurisdiction that such documents could not be provided.	Malta is recommended to ensure that the instances where the application of the provisions safeguarding trade, business, industrial, or commercial secret invoked by the taxpayer are carefully weighed to ensure effective exchange of information.

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.

420. The 2020 Report found that the Maltese competent authority faced challenges in timely handling incoming requests due to resource limitations.

As a result, the deadlines specified in regulations and guidance were not implemented effectively. Additionally, it was noted that Malta should have consistently provided status updates to its EOIR partners when unable to provide substantive responses within 90 days. Malta was recommended to ensure the availability of sufficient staff and resources, as well as effective processes, to enable timely responses to EOI requests. As a result, Malta was rated Partially Compliant with the standard on Element C.5.

421. These recommendations have been partly addressed during the current period under review (1 July 2019 to 30 June 2022) through changes in the information-gathering processes and an improved response time. The recommendations thus remain, but improvements have been made to allow an upgrade of the rating of this Element to Largely Compliant.

422. Malta has received 606 EOI requests during the period under review, an increase of 24% since the review period considered in the 2020 Report (covering requests received from 1 April 2016 to 31 March 2019). Malta also sent 14 EOI requests to partner jurisdictions. The quality of the requests was generally good and clarifications, in the limited cases where partner jurisdictions requested some, were provided in an effective manner.

423. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Malta has not been able to fully respond to incoming EOI requests in a timely manner in several cases during the period under review, as the deadlines specified in regulations and guidance were not effectively implemented and there was a 14% of partial or total failures to provide the information requested.	Malta is recommended to monitor and adjust where needed the processes in place to ensure that all EOI requests are fully responded to in a timely manner.
During the period under review, Malta did not always provide an update on the status of the request to its EOI partners within 90 days when it was unable to provide the information requested within that timeframe.	Malta is recommended to always provide status updates to its EOI partners within 90 days where the information requested cannot be provided within that timeframe.

C.5.1. Timeliness of responses to requests for information

424. In the three-year period under review (from 1 July 2019 to 30 June 2022), Malta received 606 EOI requests, representing a 24% increase from review period covered in the 2020 Report (486 requests) and a 647% increase from the review period covered in the 2013 Report (81 requests).

425. The main EOIR partners of Malta, in terms of number of EOI requests, were France, Greece, India, Portugal and Poland. In general, the majority of the EOI requests were received from other EU Member States. EOI requests received by Malta cover ownership information, including beneficial ownership information (266 requests), accounting records (289 requests, see paragraph 294), banking information (319 requests, see paragraph 324) and other types of information, in relation to companies, partnerships, trusts and individuals.

426. The following table relates to the EOI 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 and other relevant factors

		From 1/07/2019 to 30/06/2020		From 1/07/2020 to 30/06/2021		From 1/07/2021 to 30/06/2022		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	224	100	183	100	199	100	606	100
Full response: ≤90 days		28	13	67	37	124	62	219	36
≤180 days (cumulative)		50	22	134	73	130	65	314	52
≤1 year (cumulative)	[A]	63	28	150	82	180	90	393	65
>1 year [B]		100	45	9	5	5	3	114	19
Declined for valid reasons		2	1	0	0	0	0	2	0
Requests withdrawn by requesting jurisdiction	[C]	7	3	1	1	2	1	10	2
Failure to obtain and provide information requested	[D]	51	23	23	13	8	4	82	14
Requests still pending at date of review	[E]	3	1	0	0	4	2	7	1
Outstanding cases after 90 days		196		116		75		387	
Of these, status update provided within 90 days		52	27	96	83	70	93	218	56

Notes: Malta counts each written request from an EOI partner as one request, regardless of the types or pieces of information requested. In case a request involves more than one taxpayer, Malta counts the request for information regarding each taxpayer as one request.

The time periods in this table are counted from the date of receipt of the request to the date on which a full response was issued.

427. On a total of 606 EOI requests received during the period under review, 36% were answered within 90 days (compared to 15% in the previous review), 52% were answered within 180 days (37% in the previous review) and 65% were answered within one year (62% in the previous review). Finally, 19% of the EOI requests were answered in more than one year (20% in the previous review) and 1% were still pending at the time of writing. The time taken to answer EOI requests has globally improved compared to the previous review period, and also within the current review period, if years are taken separately. The longest response times taking place for requests received in 2019, possibly due to the time needed for the competent authority and the information holders to adapt to the COVID-19 pandemic.

428. For 82 requests (or 14% of the total), a full response could not be provided to the requesting jurisdiction. These involved cases where beneficial ownership information, accounting records or banking information could not be gathered from the taxpayer or information holder (9, 59 and 23 cases respectively, see paragraphs 167, 294 and 324). In most of these cases (81), Malta gave a partial response to the requesting jurisdiction with information that was directly accessible to the MTCA.

429. There are also seven requests (or 1%) that were pending at the time of writing. Malta indicated that the requests pending were mostly received towards the end of the review period, but three of them have been received since more than three years.

430. Some peers expressed concerns about having received only partial responses as well as with delays in receiving responses from the Maltese Competent Authority.

431. Malta advised that, for some cases, they experienced difficulties in getting in contact with the relevant persons that could have provided the information, or the intermediaries had lost contact with the taxpayers, and this made the information-gathering process lengthier.

432. Malta also indicated that some EOI requests take longer to fully answer when they are complicated and/or voluminous. For instance some requests related to information that went beyond the five-year retention period of the information holder. In cases of inactive companies that could not be contacted, the Competent Authority looked for alternative sources of information where possible (tax representative, banks, register of real estate properties), before sending negative answers (see also below).

433. Malta advised that clarifications on incoming EOI requests were sought in 35 cases, or around 6% of cases. These include cases where insufficient or incorrect details to identify the taxpayers were provided, or attachments were missing.

434. Two requests were declined during the review period. One request was declined by Malta due to a language issue, as it was not written in English and no English translation was provided within a given timeframe by the requesting jurisdiction. It is observed that the standard does not mandate EOI requests to be written in or translated into a specific language, and the language in which a request is made should be subject to bilateral communication in case of doubt. The Maltese Competent Authority indicated it shares this observation and indicated that there were cases (outside of the period under review) in which it received EOI requests in languages other than Maltese or English that were translated by the MTCA. In the case at issue, Malta indicated that the request was subsequently resubmitted in English by the exchange partner and positively responded to. Another request was declined after the requesting jurisdiction had confirmed that the request was not intended for Malta but for another jurisdiction.

435. To sum up, the response time by the Maltese Competent Authority has overall improved if compared with the previous review period, even considering the 24% increase in the number of incoming requests. The Maltese Competent Authority has also indicated, in qualitative terms, that the overall complexity of the incoming request has increased over time. This reflects an increased efficiency, if compared to the figures and circumstances reflected in the 2020 Report. There is however still scope for improvement, and the timeliness of responses is still too low to be considered as fully compliant with the standard, especially considering that only slightly more than half of the requests are responded within six months. **Malta is recommended to monitor and adjust where needed the processes in place to ensure that all EOI requests are answered in a timely manner**.

Status updates and communication with partners

436. The 2013 and 2020 Reports observed 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. This recommendation has still not been fully addressed during the current period under review, as status updates to partners were provided in 56% of the cases, in many cases together with a partial response to the request. **Malta is still recommended to always provide status updates to its EOI partners within 90 days where the requested information cannot be provided within that timeframe**.

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

437. The (delegated) Competent Authority (see paragraph 329) is a designated Chief Tax Officer within the MTCA, who is the head of the EOI Team and the point of contact for foreign administrations wishing to request information from Maltese tax authorities. Information that identifies the Competent Authority officials for EOIR purposes is available on the Global Forum Competent Authorities secure database.

438. Exchange between the Maltese Competent Authority and partner jurisdictions for EOIR purposes take place mainly through the CCN (see paragraph 405) in case of other EU Member States and by secure e-mail or registered mail in the case of non-EU partners.

Resources and training

439. The 2020 Report considered Malta's difficulties in responding to EOI requests in a timely manner as mainly an issue of staffing, and recommended Malta to ensure that there be always sufficient staff and resources available to handle EOI requests and that the deadline be effectively implemented in practice. While the overall number of human resources in the EOI Team (ten) within the International and Corporate Tax Unit of the MTCA has not changed since 2020, Malta has introduced some organisational changes to gather and provide information in a timelier fashion.

440. The ten officials in the EOI Team are: the delegated Competent Authority; a senior manager; a senior analyst; a legal analyst; three analysts; two junior analysts; and a supporting administrative staff member. The majority of the team staff has legal or accounting education background. New officers joining the EOI Team do not undergo a formal training programme in respect of EOI, but they do receive an on-the-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.

441. The EOI Team works on all EOI-related matters, including EOI for the purposes of the Value Added Tax, the implementation of the Common Reporting Standard, the Country-by-Country reporting, and the Mandatory Disclosure Rules (see paragraph 373). The EOI Team is also responsible to ensure the compliance monitoring foreseen in Reg. 4a of the Co-operation Regulations (see paragraph 92 et seq.).

442. While in the past each official within the EOI Unit used to deal with an EOI request from the beginning to the end, since 2021 a specialisation of processes/tasks has been implemented. Two officials deal with the correspondence with foreign competent authorities (Central Liaison Office

Responsibilities), two take care of the centralised office duties (receive and register requests), three check the validity of incoming requests (including on foreseeable relevance), prepare partial responses and are in communication with the CID tax auditors (see below) for the gathering of the remainder of the information, and one provides general administrative support. The delegated Competent Authority and the senior manager co-ordinate the work.

443. Since 2021, the EOI Team relies on two dedicated tax auditors from the Compliance and Investigation Directorate (CID) of the MTCA to collect information that is not directly available to the EOI Team. Maltese authorities observed that, in addition to the changes in the legal requirements (see paragraph 335), this change of interface *vis-a-vis* the taxpayers/information holders might also expedite the provision of information. The EOI Team (or the auditors from the CID) may also request legal advice from the Legal and Technical Unit within the MTCA and the Maltese Attorney General Office.

444. The EOI Team, as well as the CID, have relocated in January 2020 to new premises (see paragraph 404), which has addressed the shortage of physical space, as noted in the 2020 Report.[84]

445. The EOI Team uses an internal EOIR Manual, which outlines the procedures within the Team for processing outgoing and incoming EOI requests. The EOIR Manual elucidates the requirements specified in the Co-operation Regulations and serves as a reference document, even though its provisions as such are not mandatory.

446. The EOI Team has currently sufficient resources to carry out effective EOIR, also considering the contribution now provided by CID's tax auditors in the gathering of information.

447. However, the EOI Team has also additional tasks and responsibilities, such as carrying on the compliance monitoring foreseen in Reg. 4a of the Co-operation Regulations (see paragraphs 92 and 439). A jurisdiction should holistically consider the overall tasks and the human resources allocated to the team carrying out the EOIR functions. In Malta, the efforts dedicated to improving the timeliness of responses to EOI request has led to some progress, but as observed in parts A.1 and A.2 of this Report, insufficient supervision and enforcement was made to ensure that the provisions of the Co-operation Regulations related with the availability of information are complied with in practice (see, among others, paragraphs 98, 164 and 290).

84. See paragraph 304 of the 2020 Report, whereby Malta observed that among the reasons that may have caused delays in responding the EOI requests there was the limited working space for the EOI Team, that did not allow to hire more staff and expand the team.

Incoming requests

Competent Authority's handling of the request

448. When an EOI request is received by the Competent Authority, through either CCN, encrypted email or regular mail, the case is assigned to a member of the EOI Team. The case is given a reference number and then details of communications are entered into the EOI database. All cases are entered into the database.

449. The EOI request is then screened to verify that it meets all the relevant requisites and presents no deficiencies (e.g. lack of signature by an authorised foreign Competent Authority). The requirement of foreseeable relevance is specifically checked, as well as the circumstance that all domestic means were used in the requesting jurisdiction before an EOI request was sent to Malta. The EOI Team also considers whether there are grounds for declining the requests, e.g. information requested is protected by the attorney client privilege. Where there are grounds to decline a request, the Competent Authority would engage with the EOI partner and seek clarification before formally declining the request (see paragraph 434).

450. Where all the information requested is readily available to the Competent Authority, a (full or partial) response must be sent to the foreign Competent Authority within two months (Reg. 9(2) of the Co-operation Regulation). 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 MTCA. The team also has access to the Registry of Companies database for information regarding companies, partnerships and foreign companies which have established a branch or a fixed place of business in Malta; to the database on beneficial ownership maintained by the MBR; to the TUBOR maintained by the MFSA, to the CBAR maintained by the FIAU and to the databases maintained by the Identity Malta Agency for public deeds and acts of civil status on individuals (see paragraph 331 above).

451. As seen above (paragraph 443), for information that is not directly available to the EOI Team, two tax auditors of the CID are involved in its gathering. The tax auditors of the CID may have this information directly available to them (in resources that are specific to the tax audit functions within the MTCA) or may ask it to another department within the MTCA, which is also informed of the deadlines to meet. If the information is available to another government authority, a taxpayer or a third-party information holder, the tax auditors would send them a letter by registered postal mail. By virtue of article 10A of the Income Tax Management Act, the recipient is given 20 days to reply. By way of internal policy, an extension may be granted if this is reasonably justified. While, at the initial period of their

involvement in 2021 the tax auditors used to wait that all the information was gathered before providing a reply to the EOI Unit, now they tend to provide information as it comes, in order to allow the EOI Unit to send partial responses to the requesting jurisdiction.

452. Malta indicated that the same processes are applied where a request for information relates to a criminal investigation (see paragraph 387).

Verification of the information gathered

453. When a reply is received from the tax auditors, the EOI Team verifies its content against the EOI request to ensure that the reply is complete and satisfactory.

454. If no information or only part of the information is provided by the information holder, the person may be subject to penalties, which are applied directly by the EOI Team. 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 so far by the EOI Team (see section B.1.4 above).

455. If the information is considered accurate and complete, the tax auditors of the CID provide an acknowledgement to the information holder to provide legal certainty on the termination of its obligation to provide information in the concerned EOI case.

456. Once all the information has been received, a final response is sent to the requesting authority by the Competent Authority.

457. In conclusion, Malta has currently 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, considering that there is still need for improvement in terms of timeliness of responses and that the workload of the staff involved in EOIR also includes several other tasks (see paragraphs 435 and 447), **Malta is recommended to monitor and adjust where needed the processes in place to ensure that all EOI requests are answered in a timely manner**.

Outgoing requests

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

459. In Malta, the EOI Team is also responsible for outgoing requests. The CID may require information outside Malta in undertaking its duties, in

which case it requests the EOI Team to obtain such information from partner jurisdictions. When receiving such a request, the EOI Team will conduct an assessment and if all related criteria are met, an EOI request will be send out the partner jurisdiction. For EOI with EU Member States, a standard EU Central Application is used, while for other non-EU countries, the standard form template developed by the OECD is used as guidance, and the Maltese Competent Authority will check if a particular form is required by the related foreign Competent Authority.

460. 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.

461. During the current period under review, Malta sent 14 requests, and received 11 requests for clarifications (on complex requests, opportunity to use a different legal basis, and/or on general procedural aspects). There is no particular procedure adopted in Malta in providing clarifications, but Malta confirmed that efforts are made to respond to requests for clarification as quickly as possible.

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

462. 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.

- **Elements A.1.1, A.1.3 and A.2:** Malta should ensure that the legal ownership information and the accounting records filed with the MBR are maintained for a minimum of five years after the date on which the company or partnership is dissolved or otherwise ceases to exist (see paragraphs 57, 174 and 279).
- **Element A.1.3**: Malta should clarify its guidance and monitor the application in practice of the method for identification of beneficial owners for partnerships (see paragraph 185).
- **Element A.1.3**: Malta should ensure that the beneficial owners of relevant foreign partnerships are identified in accordance with the form and structure of each partnership in practice (see paragraph 189).
- **Elements A.1.4 and A.3**: Malta should resolve the contradiction in the FIAU Implementing Procedures relating to the identification of beneficial owners of trusts and similar legal arrangements (see paragraphs 208 and 308).
- **Elements A.1.4 and A.3:** Malta should ensure that all beneficial owners of trusts are identified, also in the case of presence of foreign professional trustees (see paragraphs 209 and 308).
- **Element A.1.5**: Malta should monitor the implementation of the Guidelines to the Co-operation Regulations in relation to the identification of beneficial owners for foundations and ensure their effectiveness in practice (see paragraph 249).

- **Element B.2**: Malta should monitor that the person subject to an EOI request is not unduly notified by the third-party information holder (see paragraph 365).
- **Elements C.1.3 and C.1.4**: Malta should ensure its EOI relationships with Libya and Syria meet the standard (see paragraph 384).
- **Element C.2**: Malta should continue to conclude EOI agreements with any new relevant partner who would so require (see paragraph 396).
- **Element C.3**: Malta should ensure that in practice, all information and documents obtained from EOIR exchange partners are clearly identified as subject to confidentiality provisions under the EOI Instrument (see paragraph 408).
- **Element C.3**: Malta should not disclose to the person concerning whom the request is made information that is not required for the purposes of the notification (see paragraph 409).

Annex 2. List of Malta's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Albania	DTC	02-May-00	23-Nov-00
2	Andorra	DTC	20-Sep-16	27-Sep-17
3	Armenia	DTC	24-Sep-19	25-Nov-2021
4	Australia	DTC	09-May-84	20-May-85
5	Austria	DTC	29-May-78	13-Jul-79
6	Azerbaijan	DTC	29-Apr-16	27-Dec-16
7	Bahamas	TIEA	18-Jan-12	30-Oct-12
8	Bahrain	DTC	12-Apr-10	28-Feb-12
9	Barbados	DTC	05-Dec-01	19-Jun-02
		DTC Protocol	25-Sep-13	30-Apr-14
10	Belgium	DTC	28-Jun-74	03-Jan-75
		DTC Protocol	19-Jan-10	31-Jul-17
11	Bermuda	TIEA	24-Nov-11	05-Nov-12
12	Botswana	DTC	02-Oct-17	13-Nov-18
13	Bulgaria	DTC	23-Jul-86	01-Jan-88
14	Cayman Islands	TIEA	25-Nov-13	01-Apr-14
15	Canada	DTC	25-Jul-86	20-May-87
16	China (People's Republic of)	DTC	23-Oct-10	25-Aug-11
17	Croatia	DTC	21-Oct-98	22-Aug-99
18	Curacao	DTC	18-Nov-15	Not in force (ratified by Malta)

	EOI partner	Type of agreement	Signature	Entry into force
19	Cyprus[85]	DTC	22-Oct-93	11-Aug-94
20	Czech Republic (Czechia)	DTC	21-Jun-96	06-Jun-97
21	Denmark	DTC	13-Jul-98	30-Dec-98
22	Egypt	DTC	20-Feb-99	07-Apr-01
23	Estonia	DTC	03-May-01	22-Jan-03
24	Ethiopia	DTC	12-Apr-18	Not in force (ratified by Malta)
25	Finland	DTC	30-Oct-00	30-Dec-01
26	France	DTC	25-Jul-77	01-Oct-79
		DTC Protocol	29-Aug-08	01-Jun-10
27	Georgia	DTC	23-Oct-09	30-Dec-09
28	Germany	DTC	08-Mar-01	27-Dec-01
		DTC Protocol	17-Jun-10	19-May-11
29	Ghana	DTC	26-Mar-19	Not in force (ratified by Malta)
30	Gibraltar	TIEA	24-Jan-12	01-Apr-12
31	Greece	DTC	13-Oct-06	30-Aug-08
32	Guernsey	DTC	12-Mar-12	10-Mar-13
33	Hong Kong (China)	DTC	08-Nov-11	18-Jul-12
34	Hungary	DTC	06-Aug-91	29-Nov-92
35	Iceland	DTC	23-Sep-04	19-Apr-06
36	India	DTC	08-Apr-13	07-Feb-14
		DTC	28-Sep-94	08-Feb-95
37	Ireland	DTC	14-Nov-08	15-Jan-09
38	Isle of Man	DTC	23-Oct-09	26-Feb-10

85. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

	EOI partner	Type of agreement	Signature	Entry into force
39	Israel	DTC	28-Jul-11	08-Dec-13
40	Italy	DTC	16-Jul-81	08-May-85
		DTC Protocol	13-Mar-09	24-Nov-10
41	Jersey	DTC	25-Jan-10	19-Jul-10
42	Jordan	DTC	16-Apr-09	13-Oct-10
43	Korea	DTC	25-Mar-97	21-Mar-98
44	Kosovo	DTC	06-Mar-19	20-Sep-19
45	Kuwait	DTC	24-Jul-02	19-Mar-04
46	Latvia	DTC	22-May-00	24-Oct-00
47	Lebanon	DTC	23-Feb-99	10-Feb-00
48	Libya	DTC	28-Dec-08	20-May-10
49	Liechtenstein	DTC	29-Sep-13	01-Jul-14
50	Lithuania	DTC	17-May-01	02-Feb-04
51	Luxembourg	DTC	29-Apr-94	14-Feb-96
		DTC Protocol	30-Nov-11	11-Jul-13
52	Malaysia	DTC	03-Oct-95	01-Sep-00
53	Mauritius	DTC	15-Oct-14	23-Apr-15
54	Mexico	DTC	17-Dec-12	09-Aug-14
55	Moldova	DTC	10-Apr-14	17-Jun-15
56	Monaco	DTC	27-Sep-18	16-May-19
57	Montenegro	DTC	04-Nov-08	23-Sep-09
58	Morocco	DTC	26-Oct-01	15-Jun-07
59	Netherlands	DTC	18-May-77	09-Nov-77
60	Norway	DTC	30-Mar-12	14-Feb-13
61	Pakistan	DTC	08-Oct-75	20-Dec-75
62	Poland	DTC	07-Jan-94	24-Nov-94
		DTC Protocol	06-Apr-11	22-Nov-11
63	Portugal	DTC	26-Jan-01	05-Apr-02
64	Qatar	DTC	26-Aug-09	09-Dec-09
65	Romania	DTC	30-Nov-95	16-Aug-96
66	Russian Federation	DTC	24-Apr-13	22-May-14
67	San Marino	DTC	03-May-05	19-Jul-05
		DTC Protocol	10-Sep-09	15-Feb-10
68	Saudi Arabia	DTC	04-Jan-12	01-Dec-12

	EOI partner	Type of agreement	Signature	Entry into force
69	Serbia	DTC	09-Sep-09	16-Jun-10
70	Singapore	DTC	21-Mar-06	29-Feb-08
		DTC Protocol	20-Nov-09	28-Jun-13
71	Slovak Republic	DTC	07-Sep-99	20-Aug-00
72	Slovenia	DTC	08-Oct-02	12-Jun-03
73	South Africa	DTC	16-May-97	12-Nov-97
		DTC Protocol	24-Aug-12	17-Dec-13
74	Spain	DTC	08-Nov-05	12-Sep-06
75	Sweden	DTC	09-Oct-95	03-Feb-96
76	Switzerland	DTC	25-Feb-11	06-Jul-12
77	Syrian Arab Republic	DTC	22-Feb-99	16-Oct-00
78	Tunisia	DTC	31-May-00	31-Dec-01
79	Türkiye	DTC	14-Jul-11	13-Jun-13
80	Ukraine	DTC	04-Sep-13	28-Aug-17
81	United Arab Emirates	DTC	13-Mar-06	18-May-07
82	United Kingdom	DTC	12-May-94	27-Mar-95
83	United States	DTC	08-Aug-08	23-Nov-10
84	Uruguay	DTC	11-Mar-2011	13-Dec-2012
85	Viet Nam	DTC	11-Mar-2011	25-Dec-2012

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).[86] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation 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 standard on exchange

86. 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.

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, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, Cabo Verde, 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, Czechia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, 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), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, 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, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Vanuatu and Viet Nam.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Philippines, Togo, and 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 Administrative Cooperation in the Field of Taxation

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 co-operation 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, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden. The United Kingdom left the EU on 31 January 2020 and hence this directive is no longer binding on the United Kingdom.

Since its adoption this Directive has been amended seven times, with the aim of strengthening the administrative co-operation among EU Member States, with:

- Directive 2014/107/EU introducing 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 ensuring that 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.
- Directive 2021/514/EU on exchange of information of sales through digital platforms.
- Directive 2023/2226/EU on automatic exchange of information on revenues from transactions in crypto-assets and on advance tax rulings for the wealthiest (high-net-worth) individuals.

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 amended in December 2020, and the 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 on 11 December 2023, Malta's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2019 to 30 June 2022, Malta's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Malta's authorities during the on-site visit that took place in May 2023 in Valletta, Malta.

List of laws, regulations and other materials consulted

(All links in this section were checked on 20 November 2023)

Laws

Act XLVII of 2020
https://legislation.mt/eli/act/2020/47/eng/pdf

Banking Act
https://legislation.mt/eli/cap/371/eng/pdf

Civil Code
https://legislation.mt/eli/cap/16/eng/pdf

Commercial Code
https://legislation.mt/eli/cap/13/eng/pdf

Companies Act
https://legislation.mt/eli/cap/386/eng/pdf

Company Service Providers Act (as amended by Act L of 2020)
https://legislation.mt/eli/cap/529/eng/pdf

Controlled Companies (Procedure for Liquidation) Act
https://legislation.mt/eli/cap/383/eng

Co-operative Societies Act
https://legislation.mt/eli/cap/442/eng/pdf

Income Tax Act
https://legislation.mt/eli/cap/123/eng/pdf

Income Tax Management Act
https://legislation.mt/eli/cap/372/eng/pdf

Insurance Business Act
https://legislation.mt/eli/cap/403/eng/pdf

Malta Financial Services Authority Act
https://legislation.mt/eli/cap/330/eng/pdf

Notarial Professional and Notarial Archives Act
https://legislation.mt/eli/cap/55/eng/pdf

Prevention of Money Laundering Act
https://legislation.mt/eli/cap/373/eng/pdf

Professional Secrecy Act
https://legislation.mt/eli/cap/377/eng/pdf

Securitisation Act
https://legislation.mt/eli/cap/484/eng/pdf

Trusts and Trustees Act
https://legislation.mt/eli/cap/331/eng/pdf

Regulations

Audit Report Waiver and Deduction Rules
https://legislation.mt/eli/sl/372.29/eng/pdf

Centralised Bank Account Register Regulations
https://legislation.mt/eli/sl/373.3/eng/pdf

Civil Code (Second Schedule) (Registration of Beneficial Owners – Associations) Regulations
https://legislation.mt/eli/sl/16.17/eng

Civil Code (Second Schedule) (Registration of Beneficial Owners – Foundations) Regulations
https://legislation.mt/eli/sl/16.18/eng

Companies Act (Register of Beneficial Owners) Regulations ("RBO Regulations")
https://legislation.mt/eli/sl/386.19/eng/pdf

Companies Act (Register of Beneficial Owners)(Amendment) Regulations, 2020
https://legislation.mt/eli/ln/2020/247/eng/pdf

Companies Act (Cell Companies Carrying on Business of Insurance) Regulations
https://legislation.mt/eli/sl/386.10/eng/pdf

Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations
https://legislation.mt/eli/sl/386.13/eng/pdf

Continuation of Companies Regulations
https://legislation.mt/eli/sl/386.5/eng/pdf

Cooperation with Other Jurisdictions on Tax Matters Regulations ("Co-operation Regulations")
https://legislation.mt/eli/sl/123.127/eng

Cross-border Conversions of Limited Liability Companies Regulations
https://legislation.mt/eli/ln/2023/27/eng

National Coordinating Committee on Combating Money Laundering and Funding of Terrorism Regulations
https://legislation.mt/eli/sl/373.2/eng/pdf

Prevention of Money Laundering and Funding of Terrorism Regulations ("AML Regulations")
https://legislation.mt/eli/sl/373.1/eng/pdf

Re-Insurance Special Purpose vehicles Regulations
https://legislation.mt/eli/sl/403.19/eng/pdf

Securitisation Cell Companies Regulations
https://legislation.mt/eli/sl/386.16/eng/pdf

Trusts (Income Tax) Regulations
https://legislation.mt/eli/sl/123.89/eng/pdf

Trusts and Trustees Act (Register for Beneficial Owners) Regulations ("TTA BO Regulations")
https://legislation.mt/eli/sl/331.10/eng

Other materials

FIAU Implementation Procedures
https://fiaumalta.org/wp-content/uploads/2021/11/20211018_Implementing-Procedures-Part-I-v.2.pdf

FIAU Supervisory Manual (extracts)
(internal document not subject to publication)

MFSA Code of Conduct pursuant to Article 52 of the Trusts and Trustees Act
https://www.mfsa.mt/wp-content/uploads/2019/01/Trusteescodeofconduct.pdf

MFSA Company Service Providers Rulebook
https://www.mfsa.mt/wp-content/uploads/2021/03/Company-Service-Providers-Rulebook.pdf

MFSA Register of Beneficial Owners of Trusts Frequently Asked Questions (Version 4.0 25 January 2023)
https://www.mfsa.mt/wp-content/uploads/2019/01/Trusts-BO-Register-FAQs_21Jun2018.pdf

MFSA Guidance Note on the Application of the Company Service Providers Act
https://www.mfsa.mt/wp-content/uploads/2021/03/Guidance-Note-on-the-Application-of-the-Company-Service-Providers-Act.pdf

MTCA Guidelines on Exchange of Information on Request (binding guidelines to the Co-operation Regulations)
https://cfr.gov.mt/en/inlandrevenue/itu/Documents/Updated%20EOI%20Guidelines.pdf

MTCA Manual for the Exchange of Information on Request
(internal document not subject to publication)

Authorities interviewed during on-site visit

Representatives from:

Office of the Commissioner for Revenue (OCfR), now Malta Tax and Customs Administration (MTCA)
https://cfr.gov.mt/en/Pages/Home.aspx

Financial Intelligence Analysis Unit (FIAU)
https://fiaumalta.org/

Malta Business Registry (MBR)
https://registry.mbr.mt/ROC/

Malta Financial Services Authority (MFSA)
https://www.mfsa.mt/

Private sector: bank association, notaries association, accountancy board, Institute of Financial Services Practitioners, and Malta Institute of Taxation

Current and previous reviews

This report provides the outcome of the fourth and latest 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 Terms of Reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews. The 2011 review evaluated Malta's legal and regulatory framework in August 2011. The 2013 review evaluated Malta's legal and regulatory framework in March 2013 as well as its implementation in practice. It concluded that Malta was rated overall Largely Compliant with the standard.

Malta also underwent a combined Phase 1 and Phase 2 conducted according to the 2016 Terms of Reference and the Methodology used in the second round of reviews and was rated as overall Partially Compliant with the standard.

Malta requested a supplementary review in September 2021. The request was acceded to by the Peer Review Group of the Global Forum and has resulted in the present supplementary report.

Information on each of Malta's EOIR 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 Netherlands, Mr Colin Chew Koo Chung from the Inland Revenue Authority of Singapore, and Ms Amy O'Donnel from the Global Forum Secretariat	not applicable	December 2011	March 2012
Round 1 Phase 2 (2013 Report)	Ms Melisande Kaaij from the Ministry of Finance of the Netherlands, Mr Colin Chew Koo Chung from the Inland Revenue Authority of Singapore, and Ms Renata Fontana from the Global Forum Secretariat	1 July 2009 to 31 June 2012	March 2013	November 2013
Round 2 Combined Phase 1 and Phase 2 (2020 Report)	Ms Mette Katrin Oien from the Ministry of Finance of Norway, Ms Pooja Hali from the Ministry of Finance of India and Mr Colin Yan from the Global Forum Secretariat	1 April 2016 to 31 March 2019	30 April 2020	July 2020
Round 2 Combined Phase 1 and Phase 2 supplementary review	Ms Mette Katrin Oien from the Ministry of Finance of Norway, Ms Pooja Hali from the Ministry of Finance of India and Mr Fabio Giuseppone from the Global Forum Secretariat	1 July 2019 to 30 June 2022	11 December 2023	27 March 2024

Annex 4. Malta's response to the review report[87]

Malta agrees with the contents of the report and the overall rating of Largely Compliant. As per its commitment to the international tax transparency standards, Malta shall work towards improving its framework and practice in line with the recommendations contained in the said report.

Malta would like to take this opportunity to express its gratitude to the Assessment Team, the Global Forum Secretariat, the Peer Review Group, and the relevant EOIR partners for their input provided during Malta's EOIR Supplementary Peer Review.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request MALTA 2024 (Second Round, Supplementary Report)

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 supplementary peer review report analyses the practical implementation of the standard of transparency and exchange of information on request in Malta, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.

PRINT ISBN 978-92-64-52535-1
PDF ISBN 978-92-64-31925-7