GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

COSTA RICA



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Costa Rica 2015

PHASE 2: IMPLEMENTATION OF THE STANDARD IN PRACTICE

October 2015
(reflecting the legal and regulatory framework as at July 2015)



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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Costa Rica, as well as the practical implementation of that framework. The international standards which are set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, are concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners. The assessment of effectiveness in practice has been performed in relation to a three year period (from 1 July 2011 to 30 June 2014).

2. Costa Rica's location on the Central American isthmus provides for direct access to North and South American markets and direct ocean access to Europe and Asia. It enjoys one of the highest levels of foreign direct investment in Latin America and its economy is service based, with the services sector accounting for approximately 2/3 of Costa Rica's GDP. Costa Rica has agreements providing for exchange of information with 89 jurisdictions, comprising 16 tax information exchange agreements (TIEAs) with provisions that mirror the OECD Model TIEA, an EOI agreement in force with the United States since 1991, 3 double tax conventions (DTCs) with a provision equivalent to Article 26 of the OECD Model Tax Convention, a Mutual Assistance Convention with four other Central American countries and the Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 (Multilateral Convention). The Multilateral Convention was signed by Costa Rica in March 2012 and entered into force on 1 August 2013. During 2012 and 2013, Costa Rica experienced some undue delays in the ratification process of a number of EOI agreements, as priority had been given to the ratification of the Multilateral Convention. As Costa Rica has since taken the steps to bring into force EOI agreements with the vast majority of its EOI partners, it should monitor the ratification process to ensure that its EOI agreements continue to be ratified and brought into force expeditiously.

3. Obligations to ensure availability of ownership and identity information for companies and partnerships are generally in place but some deficiencies still remain. For companies, this obligation stems from the requirement to keep a share register. For partnerships, it comes from the requirement to register and to lodge any transfer of ownership with the Public Registry. The legislative amendments introduced by the Costa Rican Legislative Assembly in September 2012 establish enforcement measures in respect of joint stock corporations (*sociedades anónimas* or SAs) that fail to keep a shareholder register, but are silent with respect to limited liability companies (*sociedades de responsabilidad limitada* or LTDAs) and partnerships.

4. It is noted, however, that the Public Registry does not exercise monitoring functions according to its legal framework. More importantly, the vast majority of companies and partnerships (approximately 70%) are not regularly monitored by the Tax Administration. These entities are considered as inactive and thus not subject to tax or tax filing obligations because of the territorial taxation regime of Costa Rica. In practice, ownership information requested with regard to companies was available during the peer review period, in the hands of the Public Registry, the legal representatives and/or the shareholders. Costa Rica received no EOI requests concerning identity and ownership information on partnerships over this period.

5. *Fideicomisos,* exist in Costa Rica and adequate ownership and identity requirements are found in the anti-money laundering laws, which cover all *fiduciarios* that act for two or more *fideicomisos* per year and requires that the *fiduciario* provide information on the *fideicomitente* and *fidecomisario* of the *fideicomiso* at registration. No similar obligations are established with respect to ownership information concerning foreign law trusts administered by a Costa Rican resident and this gap has not been addressed by the legislative amendments of September 2012. Over the review period, Costa Rica did not receive any EOI requests regarding ownership information on *fideicomisos*, foreign trusts, foundations or any similar arrangements.

6. A clear obligation to keep accounting records exists in Costa Rica for all entities with the exception of foreign law trusts, including a requirement to maintain underlying documents. The legislative amendments of September 2012 extended the penalty provided under tax law for non-compliance to the accounting record keeping requirements under the commercial law. In addition, a five-year minimum retention period requirement has been clearly established with respect to general accounting records, including underlying documentation, that must be kept by all taxpayers and responsible parties. A gap remains, however, with regard to account record-keeping obligations concerning foreign law trusts administered by Costa Rican resident trustees. In practice, accounting information was available during the peer review period, and obtained directly from the taxpayers.

7. The fact that the Costa Rican authorities have no regular oversight programme in place to ensure compliance with the obligations to maintain ownership, identity and accounting information with regard to relevant entities and arrangements (except for regulated entities and covered *fiduciarios*), in particular for inactive entities, gives rise to concerns on the availability of this information in practice. Furthermore, no figures are available concerning the compliance level with the obligations to maintain such information or the application of enforcement measures for non-compliance. It is, therefore, recommended that Costa Rica puts in place a programme to monitor compliance with the obligation to maintain ownership, identity and accounting information for all relevant entities and arrangements, and particularly inactive entities, and exercises its enforcement powers as appropriate to ensure that such information is available in practice.

8. Bank information, including records of all transactions is available. In practice, there is active supervision of the financial market and banking information was made available during the peer review period.

9. Access powers are derived from the General Tax Code. The Costa Rican competent authority has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Costa Rica and stored in the Tax Administration institutional databases. During the review period, the Costa Rican competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information, bank information and other types of information. Compulsory powers are provided for under Costa Rican law but their effectiveness remained untested over the peer review period.

10. Up until September 2012, Costa Rica's domestic law was ambiguous with regard to the Tax Authorities' powers to access ownership, identity and accounting information for EOI purposes. The legislative amendments introduced by Costa Rica in September 2012 expressly allows the Tax Administration to gather information considered foreseeably relevant for tax purposes and to provide this information to foreign authorities under EOI agreements.

11. Before September 2012, access to bank information was very restricted as the Tax Administration had to demonstrate evidence of an unlawful act under Costa Rican law and that the taxpayer would be subject to audit pursuant to Costa Rica's National Audit Plan. In 2012, Costa Rica also amended the procedure to obtain information from financial entities. Under the new procedure established in September 2012, there is no requirement to show evidence of an unlawful act, but the tax administration must approach a civil administrative judge when a request made by a foreign authority complies with an EOI agreement. In 2015, Costa Rica amended again its laws to introduce a streamlined procedure under which the Tax Administration can request bank information directly to the financial entities without a court order.

12. Nevertheless, these changes cannot be retrospectively applied to obtain bank information in connection with civil tax matters concerning taxable periods prior to 1 October 2012. For criminal tax matters, however, the Tax Administration has unrestricted access to bank information concerning taxable periods prior to 1 October 2012, as long as the applicable EOI agreement is in force. In practice, this gap is likely to be narrow as most EOI agreements concluded by Costa Rica became effective for civil tax matters with respect to taxable periods starting on or after 1 October 2012. Nevertheless, Costa Rica should ensure that all bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.

13. On its face, the attorney-client privilege standard is potentially overbroad, which could limit access to information. In practice, however, the attorney-client privilege has never hindered Costa Rica's access powers and the scope of such professional secrecy provisions has been narrowly interpreted by Costa Rican courts with regard to non-tax cases. The Tax Administration issued an official position confirming that the position taken by the Costa Rican courts is also applicable to tax cases.

14. During the period under review (1 July 2011 – 30 June 2014), Costa Rica received a total of 12 income tax requests for information from five jurisdictions. Costa Rica provided timely responses to the EOI partners in all 12 cases. Although the number is relatively limited, the EOI requests covered a range of ownership, accounting and bank information. The procedures established by the Tax Administration have proven sufficient to handle incoming EOI requests in a timely manner. The resources currently allocated to the Tax Treaties Unit are adequate to deal with the present workload. Feedback from peers indicates that they were generally satisfied with Costa Rica's level of co-operation and timeliness of response to EOI requests made during the peer review period.

15. Costa Rica has been assigned a rating for each of the 10 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, taking into account the Phase 1 determinations and any recommendations made in respect of Costa Rica's legal and regulatory framework and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Costa Rica has been assigned a rating of Compliant for elements A.3, B.2, C.2, C.3, C.4 and C.5, Largely Compliant for elements B.1 and C.1, Partially Compliant for element A.2 and Non-Compliant for element A.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Costa Rica is Partially Compliant.

Introduction

Information and methodology used for the peer review of Costa Rica

16. The original Phase 1 and Supplementary assessments of the legal and regulatory framework of Costa Rica were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and were prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The original Phase 1 assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at January 2012, other materials supplied by Costa Rica, and information supplied by partner jurisdictions. The Supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at January 2013, and information supplied by partner jurisdictions.

17. The original Phase 1 report of Costa Rica was adopted and published by the Global Forum in March 2012. The Supplementary report, which followed the Phase 1 report of Costa Rica was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in March 2013.

18. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or in effect as at 1 July 2015, Costa Rica's responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by Costa Rica, information provided by exchange of information partners, and explanations provided by Costa Rica during the on-site visit that took place from 20 to 22 January 2015 in San José, Costa Rica. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Tax Administration, Public Registry (Ministry of Justice), General Superintendence of Financial Entities, General Superintendence of Securities, and National Registry of Securities Intermediaries (see Annex 4).

19. The following analysis reflects the original Phase 1 report, as modified by the Supplementary Report approved in March 2013, and the Phase 2

assessment of the legal and regulatory framework of Costa Rica in effect as at 31 July 2015, and the practical implementation and effectiveness of this framework in the three-year review period of 1 July 2011 to 30 June 2014.

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

21. The original Phase 1 and supplementary assessments were conducted by an assessment team which consisted of two assessors and three representatives of the Global Forum Secretariat: Mr. Wayne Brown, Assistant Financial Secretary, Ministry of Finance, Bermuda; Mr. Fabio Seragusa, Taxation Unit – Guardia di Finanza, Italy; and Ms. Amy O'Donnell, Mrs. Renata Fontana and Mr. Bhaskar Goswami of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Costa Rica.

22. The Phase 2 assessment was conducted by an assessment team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Mr. Wayne Brown, Assistant Financial Secretary, Ministry of Finance, Bermuda; Mr. Stefano Gesuelli, Guardia di Finanza, Italy; and Ms. Renata Fontana from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in Costa Rica.

Overview of Costa Rica

23. Costa Rica is a country of 51 000 square kilometres located on the Isthmus of Central America in the geographic centre of the Americas. It shares a border with Nicaragua to the Northwest and Panama to the Southeast, and is bordered on either side by the Pacific Ocean and the Caribbean Sea. Costa Rica has approximately 4.6 million inhabitants. Spanish is the official and spoken language, although English is often used in commerce and international trade. Its currency is the colon (CRC), with USD 1 equal to 540 colones as at July 2015.

General information on the Legal System

24. Costa Rica is a constitutional republic, with its system of government based on the 1949 Constitution and made up of three separate branches: executive, legislative and judicial. Presidential elections take place every four years and the president is elected by popular vote. The President serves a four year term and cannot be re-elected consecutively, but may be re-elected after at least one term out of office for up to one more term. The president appoints two vice presidents and 20 cabinet members.

25. Costa Rica has a unicameral legislature with 57 seats. Representatives are elected by popular vote. The legislature has six permanent commissions which oversee agriculture and natural resources, economic affairs, government and administration, budgeting and taxation, judicial affairs and social affairs. The legislative assembly can override presidential decisions by two-thirds majority. Legislators can be re-elected only after spending one term out of office. The judicial branch is made up of the Supreme Court, appellate courts and trial courts.

26. The Costa Rican legal system is a civil law one. The hierarchy of laws is: the Constitution of the Republic of Costa Rica, international treaties, laws, decrees, resolutions and administrative acts. Administrative acts can include binding opinions by the Attorney General of the Republic of Costa Rica. Pursuant to Article 2 of the Attorney General Organic Law of 1982 (Law No. 6 815), opinions issued by the Attorney General are binding on government agencies in Costa Rica. Regulations are published in the form of an Executive Decree and become effective upon the date of publication. Treaties require the approval of not less than two-thirds of the Members of the Legislative Assembly.

27. Legal entities in Costa Rica include: joint stock companies, individual enterprises of limited liability, limited liability companies, general partnerships and limited partnerships. The most commonly used entity is the joint stock company, or *sociedad anónima* (SA). Trusts are also recognised

in Costa Rica. Foundations are possible but may only be established as not for profit entities.

The Costa Rican Economy

28. Costa Rica's GDP was approximately USD 49.6 billion in 2014 and its economy has experienced steady growth this decade. Costa Rica's major economic assets include fertile land, frequent rainfall, a well-educated population, and its location in the Central American Isthmus, which provides easy access to North and South American markets and direct ocean access to Europe and Asia. Costa Rica enjoys the region's highest standard of living with GDP per capita of approximately USD 10 382 (2014), and an unemployment rate of 9.7% (last quarter of 2014).

29. Traditionally, Costa Rica's economy is based on agricultural commodities such as coffee, cacao, bananas, pineapple, sugar and beef. More recently, technology services have gained more importance. Over 60% of the country's workforce is employed in the technology service sector, accounting for approximately 64% of GDP. The most dynamic part of the technology services sector is related with computer, information and other businesses, representing 48.1% of services' total exports.

30. Costa Rica attracts one of the highest levels of foreign direct investment per capita in Latin America. Foreign direct investment was USD 15.9 billion in 2014. Less than 19% of investment in Costa Rica comes from Central and South America. The EU accounts for over 19% of investment, mainly from Germany, Spain and Italy. Its biggest trading partner is the US, accounting for over half of its exports and imports as well as more than two-thirds of all foreign investment. Trade between the US and Costa Rica exceeded USD 11.8 billion in 2014. Costa Rica's other major economic partners are far less economically significant: China (6.7%), the Netherlands (6.2%) and Panama (5.3%) in 2014. For imports, in 2014 major partners outside of the US were China 10.6%) and Mexico (6.7%).

31. The institution of free trade zones in Costa Rica has had important national economic consequences. Created under Law No. 7 210, known as the Export Processing Law, the free trade zones offer substantial tax incentives. Traditionally, 100% exemptions from virtually all taxes and government finance for training of employees have been available to companies located within one of the 12 free export zones (six of which are privately managed). Such companies are still required to file annual tax returns declaring zero tax liability. However many of these tax advantages are due to be phased out by 2015 pursuant to Costa Rica's WTO commitments. There are currently several hundred companies within the free trade zones.

Financial Services in Costa Rica

32. Banking is the most significant component of the financial services sector in Costa Rica. A state monopoly on banks ended in the 1990s, and now private banks can offer an entire range of financial services. State owned banks still remain, and as of 30 June 2015 there were 15 banks, of which three were state-owned and 12 were private. The volume of assets held by Costa Rican banks is approximately USD 18.8 million (CRC 10 141 498 005) by state-owned banks and USD 13,9 million (CRC 7 474 834 977) by private banks. Other financial institutions include a workers' bank known as the *Banco Popular y de Desarrollo Comunal* which is capitalised through mandatory payroll contributions from workers and employers, a public funding agency for mortgage financing known as the *Banco Hipotecario de la Vivienda*, savings and loan co-operatives, mutual fund companies, and finance companies. The volume of assets held by these other financial institutions is approximately USD 4,8 million (CRC 2 598 096 843) by *Banco Popular y de Desarrollo Comunal*, USD 180 000 (CRC 97 028 428) by *Banco Hipotecario de la Vivienda*, USD 4,6 million (CRC 2 486 234 192) by savings and loan co-operatives, USD 1.7 million (CRC 915 982 282) by mutual fund companies and USD 2 million (CRC 1 092 198 028) by financial companies. Until 2010, the insurance industry was a state monopoly. As of 31 July 2015, there were 13 insurance companies operating in the market (see *Regulated Entities* section below).

33. Banks must be registered with and are supervised by the General Superintendence of Financial Entities (GSFE), which is also responsible for compliance with anti-money laundering (AML) laws. Financial entities and savings and credit co-operatives are also subject to supervision by the GSFE. Insurance companies are regulated by the General Superintendence of Insurance.

34. Costa Rica has a private stock exchange called the *Bolsa Nacional de Valores (BNV),* which is the oldest and largest in Central America. Its annual turnover was approximately USD 50 billion in December 2014. There are 16 brokerage companies and 13 investment funds that currently participate in the exchange. The securities industry is supervised by the General Superintendence of Securities (GSS), which also supervises brokerage houses, corporations for administering investment funds, issuers of securities, non-banking financial enterprises and custodian entities.

Taxation

35. Costa Rica has a territorial system of taxation, meaning that all business income which has a foreign source is tax exempt and only that portion of business revenue earned within Costa Rica is subject to tax, whether derived by a resident or non-resident.

36. The income tax is governed by the Income Tax Law (*Ley del Impuesto sobre la Renta)* and the Income Tax Regulations (*Reglamento de la Ley del Impuesto sobre la Renta).* The General Tax Code (*Código de Normas y Procedimientos Tributarios)* deals with general tax principles, administration, penalties, procedures and collections.

37. Income tax is levied on the net income derived by resident corporations and individuals conducting a "lucrative activity" in Costa Rica, which means activities for profit. For corporations and legal entities the rate is 30%. For individuals, income is taxed at progressive rates, with a maximum rate of 25%. For small and medium-sized enterprises, the rate is from 10-20% depending on the gross income of the enterprise. Essentially, any form of entity with a legal personality engaged in for-profit activities within Costa Rica is subject to income tax, including *fideicomisos* and branches, agencies or permanent establishments of non-residents operating in Costa Rica (Article 5, Income Tax Regulations).

International Cooperation

38. Costa Rica committed to the international standards on transparency and exchange of information in 2009. As of January 2012, Costa Rica has signed a total of 16 exchange of information agreements for tax purposes (TIEAs).[1] Costa Rica also has an exchange of information agreement in force with the United States since 1991 and three double tax agreements with Germany, Mexico and Spain. Since April 2006, it is also a signatory to the Multilateral Convention for Mutual Assistance and Technical Co-operation among the Central American Tax and Customs Administrations, which provides for exchange of information with El Salvador, Guatemala, Honduras and Nicaragua. In March 2012, Costa Rica signed the Multilateral Convention on Mutual Administrative Assistance on Tax Matters and it entered into force on 1 August 2013.

1. With Argentina, Australia, Canada, Denmark, Ecuador, Faroe Islands, Finland, France, Greenland, Guernsey, Iceland, Mexico, Netherlands, Norway, South Africa and Sweden.

Recent developments

39. On 1 June 2015, Law No. 9 296 was published, introducing a new tax reform that will significantly streamline the access to bank information in Costa Rica. It introduced article 106 quater of the General Tax Code, allowing the Tax Administration to exchange information automatically. The Bill also modified the articles 106 bis, 106 ter and 115 bis regarding access to bank information both for domestic and EOI purposes. Under the new regime, that entered into force on 1 June 2015, the Tax Administration is no longer required to obtain a court authorisation before requesting bank information from financial entities. Although this can be considered a significant change in the Tax Administration's access powers to bank information, it has not been tested in practice during the review period.

40. Costa Rica submitted Bill No. 19 245 to the Legislative Assembly to amend the General Tax Code in order to prevent tax fraud, which would address concerns raised in this report with respect to the availability of ownership and accounting information on foreign trusts. The proposed amendment to article 106 of the General Tax Code would impose on trustees and administrators of *fideicomisos* or similar arrangements (i.e. trusts) an obligation to provide to the Tax Administration information related with their final beneficiaries. It would also impose an obligation on the trustees and administrators to keep detailed accounting records and financial statements in accordance with the provisions of the General Tax Code. These obligations would apply to all trustees and administrators of *fideicomisos* and foreign trusts, whether individuals or legal persons, whether Costa Rican residents or not and whether financial institutions or not. The proposed amendment has been discussed by the Legislative Assembly and it awaits approval in the coming months.

Compliance with the Standards

A. Availability of information

Overview

41. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Costa Rica's legal and regulatory framework on availability of information. It also assesses the effectiveness of this framework in practice.

42. The main laws that govern relevant entities in Costa Rica are the Commerce Code and the General Tax Code. In September 2012, the Costa Rican Legislative Assembly approved the Transparency Law No. 9 068 and the Strengthening of the Tax Administration Law No. 9 069. These legislative amendments to Costa Rica's legal framework took effect on 28 September 2012 and became applicable for civil tax purposes as of the financial year commencing on 1 October 2012, without retroactive effect. Notwithstanding, the Costa Rican authorities have confirmed that the new procedure established in September 2012 may be applied to obtain bank information concerning transactions occurred or documents produced before the entry into force of the Transparency Law, insofar as they relate to taxable periods commencing on or after 1 October 2012.

43. Any entity (including foreign companies) carrying on lucrative activities in Costa Rica (meaning activities for profit) is considered a "merchant" and the Commerce Code has general requirements that apply to all "merchants", as well as specific requirements for some entities like public *Sociedad Anónima* (SA). The Commerce Code requires that all *sociedad*, which encompasses the equivalents of companies and partnerships, register with the Public Registry and provide updated articles of incorporation to the Registrar. Nominee ownership is not possible in Costa Rica and bearer shares no longer exist. Over the three-year review period, from 1 July 2011 to 30 June 2014, Costa Rica was able to obtain and provide identity and ownership information in relation to companies in connection with seven exchange of information (EOI) requests. No EOI requests were received during this period concerning identity and ownership information of partnerships.

44. The Commerce Code provides for a series of books and records, including accounting records that all "merchants" must keep. For companies, this includes minutes of shareholder meetings and a shareholder register. The shareholder register is the source of ownership information on companies. Like companies, all partnerships must register with the Public Registry and registration includes the provision of the articles of incorporation. There is also a requirement to register any transfer of ownership in the Public Registry. It is noted, however, that the Public Registry does not exercise monitoring functions to ensure compliance with these obligations.

45. The legislative amendments introduced by Costa Rica in September 2012 prescribe penalties in respect of joint stock corporations (SAs) that fail to keep a shareholder register, but are silent with respect to limited liability companies and partnerships that fail to provide ownership information upon registration. Equally, they do not address the absence of obligations to maintain ownership information in the case of individual enterprises of limited liability (EIRLs). However, no figures are available on the compliance level with the obligations to maintain identity and ownership information on SAs or the application of enforcement measures for non-compliance.

46. The General Tax Code treats legal entities similarly for tax purposes and the general requirements in the Tax Code apply to all companies, partnerships and trusts that have Costa Rican source income. It includes a requirement to register with the Tax Administration, although this does not include the provision of ownership information, and to keep records of accounts. Nevertheless, Costa Rican taxpayers are subject to tax audits and monitoring activities by the Tax Administration. The vast majority of companies (approximately 70%), however, are not regularly monitored by the Tax Administration. These entities are considered as inactive and thus not subject to tax or tax filing obligations because of the territorial taxation regime of Costa Rica.

47. *Fideicomiso* are possible in Costa Rica and it is also possible to act as a trustee for a foreign law trust. However, information on trusts and *fideicomiso* is not available in all cases. Most *fiduciarios* (those that act for two or more *fideicomisos* in a year) are required to register with the GSFE and are subject to the AML laws, which require a covered entity or person to know the identity of the *fideicomitente* and *fidecomisarios*. Trustees of foreign law trusts resident in Costa Rica are not covered by the AML laws and therefore information on the settlor and beneficiaries may not be available. Foundations in Costa Rica can only be established for non-profit, charitable activities. In practice, Costa Rica did not receive any EOI requests regarding ownership information on *fideicomisos*, foreign trusts, foundations or any similar arrangements during the peer review period.

48. In view of the lack of express obligations to maintain identity and ownership information with respect to EIRLs and foreign trusts and the absence of enforcement measures for non-compliance with the obligations to maintain identity and ownership information on LTDAs and partnerships, element A.1 is determined to be "not in place". The lack of a regular oversight programme or evidence of application of enforcement measures to ensure compliance with the existing obligations to maintain ownership and identity information with regard to most relevant entities and arrangements, in particular inactive entities, gives rise to concerns on the availability of this information in practice. Accordingly, element A.1 is rated as "non-compliant".

49. Accounting requirements are found in both the Commerce Code and the Tax Code and apply to all entities equally: companies, partnerships and *fideicomisos*. However, the Commerce Code would not apply to foreign law trusts where the trustee is resident in Costa Rica, therefore accounting information may not be available. Over the review period, Costa Rica received three EOI requests regarding accounting information, all of them pertaining to companies. The legislative amendments of September 2012 extended the penalty provided under tax law for non-compliance to the accounting record keeping requirements under the commercial law. In addition, a five-year minimum retention period requirement has been clearly established with respect to general accounting records, including underlying documentation, that must be kept by all taxpayers and responsible parties. However, the lack of a regular oversight programme or evidence of application of enforcement measures to ensure compliance with accounting record-keeping obligations, particularly with respect to inactive entities, gives rise to concerns on the availability of this information in practice. As a result, the determination under Element A.2 is "the element is in place but certain aspects of the legal implementation of the element need improvement" and the assigned rating is "partially compliant".

50. Banking information, including records of all transactions, is required to be maintained for five years pursuant to the AML laws and there is active supervision of the financial market by the respective supervisory bodies. Over the three-year review period, Costa Rica was able to provide bank information in connection with five EOI requests. Element A.3 is, therefore, determined to be "in place" and rated as "compliant".

A.1. Ownership and identity information

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

51. The various types of entities in Costa Rica are not categorised as companies or partnerships, but rather the main type of entity is called a *sociedad*, as defined in the Commerce Code, which is the basis of Costa Rica's commercial law. A *sociedad* is a legal entity separate from its owners. A distinction can be made between *Sociedades de Personas* (companies formed by persons) and *Sociedades de Capital* (companies formed by capital) and these types of entities have different requirements under the Commerce Code, most relevantly that *Sociedad de Capital* are required to keep a shareholder register whereas *Sociedades de Personas* are not. Both types of *sociedad* are treated as separate entities liable to taxes.

52. Joint stock corporations (*sociedad anónima* or SA) and limited liability companies (*sociedades de responsabilidad limitada* or LTDAs*)* are most comparable to companies in common law countries and therefore considered in the Companies section of this report. To facilitate a comparison with other reports, *sociedad en nombre colectivo* (general partnerships)*, sociedad en comandita* (limited partnerships) and *empresa individual de responsabilidad limitada* (individual enterprises of limited liability or EIRLs) are best described as partnerships and therefore considered in the Partnership section of this report.

53. The Commerce Code also makes a distinction between entities that are "merchants" and those that are not. "Merchants" have basic requirements under the Code, including accounting requirements. Article 5 of the Code defines "merchants" as:

a. any entity conducting commercial activities (for-profit) in a habitual manner;

b. individual enterprises of limited liability (EIRLs);

c. entities that are created based on the provisions in the Code, whatever the purpose or business that may be carried out; and

d. foreign companies and their regional offices and branches that carry out acts of commerce in the country, when they act as distributors of products manufactured by their company in Costa Rica.

54. Therefore all *sociedades* are merchants under the Commerce Code and must register with the Public Registry, which is part of the Ministry of Justice (Art. 19, Commerce Code). This includes all foreign companies carrying on business in Costa Rica (see foreign companies section below). Moreover, all companies are required to register with the tax authorities in order to conduct corporate activities in Costa Rica, with the option of registering as active or inactive companies (see tax law section below). Both active and inactive companies are considered "merchants" and therefore subject to the requirements of the Commerce Code, meaning that they are required to maintain ownership, identity and accounting records, as indicated below.

Companies *(ToR A.1.1)*

Types of companies

55. Joint stock corporations or SAs are the most common form of company in Costa Rica. Composed of at least two shareholders whose liability is limited to their capital contribution, SAs must have a steering committee or board of directors with at least three members (who may or may not be shareholders) and who serve as the president, secretary and treasurer. This is the only form of public company in Costa Rica but it can also operate as a private company. As at December 2014, there were a total of 484 503 SAs, of which 142 497 were active and filing tax returns (*de alta*); and 5 188 foreign companies, of which 394 were active and filing tax returns (*de alta*).

56. Limited liability companies or LTDAs are made up of partners who are liable solely for their contribution and are managed by one or more managers who may be shareholders or third parties. An LTDA may not be a public company. The ownership is represented by nominal shares, which may only be transferred with previous unanimous consent from the shareholders. If the proposed assignment of an ownership interest is rejected by the LTDA, the shareholders will have an option of two weeks to acquire the shares that were to be transferred under the same conditions as offered to the third party. If these conditions are not met, then the assignment to the third party is held to have been accepted (Articles 85 and 86). As at December 2014, there were 58 823 LTDAs in Costa Rica, of which only 14 539 were active and filing tax returns (*de alta*).

Company ownership and identity information required to be provided to government authorities

57. Each of the companies identified above (including active and inactive companies) are considered "merchants" and must register with the Public Registry, which is part of the Ministry of Justice (Art. 19, Commerce Code).

58. As merchants, companies must provide articles of incorporation at registration (Art. 235). The articles of incorporation must contain, among other things: the name, nationality, profession and domicile of the founding shareholders who are natural persons (Art. 18(2), Commerce Code). If a company is one of the founders, the articles of incorporation must include the name or business name of the company's founding it (Art. 18(3), Commerce Code). The articles must also include the type of company; capital stock amount; contribution by each founding shareholder; the company's domicile, which must be a current accurate address within Costa Rica; and the names of the administrators, with an indication of those who will represent the company, and the nomination of its resident agent (Art. 18, Commerce Code).

59. Although the names of the founding shareholders would therefore be known at registration, there is no corresponding duty to amend the articles if there is a change in the shareholders. For public SAs, the articles of incorporation must also include the number, nominal value, nature and class of the shares (Art. 106, Commerce Code). Once registered in the Public Registry, a company has the status of a legal entity (Art. 20). In addition to registering their articles of incorporation with the Public Registry, SAs and LTDAs whose capital is paid up in cash or securities must register electronically with the Public Registry through the *Portal Crear Empresa* (established by Executive Decree No. 37 593-JP-MINAE-MAG-MEIC-S and Decree No. 38 137-JP-MAG-MAIC-S-MINAE) but the electronic registration form does not include ownership information.[2]

60. When a company is modified, dissolved, merged or otherwise changes its structure, it can only do so through a public deed published in the official journal and registered in the Public Register (Art. 19, Commerce Code). There is no specific deadline for the registration of the public deed containing such changes with the Registry. Until a company's registration or any change required to be registered is in fact published in the Registry, no rulings, agreements or company documents will have legal effect with regard to third parties (Art. 22).

61. There is no requirement that a company have a resident director or officer in Costa Rica, however, for SAs, which must have a Board of Directors, when all the members of the Board of Directors do not reside in Costa Rica,

2. https://www.crearempresa.go.cr.

the company must appoint a resident agent (Art. 18(13), Commerce Code). The resident agent must be an attorney with an open office in Costa Rica. When the company is required to have a registered agent, the name of the resident agent must be included in the articles of incorporation which must be registered before the Public Registry (Art. 18(13)). The registered agent's main role is to receive notifications on behalf of the company.

62. Upon incorporation of a company or registration of any change, the Public Registry officers must verify that all legal requirements have been fulfilled before validating this registration. As a matter of practice, all information and documents registered with the Public Registry are kept indefinitely and recorded on its electronic database. It is possible to obtain online certificates through the website of the Public Registry.[3]

63. When the Costa Rican competent authority receives an EOI request concerning ownership and identity information about a company, it will initially examine its own institutional databases and public sources to see if the requested information is readily available. In cases where the requested information is held by another government entity, such as the Public Registry, a request letter to produce the information is prepared and sent to the Public Registry (see more details under C.5 below).

64. Even though the Tax Administration has direct access to a copy of the Public Registry's electronic database, the Costa Rican competent authority always requests certified copies of documents held by the Public Registry. The database contains comprehensive identity information on the founding shareholders, but there is no obligation to file annual returns or inform the Public Registry about ownership changes after incorporation. Therefore, the Tax Administration will typically have to seek updated ownership information directly from the company, its legal representative and/or its shareholders, as described below.

Tax Law

65. In order to conduct corporate activities in Costa Rica, all active companies, whether domestic or foreign entities, are required to register with the Tax Administration (Art. 22, Tax Procedures Regulation).Active companies conduct lucrative activities in Costa Rica (meaning activities for profit) and file income tax returns annually. Inactive companies, on the other hand, do not conduct activities for profit in Costa Rica and therefore are not required to file income tax returns. The table below contains an overview of the number companies, including domestic and foreign entities, registered as active or inactive in Costa Rica.

3. https://www.rnpdigital.com/shopping/login.jspx.

Period	Active	Inactive	Total
2012	161 062	356 932	517 994
2013	165 652	357 542	523 194
2014	152 448	379 205	531 653
2015 (as at March)	147 081	392 981	540 062

66. The Tax Code applies to all legal entities incorporated in Costa Rica as well as branches, agencies and other permanent establishments of non-residents in Costa Rica and anyone engaged in for-profit activities in Costa Rica (Article 5, Income Tax Regulations). Because it has a territorial tax system, only Costa Rican source income is taxable.

67. All companies subject to tax are required to file a declaration of registration with the Tax Administration (Article 78, General Tax Code). Registration includes the completion of Form D-140, as well as the presentation of an original identity document of a legal representative and a legal capacity certificate no more than three months old. Each taxpayer is issued a taxpayer identification number. At this time, the Tax Administration authenticates the books that the taxpayer is required to keep by the Commerce Code, which includes a share register and a book of accounts.

68. Form D-140 requires the taxpayer identification number, name of natural or legal person, exact domicile, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity number, address and signature of the legal representative. A taxpayer is also required to provide any information needed and promptly communicate any modification to the Tax Administration (Art. 128). There is no requirement to provide ownership information under the tax laws, but the Tax Administration can inquire at any time about the company's ownership information (Art. 106(b)).

69. With regard to active companies, the Tax Administration has updated information on the fiscal domicile and the identity of the legal representative, who is responsible for maintaining and providing ownership and identity information concerning their shareholders (Art. 21(b), General Tax Code). In the course of a tax audit, the Tax Administration may also verify whether such companies maintain updated share registers. On April 2015, the Large Taxpayer Directorate implemented, through Resolution DGT-R-30-2014 of 5 August 2014, a new electronic mechanism to request information from large taxpayers called AMPO (*Análisis Multifuncional Programado y Objetivo*). Large taxpayers must provide ownership and accounting information, which must be updated within a 10-day period after any change is made thereon. Nevertheless, the AMPO programme to monitor the compliance of the obligation to maintain ownership and identity information is limited in scope, as

it does not apply to other taxpayers or inactive companies. As such, the vast majority of companies (approximately 70%) are not regularly monitored by the Tax Administration as they are considered as inactive and thus not subject to tax or tax filing obligations.

70. Since 2011, the Tax Administration has a programme in place to monitor inactive companies through information crosschecks in order to establish whether these entities are performing lucrative activities without properly complying with their registration and tax filing obligations. From 2011 to 2013, the Tax Administration has identified and punished 3 131 companies performing lucrative activities while irregularly registered as inactive, for failure to comply with their administrative and material tax obligations (article 79 of the Tax Code).

71. In order to discourage the common practice of using an inactive company to hold an asset, like a house or a car, in order to protect against personal liability, Costa Rica passed Law No. 9 024 that entered into force on 1 April 2012, imposing an annual minimum tax on inactive companies. The Public Registry is responsible for monitoring the collection of this tax. In practice, however, the Public Registry has been unable to perform this supervisory function due to the lack of sufficient financial and human resources. As a result, the compliance level with Law No. 9 024 had been extremely low, and approximately 70% of the companies considered as inactive have failed to pay the annual minimum tax. Failure to comply with the tax obligations imposed by Law No. 9 024 for three consecutive years may lead to the dissolution of the entity (article 6) but in practice this enforcement measure has never been applied.

72. On 28 January 2015, the Constitutional Chamber of the Supreme Court issued decision No. 2015-001241, declaring Law No. 9 024 unconstitutional. This decision was given on the grounds that, in comparison with the original bill, the approved bill had substantial amendments that were not published, violating the principle of publicity of the legislative procedure. According to the Constitutional Chamber of the Supreme Court, there must be absolute transparency, particularly in tax matters, so that the taxpayer is aware of the tax implications and has the possibility to object to the bill. This decision only produces effects as from the 2016 taxable period, so the tax is due in relation to previous tax periods. The Costa Rican authorities informed that there are no plans to reintroduce the annual minimum tax on inactive companies.

Company ownership and identity information required to be held by companies

73. A public SA that issues shares must keep a record of the name, nationality and domicile of the shareholder and the number of shares belonging to him/her; any payments or transfers made; and any exchanges, cancellations or encumbrances on the share (Art. 137, Commerce Code). A private SA (whether active or inactive) and an LTDA also have the obligation to keep a share register, listing the shares pertaining to the subscribing or founding shareholder and then, in chronological order, the successive transfers (Art. 256). The Transparency Law introduced by Costa Rica in September 2012 establishes enforcement measures in respect of SAs that fail to keep a shareholder register, but no similar enforcement measures have been provided with respect to LTDAs (see section A.1.6 below).

74. In practice, however, the Costa Rican authorities do not have a regular programme in place to monitor the compliance of the obligation to maintain ownership and identity information. The AMPO programme, introduced in April 2015, to monitor the compliance of the obligation to maintain ownership and identity information by large taxpayers is limited in scope, as it does not apply to other taxpayers or inactive companies. This gives rise to practical concerns about the availability of identity and ownership information, particularly with regard to inactive companies. It is, therefore, recommended that Costa Rica puts in place an oversight programme to ensure the compliance with the obligation to maintain a share register by all companies.

Foreign Companies

75. The definition of merchant in Commerce Code includes any foreign company that conducts commercial activities (for-profit) in Costa Rica in a habitual manner (Article 5(d)). As merchants, foreign companies are subject to the same requirements as domestic companies. This includes a requirement to register with the Public Registry and to appoint a resident agent, who must be an attorney with an open office in Costa Rica with sufficient power to accept legal and administrative notifications in the name of the company when none of its representatives are domiciled in the country. The resident agent acts as the contact point of the foreign company in Costa Rica and is not required to maintain corporate ownership information. Registration must take the form of a public deed appointing a proxy for the company's business dealings and must include the purpose of the branch, the name of the spokespeople or administrators and a statement that the representative and the branch are subject to the laws and courts of Costa Rica (Art. 226). Like a domestic company, registration does not include ownership information on the company but the company is required to keep a share register (Art. 261).

76. For tax purposes, legal entities are considered tax resident if incorporated in Costa Rica, but not by virtue of management and control therein. Nevertheless, foreign companies that have branches, agencies and other permanent establishments in Costa Rica or engage in for-profit activities in Costa Rica are considered tax resident and subject to the Income Tax Code, including its registration requirements (Art. 5, Income Tax Regulations). However, registration does not include a requirement to provide ownership information, although the Tax Administration has the same authority to inquire about the ownership of a foreign company as it does for a domestic one and could inquire about the company's owners. As at December 2014, there were a total of 5 188 foreign companies registered in Costa Rica, of which 394 were active and filing tax returns (*de alta*).

77. The fact that the Public Registry and the Tax Administration have no regular oversight programmes in place to ensure that the share register is properly maintained by foreign companies, particularly with regard to inactive foreign companies, gives rise to concerns as to the availability of identity and ownership information in practice. It is, therefore, recommended that Costa Rica puts in place an oversight programme to ensure the compliance with the obligation to maintain ownership and identity information by foreign companies.

Regulated Entities

78. In Costa Rica, the financial market is regulated by the National Council for Financial System Supervision and regulated entities are supervised by four supervisory bodies according to their sector, i.e. General Superintendence of Financial Entities (GSFE), the General Superintendence of Securities (GSS), the Superintendence Pensions and the Superintendent of Insurance. All entities regulated by these four supervisory bodies are subject to the AML laws (Art. 1, GSFE Agreement 12-10 and Arts. 14 and 15, Law No. 8 204). The Financial Intelligence Unit (FIU) investigate money laundering activities based on reports of suspicious transactions submitted by these oversight bodies and regulated entities mentioned in articles 14 and 15 of Law No. 8 204.

79. Entities regulated by the GSFE include public and private banks, non-banking financial institutions, savings and loan organisations, credit co-operatives and solidarity associations, as well as other entities authorised by law to conduct financial intermediation (Articles 116 and 117, Law No. 7 558). Foreign companies cannot undertake activities regulated by the GSFE. The GSS regulates, supervises and oversights Costa Rican securities markets, as well as the activities of individuals or legal entities that are directly or indirectly involved in this market, as specified by Law No. 7 732.

80. A company that is supervised by the GSFE has additional requirements to those under the Commerce Code and General Tax Code and is also subject to audit by the GSFE. The requirements, procedures and deadlines for the registration of a regulated entity are regulated by the GSFE. It must inform the GSFE of any change in its board of directors and must also file with the GSFE a shareholder list with the name, nationality and address of the shareholders, which must be updated any time a change in ownership occurs.

81. GSFE Agreement 11-06 establishes the obligation to submit a certificate by public notary stating the number of shares issued, subscribed and paid; the type and value of each class of share; and the name, qualification and exact address of each and every shareholder, according to the company's share register. If the shareholders are legal persons, the same level of information must be submitted with respect to their shareholders, up to the level of individuals holding more than 5% of the capital (Art. 2, GSFE Agreement 11-06).

82. It must also file supporting documents, which include: notary certification indicating chain of ownership of all shareholders until an individual is reached,[4] with information on the individual and the percentage owned; list of Board of Directors, including all personal information; legal capacity certificate or certificate of good standing; CPA certificate indicating the capital stock paid and the number of shares, along with certified copy of the by-laws; written authorisation from the legal representative of any company in which the entity owns 50% or more of the capital stock to investigate the company in any national or international agency (with notarised signature); written authorisation of each of the members of the Board allowing the GSFE to investigate them in any national or international agency (with notarised signature); and financial statements pursuant to the international accounting standards, audited by a CPA (Article 16, GSFE Agreement 8-08).

83. As a matter of practice, the GSFE collects and verifies comprehensive identity and ownership on regulated entities under its supervision, including all shareholders listed in the corporate structure up to the level of individuals owning more than 5% of the legal person. Costa Rica advises that the GSFE must retain ownership information on the share composition of the companies it regulates while the company is under supervision and for at least 10 years thereafter.

84. In addition to registration duties pursuant to the Commerce Code and the General Tax Code, companies subject to supervision by the GSS, which includes the stock exchange, brokerage houses, corporations for administering investment funds, issuers of securities, non-banking financial enterprises and custodian entities, must register publicly with the National Registry of

4. The law is silent on whether this would include the ultimate beneficial owner.

Securities Intermediaries (NRSI). The NRSI is a public record that holds information on authorised participants. Entities subject to regulation by the GSS can be suspended for five years for failure to register.

85. The GSFE and the GSS conduct their supervisory functions and risk-based monitoring programmes through desk reviews and field visits, verifying if regulated entities are compliant with their AML and regulatory obligations, conducting administrative procedures and imposing administrative sanctions as appropriate (see sections A.1.4 and A.1.6 below).

Nominees

86. The concept of nominee ownership does not exist in Costa Rica. The Commerce Code provides that shares must be nominal (Art. 120) and there are no references to nominee ownership in any of Costa Rica's laws, including its AML law. Further, Article 687 of the Commerce Code provides that nominative securities are issued in favour of a determined person, whose name must be both on the share itself as well as in the securities register, which must be updated with any successive transfer. No act or transaction related to the security will be enforceable against the issuer or against third parties unless both of these requirements are met.

87. The concept of *mandatario* does exist in Costa Rican law, however it is quite different from the concept of nominee ownership. Specifically, a *mandatario* is not the legal or beneficial owner of shares, nor does his/her name appear on the stock register. A *mandato* is entered into through either public or private deed and must be in writing (Article 1251, Civil Code). A general *mandato* must be granted by public deed before a Notary Public and filed in the Public registry. The agreement has no effect until the registration is completed. General *mandato* allows the *mandatario* to essentially conduct all business of the person. For example, the *mandatario* can sell or mortgage assets, accept or decline wills, and undertake any juridical act that the person granting the power could do, except for those expressly forbidden by law (Article 1253). The Tax Administration has never faced issues regarding the identity of *mandatarios* for EOI purposes and the peers have not raised any concerns on this topic.

Bearer shares *(ToR A.1.2)*

88. Article 120 of the Commerce Code provides that all shares must be nominal. The Transparency Law introduced by Costa Rica in September 2012 has eliminated the references to bearer shares mistakenly left in Costa Rica's Commerce Code. In addition, Costa Rica's AML law provides that covered entities, which includes essentially every financial institution, cannot open

accounts, or have as clients, companies that have bearer shares (Art. 16(f), Law No. 8 204).

89. Costa Rica enacted Law No. 7 732, the Stock Exchange Regulatory Law, in 1997 which amended Article 120 of the Commerce Code to effectively eliminate bearer shares. Companies were given a time period to hold a shareholder meeting for the company to officially agree to convert the bearer shares into nominal shares. This process was supervised by the Public Registry and was completed in 1999. Costa Rica advises that they are satisfied that no bearer shares exist in Costa Rica. Discussions with the Costa Rican authorities and feedback from peers indicate that, to date, no information has been requested regarding bearer shares.

Conclusion

90. Ownership information should be available on all domestic companies (both active and inactive) as well as foreign companies through the share register, although there is no express penalty for failure to keep this information with respect to limited liability companies (see A.1.6 below). The fact that the Costa Rican authorities have no regular oversight programme in place to ensure that the share register is properly maintained by all companies, in particular inactive companies, gives rise to practical concerns on the availability of ownership and identity information with regard to these entities. The concept of nominee ownership does not exist in Costa Rica and bearer shares have been effectively eliminated.

91. During the three-year period under review (1 July 2011 to 30 June 2014), Costa Rica received seven EOI requests regarding identity and ownership information in relation to companies. The Costa Rican competent authority sought ownership and identity information from the Public Registry (in five cases), the legal representatives (in one case) and/or the shareholders (in two cases). On two occasions, Costa Rica faced practical difficulties in obtaining ownership information directly from the company or its legal representative either because the company was not registered with the Costa Rican authorities or due to an unreported change of its fiscal domicile. Nevertheless, in the latter case, the requested information was obtained from the local tax administration office in the course of a tax audit, and provided to the EOI partner without delay.

Partnerships *(ToR A.1.3)*

92. *Sociedad en nombre colectivo* (general partnerships)*, sociedad en comandita* (limited partnerships) *and empresa individual de responsabilidad limitada (*individual enterprises of limited liability or EIRLs) are most similar to the common law concept of partnerships. All three forms of entities are

uncommon in Costa Rica. As at December 2014 there were 2 012 individual enterprises of limited liability in Costa Rica, of which 454 were active and filing tax returns (*de alta*); 169 limited partnerships, of which only one was active and filing tax returns (*de alta*); and 1 508 general partnerships, of which only 18 were active and filing tax returns (*de alta*).

Types of Partnerships

93. *Sociedad en nombre colectivo* are most analogous to common law general partnerships and are made up of partners that are jointly and severally liable for any and all actions of the partnership. A general partnership must have an administrator, who does not have to be a partner but who must be authorised in the by-laws (Art. 37, Commerce Code). The administrator has power of attorney for the partnership.

94. *Sociedad en comandita* most closely resemble common law limited partnerships. They have partners whose liability is limited to their contribution; however partners may not exercise administrative powers within the partnership. A limited partnership is formed by a managing partner, responsible for the administration of the partnership and at least one limited partner (Art. 57, Commerce Code). Limited partners are only liable to the extent of their capital contribution and cannot carry out administrative acts for the partnership.

95. Individual Enterprises of Limited Liability or EIRLs are legal entities that limit the liability of the founder to his/her capital contribution (Art. 9, Commerce Code). Other juridical entities cannot create or own an EIRL.

Commerce Code

96. All partnerships and EIRLs must register with the Public Registry (Article 19). Registration must include the articles of formation (Art. 235).

97. For EIRLs, the articles of formation must indicate the name of the enterprise, its domicile, its capital stock, its duration and the name of its manager (Article 10, Commerce Code). The manager may also be the owner of the EIRL, but in practice they are usually the same person. Therefore, if the manager and the owner are not the same person, ownership information on an EIRL may not be available. The EIRL's by-laws and any amendment thereto must be published in the official newspaper and registered in the Public Registry (Article 13).

98. Limited partnerships and general partnerships are regarded as commercial entities irrespective of their purpose (Art. 17, Commerce Code). As far as ownership information is concerned, the articles of formation must include, among other things: the name, nationality, profession and domicile

of the founding partners who are natural persons (Art. 18(2), Commerce Code) and the name or business name of the founding partners who are legal persons (Art. 18(3), Commerce Code). For limited partnerships, the articles of formation must also include the names of all of the partners, distinguishing between the managing and limited partners and must include the capital contribution of each partner (Article 59).

99. Furthermore, all partnerships are required to enter into the commercial register the transfer of any interest in a partnership, therefore this information would be up to date (Art. 235). However, there is no express penalty for failure to register or to update registration and the Public Registry does not conduct any checks or audits to ensure that these formalities are observed by all partnerships registered therein. The only consequences involve rights between partners, not penalties that the Costa Rican authorities can use to enforce this requirement.

100. Upon formation of a partnership or registration of any change, the Public Registry officers must verify that all legal requirements have been fulfilled before validating this registration. As a matter of practice, all information and documents registered with the Public Registry are kept indefinitely and recorded on its electronic database. It is possible to obtain online certificates through the website of the Public Registry.[5]

Tax Code

101. General partnerships, limited partnerships and EIRLs are not taxed at the entity level; instead, the partners themselves must include in their individual tax return the taxable income of the partnership attributable to their share.

102. Like companies, partnerships must register with the Tax Administration. Partnerships that do not generate taxable income in Costa Rica still must file a form with the Tax Administration, but the form simply indicates that they do not have any tax liability.

103. The same as for a company, registration for partnerships with taxable income includes the completion of Form D-140, as well as the presentation of a valid identity document. Each taxpayer will be issued a taxpayer identification number. In addition, because partnerships are pass-through entities, the individual partners must also file income tax returns. Form D-140 requires the taxpayer identification number, name of the partnership, exact domicile, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity number, address and signature of the legal representative.

5. https://www.rnpdigital.com/shopping/login.jspx.

104. The partnership is also required to provide any information needed and promptly communicate any modification to the Tax Administration (Art. 128). Although there is no requirement to provide the names of the partnership's owners, the Tax Administration can inquire at any time about the ownership of the partnership (Art. 106(b)).

105. Because partnerships are considered *sociedad de personas* and not *sociedad de capital*, they are not required to keep register of partners.

Conclusion

106. Ownership and identity information is available in the case of general and limited partnerships. For an EIRL this information would only be available if the owner and manager is the same person. All partnerships must register with the Public Registry and the tax authorities, and ownership information, including transfers of ownership, must be registered as well. However, there is no express penalty for failure to register or to update registration and because this is the source of ownership information on partnerships, this could represent a gap in the availability of information (see A.1.6 below).

107. Over the review period, Costa Rica received no EOI requests concerning ownership and identity information about partnerships. Nevertheless, the Costa Rican authorities confirmed that they are in a position to provide this information if so requested. As a matter of practice, the Costa Rican competent authority always requests certified copies of documents held by the Public Registry, even though the Tax Administration has direct access to a copy of the Public Registry's electronic database. The database should contain comprehensive and updated identity information on the partners of limited partnerships and general partnerships, but not necessarily of all EIRLs.

108. In practice, however, the Public Registry has no regular oversight programme in place to ensure the compliance with the obligation to maintain ownership and identity information pertaining to partnerships. This gives rise to concerns as to the availability of this identity and ownership information in practice. It is, therefore, recommended that Costa Rica puts in place a programme to monitor compliance with the obligation to file updated ownership and identity information by all partnerships.

Trusts *(ToR A.1.4)*

109. The concept of "trust" does not exist under Costa Rican law, and Costa Rica has not signed The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is, however, no obstacle

in Costa Rican domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in Costa Rica. In addition, Costa Rican law knows the concept of *fideicomiso*, which is similar to a trust. *Fideicomisos* are governed by the Commerce Code and are also subject to the Tax Code for any lucrative activities in Costa Rica (meaning activities for profit) and must be created by a written document (Art. 635, Commerce Code). According to the Costa Rican authorities, there are no national or public consolidated records with figures on the overall number of *fideicomisos* established or foreign trusts administered in Costa Rica.

Fideicomiso

110. A *fideicomiso* can be established in Costa Rica under the Commerce Code by a *fideicomitente*, in order to transfer to a *fiduciario* the ownership of goods or rights, which the *fiduciario* is then obligated to use to achieve the legal purpose of the *fideicomiso* (Art. 633, Commerce Code). Any individual or company may be a *fiduciario* in Costa Rica (Art. 637, Commerce Code). A company that acts as a *fiduciario* must have articles of incorporation that specifically provide for the company to act as such.

111. The Tax Code provides that a *fideicomiso* is subject to tax in Costa Rica on income generated within Costa Rica (Art. 17) and that the *fideicomiso* is considered a taxpayer (Art. 18). A *fiduciario* is required to pay the taxes and fees on any property held in the *fideicomiso*, and is jointly and severally liable for this obligation (Art. 651).

Ownership information provided to the government authorities

112. Both professional and non-professional *fiduciarios* are subject to the requirements of the Commerce Code. They are required to identify and register the properties held in trust as required by Costa Rican law (such as real estate) and to keep them separate from his or her own property and, when acting on behalf of the *fideicomiso*, to identify the *fideicomiso* (Art. 644, Commerce Code).

113. *Fideicomisos* that generate income in Costa Rica are required to be registered with the Tax Administration. Such registration includes a certificate of good standing for the *fiduciario* and a description of the economic activity carried out through the *fideicomiso*. As at 30 November 2014, a total of 322 *fideicomisos* were enrolled as taxpayers with the Tax Administration.

114. *Fideicomisos* that issue securities must register with the GSS and registration includes information on the *fideicomitente*, *fiduciario* and *fidecomisario*s (Article 19, Law No. 7 732). As at 25 August 2014, there were 6 *fideicomisos* registered with the GSS.

Ownership information retained by the fiduciario

115. A *fiduciario* has an obligation to undertake any actions necessary to carry out the *fideicomiso.* The *fiduciario* must also be accountable to the *fidecomisario* for his/her actions and to the *fideicomitente* when applicable. The *fiduciario* must render accounts at least once a year and report to the *fidecomisario* any receipts from income or proceeds from liquidation carried out by the *fiduciario* within a period of 30 days after receipt and must also report any investment, acquisition or replacement of goods acquired, unless expressly agreed otherwise by the *fideicomitente* (Art. 650).

116. Although the Commerce Code does not expressly require that a *fiduciario* know the identity of the *fideicomitente* and the *fidecomisarios*, as required by the international standards, the fact that the *fiduciario* must report directly to the *fidecomisario*s and agree to certain arrangements with the *fideicomitente* means that the *fiduciario* would necessarily have to know the identity of the *fideicomitente* and *fidecomisario*s.

117. A *fiduciario* can be either a company or an individual, and in both cases the AML laws would apply. First, essentially all financial entities are subject to the AML laws, as the law states that any entity regulated by the GSFE is subject to the AML laws (Art. 14, Law No. 8 204). In addition, the AML law also covers entities or individuals who manage *fideicomiso*, whether professionally or not, and who are not financial intermediaries (Art. 15, Law No. 8 204). As at 30 April 2015, a total of 100 third-party resource managers were registered with the GSFE, including 51 who declared that they were acting as *fiduciarios*.

118. *Fiduciarios* who are not entities supervised by the GSFE (and therefore already registered) are required to register with the GSFE if they administer more than two *fideicomiso* in a year. For individuals, registration includes the name, profession, copy of identity card, address of residence and commercial establishment, and financial statements, among other things. For legal persons, registration includes the full name of the legal representative and individuals with powers of attorney, copy of identity card, address of residence of legal representatives, address of company and where the commercial establishment is located, financial information, articles of incorporation, a certification of the number of shares, type and the name and address of the shareholders pursuant to the shareholder registry (if shareholders are legal persons it must include the name of each shareholder owning more than 5% of the company), board members and annual financial statements, among other things (Article 2, SUGEF Agreement 11-06). If a *fiduciario* is a foreign person, a verifiable residence in Costa Rica is required upon registration with the GSFE. Any change to the information or documents submitted for registration must be submitted to the GSFE no later than five working days from such change (Article 5).

119. *Fiduciarios* covered by the AML laws are required to perform know your client measures when establishing a business relationship, making a fiduciary transaction, or carrying out transactions equal to or greater than USD 10 000 or its equivalent. These measures include registering and verifying "the identity, representation, domicile, legal authority, and occupation of the individual … as well as other identification information" (Art. 16(c), Law No. 8 204). This is required whether the customer is an occasional or regular customer and the information must be written on a form that the customer must sign. In addition, Costa Rica issued a regulation by Executive Decree No. 3 6948 which requires that *fideicomisos* subject to the AML law must establish and adequately document the *fideicometente* and *fidecomisario* of the *fideicomiso* (either direct or indirect ownership) when the *fideicomitente* or *fidecomisario* is a company (Art. 27). Taken together with the requirements in the Commerce Code, this ensures that ownership information on a *fideicomiso* would be available.

120. Records of the information and documentation required must be kept during the "effective term of the transaction" and for at least five years from the date of the transaction. A covered *fiduciario* must also keep all customer identification records, account files, business correspondence and financial operations that permit reconstruction or conclusion of the transaction for a minimum of five years. Any information relating to transactions identified as suspicious must be directly and confidentially transmitted to the FIU. Following the electronic submission of such information, covered *fiduciarios* must inform the respective Superintendence (GSFE or GSS), referring to the number and date of the report submitted to the FIU (Art. 35, Law No. 8 204 Act).

121. However, because a *fiduciario* is only covered by the AML laws if s/he administers more than two *fideicomisos* in a year, whether for profit or not (SUGEF Agreement 11-06), some *fiduciarios* would not be subject to the identity requirements of the law and therefore this information may not be available in some cases. Costa Rica advises that this represents a very limited number of *fideicomisos*. In practice, however, this represents a small gap in the availability of information on *fideicomisos*.

122. The regulatory and supervisory bodies that have oversight of the *fideicomisos* are the GSFE and the GSS. In order to verify if supervised fiduciaries are compliant with their AML and regulatory obligations, the GSFE and the GSS have in place monitoring programmes developed under a methodology of risk-based supervision, according with international best practices. Conducting a field visit involves several stages:

1. *Planning*: during this phase, the supervisory bodies determine the most important objectives to be achieved during the field visit and the resources (human and technological) are assigned to conduct the

study. At this stage, it is important to justify and document the type, scope, approach and duration of the inspection, taking into account the size and complexity of the supervised entity, risk profile, compliance history, monitoring studies and other reasonable basis.

2. *Field visit*: the current procedure has a number of activities that supervisors should apply in order to evaluate the effectiveness of AML prevention systems developed by the supervised entities. Issues such as corporate governance policies and procedures, monitoring systems, compliance bureaucracy, suspicious transaction reports, control systems and internal and external audit are evaluated.

3. *Issuance of reports*: all relevant results obtained during the planning and field visit are communicated to the supervised entity, in order to develop action plans to improve the weaknesses identified during the risk management activities.

4. *Monitoring and analysis*: the GSFE is implementing processes to streamline the mechanisms for monitoring the risk of the supervised entities, through a continuous improvement of processes and procedures. During 2012 and 2013, the GSFE also developed diagnostic mechanisms on the situation of supervised entities that help establish the priorities for supervision.

123. The GSFE implemented two initiatives to streamline its monitoring programme. At the end of 2012, the GSFE acquired a software that serves as a tool to support and facilitate the work of supervision, receipt of information, reporting and monitoring of the findings. In 2014, it conducted a pilot plan involving 19 regulated entities (including three banks and three *fideicomisos*), based on a risk management analysis, that will be extended to all regulated entities by the end of 2015.

124. The GSFE checks if covered *fiduciarios* are performing know your client measures. If any flaws are detected, administrative procedures are open and penalties are applied, as prescribed by Law No. 8 204 (see A.1.6 below). Intergovernmental co-operation and information exchanges are common practices in Costa Rica. The Tax Administration will typically exchange information directly with the FIU, rather than the GSFE or the GSS.

Foreign trusts

125. Nothing in Costa Rican law would prevent a person from serving as a trustee of a foreign trust. The AML laws do not apply to trustees of a foreign trust.

126. A foreign trust would only be relevant for tax purposes in Costa Rica if it generates income in Costa Rica. In that case, the trustee would be liable to tax on income earned in Costa Rica and therefore also required to register with the Tax Administration and keep accounting records (see section A.2. below). However, the Tax Code does not impose a requirement that the trustee provide the names of the settlor and beneficiaries upon registration nor would such information necessarily be provided in the tax return. In addition, as Costa Rica has a territorial tax system, a trustee would only have obligations under the Tax Code to the extent that the trust income is Costa Rican source income. A foreign trust with a trustee resident in Costa Rica that has only foreign source income would not be subject to tax in Costa Rica.

127. The Costa Rican authorities indicated that, in the course of their supervisory and monitoring role, they have never found any cases where a Costa Rican resident was acting as trustee for a foreign trust or a foreign trust with Costa Rican source income was in breach of tax filing obligations. The Costa Rican authorities reported, and feedback from peers confirms, that to date there have been no cases involving ownership and identity information of a foreign trust.

Conclusion

128. *Fiduciarios* in Costa Rica must register with the GSFE if they are a financial institution or if they administer more than two *fideicomisos* in any year and they are also subject to the AML laws. *Fideicomisos* that issue marketable securities must provide information on the *fideicomitente, fiduciario* and *fidecomisario*s upon registration. The reporting requirements in the Commerce Code, together with the AML requirements on *fiduciarios* under the AML laws ensures that ownership information on *fideicomisos* is available. *Fiduciarios* who are not financial institutions and administer two or fewer *fideicomisos* per year do not have a duty to maintain ownership information. Further, ownership information on a foreign trust with a Costa Rican resident trustee may not be available.

129. Over the review period, Costa Rica received no EOI requests pertaining to identity information relating to settlors, beneficiaries, *fiduciarios* or trustees of *fideicomisos* or foreign trusts administered from or with a trustee resident in Costa Rica. The GSFE and the GSS have in place risk-based oversight programmes to ensure that covered *fiduciarios* are performing know your client measures and AML obligations are complied with. Nevertheless, this monitoring programme does no cover *fiduciarios* who are not financial institutions and administer two or fewer *fideicomisos* per year or Costa Rican resident trustees of foreign trusts. This ensures that ownership and identity information on *fideicomitentes*, *fiduciarios* and *fidecomisario*s would be available with respect to most *fideicomisos*, but a potentially small gap has

been identified in practice. It is, therefore, recommended that Costa Rica puts in place an oversight programme to ensure the compliance with the AML obligation by all *fiduciarios* and Costa Rican resident trustees of foreign trusts.

Foundations *(ToR A.1.5)*

130. Foundations in Costa Rica may only be established as private not for profit entities. The goal of a foundation in Costa Rica must be accomplishing, or helping to accomplish, via the use of assets, activities of an educational, beneficial, scientific, artistic or literary nature and, in general, all activities that represent social well-being.

131. Foundations must be established through public deed or by will and must be registered with the Public Registry (Article 3, Law No. 5 338 (Foundations Law)). A foundation is a separate legal person (Art. 5). The document creating the foundation must include the name, address, and object of the foundation and details on how it will be administered (Art. 4). The constitutive document of the foundation has to contain the identification of the founder(s) and, as a matter of practice, this information publically available at the microfilm registry of the Public Registry. In addition, the Public Registry's database also contains updated information about the legal representative of foundations. As at December 2014, there were 2 939 foundations registered in Costa Rica.

132. The administration and management of a foundation is conducted by an Administrative Board. The founder must designate either one or three persons as directors and must also establish in the Articles of Organisation the way in which members will be substituted. If the founder designates only one director, the Board must have three people; if there are three directors, the Board must have five. In both instances, one of the members of the Board will be designated by the Executive Branch and another by the municipality of the neighbourhood where the foundation is domiciled (Article 7). A foundation's board must render a report of the activities of the foundation to the Comptroller General of the Republic annually (Article 15).

133. Over the review period, Costa Rica received no EOI requests concerning ownership and identity information about foundations. In practice, the Public Registry has no regular oversight programme in place to ensure the compliance with the obligation to maintain ownership and identity information pertaining to foundations. It is, therefore, recommended that Costa Rica puts in place an oversight programme to ensure the compliance with this obligation by the administrators of foundations.

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

134. Jurisdictions should have in place effective enforcement provisions to ensure the availability of information, one such possibility among others being sufficiently strong compulsory powers.

Companies and Partnerships

135. All companies and partnerships are required to register with the Public Registry. Until registration is effected, no rulings, agreements or company documents have any legal effect against third parties. The effect of not updating registration or notifying the Public Registry of transfers of ownership is the same, meaning that a new partner/owner is not liable to third parties for actions of the entity if the change in ownership is not provided to the Public Registry.

136. All domestic companies and some foreign companies must keep a share register. The Transparency Law introduced by Costa Rica in September 2012 prescribes penalties in respect of joint stock corporations (*sociedades anonimas* or SAs) that fail to keep a shareholder register, but no similar penalties have been established with respect to limited liability companies (*empresas de responsabilidad* limitada or LTDAs) and partnerships. The lack of effective enforcement provisions could result in ownership information not being available and it is therefore recommended that Costa Rica implement effective penalties to ensure the availability of information with respect to limited liability companies and partnerships.

137. No figures are available concerning the compliance level with the obligations to maintain ownership and identity information by companies (except for regulated entities) and partnerships, or the application of enforcement measures for non-compliance. The fact that the Costa Rican authorities have no regular oversight programme in place to ensure that these obligations are observed gives rise to practical concerns on the availability of ownership and identity information with regard to these relevant entities, particularly with regard to inactive companies and partnerships. It is, therefore, recommended that Costa Rica puts in place a programme to monitor compliance with the obligation to maintain ownership and identity information with regard to all relevant entities.

138. The Tax Code provides for both administrative and criminal sanctions. Penalties in Costa Rica are expressed in terms of a percentage of the "base salary". For 2015, the base salary is CRC 403 400, or approximately USD 750.

139. The Tax Code requires that all companies and partnerships subject to tax file a form D-140 declaration with the Tax Administration annually. Form D-140 does not include all ownership information on the entity, but does include the taxpayer identification number, the name of the entity, a description of its activity, the address where it will be carried out, and the name, identity number, address and signature of the legal representative. The entity is also required to communicate any modification "promptly" to the Tax Administration. Companies and partnerships with taxable income in Costa Rica who fail to file a declaration of registration, cancellation of registration or modification of relevant information about the legal representative or fiscal domicile by the date set in the law or regulations with the Tax Administration are liable for a fine of 50% of the base salary for each month or fraction thereof, not to exceed three base salaries (Art. 78, Tax Code).

140. Taxpayers who fail to file a declaration or file an inaccurate declaration by the due date are liable for a sanction of 25% of the difference between the tax amount payable and the credit balance. Where the Tax Administration determines that there has been an error through data simulation or information skewing or hiding the true information or using any other means of deceit in an amount less than 200 base salaries, the sanction is 75% (Art. 81).

141. The Tax Code also provides for criminal sanctions, including when a taxpayer provides the Tax Administration with misleading information and the amount defrauded exceeds 200 base salaries, in this case the sanction is 5 to 10 years in prison for misleading information through data simulation, skewing or hiding true information or deception (Art. 92).

142. Nevertheless, the vast majority of companies (approximately 70%) are not regularly monitored by the Tax Administration as they are considered as inactive and thus not subject to tax or tax filing obligations. Since 2011, the Tax Administration has a programme in place to monitor inactive companies through information crosschecks in order to establish whether these entities are performing lucrative activities without properly complying with their registration and tax filing obligations. From 2011 to 2013, the Tax Administration has identified and punished 3 131 companies performing lucrative activities while irregularly registered as inactive, for failure to comply with their administrative and material tax obligations (article 79 of the Tax Code). In 2015, Directive No. DR-DCE-DI-01-2015 introduced a new programme, through information crosschecks, which detects taxpayers that have been conducting transactions with third parties or carrying out a commercial activity, without filing tax returns and being properly registered with the Tax Administration.

143. Furthermore, Law No. 9 024 was enacted in 2012 to discourage the use of inactive companies for holding valuable assets, by imposing an annual minimum tax on inactive companies and a penalty of dissolution of the entity

for failure to comply with this tax obligation for three consecutive years (article 6). In practice, however, the compliance level with the annual minimum tax has been extremely low, with taxes collected by the Public Registry from about only 30% of the companies considered as inactive. On 28 January 2015, the Constitutional Chamber of the Supreme Court declared Law No. 9 024 unconstitutional and this decision produces effects as from the 2016 taxable period.

144. The AML laws forbid a bank from accepting the accounts of a company that has bearer shares. Pursuant to Law No. 8 204, financial institutions are responsible for the actions of their employees, officials and owners and individuals and companies regulated by the law may be sanctioned by a fine of up to 1% of their net worth for failure to adhere to this requirement. The same penalty applies for failure to obtain and keep identity information and keep customer identification records for a minimum of five years.

145. Once the GSFE detects breaches to the AML laws in the course of its supervisory activities, it opens an ordinary administrative procedure against a supervised entity. The GSFE reported that, in May 2009, an ordinary administrative procedure resulted on the imposition of a fine of 279 million colones, equivalent to approximately USD 520 500, corresponding to 0.15% of assets reported by the entity at 30 November 2007. Another ordinary administrative procedure against a supervised entity is pending at an early stage, for possible failure to register and possible omission of the record keeping AML obligations on the identity its customers.

Trusts

146. All *fideicomisos* in Costa Rica must register with the GSFE if they are a financial institution or if they administer more than two *fideicomisos* in any year. Registration includes identity information on the *fideicomiso* (including ownership information in case of a legal person). Both administrative and criminal sanctions are available for failure to comply with the requirements of the GSFE. A prison sentence of three to six years is imposed on any *fideicomiso* that performs unauthorised financial intermediation, meaning to act as a *fideicomiso* without being authorised by GSFE, or permits or authorise such activities in their office (Article 157).

147. *Fideicomisos* in Costa Rica are also subject to the AML laws, which require them to take customer due diligence measures. The penalty for failure to take these measures is a fine of 1% of their net worth (Article 81(a)(4), AML Law).

148. With regard to enforcement measures, the GSFE prepares a report of with a corrective action plan for each of the monitoring surveys and field visits it carries out. The report sent to the supervised entity should include the actions to be implemented, responsibilities for implementation and compliance

deadlines. The implementation of these action plans is monitored by the GSFE and is also considered in the planning stage of new field visits. Throughout the course of the GSFE and the GSS oversight programmes, compliance with know your client measures by covered *fiduciarios* and AML obligations applicable to regulated entities to maintain ownership and identity information pertaining to *fideicomisos* has been considered satisfactory by the supervisory bodies.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
An EIRL is only required to file the name of the manager at registration; therefore unless the manager and owner are the same person, ownership information on an EIRL may not be available.	Costa Rica should ensure that ownership information on EIRLs is available.
Although a trustee of a foreign law trust would be liable to tax on Costa Rican source income of the trust, there are no requirements for the trustee to maintain ownership information.	Costa Rica should take measures to ensure that information is available that identifies the settlor and beneficiaries of foreign trusts
There are no express penalties in place for limited liability companies and partnerships that fail to register or update registration information. In addition, there is no penalty for a limited liability company that fails to maintain a share register.	Costa Rica should put in place effective enforcement provisions to ensure the availability of information for limited liability companies and partnerships.

Phase 2 Rating	
Non-Compliant	
During the review period, Costa Rica did not have a regular oversight programme in place to ensure compliance with the obligations to maintain ownership and identity information, particularly for inactive entities, and penalties for non-compliance were unenforced in practice.	Costa Rica should put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

A.2. Accounting records

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

General requirements (ToR A.2.1)

149. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should; *(i)* correctly explain all transactions, *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. and need to be kept for a minimum of five years.

Companies, Partnerships and Fideicomiso/Trusts

150. The Commerce Code contains general accounting requirements for all "merchants", which includes all domestic companies, foreign companies that conduct commercial activities in a habitual manner in Costa Rica, *fideicomisos* and partnerships (Art. 234). It requires that merchants keep records such that "the business operations and financial situation may be easily, clearly, and accurately set forth" (Art. 251). This must include a balance sheet and inventory books, journal and general ledger. Where necessary, worksheets and any books or auxiliary records must also be kept (Art. 251). In addition, the Commerce Code requires that a *fiduciario* render accounts at least once each year (Art. 644). However, no specific accounting rules exist for foreign trusts administered by Costa Rican trustees and there are no penalties in the Commerce Code for failure to keep accounting records.

151. Companies that issue securities must present audited financial statements annually, and one unaudited internal financial statement each quarter. Such financial statements include a balance sheet, income statement, a statement of changes in equity and a cash flow statement. Financial statements must follow the International Financial Reporting Standards (IFRS) requirements. In the case of a foreign company domiciled in a country that uses different standards, they may comply with standards applicable to that country but must also attach a report prepared by an external auditor explaining the differences between these standards and Costa Rica's (Regulation on Public Offering of Securities, Art. 23).

152. All legal entities formed in Costa Rica as well as branches, agencies and other permanent establishments of non-residents in Costa Rica

and anyone engaged in for-profit activities in Costa Rica are subject to the Tax Code. It requires that taxpayers keep accounting records in an "orderly manner" in case they are required by the Tax Administration in order to facilitate any determination, supervision and investigation that the Tax Administration carries out (Art. 128). Such records must include the business books, records, documents and histories of operations or situations that constitute taxed events. These records must be kept in the fiscal domicile of the company, unless the Tax Administration agrees otherwise (Art. 110). According to the Commerce Code, fiscal domicile must be within Costa Rica (Art. 18, Commerce Code).

153. Under the tax law, the penalty for not keeping accounting books, having them authenticated, not showing accounting books when the tax authorities require or having books more than three months out of date, is one base salary (Art. 82, Tax Code). The base salary for 2015 is CRC 403 400 or approximately USD 750.

154. The General Tax Code requires that the taxpayers keep accounting records in an "orderly manner". It also prescribes a penalty for non-compliance with these general accounting requirements. However, the general accounting requirements prescribed by the General Tax Code were not consistent with the international standards, as they did not ensure that the records could correctly explain all transactions, enable the financial position of the entity or arrangement be determined with reasonable accuracy at any time and allow financial statements to be prepared.

155. The Commerce Code requires that all merchants keep records such that, "the business operations and financial situation may be easily, clearly and accurately set forth". This must include a balance sheet, inventory books, journal and general ledger. In September 2012, the Strengthening of the Tax Administration Law amended article 84 of the General Tax Code to make explicit reference to the accounting requirements established in the Commercial Code, extending the same penalty for not keeping accounting records as required under the General Tax Code to a failure to keep accounting records in accordance with the Commerce Code.

156. In addition, article 110 of the General Tax Code was amended to impose on all Costa Rican taxpayers an obligation to keep the accounting records in the fiscal domicile or any other place, authorised by the tax administration. The databases and storage sites may even be outside Costa Rican territory, as long as they are available for auditing. Moreover, article 251 of the Commerce Code was also amended to establish that the general accounting requirement include those kept in electronic formats. On April 2015, the Large Taxpayer Directorate implemented, through Resolution DGT-R-30-2014 of 5 August 2014, a new electronic mechanism to request information from large taxpayers. Large taxpayers must provide ownership

and accounting information, which must be updated within a 10-day period after any change is made thereon. Nevertheless, this programme to monitor the compliance of the obligation to maintain ownership and identity information is limited in scope, as it does not apply to other taxpayers or inactive companies.

157. Trustees of foreign law trusts are not subject to the accounting requirements of the Commerce Code, as a foreign law trust cannot be considered a "merchant" under Costa Rican law. Although business activities of foreign law trust will be subject to the accounting requirements of the Tax Code if these activities are carried on in Costa Rica, these requirements fall short of the international standards. Accounting information on foreign law trusts with a trustee in Costa Rica therefore may not be available. It is recommended that Costa Rica address this gap in availability of information.

Underlying documentation (ToR A.2.2)

158. The Commerce Code requires that merchants (domestic companies, foreign companies, partnerships and *fideicomisos*) keep "mail, invoices and other supporting documents." This conforms with the international standards, however this requirement does not, apply to foreign law trusts or non-merchant foreign companies. The Strengthening of the Tax Administration Law of September 2012 extended the same penalty for not keeping underlying documentation as required under the General Tax Code to a failure to keep records as prescribed in the Commerce Code.

159. The Tax Code requires all entities with income in Costa Rica to keep "documents and histories of operations or situations that constitute taxed events". In addition, Article 109 says that the Tax Administration may require that accounting records "be backed by the pertinent vouchers".

Document retention (ToR A.2.3)

160. The Commerce Code, as amended by the Transparency Law of September 2012, requires that merchants maintain accounting records from the start of the business until four years after ending operations (Art. 234). As such, the document retention requirement for a merchant that has not ended operations is indefinite. Underlying documents such as mail, invoices and supporting documents must only be kept for at least five years from "the respective dates", which Costa Rica advises means the date of issuance.

161. The Transparency Law also introduced amendments to article 109 of the General Tax Code, in addition to the changes to articles 234, 270 and 271 of the Commerce Code relating to the minimum retention period for accounting records and underlying documents. These amendments make it

clear that all taxpayers and responsible parties must keep accounting records and underlying documents for a minimum period of five years, which is in line with the international standards.

Availability of accounting records in practice

162. The accounting record-keeping obligations prescribed by the tax laws are inconsistent with the international standards and are only applicable to Costa Rican taxpayers, including domestic and foreign companies, partnerships and any other natural persons engaged in lucrative activities in Costa Rica. Since the vast majority of companies and partnerships (approximately 70%) are considered as inactive, and thus not subject to tax or tax filing obligations in Costa Rica, they are not regularly monitored by the Tax Administration. No figures are available, however, concerning the number of tax audits or the application of enforcement measures over the review period for non-compliance with the accounting record-keeping obligations prescribed by the tax laws.

163. As of 2011, the Tax Administration has a programme in place to monitor inactive companies through information crosschecks in order to establish whether these entities are performing lucrative activities without properly complying with their registration and tax filing obligations. From 2011 to 2013, the Tax Administration has identified and punished 3 131 companies performing lucrative activities while irregularly registered as inactive, for failure to comply with their administrative and material tax obligations (article 79 of the Tax Code). Nevertheless, this programme does not ensure that inactive companies that do not conduct activities for profit in Costa Rica are compliant with their accounting record-keeping obligations under the Commerce Code.

164. While the Tax Administration monitors compliance with the tax obligations by Costa Rican taxpayers, it cannot enforce the accounting requirements set forth by the commercial laws. Therefore, even though the same penalty for not keeping accounting records and underlying documentation as required under the General Tax Code was extended to a failure to keep records as prescribed in the Commerce Code, the competence to apply this penalty remains with the Public Registry. As mentioned above in Part A of this report, the Public Registry has no regular oversight programme in place to ensure that registered entities, in particular inactive entities, comply with the accounting record-keeping requirements prescribed by the Commerce Code, which are in line with the international standards. Moreover, no figures are available concerning the application of enforcement measures prescribed by the commercial laws in practice.

165. The GSFE and the GSS supervise regulated entities and covered *fiduciarios* in their compliance with accounting record-keeping requirements prescribed by the AML laws. These supervisory bodies conduct risk-based monitoring programmes through desk reviews and field visits, conducting administrative procedures and imposing administrative sanctions in case of beaches (see A.1.6 above). Throughout the course of the GSFE and the GSS oversight programmes, compliance with accounting record-keeping requirements by regulated entities and covered *fiduciarios* has been considered satisfactory.

Conclusion

166. The Commerce Code requires that reliable accounting records, including underlying documents, are retained consistent with the international standards. The Strengthening of the Tax Administration Law of September 2012 extended the same penalty for not keeping accounting records and underlying documentation as required under the General Tax Code to a failure to keep records in accordance with the Commerce Code. Foreign trusts are not subject to the accounting requirements of the Commerce Code, but are subject to the requirements of the Tax Code if they have taxable income in Costa Rica. The Tax Code requires that accounting records are kept, but not with the specificity required by the standards. Following the legislative amendments introduced by Costa Rica in September 2012, the Commerce Code and the General Tax Code require that accounting records and underlying documents be kept for five years, consistent with the standards.

167. The Tax Administration monitors compliance with the accounting record-keeping obligations prescribed by the tax laws but this supervision is limited to Costa Rican taxpayers, including active domestic and foreign companies, partnerships and trustees of foreign trusts with lucrative activities in Costa Rica. The AMPO programme, introduced in April 2015, to monitor the compliance of the obligation to maintain accounting information by large taxpayers is limited in scope, as it does not apply to other taxpayers or inactive companies. Except for regulated entities and covered *fiduciarios*, there are no regular oversight programme in place to ensure that the accounting requirements prescribed by the Commerce Code are observed by all relevant entities and arrangements. This gives rise to concerns on the availability of accounting information in practice, particularly with regard to inactive entities. Moreover, no figures are available concerning the application of enforcement measures for non-compliance with accounting requirements in practice. It is, therefore, recommended that Costa Rica puts in place an oversight programme to ensure compliance with and enforcement of the obligation to maintain reliable accounting records and underlying documents for at least five years by all relevant entities and arrangements.

168. Over the three-year period under review (1 July 2011 to 30 June 2014), Costa Rica received three EOI requests regarding accounting information, all of them pertaining to companies. In order to obtain the requested accounting information, the Costa Rican competent authority sought information from the Tax Administration and/or the partners. The Costa Rican authorities stated that they faced no practical difficulties in obtaining and providing the requested accounting information in a timely manner. Feedback from peers indicates that they were generally satisfied with the accounting information provided by Costa Rica during the review period.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Costa Rican legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts which are administered in Costa Rica or in respect of which a trustee is resident in Costa Rica.	Costa Rica should ensure that all relevant entities and arrangements maintain accounting records, including underlying documentation.

Phase 2 Rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the review period, Costa Rica did not have a regular oversight programme in place to ensure compliance with the obligations to maintain accounting information, particularly for inactive entities, and penalties for non-compliance were unenforced in practice.	Costa Rica should put in place an oversight programme to ensure the compliance of the obligations to maintain accounting information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

169. Banking information should be available for all account-holders and should include all records pertaining to the accounts as well as to related financial and transactional information. As at 30 April 2015 there were 15 banks, of which three were state-owned and 12 were private.[6]

170. Costa Rica's AML law (Law No. 8 204) requires that all financial institutions record the incoming and outgoing cash transactions equal to or greater than USD 10 000 or its equivalent in colones (Art. 20). For each such transaction, the report must include the following:

- identity, signature, date of birth and address of the person who physically made the transaction;
- a photocopy of an identity document;
- for companies, the identity, signature, date of birth and address of the legal representative and resident agent;
- identity and address of the person in whose name the transaction is made the beneficiary or addressee of the transaction (if applicable);
- the accounts affected by the transaction (if any);
- type of transaction involved;
- identity of the financial institution that made the transaction;
- date, time, amount and origin of the transaction; and
- The identification of the employee who processed the transaction. (Art. 21)

171. Pursuant to Law No. 8 204, it is forbidden to maintain anonymous accounts, numbered accounts or accounts under fictitious or inexact names (Art. 16(b)). The financial institution must keep "a precise and complete record of the documents, electronic mail, and any other evidence to back it up" from the date of the transaction and for five years thereafter (Art. 22).

172. Multiple transactions are considered single transactions for these purposes if they are made by a particular person or for his/her benefit within one day (or another period that the supervisory or oversight authority may designate) (Art. 23).

6. www.sugef.fi.cr/publicaciones/listado_entidades_sujetas_fiscalizacion/.

173. The law also requires that a bank keep "customer identification records, account files, business correspondence and financial operations that permit reconstruction or conclusion of the transaction for a minimum of 5 years" (Article 16(e)). Further, a regulation to Law No. 8 204 (issued in the form of Executive Decree No. 36 948) requires that financial institutions keep records of all transactions for five years, without limiting this requirement to transactions over a specified amount. In summary, bank information, including records of all transactions, is available.

Availability of bank information in practice

174. In Costa Rica, the financial market is regulated by the National Council for Financial System Supervision and banks are supervised by the General Superintendence of Financial Entities (GSFE). The GSFE conducts its supervisory functions and risk-based monitoring programme through desk reviews and field visits, to verify if regulated entities are compliant with their AML and regulatory obligations (see section A.1.4 above). Once the GSFE detects breaches to the AML laws in the course of its supervisory activities, it opens an ordinary administrative procedure against a supervised entity.

175. The GSFE reported that, in May 2009, an ordinary administrative procedure resulted on the imposition of a fine of 279 million colones, equivalent to approximately USD 520 500, corresponding to 0.15% of assets reported by the entity at 30 November 2007. Another ordinary administrative procedure against a supervised entity is pending at an early stage, for possible failure to register and possible omission of the record keeping AML obligations on the identity its customers.

176. Over the review period, the Competent Authority received five EOI requests concerning bank information. In practice, Costa Rica was able to gather and provide banking information without difficulties or undue delay in relation to four cases. In one administrative case, Costa Rica declined to send bank information to one of its EOI partners for the period from 2009 to 2011. This is unrelated to the availability of bank information in practice. As further discussed in Part B of this report, the EOI agreement between Costa Rica and this EOI partner is not considered to the standard since it limits the exchange of bank information to cases of tax fraud, as defined under Costa Rican law. This issue could be solved once the Multilateral Convention is in force both in Costa Rica and this EOI partner. This is the case for Costa Rica but this EOI partner, which is also a signatory of the Multilateral Convention, has not ratified it yet.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

B. Access to information

Overview

177. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Costa Rica's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

178. The Costa Rican competent authority has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Costa Rica and stored in the Tax Administration institutional databases. During the review period, the Costa Rican competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information, bank information and other types of information. Compulsory powers are provided for under Costa Rican law but their effectiveness remained untested over the peer review period.

179. Up until September 2012, Costa Rica's domestic law was ambiguous with regard to the Tax Authorities' powers to access ownership, identity and accounting information for EOI purposes. Following the changes that Costa Rica made to its legal and regulatory framework in September 2012, the competent authority of Costa Rica has sufficient powers to obtain and provide information considered foreseeably relevant under an international agreement providing for exchange of information for tax purposes (EOI agreement). These legislative amendments removed ambiguities from Costa Rica's legal framework that could limit the competent authority's ability to obtain and provide information due to a domestic tax interest requirement.

In practice, no difficulties have arisen in connection with gathering information requested under valid EOI agreements, regardless of whether Costa Rica needed the information for its own tax purposes.

180. In September 2012, Costa Rica also amended the procedure to obtain banking information from financial entities. Before September 2012, the tax authorities had to demonstrate evidence of an unlawful act under Costa Rican law and that the taxpayer would be subject to audit pursuant to Costa Rica's National Audit Plan. As such, access to bank information was restricted by a dual criminality principle and a domestic tax interest requirement. Under the new procedure established in September 2012, bank information became accessible following an order from a civil administrative judge, rather than an order from a criminal judge, both for domestic and EOI purposes. Specific timelines have been prescribed for the processing of the application made to the judge. In June 2015, Costa Rica amended again its laws to introduce a streamlined procedure under which the Tax Administration can request bank information directly to the financial entities without a court order.

181. On their face, these legislative amendments brought Costa Rica's legal framework in line with the standards in terms of access powers to ownership, accounting and banking information. However, on 13 March 2015, Costa Rica's Tax Administration Directorate published Official Position No. DGT-CI-002-15 about the application of the tax reform introduced by the Transparency Law of September 2012. According to Costa Rica's interpretation of its domestic law, these changes cannot be retrospectively applied to obtain bank information in connection with civil tax matters concerning taxable periods prior to 1 October 2012. Notwithstanding, the Costa Rican authorities have confirmed that the new procedure established in September 2012 may be applied to obtain bank information concerning transactions occurred or documents produced before the entry into force of the Transparency Law, insofar as they relate to taxable periods beginning on or after 1 October 2012. For criminal tax matters, however, the Tax Administration has unrestricted access to bank information concerning taxable periods prior to 1 October 2012, as long as the applicable EOI agreement is in force. In practice, this gap is likely to be narrow as most EOI agreements concluded by Costa Rica became effective for civil tax matters with respect to taxable periods starting on or after 1 October 2012. Nevertheless, Costa Rica should ensure that all bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.

182. On its face, Costa Rica's attorney-client privilege standard is potentially overbroad. Nevertheless, the Costa Rican authorities have confirmed that the professional secrecy exception in relation to lawyers has been narrowly interpreted by the Costa Rican courts in a number of non-tax cases.

On 27 July 2015, the Tax Administration issued Official Position No. DGT-CI-007-2015 confirming that the professional secrecy provisions in relation to legal professionals are interpreted and applied in a restrictive manner and, in practice, it has never prevented tax authorities from accessing information requested for EOI purposes. Accordingly, Element B.1 was found to be "in place" and, in view of potential restrictions to the access bank information in relation to taxable periods prior to 1 October 2012, rated as "largely compliant".

183. Under Costa Rica's laws, there are no notification requirements. Rights and safeguards established under Costa Rica's legal framework are in line with the standards. Discussions with the Costa Rican authorities and feedback from peers indicate that these rights and safeguards have never caused practical difficulties or undue delay to effective exchange of information. Accordingly, Element B.2 is found to be "in place" and rated as "compliant".

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).

The Costa Rican Competent Authority

184. In Costa Rica, the function of competent authority for information exchange for international tax purposes is carried out by the Tax Administration. Pursuant to Costa Rica's EOI agreements, the Competent Authority is the General Director of the Tax Administration, except for the DTC with Spain and the EOI agreement with the United States, for which the Competent Authority is the Minister of Finance or his authorised representative. In respect of these two cases, the Minister of Finance delegated the role of the Competent Authority to the General Director of the Tax Administration. However, the Competent Authority does not participate directly in the daily EOI activity as this function has been assigned to the Tax Treaties Unit by internal regulation.

185. The Tax Treaties Unit serves under the Directorate of International Taxation, which in turn serves under the Competent Authority. The Tax Treaties Unit is headed by the Deputy Director of Tax Treaties and it has three additional staff members. All EOI requests received by the Competent Authority are processed by the Tax Treaties Unit, under the supervision of the Director of International Taxation. Every official document produced by

the Tax Treaties Unit and approved by the Director of International Taxation must be approved and signed by the Competent Authority. According to the Costa Rican authorities, this clearance chain has caused no difficulties or delays in handling EOI requests received by Costa Rica to date (see more details under C.5 below).

Ownership, identity and bank information *(ToR B.1.1)*

186. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of active and inactive companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, ownership information on all such persons in an ownership chain.[7] Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements, whether active or inactive.[8]

187. The Tax Administration is empowered by the Tax Code "to verify correct compliance with the tax obligations through all legal means and procedures." Specifically, the Tax Administration is authorised to require any individual or *sociedad*, whether or not it is registered, to pay taxes, to declare tax obligations and to ensure the accuracy of the contents of sworn statements (i.e. tax returns) using legal analysis and investigation that it deems appropriate (Art. 103, Tax Code).

188. Pursuant to the Tax Code, any individual or *sociedad*, whether public or private, must provide the Tax Administration with information that can be used to determine economic, financial and professional relationships with other parties (Article 105, Tax Code). By its terms, this would apply to an entity, whether liable to tax or not.

189. Without limiting the general requirement to provide information, the Tax Code specifically requires that *sociedades*, associations, foundations and professional associations must provide tax information consisting of records about the partners, associates, members and colleagues (Article 106(b), Tax Code). Such records can include any record that the tax administration may justify to be foreseeably relevant for tax purposes (see section B.1.3 below). In addition, anyone who has the benefit of a tax incentive must provide the tax administration with any and all information that demonstrates that all requirements to obtain such incentives are met (Article 106(e)).

7. See OECD Model TIEA Article 5(4).
8. See JAHGA Report paragraphs 6 and 22.

Information gathering measures in practice

190. There are no different processes involved where an EOI request is received pursuant to a DTC, a TIEA or a multilateral agreement on administrative assistance. Over the three-year review period, from 1 July 2011 to 30 June 2014, the Tax Administration experienced no undue delays or practical difficulties when exercising the access powers provided for in articles 103-106 of the Tax Code to gather information from other agencies, the taxpayer or third parties. The procedures are generally the same irrespective of the kind of information requested, or whether it relates to a criminal or administrative investigation, except for gathering bank information (see B.1.5 below).

191. All EOI requests received by the Competent Authority are processed by the Tax Treaties Unit. If the requested information is available in one of the institutional databases of the Tax Administration and the staff member of the Tax Treaties Unit has access to it, he/she collects the information and prepares the response letter to the requesting jurisdiction within five working days. The Costa Rican authorities reported that information was directly accessible to the Tax Treaties Unit with respect to three or 25% of the EOI requests received over the review period.

192. When the requested information is in the hands of the Tax Administration, but not directly accessible by the Tax Treaties Unit, the staff member requests it to another office of the Tax Administration or to a local tax administration. According to the Costa Rican authorities, this situation corresponded to six or 50% of the EOI requests received during the period under review. The requested information must be provided to the Competent Authority no later than 20 working days from the date when requested, depending on the quantity of the requested information. When the staff member receives the requested information, he/she must verify its completeness. If incomplete, the staff member will provide a partial reply to the requesting jurisdiction and monitor the progress of the case until the Tax Administration fully satisfies the request with the missing information.

193. With regard to 11 requests or 92% of the EOI requested received during the review period, the Tax Treaties Unit had to also seek information from other governmental authorities. In Costa Rica, the main agencies involved in the collection of information requested for EOI purposes are the Civil Registry, the Public Registry, the City Councils and the General Migrations and Foreign Citizens Bureau. In such cases, the staff member has five business days to prepare a draft request to be signed by the Competent Authority, in order to send specific requests to all agencies involved in the information collection.

194. In general, other agencies must send the requested information to the Competent Authority within ten working days, while the Public Registry

must provide the requested information within seven working days (Art. 6 of the Right of Petition Regulation Law and Art. 32 of the Constitutional Jurisdiction Law). While the Tax Administration has direct access to a copy of the Public Registry's database, containing a wide range of identity and ownership information, the Tax Treaties Unit always requests certified copies of documents held by the Public Registry, as a matter of practice.

195. In one of the EOI requests received during the review period, the Tax Treaties Unit had to request information from the person or entity subject of the enquiry by the requesting jurisdiction. According to article 43 of the Tax Procedures Regulation, the taxpayer or any third party in possession or control of the requested information has ten working days to provide it to the Tax Administration. Upon receipt, the staff member of the Tax Treaties Unit analyses the requested information and follows up with the other agencies, taxpayer or third parties, as appropriate, to ensure that the information received fully satisfies the EOI request.

Accounting records (ToR B.1.2)

196. The General Tax Code does not distinguish between ownership and identity information and accounting information. It is therefore clear that accounting information is accessible by the Tax Administration to the same extent as ownership and identity information. In addition, the Commerce Code provides that, with the exception of the Tax Administration, "no authority may inquire whether the accounting books are kept in an orderly fashion nor carry out any general investigation into or examination of the accounting" (Articles 265 and 266, Commerce Code).

197. The Transparency Law of September 2012 amended article 104 of the General Tax Code. The effect of this amendment is that the tax administration will now be able to request books, accounting records, files and any information that may be considered relevant for tax purposes. This record could be a paper record or electronic one. Taxpayers are also under an obligation to identify every person (individual or company) that is involved in transactions. Large taxpayers can also be requested to provide financial statements provided by a certified public accountant. Over the review period, the Tax Administration exercised these access powers with respect to one EOI request.

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

198. Up until September 2012, Costa Rica's domestic law was ambiguous with regard to the Tax Administration's powers to access ownership, identity and accounting information for EOI purposes. Prior to the legislative changes introduced in September 2012, the reference to "tax relevance"

contained in the General Tax Code, in conjunction with the lack of specific legal provisions that expressly empowered the competent authority to obtain information for EOI purposes, appeared to limit the access powers to information that was relevant for domestic tax purposes. The Transparency Law of September 2012 introduced substantial changes to Costa Rica's legal and regulatory framework to bring it in line with the standards.

199. Article 105, of the General Tax Code was amended to make explicit reference to information that is "foreseeably relevant for tax purposes". In addition, the Transparency Law introduced a new article 115 bis in the General Tax Code, which *(i)* expressly overrides the restriction imposed by article 115 of the same statute on the use of and transmission of information obtained or gathered by Costa Rica's tax administration for domestic tax purposes only and *(ii)* makes it clear that the same procedures and facilities which are available to collect information for domestic tax purposes are also available for treaty purposes. The Costa Rican authorities have indicated that the term "treaty" used in article 115 bis of the General Tax Code covers all EOI agreements regardless of form.

200. Following these amendments, the competent authority of Costa Rica has unambiguous access powers to obtain and provide information to entertain a request made under an EOI agreement, without being subject to a domestic tax interest requirement. The Costa Rican authorities and feedback from peers indicate that no difficulties have arisen in practice with obtaining or providing information requested by foreign competent authorities under the respective EOI agreements, irrespective of whether Costa Rica needed the information for its own tax purposes.

Compulsory powers (ToR B.1.4)

201. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In Costa Rica, penalties exist for failure to provide information requested by the Tax Administration and the Tax Administration also has significant powers to compel the production of information.

202. The Tax Code empowers the Tax Administration to subpoena taxpayers and responsible parties for them to appear at the Tax Administration offices to answer questions or demands for information when it relates to their pertinent tax obligations. The information must be "needed to verify and oversee the relevant tax obligations in line with due process" (Art. 112).

203. The penalty for failure to appear at the Tax Administration office when required is a sanction of one base salary. If a person fails to provide information within the time frame provided in the law, a sanction equivalent to two base salaries will apply. The sanction is one base salary when

the information provided contains errors or does not match that which was requested (Art. 83, Tax Code). For 2015, the base salary is CRC 403 400, or approximately USD 750.

204. The Tax Administration can also inspect the premises of a taxpayer "when necessary to determine or oversee the taxpayers' tax situation" (Art. 113). If a taxpayer refuses, the Tax Administration can issue a ruling to request that the competent legal authority issue authorisation to proceed with the search. The Tax Administration may also issue a ruling to request that the competent legal authority authorise seizure of documents or property that needs to be kept to determine a tax obligation or to ensure proof of the commission of an infraction or unlawful tax act (Art. 114).

205. The Transparency Law of September 2012 amended the procedure for obtaining information from financial entities, as described under new articles 106 bis and 106 ter of the General Tax Code (see B.1.5 below). As per article 106 ter (4) of the General tax Code, financial entities must comply with all requests for information by the tax administration as long as they are accompanied by a certified copy of the judge's resolution. If they fail to do so, the sanction shall be equivalent to 2% of the gross income of the financial entity in the fiscal period of the infraction, with a minimum of 10 base salaries and a maximum of 100. Article 83 of the General Tax Code, as amended by the Strengthening of the Tax Administration Law, also provides a sanction for not providing information to the tax administration. This is 2% of the gross income of the taxpayer with a minimum of 10 base salaries with a maximum of 100. If erroneous information is provided, the base penalty will be 1% of a base salary for every incorrect data.

206. In addition, article 82 of the General Tax Code was amended by the Strengthening of the Tax Administration Law to impose a sanction on Costa Rican taxpayers who offer resistance to administrative enforcement activities. Failure to provide information or documentation requested by the tax administration upon the first request is punished with a fine corresponding to one base salary, or five base salaries upon the second request, or 2% of the taxpayer's gross income with a minimum of ten and maximum of 100 base salaries upon the third request. These fines are not cumulative and the appropriate sanction will be determined by the total number of times that a request has been neglected.

207. During the three-year period under review, the Competent Authority encountered no cases where a person who was required to keep information and/or had possession or control of the requested information challenged the obligation to furnish such information to the Tax Administration. In one isolated case, four banks did not respond to the Tax Administration request within the stipulated deadline and were penalised. However, the Tax Administrative Court issued four administrative decisions suspending the

application of the sanctions imposed by the Tax Administration, based on the fact that, since the person under investigation was not a client, these banks were not required to keep this information, nor were they in possession or control of the requested bank information. In practice, those decisions are not likely to affect the enforcement of the Tax Administration's access powers to gather information for EOI purposes.

208. The main practical difficulty experienced by the Competent Authority concerns cases where the person who was required to be in possession or control of the information could not be found. Even in such cases, the Competent Authority has been able to obtain the requested information from other sources and to provide it to the requesting jurisdiction. In view of the limited practical experience over the review period, Costa Rica should monitor the effectiveness of its powers to compel the production of information.

Secrecy provisions *(ToR B.1.5)*

209. Jurisdictions should not decline on the basis of their secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Bank Secrecy

210. Secrecy provisions for banks and private credit and financial institutions are found in the Commerce Code, the Tax Code and the Central Bank Act (Law No. 7 558, which outlines the regulatory powers of the GSFE).

211. Under the Commerce Code, banks or private credit and financial institutions are inviolable in Costa Rica and only have to provide information about their clients pursuant to a written request from the owner of an account or an order from a "competent judicial authority".

212. The Tax Code provides a specific exception to the general requirement that any individual or company provide the Tax Administration with information that is foreseeably relevant for tax purposes and can be used to determine the economic, financial and professional relationships with other parties. Specifically, banks and public or private credit and financial institutions must only provide information related to the financial and economic operations of their customers or users pursuant to a "founded ruling" from the Tax Administration. Procedurally, the Tax Administration issues a ruling asking the competent judicial authority to order the delivery of information.

213. Up until September 2012, the Tax Administration had to demonstrate the existence of solid evidence about a potentially unlawful act under Costa Rican law in order to get a substantiated ruling. In addition, the Tax Administration had to show that the taxpayer could have been subject to an

audit pursuant to the National Audit Plan, which the Tax Administration releases annually. The National Audit Plan is essentially a list of types of businesses and taxpayers that can be audited and is comprehensive. As such, access to bank information was restricted by a dual criminality principle and a domestic tax interest requirement.

214. The name and identity number of the tax payer had to be indicated on a request. The law also provided for the possibility to request information from third parties that could be involved in the unlawful act. In this case, the request had also to include information about the third party. Therefore, while it was possible to access bank information in Costa Rica under this old procedure, the authorities' ability to obtain such information was significantly limited.

215. In September 2012, Costa Rica amended and streamlined the procedure for obtaining information from financial entities. This new procedure is described under new articles 106 bis and 106 ter of the General Tax Code, as amended by the Transparency Law. In addition, article 615 of the Commerce Code was also amended by the Transparency Law to enable the tax administration to access bank information when duly authorised. The Transparency Law entered into force on 28 September 2012, as published in the Official Gazette.

216. The Transparency Law explicitly revoked section e) and the last three paragraphs of article 106 of the General Tax Code which set forth the old procedure for obtaining bank information, i.e. whereby the Tax Administration had to demonstrate evidence of an unlawful act under Costa Rican law and that the taxpayer would be subject to audit pursuant to Costa Rica's National Audit Plan. No transitional provisions or grandfathering rules were included in the Transparency Law to regulate the application of the old procedure to past situations.

217. On 13 March 2015, Costa Rica's Tax Administration Directorate published Official Position No. DGT-CI-002-15 concerning the application of the legislative changes introduced by the Transparency Law of September 2012. According to Official Position No. DGT-CI-002-15, these changes must be interpreted and applied in line with the constitutional principle of non-retroactive effect of the law. Pursuant to Article 34 of the Constitution, "No law shall have retroactive effects to the detriment of any person whatsoever or to his acquired property rights, or to the detriment of any consolidated legal situations".

218. According to the Costa Rican authorities, section e) and the last three paragraphs of article 106 of the General Tax Code created a consolidated situation. In their view, the new procedure established under articles 106 bis and 106 ter of the General Tax Code cannot be retroactively applied to obtain bank information which is foreseeably relevant for the investigation of civil tax matters concerning taxable periods commencing before the

date of entry into force of these legislative amendments. Nevertheless, the Costa Rican authorities have confirmed that the new procedure established in September 2012 may be applied to obtain bank information concerning transactions occurred or documents produced before the entry into force of the Transparency Law, insofar as they relate to taxable periods beginning on or after 1 October 2012. For criminal tax matters, however, the Tax Administration has unrestricted access to bank information concerning taxable periods prior to 1 October 2012, as long as the applicable EOI agreement is in force.

219. Most EOI agreements concluded by Costa Rica became effective for civil tax matters in respect of taxable periods beginning on or after that date of entry into force of the Transparency Law. The exceptions are Costa Rica's EOI agreements with Australia and Spain (i.e. one of Costa Rica's most relevant EOI partners), which started to produce effect as of 2011. Therefore, in practice, the potential gap concerning access to bank information in connection with civil tax matters concerning taxable periods prior to 1 October 2012 is likely to be narrow. Nevertheless, Costa Rica should ensure that all bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.

220. The new procedure established in September 2012 under articles 106 bis and 106 ter of the General Tax Code requires that a request made by the tax administration, through the Director General, is addressed in writing to a civil administrative judge. Under the new procedure, the tax administration must inform the judge that the request is being made pursuant to a request from another jurisdiction and that it complies with an EOI agreement. The relevant portions of article 106 ter of the General Tax Code are reproduced below:

> "Article 106 ter. – Procedure to request information from financial entities
>
> In any of the cases of the preceding article, the request made by the tax administration must be made through the General Director and must comply with the following procedure:
>
> 1. Written request addressed to the civil administrative judge pursuant to section 5) of article 110 of the Organic Law of the Judicial Power.
> 2. The request made through the general director of the tax administration must indicate the following:
>   a. Identity of the person under investigation.
>   b. If known, any other information such as domicile, date of birth and other information.

c. Details about the information requested, including the fiscal period covered, and the nature and manner in which the tax administration wished to receive the information.

d. Specify if the information is required for an auditing process conducted by the tax administration, or to comply with an international treaty contemplating exchange of information for tax purposes.

e. Details of the circumstances motivating the auditing process, as well as why the information is foreseeably relevant for tax purposes.

f. In the event the request for information is to comply with a request made by another jurisdiction by virtue of an international treaty contemplating exchange of information for tax purposes, the tax administration will provide an affidavit indicating that the request for information has been verified and complies with such treaty."

221. On 18 January 2013, Costa Rica's Tax Administration Directorate published Resolution No. DGT-R-003-2013 to further regulate the new procedure to request information from financial entities introduced by articles 106 bis and 106 ter of the General Tax Code, as amended by the Transparency Law. With respect to section 2(a) of article 106 ter of the General Tax Code, article 1 of Resolution No. DGT-R-003-2013 established that "identity" means any information or data that allows a person to be identified, such as name, identification number or any other similar details.

222. Article 3 of Resolution No. DGT-R-003-2013 clarified that the requirements prescribed by section 2(e) of article 106 ter of the General Tax Code are only applicable with respect to the collection of information for domestic tax purposes (section (b) of article 106 bis, General Tax Code), and are not applicable with respect to banking information sought under a request pursuant to an EOI agreement (section (a) of article 106 bis, General Tax Code). This removed any ambiguities that may have been created by section 2(e) of article 106 ter reproduced above, i.e. whether access to banking information would be granted only in the course of an ongoing audit.

223. Articles 5 and 6 of Resolution No. DGT-R-003-2013 state that information obtained through an EOI agreement, including a request made by the requesting jurisdiction, is considered confidential information and must be protected in the same manner as information obtained for domestic purposes, in accordance to domestic legislation. Article 3 of Resolution No. DGT-R-003-2013 also clarified that, when approaching the judge to seek

authorisation to obtain banking information, the Costa Rican tax administration does not have to provide a copy of the request made by the requesting jurisdiction.

224. If satisfied, the judge must, within five working days, issue a resolution authorising the tax administration to send the request to the financial entity. Pursuant to article 106 ter (3) of the General tax Code, the judge's resolution presented to the financial entity may not give the circumstances, or provide details, of the request or investigation, and the confidentiality obligations established under Costa Rica's EOI agreements must be observed. Costa Rica has indicated that neither the taxpayer nor any third party is notified under this new procedure. In case the judge is of the opinion that the request does not fulfil the requirements, the judge must issue a resolution to this effect to the tax administration, giving them three days (extendable to ten days at the request of the tax administration) to correct the defects.

225. On its face, this new procedure to request information from financial entities remedies the gaps that were identified with regard to the Tax Administration's access powers to bank information but it is only applicable to EOI requests concerning taxable periods commencing on or after 1 October 2012. The Costa Rican authorities have confirmed that the new procedure may be applied to obtain bank information concerning transactions occurred or documents produced before the entry into force of the Transparency Law, insofar as they relate to taxable periods commencing on or after 1 October 2012.

226. On 1 June 2015, Law No. 9 296 was published, introducing a new tax reform that significantly streamlined the access to bank information in Costa Rica. It introduced article 106 quater of the General Tax Code, allowing the Tax Administration to exchange information automatically. It also modified the articles 106 bis, 106 ter and 115 bis regarding access to bank information both for domestic and EOI purposes. Under the new regime introduced by Law No. 9 296, the Tax Administration is no longer required to obtain a court authorisation before requesting bank information from financial entities. Although this can be considered a significant change in the Tax Administration's access powers to bank information, it has not been tested in practice during the period under review (1 July 2011-30 June 2014). Since 1 June 2015, the Costa Rican Competent Authority handled one request for bank information under the streamlined procedure introduced by Law No. 9 296 and was able to obtain the requested information directly from the banks within ten working days, without a court order.

Gathering bank information in practice

227. Over the review period, the Competent Authority received five EOI requests concerning bank information, of which four concerned civil tax matters and one concerned criminal tax matters. In practice, Costa Rica was able to gather and provide banking information without difficulties or undue delay in relation to four cases. The Tax Administration had to obtain court authorisations to request bank information from financial entities in connection with three of these EOI requests, of which two concerned civil tax matters and one concerned criminal tax matters. In another administrative case, the Tax Administration had direct access to the requested bank information through the annual tax return of the person under investigation, so the exercise of its access powers was unnecessary.

228. Costa Rica declined, however, to send bank information requested by one of its EOI partners in connection with one administrative case concerning the period from 2009 to 2011. This EOI request was not fully declined since Costa Rica was able to provide other information sought by this EOI partner in the same request. The EOI agreement between Costa Rica and this EOI partner was not considered to the standard since it limited the exchange of bank information to cases of tax fraud, as defined under Costa Rican law. This issue could be solved once the Multilateral Convention is in force both in Costa Rica and this EOI partner. This is the case for Costa Rica but this EOI partner, which is also a signatory of the Multilateral Convention, has not ratified it yet.

229. During the review period, all the EOI requests received by Costa Rica's Competent Authority concerning bank information were dealt with under the new procedure established by the Transparency Law, pursuant to articles 106 bis and 106 ter of the General Tax Code. Under this procedure, the General Director of the Tax Administration, who also performs the function of Competent Authority, must send a written request to the civil administrative judge, whether it relates to a criminal or administrative investigation.

230. The written request to the judge must contain the identity of the person under investigation and, if known, any other information such as domicile, date of birth and others. It must also include details about the information requested, including the fiscal period consulted, and the nature and manner in which the tax administration wished to receive the information. Further, it must specify if the information is required for an auditing process conducted by the tax administration, or to comply with an EOI agreement. If the latter, the Tax Administration must provide an affidavit indicating that the request of information has been verified and complies with such an EOI agreement. The judge must verify if the request complies with all these

requirements and decide the case within five working days from the day the written request is received.

231. If the request fulfils all the requirements indicated above, the judge issues a resolution authorising the Tax Administration to send a request directly to the financial entity, along with a certified copy of the judge's resolution. In the request sent to the financial entity, the Tax Administration must include the EOI agreement or just a general reference of EOI agreements signed by Costa Rica, reference to the legal basis concerning the access powers that the Tax Administration has in order to require information, a description of the requested information, the response timeline and the possible sanctions they face in case of non-compliance. The financial entity has up to 10 working days to provide the bank information requested by the Tax Administration.

232. If the judge considers that the request does not comply with the requirements indicated above, he issues a resolution indicating this to the Tax Administration and providing a term of three working days to rectify the non-compliances. If complex amendments are required, the Tax Administration may request an extension of term to 10 working days. During the review period, the Tax Administration never faced a case where the judge challenged the compliance with these requirements.

Professional Secrecy

233. Article 105 of the General Tax Code provides for certain exceptions with respect to access powers in relation to information held by third parties, mostly information protected by professional secrecy, which appear to go beyond the international standard. In particular, these exceptions concern information held by: (a) religious ministries about matters related to how the ministry is exercised; (b) parties who through express legal provisions may invoke professional secrecy related to the information supported by it (even though professionals may not claim professional secrecy to block the checking of their own tax situation); (c) employees who are legally forced to keep data, correspondence, and general communications secret; and (d) the forebears and descendants to the third degree of consanguinity or affinity, including the spouse of the party being overseen.

234. Costa Rica's Tax Administration Directorate issued Resolution No. DGT-R-003-2013, which was published and entered into force on 18 January 2013, to facilitate the implementation of article 105 of the General Tax Code, as amended by the Transparency Law. This resolution is binding on the tax administration. Article 4 of Resolution No. DGT-R-003-2013 clarified that the exceptions provided for in sections (a), (b), (c) and (d) of article 105 of the General Tax Code do not apply when the request is based on an economic

relationship between the person under investigation and the third party from whom information is sought.

235. With regard to the exception provided under article 105(d) of the General Tax Code concerning information held by a relative or spouse, Costa Rica has indicated that it is narrowly interpreted and would not apply if the holder had any economic, financial or professional relationship with the person under investigation. In such cases, it would not be necessary for a requesting jurisdiction to demonstrate the existence of an economic, financial or professional relationship, but simply to indicate that there is a reason to believe that such a relationship exists between the person under investigation and the third party from whom information is sought. No issues with regard to the exceptions provided under article 105 of the General Tax Code as they relate to EOI requests have been reported by peers or experienced by Costa Rica.

236. The Costa Rican authorities have provided Regulation 47 of the Costa Rica Bar Association as the relevant standard for attorney-client privilege in Costa Rica. It provides that confidences made to an attorney by virtue of a private relationship with a client, counterparty or colleague are considered secret. In addition, knowledge acquired by an attorney acting in his legal capacity through private documents are also considered secret. Information remains secret even after the professional relationship has ended. An attorney cannot reveal such information or confidences, unless doing so to defend him/herself, to establish a right to charge legal fees or to avoid an innocent being charged. Information is not considered secret if it admits intent to commit a crime.

237. On its face, a comparison of Costa Rica's attorney-client privilege standard to the standard in the OECD Model TIEA leads to the conclusion that Costa Rica's standard is potentially overbroad. Nevertheless, Costa Rica has provided abstracts from court decisions in non-tax cases concerning the interpretation of the professional secrecy provisions with respect to information held by liberal professionals (including legal professionals).[9] The decisions demonstrate that the scope of the professional secrecy provisions is limited to information that liberal professionals (including legal professionals) obtain because of the exercise of their professional role, the disclosure of which would violate fundamental rights to privacy protected by Article 24 of the Constitution. On 27 July 2015, the Tax Administration issued Official Position No. DGT-CI-007-2015 confirming that the professional secrecy provisions in relation to legal professionals are interpreted and applied in a

9. First Instance Decision No. 07548 by the Constitutional Court dated 30 April 2008, Decision no. 00186 by the Court of Criminal Appeal of San Ramon dated 9 May 2008 and Decision No. 1259 by the Third Chamber of the Supreme Court dated 4 November 2010. .

restrictive manner which would not prevent the tax authorities from accessing financial, economic and property data. The disclosure of such information does not involve the honor and personal or family privacy of individuals, thus it is not sheltered by professional secrecy.

238. From those peers that provided peer input, none indicated that professional secrecy has ever caused any issues in practice in relation to EOI. There have been no cases in which an EOI request has been denied or in which, as a result of the information provided, an entity or individual has raised an objection founded on professional secrecy. Therefore, the scope of attorney-client privilege provisions is likely to be narrowly interpreted by Costa Rican courts also with regard to tax cases and should not affect the effective exchange of information in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating	
Largely Compliant	
Costa Rica's ability to access bank information in connection with civil tax matters pertaining to taxable period prior to 1 October 2012 is limited by Costa Rica's interpretation of its domestic legislation.	Costa Rica should ensure that all relevant bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.

B.2. Notification requirements and rights and safeguards

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

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

239. Rights and safeguards should not unduly prevent or delay effective exchange of information.[10] For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine

10. See OECD Model TIEA Article 1.

the chance of success of the investigation conducted by the requesting jurisdiction).

240. There are no notification requirements in Costa Rica which would impede effective EOI and no issues have arisen in practice. Discussions with the Costa Rican authorities and feedback from peers indicate that these rights and safeguards have never caused practical difficulties or undue delay to effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

C. Exchanging information

Overview

241. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Costa Rica has a network of information exchange that would allow it to achieve effective exchange of information in practice.

242. Costa Rica has a network of exchange of information mechanisms with 89 jurisdictions, comprised of 16 tax information exchange agreements (TIEAs)[11] that are identical to the OECD Model TIEA for all relevant purposes, an EOI agreement in force with the United States, three double tax conventions (DTCs)[12] containing a provision that mirrors Article 26 of the OECD Model Tax Convention, a Mutual Assistance Convention with Central American countries and the Multilateral Convention on Mutual Administrative Assistance, which was signed by Costa Rica in March 2012 and entered into force in August 2013.

243. As a member of the Central American Integration System (SICA), which is an organisation of eight Central American countries[13] established in order to integrate the economies of its member nations, Costa Rica is a party to the Convention for Mutual Assistance and Technical Co-operation (hereinafter the "Central American Mutual Assistance Convention") which covers the exchange of information in tax matters. The Convention was signed on 25 April 2006 by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and has been ratified by all parties. To date, this Convention has been ratified and brought into force by all parties. The Council of

11. With Ecuador, Guernsey, South Africa, Norway, Finland, Denmark, Faroe Islands, Greenland, Iceland, Sweden, Argentina, Canada, France, Mexico, Australia and the Netherlands.
12. With Germany, Mexico and Spain.
13. Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Dominican Republic.

Ministers of Economic Integration (COMIECO) and the Council of Ministers of Treasury and Finance (COSEFIN) ratified an Explanatory Note to the Convention. Article 21 of the Convention provides that COMIECO and COSEFIN should resolve any dispute arising between the parties to the Convention regarding the application and interpretation of the Convention and the Explanatory Note is consistent with that and also provides an interpretation to the Convention that is consistent with the international standard.

244. Costa Rica's EOI agreement with its most significant economic partner, the United States, was concluded in 1989 and has been in force for over 20 years. The protocol limits bank information that can be exchanged to information "relating to possible tax fraud matters" as defined by Costa Rican law. This is a significant impediment to exchange of information and therefore Costa Rica cannot exchange information with the United States to the standard.

245. The protocol to Costa Rica's Double Tax Convention (DTC) with Spain, also considered a relevant trading partner of Costa Rica, contains language that specifically provides for the parties to exercise their access powers under the treaty to the same extent as under their domestic laws. Up until September 2012, Costa Rica's access powers were limited with regard to access to bank information to that relating to a "possible unlawful act" as defined by Costa Rican law, and as a result this treaty did not meet the international standard. On its face, the 2012 tax reform remedies the gaps that were identified with regard to the Tax Administration's access powers to bank information. However, due to Costa Rica's interpretation of its domestic law, this new procedure is only applicable with regard to EOI requests concerning taxable periods commencing on or after 1 October 2012.

246. On 1 March 2012, Costa Rica signed the Multilateral Convention on Mutual Administrative Assistance (hereinafter the "Multilateral Convention"), that entered into force in Costa Rica on 1 August 2013. On the face of it, this will bridge the gap that was found in the EOI agreements that Costa Rica has with the United States and Spain. During 2012 and 2013, Costa Rica experienced some undue delays in the ratification process of a number of EOI agreements, as priority had been given to the ratification of the Multilateral Convention. As Costa Rica has since taken the steps to bring into force EOI agreements with the vast majority of its EOI partners, it should monitor the ratification process to ensure that its EOI agreements continue to be ratified and brought into force expeditiously. Accordingly, Element C.1 is determined to be "in place" and rated as "largely compliant".

247. Since its commitment to the international standards in 2009, Costa Rica has begun to sign an increasing number of EOI agreements. In March 2012, Costa Rica signed the Multilateral Convention, subsequently ratified and brought into force since August 2013, substantially widening its current

EOI network to cover 89 jurisdictions. Costa Rica's EOI network allows for EOI for tax purposes with all relevant partners, including its significant trading and regional partners. Comments were sought from Global Forum members in the course of the preparation of this report, and only one jurisdiction advised that a negotiated TIEA remains unsigned by Costa Rica as both jurisdictions are already covered by the Multilateral Convention and the two types of instruments pursue the same objective. Element C.2 is therefore found to be "in place" and rated as "compliant".

248. Costa Rica's agreements all provide for confidentiality for information obtained to the international standard. In addition, effective measures and procedures have been put in place to ensure confidentiality of information received and exchanged and, to date, no issues with confidentiality as it relates to EOI requests have been reported by peers or experienced by Costa Rica. Accordingly, Element C.3 is found to be "in place" and rated as "compliant".

249. Rights and safeguards, either in its domestic laws or its agreements, would not impede access to information. The Costa Rican authorities have confirmed that the professional secrecy exception in relation to lawyers is interpreted and applied in a restrictive manner and has never prevented tax authorities from accessing information requested for EOI purposes. No other issues related to these matters have been raised in practice. As a result, the determination under Element C.4 is "the element is in place" and the rating is "compliant".

250. During the period under review (1 July 2011-30 June 2014), Costa Rica received 12 requests from five jurisdictions. Although the number is relatively limited, the EOI requests covered a range of ownership, accounting and bank information. The procedures established by the Tax Administration have proven sufficient to handle incoming EOI requests in a timely manner. The resources currently allocated to the Tax Treaties Unit are adequate to deal with the present workload. Feedback from peers indicates that they were generally satisfied with Costa Rica's level of co-operation and timeliness of response to EOI requests made during the review period. As a result, Element C.5 is rated "compliant".

C.1. Exchange of information mechanisms

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

251. The Constitution of the Republic of Costa Rica prevails over international treaties. According to the Constitution, international treaties are superior to the domestic laws. Specifically, Article 7 provides that "public treaties, international agreements and concordats duly approved by the Legislative Assembly

shall have a higher authority than the laws upon their enactment or from the day they designate."

252. The Competent Authority for exchange of information purposes in Costa Rica is the Tax Administration. Pursuant to Costa Rica's EOI agreements, the Competent Authority is the General Director of the Tax Administration, except for the DTC with Spain and the EOI agreement with the United States, for which the Competent Authority is the Minister of Finance or his authorised representative. In respect of these two cases, the Minister of Finance delegated the role of the Competent Authority to the General Director of the Tax Administration.

253. The Directorate the Tax Treaties Unit serves under the Directorate of International Taxation, which in turn serves under the Competent Authority. While the Tax Treaties Unit has the responsibility for processing all EOI requests and implementing all EOI agreements, every document produced by the Tax Treaties Unit must be approved and signed by the Competent Authority. Over the peer review period (1 July 2011 to 30 June 2014), Costa Rica has received 12 EOI requests from five jurisdictions.

Foreseeably relevant standard (ToR C.1.1)

254. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless, it does not allow for "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, as well as paragraph 1 of Article 26 of the OECD Model Taxation Convention, which is set out below:

> "The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters."

255. In 2014, Costa Rica's TIEAs with Finland and Norway came into force. Between 2013 and 2014, Costa Rica has also signed new DTCs with Germany and Mexico and new TIEAs with Ecuador and Guernsey. The new DTCs with Germany and Mexico, as well all sixteen of Costa Rica's TIEAs (with Ecuador, Guernsey, South Africa, Finland, Norway, Sweden, Iceland, Denmark, Faroe Islands, Greenland, Argentina, Canada, Mexico, France,

Australia and the Netherlands) provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic tax laws of the contracting parties.

256. The DTC with Spain provides that the contracting parties shall exchange such information as is "necessary" to carrying out the provisions of the convention. The commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, refers to the standard of "foreseeable relevance" and states that the contracting states may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant". In view of this recognition, Costa Rica's DTC with Spain meets the foreseeably relevant standard.

257. Costa Rica's EOI agreement with the United States provides that the competent authorities will "exchange information to administer and enforce the domestic laws concerning the taxes covered by this Agreement". Although this does not contain the term "foreseeably relevant", the next sentence provides that this includes information "which may be relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, and the enforcement of laws relating to tax crimes or crimes involving the contravention of tax administration." There is therefore a commitment to exchange all information that is relevant, and this EOI agreement meets the international standard in this regard.

258. The Central American Mutual Assistance Convention provides for the exchange of "information and documentation related to taxes in effect" (Article 4). As discussed above, the Commentary to Article 26 of the OECD Model Tax Convention provides that contracting states may agree to an alternative formulation of the standard so long as it is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant". Information "related to taxes in effect" meets this requirement.

259. Article 4(1) of the Multilateral Convention provides that "the Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention." All the EOI agreements entered into by Costa Rica therefore meet the foreseeably relevant standard.

260. The Manual of General and Legal Aspects for the Implementation of Exchange of Information for Tax Purposes (General EOI Manual), issued by the General Director of the Tax Administration as Guideline No. DGT-D-011-2014 of 6 October 2014, does not provide an explicit definition of foreseeable relevance. Instead it states that the term "foreseeably relevant" included in Costa Rica's EOI agreements and domestic law is defined in the

last paragraph of article 106 bis of the General Tax Code, which establishes "it is considered as foreseeably relevant for tax purposes, any information required to comply with an application for information, in accordance to an international agreement providing for the exchange of information in tax matters" (Chapter III.a.3).

261. The General EOI Manual also recognises that the possibility of requesting information to a jurisdiction under a valid EOI agreement does not imply the possibility of making requests which are not fully justified, also known as "fishing expeditions" under Costa Rican law, meaning the applications of speculative information have no ties with an investigation or audit in progress. In practice, Costa Rica has never declined an EOI request on the basis of lack of foreseeable relevance.

In respect of all persons (ToR C.1.2)

262. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

263. All Costa Rica's TIEAs contain a jurisdictional scope provision identical to the Model TIEA. Costa Rica's EOI agreement with the United States contains a similar jurisdictional scope provision, and therefore also allows for exchange of information in respect of all persons. Costa Rica's DTC with Spain specifically provides that exchange of information is not restricted by Article 1.

264. There is nothing in the Central American Mutual Assistance Convention that would limit its application to citizens or nationals of the contracting states. Instead the scope of the convention pertains to taxes and taxes apply in Costa Rica regardless of citizenship. Article 1(3) of the Multilateral Convention specifically states that "a Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State." In conclusion, Costa Rica is able to exchange information in respect of all persons under all its EOI agreements.

265. The General EOI Manual provides for a definition of persons covered, including residents of either contracting state or residents of a third country who are not subject to tax in either contracting state (Chapter III.a.3.a). In practice, both discussions with the Costa Rican authorities and feedback from peers indicate that no difficulties have arisen with any of its

EOI partners regarding an EOI request relating to residents of either of the contracting states or residents of third party jurisdictions.

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

266. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the Model Agreement on Exchange of Information, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information relates to an ownership interest.

267. All Costa Rica's TIEAs contain Article 5(4)(a) and (b) from the Model TIEA which provides that parties "shall ensure that its competent authorities…have the authority to obtain and provide upon request: a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity…". A similar provision is found under Article 21(4) of the Multilateral Convention.

268. As discussed in Section B.1.5 (above), Costa Rica amended the procedure to access bank information under its domestic laws. Following the legislative amendments introduced in September 2012, an application can also be made to the civil administrative judge (and specific timelines are prescribed for processing it) when banking information is requested under an EOI agreement. However, due to Costa Rica's interpretation of its domestic law, these changes cannot be retrospectively applied to obtain bank information in connection with civil tax matters concerning taxable periods prior to 1 October 2012. For criminal tax matters, however, the Tax Administration has unrestricted access to bank information concerning taxable periods prior to 1 October 2012, as long as the applicable EOI agreement is in force. In practice, this gap is likely to be narrow as most EOI agreements concluded by Costa Rica became effective for civil tax matters with respect to taxable periods beginning on or after 1 October 2012, with the exception of the EOI agreements with Australia and Spain, effective as of 2011.

269. Costa Rica's EOI agreement with the United States limits the exchange of bank information to cases of tax fraud as defined under Costa Rican law although for these purposes, Costa Rica advises that tax fraud is broadly defined. This restricts the information that can be exchanged, and therefore this treaty is not to the standard.

270. On 1 March 2012, Costa Rica signed the Multilateral Convention and, following its ratification by Costa Rica on 28 January 2013, it entered into force on 1 August 2013. The United States is also a signatory to the

Multilateral Convention. Under these circumstances, the gap identified in relation to the EOI agreement with the United States would be resolved once this convention enters into force between the United States and Costa Rica.

271. The protocol to Costa Rica's DTC with Spain provides that the parties agree to exchange information, including bank information "exercising the same powers that the Constitution and domestic laws confer on such authorities regarding its residents for the purposes of tax investigation or information. Such powers shall, whenever appropriate, be exercised through court intervention". The gap that existed in connection with the limited access to banking information under Costa Rica's domestic law was addressed in September 2012, but only with regard to EOI requests concerning taxable periods commencing on or after 1 October 2012. Therefore, a potential gap remains with respect to bank information related to the 2011 tax period, as discussed under section B.1.5 of this report. Accordingly, the perceived problem in the DTC with Spain is partially resolved and over time this gap will be closed once the statute of limitation provided under Spanish domestic tax law expires. In addition, as of 1 August 2013, the Multilateral Convention supersedes this DTC.

272. Pursuant to the Central American Mutual Assistance Convention, information that may be exchanged on request includes information and documentation related to:

- general or identification information of natural or legal persons in their capacity as taxpayers, legal representatives, as well as shareholders, partners or participants in other social or collective entities without legal personality; or as clients, creditors or suppliers of other taxpayers;
- commercial, financial, industrial, intellectual property transactions or operations or those pertaining to any other economic activity;
- any other [information] aimed at guaranteeing the correct levying and collection of taxes (Article 8, Convention).

273. The reference to commercial, financial, industrial and intellectual property transactions or those pertaining to any economic activity is broad enough to encompass bank information as envisioned by the Model Convention. The Explanatory Note to the Convention provides that information held by banks or financial entities cannot be considered a professional or commercial secret solely for this reason, even though some banking information may contain some secrets.

Absence of domestic tax interest (ToR C.1.4)

274. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An

inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

275. All Costa Rica's TIEAs are identical to the Model TIEA and therefore allow for information to be obtained and exchanged notwithstanding that it is not required for a domestic tax purpose. The TIEAs expressly state that a party shall use all relevant information gathering measures to provide the requesting party with the information requested "notwithstanding that the requested Party may not need such information for its own tax purposes". A similar provision is included in Article 21(3) of the Multilateral Convention.

276. The Central American Mutual Assistance Convention does not refer to a domestic tax interest requirement. The Explanatory Note clearly states that "[i]t will make no difference whether the requested assistance or co-operation is useful or not for the functions of the requested Administration".

277. The protocol to Costa Rica's DTC with Spain specifically refers to the domestic laws of the parties, providing that they should exercise the same powers that the Constitution and domestic laws confer on the authorities for purposes of tax investigation or information. Costa Rica's EOI agreement with the United States does not expressly provide that information should be exchanged without regard to a domestic tax interest and therefore would be limited by the potential domestic tax interest. Costa Rica advises that it does in fact exchange information pursuant to its EOI agreement with the United States that is relevant to taxes in the United States but not Costa Rica. Furthermore, as previously discussed, the Multilateral Convention entered into force for Costa Rica on 1 August 2013.

278. As discussed in Section B.1.3 above, Costa Rica has amended its domestic laws such that it can now exchange information for the purposes of an international agreement contemplating exchange of information for tax purposes. Therefore, the gap that was identified with respect of domestic tax interest is now closed.

279. In practice, the Costa Rican authorities have exchanged information without consideration for the existence of a domestic tax interest. The General EOI Manual clearly indicates that information should be gathered and provided for EOI purposes despite the lack of a domestic tax interest (Chapter II.4, last bullet point, and Chapter III.a.3, 5th paragraph).

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

280. The principal of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information

request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

281. All Costa Rica's TIEAs are identical to the OECD Model and therefore do not apply the dual criminality principle to restrict the exchange of information. Similarly, the Spain-Costa Rica DTC does not apply the dual criminality principle.

282. Costa Rica's EOI agreement with the United States requires that bank information only be exchanged where the case involves tax fraud as defined under Costa Rican law, therefore the agreement is restricted by dual criminality. As both Costa Rica and the United States are signatories to the Multilateral Convention and the Convention has entered into force for Costa Rica, the gap identified with respect to this EOI agreement will be closed once the Multilateral Convention enters into force between them.

283. Nothing in the Central American Mutual Assistance Convention or the Explanatory Note limits exchange of information to instances when the conduct being investigated would be a crime in the requested state. Costa Rica's policy in this regard is to exchange information under its EOI agreements irrespective of whether the conduct being investigated would constitute a crime in Costa Rica.

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

284. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

285. All Costa Rica's TIEAs are the same as the OECD Model in all relevant respects and therefore do not limit information exchange to information involving criminal tax matters. Therefore, information exchange in both civil and criminal matters is permitted under these EOI agreements.

286. Costa Rica's DTC with Spain contains a specific reference to Costa Rica's domestic laws. Since September 2012, Costa Rica's domestic law no longer requires proof of an unlawful act in order to obtain bank information, but only with regard to EOI requests concerning taxable periods commencing on or after 1 October 2012. Therefore, a potential gap remains with respect to bank information related to the 2011 tax period, as explained under section B.1.5 of this report. Over time this gap is likely to be closed once the statute of limitation

provided under Spanish domestic tax law expires. As of 1 August 2013, Spain and Costa Rica are covered by the Multilateral Convention.

287. Costa Rica's EOI agreement with the US does provides that included in the scope of the agreement is "information…which may be relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, and the enforcement of laws relating to tax crimes or crimes involving the contravention of tax administration." The gap that existed in connection with the limited access to banking information under Costa Rica's domestic law was addressed in September 2012, as discussed under section B.1.5 of this report. Accordingly, the issue of the limitation of the Costa Rica-United States EOI agreement to cases of "tax fraud" involving a criminal matter has also been addressed. In addition, both Costa Rica and the US are signatories to the Multilateral Convention, with entry into force having already taken place for Costa Rica.

288. Nothing in the Central American Mutual Assistance Convention would limit exchange of information to criminal tax matters, however, again the exchange of bank information is limited to cases where there is proof of an unlawful act.

289. The process of exchanging information related to criminal matters is the same as that for civil matters. In practice, the Costa Rican authorities have been able to exchange information in both civil and criminal tax matters.

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

290. All Costa Rica's TIEAs are identical to the OECD Model and therefore contain Article 5(3), providing that the requested party, to the extent allowable under its domestic laws, shall provide information in the form of depositions of witnesses and authenticated copies of original documents. The EOI agreement with the US provides that the party will provide information in the same form as if the tax of the applicant state were the same as the requesting state. It specifies that books, papers, records and personal property shall be provided. Although there is nothing in Costa Rica's DTC with Spain that provides for the form of information, there is also nothing that would limit it.

291. Neither the Central American Mutual Assistance Convention nor the Explanatory Note contain a provision about the form and content of requests. However, the Explanatory Note says that the terms "information" and "documentation" must be understood in its broadest sense, and must never be restricted only to physical documentation (Article 8).

292. The General EOI Manual acknowledges that EOI partners may require information in a particular format to satisfy their requirements of evidence or other legal requirements. The General EOI Manual establishes

that, "[w]hen specifically required and to the extent allowed under national law, the competent authority shall try and obtain information in the particular format required. Such formats may include testimonies of witnesses and certified copies of original records" (Chapter III.a.3, 6th paragraph). In practice, all documents from the Public Registry and financial entities are provided in the format of certified copies of original records.

In force (ToR C.1.8)

293. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

294. In Costa Rica, in order for an exchange of information agreement to be ratified, it must first be filed before the Legislative Assembly. The text is then immediately published and the issue is assigned to a commission of the Legislative Assembly, which is tasked with issuing either a positive or negative report on the agreement. After the commission reports on the agreement, it is discussed by the full Assembly in two separate debates. After the first debate, the issue goes to the Constitutional Court to verify that no constitutional issues arise from the agreement. After the Constitutional Court issues its decision, it is submitted to the Legislative Assembly for a second debate and voting. When approved, it is submitted to the President for signature and published in the Official Gazette. Costa Rica advises that this process takes approximately 9 months to one year, depending on the legislative agenda of the country at that time.

295. During 2012 and 2013, Costa Rica experienced some undue delays in the ratification process of a number of EOI agreements, particularly with regard to the seven EOI arrangements signed with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden between June and August 2011 and the TIEA signed with South Africa in October 2012. Costa Rica had indicated that these EOI arrangements were awaiting the approval of Congress, but priority had been given to the ratification of the Multilateral Convention since it would close this gap with respect to most of these jurisdictions.

296. On 1 March 2012, Costa Rica signed the Multilateral Convention. It received congressional approval on 21 January 2013 and was ratified by Congress on 28 January 2013, following the technical opinion issued by the Constitutional Court. The Multilateral Convention entered into force with respect to Costa Rica on 1 August 2013, bringing the number of jurisdictions with whom Costa Rica has an EOI relationship in force from ten to 65, out of its 89 EOI partners (see list of all EOI mechanisms in Annex 2). The Central American Mutual Assistance

Convention, signed on 25 April 2006 by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, has been ratified and brought into force by all parties.

297. Costa Rica has also concluded the internal requirements for the ratification of the TIEAs with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. These jurisdictions have been notified accordingly and the TIEAs with Finland and Norway were brought into force. In 2013 and 2014, Costa Rica has also signed new DTCs with Germany and Mexico and new TIEAs with Ecuador and Guernsey, which are not yet in force. Except for Ecuador, all of these jurisdictions are also parties to the Multilateral Convention. It is, therefore, possible to conclude that Costa Rica has taken the steps to bring into force EOI agreements with the vast majority of its EOI partners. Nevertheless, Costa Rica should monitor the ratification process to ensure that its EOI agreements continue to be ratified and brought into force expeditiously, particularly with regard to the TIEA with Ecuador signed in 2013.

In effect *(ToR C.1.9)*

298. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. On 27 August 2012, the Legislative Assembly of Costa Rica approved the Transparency Law and the Strengthening of the Tax Administration Law, which entered into force on 28 September 2012, as published in the Official Gazette. These laws introduced amendments to the General Tax Code and the Commerce Code, which allow Costa Rica to give effect to its EOI agreements, in accordance with the international standards.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Costa Rica's ability to access bank information in connection with civil tax matters pertaining to taxable period prior to 1 October 2012 is limited by Costa Rica's interpretation of its domestic legislation.	Costa Rica should ensure that all relevant bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.

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

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

299. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

300. Costa Rica joined the Multilateral Convention since March 2012, substantially widening the coverage of its network of agreements providing for exchange of information with 89 jurisdictions. This includes agreements with OECD Member countries and regional partners like Guatemala, Honduras, Argentina and Mexico. Costa Rica's EOI network covers its biggest trading partner (the United States), as well as three other somewhat significant trading partners (Spain, Mexico and the Netherlands).

301. Costa Rica has taken various steps to attend to the gaps in its domestic laws, as discussed in section B.1 of this report. In September 2012, Costa Rica introduced legislative amendments to remove restrictions in its domestic laws on access to banking information and the issue of domestic tax interest that could impede access to information pursuant to its EOI agreements. However, due to Costa Rica's interpretation of its domestic law, the restrictions to Costa Rica's access powers to bank information will remain applicable to a very limited number of cases, i.e. with regard to the EOI agreements with Australia and Spain and only with respect to EOI requests related to taxable period prior to 1 October 2012. As such, the deficiencies in Costa Rica's domestic laws which prevented its EOI agreements from being effective have been addressed in respect of the majority of Costa Rica's EOI partners, resulting in EOI relationships to the standard with 89 jurisdictions, apart from the narrow gaps with regard to the EOI Agreements with Australia and Spain.

302. Comments were sought from the jurisdictions participating in the Global Forum, and in the course of preparation of this report, no jurisdiction advised that Costa Rica had refused to negotiate or enter into an agreement. One of the peers reported that a negotiated TIEA remains unsigned by Costa Rica as both jurisdictions are already covered by the Multilateral Convention and the two types of instruments pursue the same objective. In summary,

since its commitment to the international standards in 2009, Costa Rica continues to expand its EOI network, covering all relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Costa Rica should continue to develop its EOI network with all relevant partners.

Phase 2 Rating
Compliant

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1); all other information exchanged (ToR C.3.2)

303. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

304. Fifteen of Costa Rica's TIEAs are identical to the Model and therefore provide adequate provisions to ensure the confidentiality of information received. Costa Rica's TIEA with Guernsey provides for the possibility to share the received information for non-tax purposes with the express written consent by the competent authority of the requested party and provided this is permitted under the domestic legislation of the requested party. An equivalent provision is included in Article 22 of the Multilateral Convention. Costa Rica's EOI agreement with the United States contains a confidentiality provision to the standard. In addition, its DTCs with Germany, Mexico and

Spain contain the equivalent of Article 26(2) of the OECD Model Convention and are therefore to the standard.

305. The Central American Mutual Assistance Convention guarantees confidentiality of information exchanged in Article 2 and Article 9. Article 2 states that information should be confidential according to the legislation in the contracting states. Article 9 also limits the use of information to the functions performed by the tax administration of the party receiving the information. The functions mentioned in Article 2 include "management, audit and collection" but Article 16 adds that information obtained may also be used as evidence in administrative and judicial proceedings.

306. The Central American Mutual Assistance Convention does not provide for the possibility to use information for other purposes than its general purpose or to provide the information to any other entity, authority or jurisdiction.

307. In addition, Costa Rica's domestic laws provide for sufficient confidentiality protection for information obtained by the Tax Administration. Specifically, Article 117 of the General Tax Code establishes that:

> "Any information that the Tax Administration may obtain from the taxpayers and responsible third parties by any means is confidential in nature; and its functionaries and employees may not release the amount or source of income in any way whatsoever, including any other information on the declarations, nor may they allow that these or other copies, books or documents that contain extracts or references about said information be seen by parties other than those in charge at the Administration for ensuring compliance with the legal regulatory tax provisions for which they are responsible."

308. Furthermore, articles 5 and 6 of Resolution No. DGT-R-003-2013, of 18 January 2013, state that information obtained by the Costa Rican tax administration through an EOI agreement, including a request made by the requesting jurisdiction, is considered confidential information and must be protected in the same manner as information obtained for domestic purposes, in accordance with domestic legislation. Furthermore, the response to a request made by the requesting jurisdiction and all the information sent to that jurisdiction in accordance with an EOI agreement, must contain a stamp indicating that the information is confidential and provided pursuant to the EOI agreement (article 7, Resolution No. DGT-R-003-2013).

309. There is a penalty in the Tax Code that applies when anyone in the Tax Administration who breaches the prohibition against transferring or sending to other offices, agencies, public or private institutions the information obtained or gathered for tax purposes (Art. 115). Such a breach

constitutes the crime of release of secrets, which is punishable by 3 months to 2 years in prison (Art. 337, Criminal Code). Costa Rica advises that crime of release of secrets would also apply to a breach of Article 117 confidentiality requirements and carries the same criminal penalty.

310. The Tax Administration has internal measures in place to ensure that confidentiality practices are being respected by all officers concerned with the EOI process. These measures ensure that access to highly confidential information such as EOI requests is limited. Only six persons have access to each EOI request, the collected information, the request responses and the data base where all the information is confidentially kept. As such, access to confidential information is restricted to the General Director of the Tax Administration who is the Competent Authority, his secretary, the Director of International Taxation, the secretary from the Directorate of International Taxation, the Deputy Director of the Tax Treaties Unit and the staff member in charge of the case. All controls, requests and responses recording systems are handled by the Tax Treaties Unit.

311. The incoming and outgoing EOI requests and related documents are kept in the Tax Treaties Unit´s facility. Physical security for the confidentiality of all information/documents and computer equipment belonging to the Tax Treaties Unit is also strictly maintained. The Tax Treaties Unit is located within the Tax Administration building, and the public are not authorised to enter the building except for limited areas, accompanied at all times by tax officials. All visitors must register at the front desk security.

312. Each staff member of the Tax Treaties Unit has his/her own password-protected computer. A high quality copier/scanner/printer is available at the Tax Treaties Unit, which is also password-protected. It also has an Access data base where all incoming and outgoing requests are recorded, along with scans of all collected information and request responses. All information or printed files that are not meant to be kept must be personally destroyed by the staff member in charge of the case, using shredders located on the same floor as the Tax Treaties Unit.

313. There are also two manuals which state the procedures and confidentiality obligations. The Manual of Procedures for Exchange of Tax Information by Requirement Between the Government of Costa Rica and Other Countries (Internal EOI Manual), issued by the Tax Treaties Unit in October 2012, describes the steps to be taken by its staff members in processing incoming and outgoing EOI requests. The Manual of General and Legal Aspects for the Implementation of Exchange of Information for Tax Purposes (General EOI Manual), issued by the General Director of the Tax Administration as Guideline No. DGT-D-011-2014 of 6 October 2014, is aimed at providing general guidance on EOI matters to all staff of the Tax Administration and to local tax administrations.

314. Both manuals provide for strict rules and procedures to ensure confidentiality of taxpayer information obtained for EOI purposes (General EOI Manual, Chapter III.a.4 and Internal EOI Manual, Chapter IV.A). The General EOI Manual also makes express reference to the guidance provided in the OECD Manual on Exchange of information, and later the Global Forum booklet *Keeping it Safe*.[14] According to both manuals, information received according to the provisions of an EOI agreement should be treated confidentially, as if dealing with information obtained under domestic law. The confidentiality of the information must be respected in all stages of the exchange process. The rules of confidentiality cover all the documents exchanged between the competent authorities, including the written request by which information is required.

315. All EOI requests are made or received through the Competent Authority. EOI requests received by the Competent Authority are marked as "confidential" and immediately forwarded to the Director of International Taxation and handled to the Deputy Director of the Tax Treaties Unit. A hard file is opened for each request and kept in a secure cabinet within the Tax Treaties Unit which is locked with a key at all times. Only two staff members have access to the cabinet where the physical files are stored, i.e. the secretary from the Directorate of International Taxation and the Deputy Director of the Tax Treaties Unit.

316. When requesting and obtaining the required information from other offices of the Tax Administration, local tax administrations or other agencies, only the minimum information contained in the EOI request should be disseminated (and not the entire EOI request), meaning only the information that is necessary to obtain an adequate reply and thus reply to the requesting state. The information obtained may not be disseminated to a third country, unless there is an express provision in the EOI agreement allowing for it. It may not be used for purposes other than tax, except if the EOI agreement provides otherwise, express written consent is given to the Competent Authority of the required state, and this is allowed by its national legislation.

317. In the course of gathering the requested information, communications with other offices of the Tax Administration, local tax administrations or other agencies must be done in closed and sealed envelopes with the confidentiality stamp (Internal EOI Manual, Chapter V.A.16). As a matter of practice, internal communications typically contain the file reference number, the legal basis (i.e. EOI agreement under which information is requested), the identity of the person(s) under investigation, a list of questions, as well as a

14. *Keeping it Safe: Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, 2012.

description of the facts of the case. This information may not be disclosed to third parties.

318. Once an exchange of information process is completed, all supporting data is placed in a closed envelope with the the confidentiality stamp and forwarded to the Tax Treaties Unit. On providing the information to the EOI partner, materials are generally sent via registered mail, whereby a mail tracking function is in place. When the EOI partner so requests, the Costa Rican authorities may transmit the requested information electronically by using the encryption system or secure platform provided by the EOI partner.

319. To date, requests received in English and French have been directly processed by the staff member in charge of the case without the need to resort to external translators, and responses have been generally provided in Spanish. If the Tax Treaties Unit receives requests in other foreign languages in the future, a strict protocol must be observed to hire external translators. The contract should include confidentiality obligations and sanctions that are equivalent to the ones applicable to tax officers.

Conclusion

320. Feedback from peers indicates that there have been no issues with confidentiality as it relates to EOI requests to date. The Costa Rican authorities have confirmed that there have been no cases in which information received by the Competent Authority from an EOI partner has been made public or disclosed to a third party other than in accordance with the terms of the EOI agreement under which it was provided and the international standards.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

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

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

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

321. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

322. All Costa Rica's agreements contain Article 7 of the OECD Model TIEA, providing that a jurisdiction can refuse to exchange information in certain instances. Costa Rica's EOI agreement with the US is effectively the same as the OECD Model in this regard. Similarly, its DTC with Spain is effectively the same as Article 26(3) of the OECD Model. A similar provision is included in Article 21(2) of the Multilateral Convention.

323. The Central American Mutual Assistance Convention expressly provides that when the parties exchange information, they must take into account the requirements for the protection of information obtained which is of a personal nature (Article 19). The Convention does not include a provision on attorney-client privilege. It is therefore necessary to look to the domestic laws of the jurisdiction. As discussed in section B.1.5, the attorney-client privilege standard provided by Costa Rica is potentially overbroad. Nevertheless, Costa Rica has provided abstracts from court decisions[15] in non-tax cases demonstrating that the scope of the professional secrecy provisions is limited to information that liberal professionals obtain because of the exercise of their professional role, the disclosure of which would violate fundamental rights to privacy protected by Article 24 of the Constitution. On 27 July 2015, the Tax Administration issued an Official Position No. DGT-CI-007-2015 confirming that the professional secrecy provisions in relation to legal professionals are interpreted and applied in a restrictive manner which would not prevent the tax authorities from accessing financial, economic and property data. Therefore, it is unlikely that this professional secrecy provision could affect

15. First Instance Decision No. 07548 by the Constitutional Court dated 30 April 2008, Decision no. 00186 by the Court of Criminal Appeal of San Ramon dated 9 May 2008 and Decision No. 1259 by the Third Chamber of the Supreme Court dated 4 November 2010. .

Costa Rica's ability to exchange information to the standard under the Central American Mutual Assistance Convention.

324. From those peers that provided peer input, none indicated that professional secrecy has ever caused any issues in practice in relation to EOI. There have been no cases in which an EOI request has been denied or in which, as a result of the information provided, an entity or individual has raised an objection founded on professional secrecy. Therefore, the scope of attorney-client privilege provisions is likely to be narrowly interpreted by Costa Rican courts also with regard to tax cases and should not affect the effective exchange of information in practice.

325. Notification requirements do not exist in Costa Rica's domestic laws. Although until 1 June 2015 the Tax Administration had to go to a court to obtain bank information only the bank, not the taxpayer, would be notified. Discussions with the Costa Rican authorities and feedback from peers indicate that these rights and safeguards have never caused practical difficulties or undue delay to effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

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

326. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

327. Fifteen of Costa Rica's TIEAs are identical to the OECD Model TIEA and therefore contain Article 5(6)(a) and (b), and require a response

within 90 days, while in the TIEA with Ecuador a requested party is required to provide the information within 70 days. Its EOI agreement with the US does not provide for a timeline to respond to an information request. Article 20(1) of the Multilateral Convention provides that "[i]f the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible."

328. Costa Rica's DTCs with Germany, Mexico and Spain do not provide for a specific timeline to respond to a request for information from a treaty partner. However, the protocol to the Spain-Costa Rica DTC provides that the competent authorities agree to comply with the information requirements within a period of six months from receipt of the request.

329. The Central American Mutual Assistance Convention provides for a deadline to respond to a request for information, which is 15 working days from the receipt of the request (Article 15). This is considerably shorter than the deadlines set in Article 5(6) of the OECD Model, where a party agrees to 60 days to confirm the receipt of the request and notify the applicant party of any deficiencies in it and an initial 90 days from the receipt of the request to provide the information. The Convention is therefore clearly in accordance with the standards on this point.

330. In addition, the Central American Mutual Assistance Convention provides for the possibility of extending this deadline, by informing the requesting state about the reasons for delay. The Explanatory Note mentions some reasons for delay, which include the complexity of the actions to obtain the information, the volume of the data required, or other administrative circumstances.

331. Over the three-year period under review, from 1 July 2011 to 30 June 2014, Costa Rica received 12 EOI requests from 5 jurisdictions, half of which were sent by two of Costa Rica's most relevant trading partners. Although the number is relatively limited, the EOI requests covered a range of ownership, accounting and bank information. During the 13 months following the review period, from July 2014 to July 2015, the Tax Administration has received an additional 17 EOI requests, showing a steep increase in the number of EOI requests sent by EOI partners. The Costa Rican authorities informed that these EOI requests have been dealt with in a timely and effective manner.

332. Feedback from peers indicates that they were generally satisfied with Costa Rica's timeliness of response to EOI requests made during the review period. In 58% of the cases (7 requests), full information was provided within 90 days, in 34% of the cases (4 requests) between 91 and 180 days, in 8% of the cases (1 request) between 181 days and one year. Generally, where response time has taken longer, this was as a result of the need for further

clarification from the requesting party or as a result of the requested information relating to an extended time period. A number of EOI requests sought a range of different types of information which the Costa Rican Competent Authority obtained from different sources. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the review period.

		Jul-Dec 2011		2012		2013		Jan-Jun 2014		Total	Average
		num.	%	num.	%	num.	%	num.	%	num.	%
Total number of requests received*	(a+b+c+d+e)	3	100%	2	100%	5	100%	2	100%	12	100%
Full response**: ≤90 days		2	67%	1	50%	3	60%	1	50%	7	58%
≤180 days (cumulative)		3	100%	2	100%	5	100%	1	50%	11	92%
≤1 year (cumulative)	(a)	3	100%	2	100%	5	100%	2	100%	12	100%
>1 year	(b)	0	-	0	-	0	-	0	-	0	-
Declined for valid reasons	(c)	0	-	0	-	0	-	0	-	0	-
Failure to obtain and provide information requested	(d)	0	-	0	-	0	-	0	-	0	-
Requests still pending at end of review period	(e)	0	-	0	-	0	-	0	-	0	-

* Costa Rica counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was received.

333. The Costa Rican authorities have confirmed that any request, irrespective of the number of persons/entities involved or pieces of information requested, is counted as a single request. Where additional information to the original request is requested, the further request is regarded as a new and single request again irrespective of the number of persons/entities involved.

334. Over the three-year period under review, Costa Rica has never failed to obtain and provide information requested. However, Costa Rica clarified that in some cases it has not been able to provide the totality of the information requested either because the information did not exist or because the taxpayer was not registered. Costa Rica has never declined a request during the review period, but in three cases it has declined to provide partial information to two jurisdictions due to the lack of a valid EOI agreement signed or in force during part of the requesting period.

335. Costa Rica declined to send bank information to one of its EOI partners for the period from 2009 to 2011 in response to an EOI request received

before the period under review. This EOI agreement is not considered to the standard since it limits the exchange of bank information to cases of tax fraud, as defined under Costa Rican law. As both this EOI partner and Costa Rica are covered by the Multilateral Convention, this gap should shortly be bridged once the Multilateral Convention enters into force between them.

336. Over the review period, Costa Rica has requested clarifications from one requesting jurisdiction in two cases to enquire how the requested account and bank information was related to the investigation. In the five cases where Costa Rican has been unable to obtain and provide information within 90 days of receipt of these requests, the Competent Authority has provided an update on the status of the request and provided the information which was partially available. Feedback from peers confirmed that progress updates were systematically provided where EOI requests were not answered within 90 days.

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

337. It is important that a jurisdiction have appropriate organisational processes and resources in place to ensure a timely response.

338. The Competent Authority for exchange of information purposes in Costa Rica is the General Director of the Tax Administration but he does not participate directly in the daily EOI activity as this function has been assigned to the Tax Treaties Unit by internal regulation. Nevertheless, every document produced by the Tax Treaties Unit must be approved and signed by the Competent Authority. The contact details of the Competent Authority are published in the Global Forum Competent Authorities Database and this information is kept up-to-date. These details are also provided to Costa Rica's EOI partners, when they require confirmation or in case of any changes.

339. The Tax Treaties Unit, established under the Directorate of International Taxation, is responsible for implementing all EOI agreements, processing all EOI requests and maintaining regular contact with Costa Rica's EOI partners, generally done by phone or via e-mail. This Unit consists of four staff members, i.e. a Deputy Director with a Law degree and training on EOI matters for six years, two lawyers with EOI training respectively for two and three years, and an auditor who has recently joined the Unit and started the EOI training.

340. Every staff member of the Tax Treaties Unit has his/her own computer. A high quality copier/scanner/printer is available to the Unit. It also has an Access data base where all incoming and outgoing requests are recorded, along with all documents received and provided in response to EOI requests. This data base includes the date of the request's receipt, the requesting party reference number, the requested party internal reference number, the

response sending date, among other relevant case details and documents. It generates automatic alerts when certain deadlines are due.

341. Through this data base, the Tax Treaties Unit monitors the number of EOI requests handled by each staff member and the response times for each EOI request. On a monthly basis, work reports are presented to the Director of International Taxation, who reports directly to the Competent Authority. The Competent Authority personally monitors the quality of the EOI requests and responses by reviewing all official document signed by him.

342. The General Directorate of the Tax Administration's budget covers all the Tax Treaties Unit's financial needs for the EOI activities, such as the cost for sending requested documents, international calls, amongst others. As such, there is no specific budget for the Competent Authority's function, the Directorate of International Taxation or the Tax Treaties Unit. Every year the Directorate of International Taxation communicates its financial needs for the next year to the department in charge of elaborating the general budget for the General Directorate of the Tax Administration. To date, there is no plan to increase resources, since the Tax Treaties Unit has been able to manage the requests that it receives normally with the resources currently available.

Handling of EOI requests

343. The Manual of Procedures for Exchange of Tax Information by Requirement Between the Government of Costa Rica and Other Countries (Internal EOI Manual), issued by the Tax Treaties Unit in October 2012, describes the steps to be taken by its staff members in processing incoming and outgoing EOI requests.

344. All EOI requests are initially received by the Competent Authority, being the General Director of the Tax Administration. The Competent Authority transfers the request to the Directorate of International Taxation and it is assigned to the Tax Treaties Unit. The Deputy Director of Tax Treaties, who is the Head of the Tax Treaties Unit, has two working days to assign it to one of the staff members. The staff member to whom the case is assigned is the responsible for assigning a reference number to the incoming request, creating a physical file, logging it into the Access data base, processing it and regularly reviewing the progress of each request.

345. The staff member has two working days to analyse if the request is valid. An acknowledgement of receipt is sent to the requesting competent authority usually via email. If further information is required to process the request, a clarification letter is sent to the requesting competent authority along with the acknowledgement of receipt.

346. If the request does not comply with the requirements of the corresponding EOI agreement or the applicant is not the competent authority or authorised representative, the staff member has two working days to prepare a response letter denying the request for information. The Head of the Tax Treaties Unit has two working days to review the response letter prepared by the staff member and to make any necessary adjustments. The Director of International Taxation has two working days to approve and forward the response letter to the Competent Authority for approval and signature. Once the Competent Authority signs the response letter, his secretary dispatches it.

347. If the EOI request is considered valid, the staff member has three working days to prepare a letter requesting information to other offices of the Tax Administration, local tax administrations, city councils, agencies or persons who may possess the information. During these three days, the staff member also searches all the information available from the public data bases to gather information readily available. The Head of the Tax Treaties Unit has two working days to review the letter prepared by the staff member and to make any necessary adjustments. The Director of International Taxation has two working days to approve and forward the letter to the Competent Authority for approval and signature. Once the Competent Authority signs the request, his secretary dispatches it.

348. If information is requested to other offices of the Tax Administration or local tax administrations, they have up to 20 working days to send the information to the Competent Authority, depending on the quantity of the requested information. Taxpayers or any third parties in possession or control of the requested information have 10 working days to provide it to the Tax Administration (Tax Procedures Regulation, article 43). The Public Registry must send the requested information within seven working days. Other governmental authorities, such as city councils, have 10 working days to send the requested information according to article 6 of the Right of Petition Regulation Law and article 32 of the Constitutional Jurisdiction Law. If the information is requested to other agency, the staff member in charge of the case must call the agency after 10 working days of its notification to check when the response will be send. An extension may be conceded if necessary which should not exceed half the term originally granted.

349. As described in Part B of the Report, if the request concerns bank information, the Tax Administration must issue a ruling asking the competent judicial authority to order the delivery of information. The judge must decide the case within five working days from the day the written request is received. If the request fulfils all the requirements, the judge will issue a resolution authorising the Tax Administration to send a request directly to the financial entity, along with a certified copy of the judge's resolution. The

financial entity has up to 10 working days to provide the bank information requested by the Tax Administration.

350. Upon receipt of the information, the staff member has five working days to review it and prepare a response letter to the requesting jurisdiction. If the information is incomplete, a partial response is prepared while the rest of information continues to be searched to be provided as soon as possible. The Head of the Tax Treaties Unit has two working days to review the response letter prepared by the staff member and to make any necessary adjustments. The response letter is then submitted to the Director of International Taxation for approval. The Director of International Taxation has two working days to give the approval and to forward the response letter to the Competent Authority for approval and signature. Once the Competent Authority signs the response letter, his secretary dispatches it. According to the Costa Rican authorities, this clearance chain has caused no difficulties or delays in handling EOI requests received by Costa Rica.

351. Once the whole process is completed, the secretary of the Directorate of International Taxation physically stores the original request and all relevant documents in a secure cabinet. All requests, information collected and request responses must be also scanned and recorded in the Access data base. The table below provides an overview of the steps and timelines for the handling of EOI requests received by Costa Rica, as described above. In practice, these timelines have never prevented Costa Rica from providing timely responses to its EOI partners. Feedback from peers confirms that they were generally satisfied with Costa Rica's level of co-operation and timeliness of response to EOI requests made during the peer review period.

Handling of EOI Requests Received by Costa Rica		
Step	Responsible	Timeline
Receipt and validation	Tax Treaty Unit and Competent Authority	4 working days
Declining for valid reasons	Tax Treaty Unit and Competent Authority	6 working days
Requesting to holders	Tax Treaty Unit and Competent Authority	7 working days
Obtaining from holders	Tax Administration	20 working days
	Taxpayers and third parties	10 working days
	Public Registry	7 working days
	Other governmental authorities	10 working days
	Judge's resolution (bank information)	5 working days
	Banks (bank information)	10 working days
Processing and responding to EOI partner	Tax Treaty Unit and Competent Authority	9 working days

352. Over the three-year review period, the Costa Rican authorities informed that there have been no cases where an EOI partner had to make further enquiries in relation to information provided by Costa Rica because the response was perceived as incomplete or inadequate. Feedback from peers confirms that they were generally satisfied with the level of co-operation shown by Costa Rica.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

353. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of Costa Rica's exchange of information agreements that appear to impose restrictive conditions on exchange of information. Other than those matters identified earlier in this report, there are no other unreasonable, disproportionate or unduly restrictive conditions on exchange of information existing in practice.

Conclusion

354. The procedures established by the General Director of the Tax Administration and the Tax Treaties Unit, which are respective described in the General EOI Manual and the Internal EOI Manual, have proven sufficient to handle incoming requests in a timely manner. The resources currently allocated to the Tax Treaties Unit are adequate to deal with the present workload.

355. Costa Rica's practices to date have demonstrated a responsive approach. Costa Rica responded to almost all its EOI requests (except for one) within 180 days, with more than half of these EOI requests responded to within 90 days. Costa Rica's EOI partners who provided peer input indicated that progress updates were systematically provided where their requests were not answered within 90 days. All in all, Costa Rica's peers have generally been positive in their comments regarding the timeliness of response by Costa Rica and the level of co-operation shown by Costa Rica. This reflects a view that Costa Rica is a dedicated EOI partner which provides timely assistance to EOI requests.

Determination and factors underlying recommendations

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

Phase 2 rating
Compliant

Summary of determinations and factors underlying recommendations

Overall Rating
PARTIALLY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is not in place.	An EIRL is only required to file the name of the manager at registration; therefore unless the manager and owner are the same person, ownership information on an EIRL may not be available.	Costa Rica should ensure that ownership information on EIRLs is available.
	Although a trustee of a foreign law trust would be liable to tax on Costa Rican source income of the trust, there are no requirements for the trustee to maintain ownership information.	Costa Rica should take measures to ensure that information is available that identifies the settlor and beneficiaries of foreign trusts.
	There are no express penalties in place for limited liability companies and partnerships that fail to register or update registration information. In addition, there is no penalty for a limited liability company that fails to maintain a share register.	Costa Rica should put in place effective enforcement provisions to ensure the availability of information for limited liability companies and partnerships.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Non-Compliant	During the review period, Costa Rica did not have a regular oversight programme in place to ensure compliance with the obligations to maintain ownership and identity information, particularly for inactive entities, and penalties for non-compliance were unenforced in practice.	Costa Rica should put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Costa Rican legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts which are administered in Costa Rica or in respect of which a trustee is resident in Costa Rica.	Costa Rica should ensure that all relevant entities and arrangements maintain accounting records, including underlying documentation.
Phase 2 rating: Partially Compliant	During the review period, Costa Rica did not have a regular oversight programme in place to ensure compliance with the obligations to maintain accounting information, particularly for inactive entities, and penalties for non-compliance were unenforced in practice.	Costa Rica should put in place an oversight programme to ensure the compliance of the obligations to maintain accounting information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	Costa Rica's ability to access bank information in connection with civil tax matters pertaining to taxable period prior to 1 October 2012 is limited by Costa Rica's interpretation of its domestic legislation.	Costa Rica should ensure that all relevant bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	Costa Rica's ability to access bank information in connection with civil tax matters pertaining to taxable period prior to 1 October 2012 is limited by Costa Rica's interpretation of its domestic legislation.	Costa Rica should ensure that all relevant bank information may be accessed for EOI purposes, in accordance with the terms of the applicable EOI agreement, to give full effect to all its EOI agreements.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		Costa Rica should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Compliant		

Annex 1: Jurisdiction's response to the review report[16]

Costa Rica would like to thank the assessment team for the tremendous work it has performed, as well as members of the Peer Review Group and other exchange of information partners for their numerous and valuable contributions to the review.

Costa Rica has taken note of the positive findings of the review report. Feedback from peers indicates that they were generally satisfied with Costa Rica's level of cooperation and timeliness of response to EOI requests made during the peer review period. A number of EOI requests included a wide range of different type of information to gather which the Costa Rican Competent Authority obtained from different sources in order to comply with them in a timely manner.

As part of Costa Rica´s commitment on the implementation of the standards in tax transparency, the Tax Administration has been working on the following legal and regulatory framework amendments:

1. Shareholder Registry Decree: It will allow the Tax Administration to hold shareholders information in its database. This decree will oblige all companies (including limited liability companies and partnerships) to provide an Informative Return about their shareholders or owners, which will be held by the Tax Administration as a shareholder registry.

   Once the Decree is in force, the Tax Administration will work on a plan to control the information provided in the Informative Return.

2. General Tax Code Amendment: Article 106 paragraph e): Costa Rica submitted Bill No. 19.245 to the Legislative Assembly named Prevention of Tax Fraud Law, which introduces several amendments. Regarding the General Tax Code it introduces a paragraph e) to Article 106 which would impose on trustees and administrators of fideicomisos or similar arrangements (i.e. trusts) an obligation to provide to the

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

Tax Administration information related with their final beneficiaries. It would also impose an obligation on the trustees and administrators to keep detailed accounting records and financial statements in accordance with the provisions of the General Tax Code. These obligations will apply to all trustees and administrators of fideicomisos and foreign trusts, whether individuals or legal persons, whether Costa Rican residents or not and whether financial institutions or not.

This amendment will strengthen the obligation for the fiduciarios or any other administrator established in the AML Law and gives the benefit that the Tax Administration will hold the updated information within its data base.

3. Tax Procedure Regulation Amendment: This will allow the Extensive Tax Control Directorate to ask for account records in order to verify the compliance and accuracy of the statements submitted, and it will also allow the control of the compliance of the obligation to keep account records.

4. The Collection Directorate's Directive. Directive number DR-DCE-DI-01-2015. This plan consists on the detection of "hidden" taxpayers through crosses of information. With this plan de Tax Administration will detect some taxpayers that have been conducting transactions with third parties and carrying out a commercial activity but they are not registered into the Tax Administration database and have not filed tax returns.

Also, this year was issued the AMPO program: The Large Business Taxpayers Directorate through resolution number DGT-R-30-2014 created a tool called AMPO (Análisis Multifuncional Programado y Objetivo) through which Large Business Taxpayers could electronically storage and update the foreseeably information for tax purposes. The Large Business Taxpayers must provide, among others, information regarding the identity of the legal representative, identity of the shareholders, general information of the account records, branches, commercial activity, commercial assets and fusions through this tool.

Regarding A.1, the Costa Rican Tax Administration has wide access powers over all companies to require ownership for exchange purposes, even though Costa Rica does not have in place an oversight program to ensure the compliance with the obligation to keep ownership information.

These wide access powers have been demonstrated during the review period, where Costa Rica was able in practice to exchange ownership information, gathered from different sources, in order to comply with requests in a timely manner, such as from the Public Registry, the legal representatives and/or the shareholders.

As well, Costa Rican Tax Administration has compulsory powers over all companies within the country. The Tax Administration could sanction joint stock companies with a fine according to Article 84 bis of the General Tax Code, and sanction other enterprises with a fine according to Article 83 of the General Tax Code.

In addition, regarding ownership and identity requirements to fideicomisos are found in the AML Law. Therefore, Costa Rica would like to clarify that the AML Law (Law N° 8204) covers those fiduciarios or any other administrator of resource management that act for two or more fideicomisos or managements in a year and requires the fiduciario or administrator to provide information on the fideicomitente and fidecomisario of the fideicomiso, or the persons who participates in the managing contract, at registration with the General Superintendence of Financial Entities. Therefore, Costa Rica considers the information is available.

Regarding the recommendation from the assessment team, to put in place an oversight program to ensure the compliance with the obligation to keep ownership and identity information and account records, Costa Rica considers that the new legal amendments will allow the Tax Administration to control more efficiently the taxpayers. Therefore, this issue will be solved in a short term.

Regarding B1, there has been an excellent performance accessing the accounting information and the limitations that have existed did not cause any major damage to the flow of information exchanged.

Annex 2: List of all exchange of information mechanisms

List of EOI agreements signed by Costa Rica as at July 2015, including Tax Information Exchange Agreements (TIEAs), Double Tax Conventions (DTCs), an exchange of information agreement in force with the United States (TIEA), a Mutual Assistance Convention with four other Central American countries and the Convention on Mutual Administrative Assistance in Tax Matters, as amended (MAC). The MAC has entered into force in Costa Rica on 1 August 2013. The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters.

The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
1	Albania	MAC	Signed	1 Dec 2013
2	Andorra	MAC	Signed	Not yet in force in Andorra
3	Anguilla	MAC [b]	Extended	1 Mar 2014
4	Argentina	TIEA	23 Nov 2009	12 Jul 2012
		MAC	Signed	1 Aug 2013
5	Aruba	MAC [c]	Extended	1 Sep 2013
6	Australia	TIEA	1 Jul 2011	14 Aug 2012
		MAC	Signed	1 Aug 2013
7	Austria	MAC	Signed	1 Dec 2014
8	Azerbaijan	MAC	Signed	Not yet in force in Azerbaijan [e]
9	Belgium	MAC	Signed	1 Apr 2015
10	Belize	MAC	Signed	1 Sep 2013
11	Bermuda	MAC [b]	Extended	1 Mar 2014

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
12	Brazil	MAC	Signed	Not yet in force in Brazil
13	British Virgin Islands	MAC [b]	Extended	1 Mar 2014
14	Cameroon	MAC	Signed	Not yet in force in Cameroon [f]
15	Canada	TIEA	11 Aug 2011	14 Aug 2012
		MAC	Signed	1 Mar 2014
16	Cayman Islands	MAC [b]	Extended	1 Jan 2014
17	Chile	MAC	Signed	Not yet in force in Chile
18	China (People's Republic of)	MAC	Signed	Not yet in force in China
19	Colombia	MAC	Signed	1 Jul 2014
20	Croatia	MAC	Signed	1 Jun 2014
21	Curaçao	MAC [c]	Extended	1 Sep 2013
22	Cyprus [a]	MAC	Signed	1 Apr 2015
23	Czech Republic	MAC	Signed	1 Feb 2014
24	Denmark	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	1 Aug 2013
25	Ecuador	TIEA	4 June 2013	Not yet in force
26	El Salvador	Central American Mutual Assistance Convention	25 Apr 2006	30 Aug 2012
		MAC	Signed	Not yet in force in El Salvador
27	Estonia	MAC	Signed	1 Nov 2014
28	Faroe Islands	TIEA	29 Jun 2011	Not yet in force
		MAC [d]	Extended	1 Aug 2013
29	Finland	TIEA	29 Jun 2011	24 May 2014
		MAC	Signed	1 Aug 2013
30	France	TIEA	16 Dec 2010	14 Dec 2011
		MAC	Signed	1 Aug 2013
31	Gabon	MAC	Signed	Not yet in force in Gabon
32	Georgia	MAC	Signed	1 Aug 2013
33	Germany	MAC	Signed	Not yet in force in Germany
		DTC	13 Feb 2014	Not yet in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
34	Ghana	MAC	Signed	1 Sep 2013
35	Gibraltar	MAC [b]	Extended	1 Mar 2014
36	Greece	MAC	Signed	1 Sep 2013
37	Greenland	TIEA	29 Jun 2011	Not yet in force
		MAC [d]	Extended	1 Aug 2013
38	Guatemala	Central American Mutual Assistance Convention	25 Apr 2006	11 Feb 2011
		MAC	Signed	Not yet in force in Guatemala
39	Guernsey	TIEA	5 Mar 2014	Not yet in force
		MAC [b]	Extended	1 Aug 2014
40	Honduras	Central American Mutual Assistance Convention	25 Apr 2006	11 Feb 2011
41	Hungary	MAC	Signed	1 Mar 2015
42	Iceland	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	1 Aug 2013
43	India	MAC	Signed	1 Aug 2013
44	Indonesia	MAC	Signed	1 May 2015
45	Ireland	MAC	Signed	1 Sep 2013
46	Isle of Man	MAC [b]	Extended	1 Mar 2014
47	Italy	MAC	Signed	1 Aug 2013
48	Japan	MAC	Signed	1 Oct 2013
49	Jersey	MAC [b]	Extended	1 Jun 2014
50	Kazakhstan	MAC	Signed	1 Aug 2015
51	Korea	MAC	Signed	1 Aug 2013
52	Latvia	MAC	Signed	1 Nov 2014
53	Liechtenstein	MAC	Signed	Not yet in force in Liechtenstein
54	Lithuania	MAC	Signed	1 Jun 2014
55	Luxembourg	MAC	Signed	1 Nov 2014
56	Malta	MAC	Signed	1 Sep 2013
57	Mauritius	MAC	Signed	Not yet in force in Mauritius
58	Mexico	TIEA	25 Apr 2011	26 Jun 2012
		MAC	Signed	1 Aug 2013
		DTC	12 Apr 2014	Not yet in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
59	Moldova	MAC	Signed	1 Aug 2013
60	Monaco	MAC	Signed	Not yet in force in Monaco
61	Montserrat	MAC [b]	Extended	1 Oct 2013
62	Morocco	MAC	Signed	Not yet in force in Morocco
63	Netherlands	TIEA	29 Mar 2011	1 Jul 2012
		MAC	Signed	1 Sep 2013
64	New Zealand	MAC	Signed	1 Mar 2014
65	Nicaragua	Central American Mutual Assistance Convention	25 Apr 2006	9 Jul 2011
66	Nigeria	MAC	Signed	Not yet in force in Nigeria [e]
67	Norway	TIEA	29 Jun 2011	13 April 2014
		MAC	Signed	1 Aug 2013
68	Philippines	MAC	Signed	Not yet in force in Philippines
69	Poland	MAC	Signed	1 Aug 2013
70	Portugal	MAC	Signed	1 Mar 2015
71	Romania	MAC	Signed	1 Nov 2014
72	Russia	MAC	Signed	1 July 2015
73	San Marino	MAC	Signed	Not yet in force in San Marino
74	Saudi Arabia	MAC	Signed	Not yet in force in Saudi Arabia
75	Seychelles	MAC	Signed	Not yet in force in Seychelles [f]
76	Singapore	MAC	Signed	Not yet in force in Singapore
77	Sint Maarten	MAC [c]	Extended	1 Sep 2013
78	Slovak Republic	MAC	Signed	1 Mar 2014
79	Slovenia	MAC	Signed	1 Aug 2013
80	South Africa	MAC	Signed	1 Mar 2014
		TIEA	27 October 2012	Not yet in force
81	Spain	DTC	4 Mar 2004	1 Jan 2011
		MAC	Signed	1 Aug 2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
82	Sweden	TIEA	29 Jun 2011	8 July 2015
		MAC	Signed	1 Aug 2013
83	Switzerland	MAC	Signed	Not yet in force in Switzerland
84	Tunisia	MAC	Signed	1 Feb 2014
85	Turkey	MAC	Signed	Not yet in force in Turkey
86	Turks and Caicos Islands	MAC [b]	Extended	1 Dec 2013
87	Ukraine	MAC	Signed	1 Sep 2013
88	United Kingdom	MAC	Signed	1 Aug 2013
89	United States	TIEA	15 Mar 1989	12 Feb 1991
		MAC	Signed	Not yet in force in United States

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

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

b. Extension by the United Kingdom.

c. Extension by the Kingdom of the Netherlands.

d. Extension by Kingdom of Denmark.

e. On 29 May 2015, Azerbaijan and Nigeria deposited their instruments of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with its Article 28, the Convention shall enter into force on 1 September 2015 for Azerbaijan and Nigeria.

f. On 25 June 2015 and 30 June 2015 respectively, Seychelles and Cameroon deposited their instruments of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with its Article 28, the Convention shall enter into force on 1 October 2015 for Seychelles and Cameroon.

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

Constitution of Costa Rica

Income Tax Law (Ley del Impuesto sobre la Renta)

Income Tax Regulations (Reglamento de la Ley del Impuesto sobre la Renta)

General Tax Code (Código de Normas y Procedimientos Tributarios)

Tax Procedures Regulation (Reglamento de Procedimientos Tributarios)

Transparency Law No. 9 068, of 10 September 2013, published in the Official Gazette No. 188, of 28 September 2012

Strengthening of the Tax Administration Law No. 9 069, of 10 September 2013, published in the Official Gazette No. 188, of 28 September 2012

Law No. 9 296 published in the Official Gazette No. 104, of 1 June 2015

Resolution No. DGT-R-003-2013, published in the Official Gazette No. 13, of 18 January 2013

Resolution No. DGT-R-30-2014, published in the Official Gazette No. 149, of 5 August 2014

Commerce Code

Law No. 7 558, Central Bank Act

GSFE Agreement 8-08

Civil Code

Law No. 8 204, AML Law

SUGEF Agreement 11-06

Law No. 5 338, Foundations Law

Regulation on Public Offering of Securities

Executive Decree No. 36 948 of 17 January 2012

Legal Opinion C-156 of 1997

Official Position No. DGT-CI-002-15

Official Position No. DGT-CI-007-15

Directive No. DR-DCE-DI-01-2015

Manual of Procedures for Exchange of Tax Information by Requirement Between the Government of Costa Rica and Other Countries (Internal EOI Manual), issued by the Tax Treaties Unit in October 2012

Manual of General and Legal Aspects for the Implementation of Exchange of Information for Tax Purposes (General EOI Manual), issued by the General Director of the Tax Administration as Guideline No. DGT-D-011-2014, of 6 October 2014

Annex 4: List of persons interviewed during the on-site visit

Ministry of Finance

Tax Administration

- Directorate of International Taxation
- Directorate of Tax Intelligence

Public Registry (Ministry of Justice)

General Superintendence of Financial Entities (GSFE)

General Superintendence of Securities (GSS)

National Registry of Securities Intermediaries (NRSI)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: COSTA RICA

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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