

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

COSTA RICA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Costa Rica 2012

PHASE 1

March 2012
(reflecting the legal and regulatory framework
as at December 2011)



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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 100 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.

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 adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published 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. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is 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.

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 two-thirds of Costa Rica’s GDP. Costa Rica has agreements providing for exchange of information with 17 jurisdictions, comprising 14 tax information exchange agreements (TIEAs), 1 double tax convention (DTC) and a multilateral convention in force between 2 treaty partners. The majority of these agreements have been concluded in the two years since its commitment to the international standards in 2009.

3. Obligations to ensure availability of ownership and identity information for companies and partnerships are generally in place. For companies, this 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. However, there are no penalties in place to ensure that these requirements are complied with; therefore this information may not always be available.

4. *Fideicomisos*, exist in Costa Rica and ownership and identity requirements are found in the AML 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 *fideicomisario* of the *fideicomiso* at registration. It is also possible to be a trustee of a foreign law trust in Costa Rica, however ownership information would not be available.

5. Although 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, there are no mechanisms in place to enforce these requirements. Further, in most cases these documents are required to be kept for 4 years, not 5 years. Bank information, including records of all transactions is available.

6. Access powers are derived from the Income Tax Code and are limited in some cases. Specifically, because Costa Rica's access powers require that there is "tax relevance", it is unclear whether the Costa Rican authorities can access information without a domestic tax interest. Further, access to bank information is limited to cases where there is an order from a criminal judge. Such an order can only be granted when the tax authorities demonstrate evidence of an unlawful act. In addition, the attorney-client privilege standard is overbroad, which could also limit access to information.

7. Costa Rica's 13 newest TIEAs follow the OECD Model, however, limitations in Costa Rica's domestic laws could impede the ability to exchange information to the standard under these agreements. One of Costa Rica's agreements contains language that would limit the exchange of bank information and this may also be limited by domestic laws in Costa Rica. Similarly, the Mutual Convention that is in effect between Costa Rica, Guatemala and Honduras, although it provides for exchange of information in civil and criminal tax matters, could be negatively impacted by domestic law in Costa Rica. Therefore, Costa Rica does not have any agreements that allow for exchange of information to the standard.

8. As a number of elements which are crucial to achieving effective exchange of information are not yet in place in Costa Rica, it is recommended that Costa Rica not move to a Phase 2 Review until it has acted on the factors highlighted in the Summary of Factors and Recommendations to improve its legal and regulatory framework. A follow up report on the steps undertaken by Costa Rica to answer the recommendations made in this report should be provided to the Peer Review Group within six months after the adoption of this report. In addition, Costa Rica should provide a detailed written report to the Peer Review Group within 12 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Costa Rica

9. The assessment of the legal and regulatory framework of Costa Rica was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The 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.

10. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Costa Rica's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened (see the table on pages 61-65).

11. The assessment was conducted by a team which consisted of two assessors and a representative 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 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.

Overview of Costa Rica

12. 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 1 USD equal to 503 colones as at July 2011.

General information on the Legal System

13. 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.

14. 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.

15. 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. 6815), 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.

16. 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

17. Costa Rica's GDP was approximately USD 51 billion in 2010 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 per capita income of approximately USD 11 232 (2008 estimate), and an unemployment rate of only 6.7%.

18. Traditionally, Costa Rica's economy is based on agricultural commodities such as coffee, cacao, bananas, pineapple, sugar and beef. Recently, Costa Rica has strengthened its technology and tourism industries. Over 50% of the country's workforce is employed in the service sector, accounting for approximately 68% of GDP. The most dynamic part of the services sector is tourism, particularly ecotourism, which Costa Rica successfully pioneered, benefitting from its natural biodiversity. Costa Rica is known worldwide for its conservation efforts with more than 26% of its land under protection. The country aims to become carbon neutral by 2021 and is rich with renewable energy, getting about 99% of all its electrical energy from clean sources.

19. Costa Rica attracts one of the highest levels of foreign direct investment per capita in Latin America. Foreign direct investment was USD 13.9 billion in 2010. Less than 8% of investment in Costa Rica comes from Central and South America. The EU accounts for over 14% of investment, mainly from Germany, Spain, Switzerland and the Netherlands. 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 10.3 billion in 2010. Costa Rica's other major economic partners are far less economically significant: China (8.8%), the Netherlands (6.8%) and Panama (4.6%) in 2009. For imports, in 2009 major partners outside of the US were Mexico (6.5%), China (6.2%) and Japan (5.3%).

20. The institution of free trade zones in Costa Rica has had important national economic consequences. Created under Law No. 7210, 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

21. 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 2011 there were 17 banks, of which 5 were state-owned and 12 were private. Other financial institutions include a workers' bank known as the *Banco Popular y de Desarrollo Comunal* which is capitalized 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 cooperatives, mutual fund companies, and finance companies. Until last year, the insurance industry was a state monopoly. Insurance companies are regulated by the GSFE (see *Regulated Entities* section below).

22. 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 cooperatives are also subject to supervision by the GSFE.

23. 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 is approximately USD 28 billion. Twenty-seven brokerage companies 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

24. 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.

25. 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.

26. 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

27. Costa Rica committed to the international standards on transparency and exchange of information in 2009. As of August 2011, Costa Rica has signed a total of 13 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 a double tax agreement with Spain. It is also a signatory to the Convention for Mutual Assistance and Technical Cooperation among the Central American Tax and Customs Administrations, which provides for exchange of information with El Salvador, Guatemala, Honduras and Nicaragua.

Recent developments

28. Costa Rica presently has a bill before the legislative assembly called the “Law for Compliance of the International Transparency Standards” (hereinafter the “Transparency Act”). This bill has completed all study phases and is pending approval, which is expected sometime in 2012. According to Costa Rica, this bill would allow the tax administration to access banking information with the authorisation of an intermediary judge (as opposed to a criminal judge who requires the existence of a potential crime), expressly authorises the tax administration to share information obtained from any tax payer or third party in a tax related investigation, creates a shareholder registry for tax purposes, extends the accounting record retention period to five years and eliminates all references to bearer shares in the Commerce Code.

29. The Council of Ministers of Economic Integration (COMIECO) and the Council of Ministers of Treasury and Finance (COSEFIN) recently signed an Explanatory Note to the Convention on Mutual Assistance and Technical Cooperation among the Central American Tax and Customs Administrations (Mutual Assistance Convention) in order to clarify the obligations to exchange information in tax and custom matters on 2 December 2011. The Explanatory Note, although not necessary to the Convention meeting the international standard, provides an interpretation to the Convention that is consistent with the international standard and could be regarded as an

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

“instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty” as meant in article 31(2)(b) of the Vienna Convention on the Law of Treaties, and therefore has the same force and effect as the terms of the treaty itself.

30. Costa Rica continues to negotiate exchange of information agreements and is currently negotiating agreements with Aruba, Colombia, Czech Republic, Guernsey, India, Indonesia, Italy, Korea, Sint Maarten and South Africa. Costa Rica has also been invited to join the Multilateral Convention on Exchange of Information.

Compliance with the Standards

A. Availability of information

Overview

31. 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.

32. The main laws that govern relevant entities in Costa Rica are the Commerce Code and the General Tax Code. 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. In addition, 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. However, the Commerce Code does not include express sanctions for failure to update registration or to keep a share register. This could cause a gap in the availability of information.

33. Nominee ownership is not possible in Costa Rica and bearer shares no longer exist.

34. 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.

35. 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. However, there is no penalty for failure to provide or update this information.

36. *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 GSE and are subject to the AML laws, which require a covered entity or person to know the identity of the *fideicomitente* and *fideicomisarios*. 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.

37. 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. While the Commerce Code requires that accounting records, including underlying documents be kept consistent with the standard, the Tax Code does not. However, the retention period is four, not five years, which is not in line with the standard and there are not sufficient enforcement mechanism in place to ensure that such records are kept. Banking information, including records of all transactions, is required to be maintained for five years pursuant to the AML laws.

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.

38. 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.

39. Joint-stock corporations (*sociedad anónima* or SA) and limited liability corporations (*empresa 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.

40. 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.

41. Therefore all *sociedad* are merchants under the Commerce Code. This includes all foreign companies carrying on business in Costa Rica (see foreign companies section below).

Companies (ToR A.1.1)

Types of companies

42. 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 August 2011, there were a total of 500 984 SAs and 4 788 foreign companies.

43. All companies are required to register with the tax authorities in order to conduct corporate activities in Costa Rica and have the option of registering as active or inactive companies. 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. 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 anywhere and therefore are not required to file income tax returns. Of the more than 500 000 registered SAs in Costa Rica, only 163 553 were registered as active companies as at 9 December 2011\ Costa Rica recently passed a law that will enter into force on 1 April 2012 that imposes an annual minimum tax on inactive companies 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 liability.

44. 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 August 2011 there were 52 964 LTDAs in Costa Rica.

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

45. Each of the companies identified above (including inactive companies) are considered “merchants” and must register with the Public Registry, which is part of the Ministry of Justice (Art. 19, Commerce Code). 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 people who have legal authority to act for the company. If a company is one of the founders, the articles of incorporation must include the name or business name of the companies founding it. 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. 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).

46. 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). 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).

47. 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, the company must appoint a resident agent (Art. 17(13), Commerce Code). The resident agent must be an attorney with an open office in Costa Rica. The only role of a resident agent is to be served with notifications. 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. 17). The registered agent’s main role is to receive notifications on behalf of the company.

Tax Law

48. 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.

49. 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.

50. Form D-140 requires the taxpayer identification number, name of person or company, 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.

Company ownership and identity information required to be held by companies

51. 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). However, in both cases there is no express penalty for not doing so (see section A.1.6 below).

Foreign Companies

52. 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(a)) 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. 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).

53. For tax purposes, foreign companies that have branches, agencies and other permanent establishments in Costa Rica or engage in for-profit activities in Costa Rica are subject to the Income Tax Code, including its registration requirements (Section 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.

Regulated Entities

54. Entities regulated by the GSFE include public and private banks, non-banking financial institutions, savings and loan organisations, credit cooperatives and solidarity associations (Article 117, Law 7558). Foreign companies cannot undertake activities regulated by the GSFE.

55. 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. 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. It must also file supporting documents, which include: notary certification indicating chain of ownership of all shareholders until an individual is reached², 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).

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

56. 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.

57. In addition to registration duties pursuant to the Commerce Code and the General Tax Code, companies subject to supervision by the General Superintendence of Securities (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 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.

Nominees

58. 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.

59. 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).

Bearer shares (ToR A.1.2)

60. Article 120 of the Commerce Code provides that all shares must be nominal. 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 (Sec. 16(f), Law No. 8204).

61. Costa Rica enacted Law 7732, 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. Whether all bearer shares were effectively converted into nominal shares should be the subject of further review in the Phase 2 Review of Costa Rica. However, multiple references to bearer shares remain in the Commerce Code. For example, the definition of a “shareholder” in the Commerce Code is “the party registered as such in the shareholder records, if the shares are nominal; or the bearer of the shares, if they are to bearer” (Article 140). In addition, the requirement to keep a share register includes an indication of the conversion of any nominal shares into bearer shares (Art. 137, Commercial Code).

62. Costa Rica advises that references to shares “to bearer” were mistakenly left in the Commerce Code and that a bill currently under consideration by the legislative assembly (the Transparency Act) would eliminate all remaining references to bearer shares. It is recommended that Costa Rica enact this legislation as swiftly as possible.

Conclusion

63. Ownership information is 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 (see A.1.6 below). The concept of nominee ownership does not exist in Costa Rica and bearer shares have been eliminated.

Partnerships (ToR A.1.3)

64. *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 August 2011 there were 2 048 individual enterprises of limited liability in Costa Rica; 172 limited partnerships, of which only 4 had reported any activity (filed tax returns) within 10 years and 1 518 general partnerships, of which only 39 had reported any activity in the past 10 years.

Commerce Code

65. *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.

66. *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.

67. Individual Enterprises of Limited Liability or EIRLs are legal entities that limit the liability of the founder to his/her capital contribution. Other juridical entities cannot create or own an EIRL.

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

69. 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. Therefore, if the manager and the owner are not the same person, ownership information on an EIRL may not be available. The EIRL's bylaws and any amendment thereto must be published in the official newspaper and registered in the Public Registry (Article 13).

70. For limited partnerships, the articles of formation must 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). For general partnerships, it is not clear that the names of all partners must be included in the articles of formation, but Costa Rica advises that this would be the case. Whether the names of all of the partners is included in practice should be the subject of further review in the Phase 2 review of Costa Rica. Further, 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. The only consequences involve rights between partners, not penalties that the Costa Rican authorities can use to enforce this requirement.

Tax Code

71. 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.

72. 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.

73. 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. 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)).

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

Conclusion

75. 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).

Trusts (ToR A.1.4)

76. 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).

Fideicomiso

77. 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).

78. 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.

79. 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

80. 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). *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*. *Fideicomisos* that issue securities must register with the GSS and registration includes information on the *fideicomitente*, *fiduciario* and *fideicomisarios* (Article 19, Law 7732).

Ownership information retained by the fiduciario

81. A *fiduciario* has an obligation to undertake any actions necessary to carry out the *fideicomiso*. The *fiduciario* must also be accountable to the *fideicomisario* 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). 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 standard, the fact that the *fiduciario* must report directly to the *fidecomisarios* and agree to certain arrangements with the *fideicomitente* means that the *fiduciario* would necessarily have to know the identity of the *fideicomitente* and *fidecomisarios*.

82. 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. 8204). 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. 8204).

83. *Fiduciaros* 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).

84. *Fiduciaros* 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. 8204). 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. 36948) which requires that *fideicomisos* subject to the AML law must establish and adequately document the *fideicomitente* and *fideicomisario* of the *fideicomiso* (either direct or indirect ownership) when the *fideicomitente* or *fideicomisario* is a company. Taken together with the requirements in the Commerce Code (see paragraph 84 above), this ensures that ownership information on a *fideicomiso* would be available.

85. 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.

86. 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*. However, this could be a small gap in the availability of information on *fideicomisos* and should therefore be the subject of further review in the Phase 2 Review of Costa Rica.

Foreign trusts

87. 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 a trustees of a foreign trust.

88. 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.

Conclusion

89. *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 *fideicomisarios* 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.

Foundations (ToR A.1.5)

90. 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.

91. Foundations must be established through public deed or by will and must be registered with the Public Registry (Article 3, Law No. 5338 (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).

92. 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 3 people; if there are 3 directors, the Board must have 5. 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).

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

93. 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

94. 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.

95. All domestic companies and some foreign companies must keep a share register, however there is no penalty for failure to do so. 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. Costa Rica advises that the Transparency Act, currently under consideration by the Legislative Assembly, will address this issue.

96. 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 2011, the base salary is CRC 316 200, or approximately USD 627.

97. 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).

98. 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).

99. 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).

100. The AML laws forbid a bank from accepting the accounts of a company that has bearer shares. Pursuant to Law 8204, 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.

Trusts

101. 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).

102. *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).

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.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
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 companies and partnerships that fail to register or update registration information. In addition, there is no penalty for a company that fails to maintain a share register.	Costa Rica should put in place effective enforcement provisions to ensure the availability of information for companies and partnerships.

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)

103. 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

104. 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. 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).

105. 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).

106. 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 2011 is CRC 316 200 or approximately USD 627.

107. The accounting record requirements in the Tax Code are not consistent with the international standard, as they do not ensure that the records correctly explain all transactions, enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and allow financial statements to be prepared. By contrast, the requirements in the Commerce Code are consistent with the international standard, but because there is not a penalty in place to enforce the requirements, they cannot be considered to ensure the availability of these records.

108. Costa Rica advises that the Commerce Code and the Tax Code, should be interpreted together and that the Tax Code needs to be seen as a set of rules that goes along with all the other existing rules so that no definition of accounting records is given in the Tax Code and instead references to accounting records refers to those set forth in the Commerce Code. They also advise that it follows that Article 82 of the Tax Code, which establishes the sanctions for not keeping the accounting records, refers to the accounting records that the Commerce Code establishes because there are not two different categories of accounting records – whenever any law refers to accounting records, it is understood that it refers to the accounting records of the Commerce Code.

109. However, the Commerce Code specifically states that accounting records must be kept where the business operations and financial situation may be easily, clearly and accurately set forth “without prejudice to the books that the Income Tax Act requires for any individual or company” (Article 251). This seems to suggest that these are separate requirements. Costa Rica should therefore ensure that the requirements under the tax law make clear that the accounting records that must be kept are those that are referred to in the Commerce Code.

110. 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 standard. 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)

111. 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 standard, however this requirement does not, apply to foreign law trusts or non-merchant foreign companies. There is also no penalty in place to enforce this requirement.

112. 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. However, the Tax Administration would have to issue a directive in order to require this and

a relevant directive has not been provided. Therefore, the Tax Code does not require the retention of underlying documents to the international standard.

Document retention (ToR A.2.3)

113. The Commerce Code requires that merchants maintain accounting records from the start of the business until 4 years after ending operations (Are. 234). This retention requirement should be for 5 years, not 4 years, in line with the international standard. In addition, although the document retention requirement for a merchant that has not ended operations is indefinite, there is no penalty for failure to keep such records. Underlying documents such as mail, invoices and supporting documents must only be kept for at least 4 years from “the respective dates”, which Costa Rica advises means the date of issuance. This falls short of the international standard and should therefore be amended to ensure that records are kept for at least five years. Costa Rica advises that this will be addressed in its Transparency Act, which is currently being considered by the Legislative Assembly.

114. The Tax Code does not contain a document retention requirement at all. This should also be addressed to insure that records required by the income tax laws are retained for a minimum of five years.

Conclusion

115. Although the Commerce Code requires that reliable accounting records, including underlying documents, are retained consistent with the international standard, there is no enforcement mechanism to ensure that these records are kept. 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 standard. In addition, the Commerce Code requires that underlying documents be kept for four years, not five years, consistent with the standard. There is no document retention requirement in the Tax Code.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
There is no mechanism to enforce the accounting record requirements in the Commerce Code.	Costa Rica should implement a mechanism to ensure that reliable accounting records are kept for all relevant entities consistent with the international standard.
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.
Underlying documents are only required to be kept for 4 years pursuant to the Commerce Code, not 5 years as required by the international standard and accounting records generally are only required to be retained for 4 years after the end of operations, not 5 years.	Costa Rica should ensure that accounting records, including underlying documents, are required to be kept for a minimum of 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

116. 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.

117. Costa Rica's AML law (Law No. 8204) 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)

118. 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).

119. 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).

120. 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. 8204 (issued in the form of Executive Decree No. 36948) requires that financial institutions keep records of all transactions for 5 years, without limiting this requirement to transactions over a specified amount. In summary, bank information, including records of all transactions, is available.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

121. 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.

122. Costa Rica does not currently have a specific law that expressly empowers the competent authority to obtain information in response to a request from a treaty partner. However, there are powers in the Tax Code that allow the Costa Rican authorities to obtain some information pursuant to a request for information from a treaty partner although not in all cases.

123. The Costa Rican Tax Authorities may access ownership, identity and accounting information where there is “tax relevance”, and it is unclear whether this means that the information must be relevant to a Costa Rican tax or whether it can be relevant to a tax due in the jurisdiction of a treaty partner. This ambiguity in the law may impede access to information.

124. Bank information is only accessible in Costa Rica pursuant to an order from a criminal judge. This order can only be granted when the tax authorities are able to demonstrate evidence of an unlawful act and that the taxpayer could have been subject to audit pursuant to Costa Rica’s National Audit Plan. This acts to impede the tax authorities’ access to bank information. In addition, Costa Rica’s attorney-client privilege standard is overbroad, and may not limit this privilege to cases where a lawyer is acting in his/her legal capacity or to communications.

125. Costa Rica advises that there is currently legislation before the legislative assembly (the Transparency Act) that would expressly empower the authorities to access information pursuant to a request under an exchange of information agreement.

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).

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

126. 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 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.³ Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.⁴

127. 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).

128. 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.

129. Without limiting the general requirement to provide information, the Tax Code specifically requires that *sociedad*, associations, foundations and

3. See OECD Model TIEA Article 5(4).

4. See JAHGA Report paragraphs 6 and 22.

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 relevant for tax purposes, although it is unclear whether this is only for Costa Rican tax purposes or for any 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)).

Accounting records (ToR B.1.2)

130. 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).

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

131. The powers to obtain information described in section B.1.1 are limited to information that is “justified, appropriate and expressly of tax relevance” (Article 105, Tax Code). In addition, the law allows for access “to verify correct compliance with the tax obligations”. It is not clear from the Tax Code whether the terms “tax obligation” and “tax relevance” refer to taxes in Costa Rica or to any taxes.

132. The Tax Code specifically defines a tax as “any fee that arises from an independent situation involving state activity related to the taxpayer” (Article 4, Tax Code). The reference to “state activity” could suggest that “tax obligation” and “tax relevance” would also have to be linked to an activity in Costa Rica, although the use of the term “state” as opposed to “Costa Rica” in the definition of “tax” may suggest that the meaning is broad. However, there is no specific law in Costa Rica providing for access to information pursuant to an international agreement for exchange of tax information and the Tax Code makes no mention of international agreements for exchange of information or other countries’ tax laws. Costa Rica advises that it interprets the phrase “expressly of tax relevance” to mean that information can be relevant to any tax, whether in Costa Rica or otherwise, and that in practice it accesses and exchanges information regardless of whether it is relevant to tax in Costa Rica. Nonetheless, this is an ambiguity that should be remedied as it

could impede access to information. Costa Rica advises that the Transparency Act, which is currently being considered by the Legislative Assembly, would remedy any uncertainty about a possible domestic tax interest.

Compulsory powers (ToR B.1.4)

133. 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 information.

134. 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).

135. 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 2011, the base salary is CRC 316 200, or approximately USD 627.

136. 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).

Secrecy provisions (ToR B.1.5)

137. 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

138. 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. 7558, which outlines the regulatory powers of the GSFE).

139. 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”. The competent judicial authority is a criminal judge from a corresponding domicile.

140. The Tax Code provides a specific exception to the general requirement that any individual or company provide the Tax Administration with information that is important tax-wise 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 legal authority (a criminal judge) to order the delivery of information.

141. In order to get a founded ruling, the Tax Administration must demonstrate the existence of solid evidence about a potentially unlawful act under Costa Rican law. In addition, they must 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. The name and identity number of the tax payer must also be indicated on a request. The law also provides for the possibility to request information from third parties that could be involved in the unlawful act. In this case, the request must also include information about the third party. Therefore, while it is possible to access bank information in Costa Rica, the authorities’ ability to obtain such information is significantly limited.

142. Costa Rica interprets that because banking information is not protected by the Constitution, and that treaties are superior to domestic laws under its Constitution, its Tax Administration can access bank information under its TIEAs despite the limitations in the law. However, because there is no law specifically giving effect to its TIEAs and because its TIEAs include Article 5(4) which says that “each contracting state shall ensure that its competent authority...has the authority to obtain and provide upon request... information held by banks...”, the TIEA itself does not provide the authority to access such information without an order from a criminal judge as described in the previous paragraph. Costa Rica advises that its Transparency Act, which is currently being considered by the Legislative Assembly, will address this issue.

Professional Secrecy

143. The Tax Administration is also forbidden from demanding information from parties who can invoke professional secrecy through express legal provisions, if the information requested is related to the information supported by the privilege. Further, the Tax Administration cannot demand information from employees who are legally forced to keep data, correspondence and general communications secret (Art. 105(c)). Public employees and public companies, however, must provide the Tax Administration with any data and background of tax importance that they may gather while exercising their functions (Art. 107).

144. 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.

145. 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 overbroad. The OECD Model provides that a jurisdiction can decline a request for information which "would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice or (b) produced for the purposes of use in existing or contemplated legal proceedings." First, the phrase in the Costa Rican standard: "acting in his legal capacity" may be broader than the Model's more specific reference to "providing legal advice". Second, the phrase "confidences made to an attorney by virtue of a private relationship with a client, counterparty or colleague" in the Costa Rican law is unclear, and could extend to a lawyer who is not acting with a view to litigation, as required by the Model. In addition, the phrase seems to extend to conversations with colleagues, but does not specifically say what these conversations are about (a pending case, the client, etc.) Finally, it covers more than just "communications", extending to "knowledge acquired by an attorney". It is therefore recommended that Costa Rica clarify its attorney-client privilege standard to ensure that it does not extend beyond the international standard, therefore impeding access to information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The Costa Rican authorities cannot access bank information without an order from a criminal judge, which is only obtainable by showing evidence of an unlawful act, the taxpayer's name and identification number and that the taxpayer could have been subject to an audit pursuant to the National Audit Plan.	Costa Rica should ensure that it has the power to obtain information held by banks and other financial institutions pursuant to a request from a treaty partner.
The Costa Rican authorities may not be able to access ownership, identity and accounting information when the information is not relevant to taxes in Costa Rica.	Costa Rica should ensure that it can obtain ownership, identity and accounting information notwithstanding that it may not need the information for its own tax purposes.
Costa Rica's attorney-client privilege standard is overbroad and could impede access to information.	Costa Rica should ensure that its attorney-client privilege standard is limited to communications between an attorney and client and to a lawyer acting in his/her legal capacity.

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)

146. Rights and safeguards should not unduly prevent or delay effective exchange of information.⁵ 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 the chance of success of the investigation conducted by the requesting jurisdiction).

5. See OECD Model TIEA Article 1.

147. There are no notification rules in Costa Rica. Although, as discussed above, in order to access bank information, the Tax Administration must obtain a founded ruling, the taxpayer is not a party to the proceeding and therefore would not be notified.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging information

Overview

148. 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.

149. Costa Rica has a network of exchange of information mechanisms comprised of 14 tax information exchange agreements (TIEAs) and one double tax convention (DTC). In addition, as a member of the Central American Integration System (SICA), which is an organisation of seven Central American countries established in order to integrate the economies of its member nations, Costa Rica is a party to the Convention for Mutual Assistance and Technical Cooperation (hereinafter “the 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 thus far has been ratified by Costa Rica, Guatemala and Honduras.⁶ The Council of Ministers of Economic Integration (COMIECO) and the Council of Ministers of Treasury and Finance (COSEFIN) recently 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.

150. Thirteen of Costa Rica’s TIEAs (with the Nordic countries, Argentina, Canada, France, Mexico, Australia and the Netherlands) are identical to the OECD Model for all relevant purposes. However, Costa Rica has restrictions in its domestic laws that could impede access to information pursuant to its TIEAs.

6. Nicaragua’s Congress recently approved the Convention and they are currently in the process of publishing and depositing the instrument before the corresponding Central American authority.

151. Costa Rica’s TIEA with its most significant economic partner, the United States, was concluded in 1989 and has been in force for 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.

152. The protocol to Costa Rica’s Double Tax Convention (DTC) with Spain 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. As Costa Rica’s access powers are limited with regard to access to bank information to that relating to a “possible unlawful act” as defined by Costa Rican law, this treaty does not meet the international standard.

153. Therefore, Costa Rica does not have an exchange of information agreements to the standard with all of its economically significant partners. Costa Rica should continue to update its EOI agreements to comply with the standard as well as amending any deficiencies identified in its domestic laws that impede the effectiveness of its treaties. It is also recommended that Costa Rica continue to develop its EOI network with all relevant partners.

154. Costa Rica’s agreements all provide for confidentiality for information obtained to the international standard. Rights and safeguards, either in its domestic laws or its agreements, would not impede access to information.

C.1. Exchange-of-information mechanisms

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

155. 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.”

156. The Competent Authority for exchange of information purposes in Costa Rica is the Tax Administration.

Foreseeably relevant standard (ToR C.1.1)

157. 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 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.”

158. Thirteen of Costa Rica’s TIEAs (with the Nordic countries, Argentina, Canada, Mexico, France, Australia and the Netherlands) contain an Article 1 which is identical to the OECD Model TIEA. These agreements therefore provide for exchange of all information that is foreseeably relevant.

159. 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.

160. Costa Rica’s TIEA 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 TIEA meets the international standard in this regard.

161. The 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.

In respect of all persons (ToR C.1.2)

162. 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.

163. Thirteen of Costa Rica's TIEAs contain a jurisdictional scope provision identical to the Model TIEA. Its TIEA with the US 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.

164. There is nothing in the 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.

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

165. 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.

166. Thirteen of 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...". As discussed in Section B.1. (above), Costa Rica can access bank information under its domestic laws, but there are severe limitations. Specifically, exchange of bank information can only take place with an order from a criminal judge, must be related to an unlawful act under Costa Rican law, by providing the taxpayer's name and identification number and only if the person could have been the subject of an audit pursuant to the National Audit plan. Costa Rica's Constitution specifically provides that an international treaty has higher authority than its domestic laws and these 13 TIEAs expressly provide for the exchange of bank information.

However, Costa Rica does not yet have in place the powers to implement the terms of its agreements fully.

167. Costa Rica’s TIEA 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. Even if Costa Rica were to remedy the limitations to access to bank information in its domestic laws, this treaty would still not meet the international standard. It is therefore recommended that Costa Rica update this treaty to comply with the international standard, particularly as the US is Costa Rica’s biggest trading partner.

168. 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”. In Costa Rica, access to bank information is limited (see section B.1, above). Therefore, the Costa Rica-Spain DTC does not provide for the exchange of information to the international standard so long as the limitation exists in its domestic laws.

169. Pursuant to the 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).

170. 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. However, restrictions in Costa Rica’s domestic laws apply and therefore Costa Rica’s ability to exchange bank information under the Mutual Convention is limited.

Absence of domestic tax interest (ToR C.1.4)

171. 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.

172. Thirteen of 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”.

173. 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 TIEA with the US 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 TIEA with the US that is relevant to taxes in the US but not Costa Rica.

174. The 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 cooperation is useful or not for the functions of the requested Administration”.

175. However, as discussed in Section B.1.3 above, there is a potential domestic tax interest requirement in Costa Rica’s access powers that could restrict the Tax Authority’s ability to access information if Costa Rica does not need it for its own tax purposes. This could make Costa Rica unable to provide some information upon request from a treaty partner and is therefore inconsistent with the international standard.

Absence of dual criminality principles (ToR C.1.5)

176. 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.

177. Thirteen of 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.

178. The US-Costa Rica TIEA 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.

179. Nothing in the 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.

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

180. 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”).

181. Thirteen of 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. However, the domestic laws require proof of an unlawful act in order to obtain bank information. Costa Rica’s DTC with Spain is expressly limited by specific reference to Costa Rica’s domestic laws. Therefore this limitation on bank information would also apply to limit the agreement in this regard.

182. Costa Rica’s TIEA 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.” However, limitations on bank information in Costa Rica’s domestic laws would apply as well as the limitation on exchange of bank information to cases of “tax fraud” which would involve a criminal matter.

183. Nothing in the 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.

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

184. Thirteen of 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 TIEA 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.

185. Neither the 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).

In force (ToR C.1.8)

186. 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.

187. Costa Rica has agreements in force with five treaty partners (its TIEA with the US, its TIEA with France, its DTC with Spain and the Mutual Assistance Convention which has been ratified by Guatemala and Honduras), although as discussed above, these treaties cannot be considered effective because of deficiencies in Costa Rica's domestic laws.

188. 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.

189. Costa Rica's TIEAs with Argentina has been approved by the Legislative Assembly and published on 12 December 2011. The TIEAs with the Netherlands and Mexico are in the study stage of the commission currently. In addition, Nicaragua's Congress has recently approved the Mutual Convention and they are in the process of publishing and depositing it before the corresponding Central American authority.

In effect (ToR C.1.9)

190. 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. As discussed in section B.1., Costa Rica's domestic laws prevent it from accessing bank information and in some cases, a domestic tax interest requirement could impede access to information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Because of a lack of legislative powers to overcome bank secrecy and a possible domestic tax interest requirement in Costa Rica's domestic laws, its treaties cannot be considered effective.	Costa Rica should amend its domestic laws to allow for effective EOI.
One of Costa Rica's agreements does not meet the international standard as it is specifically limited to tax fraud.	Costa Rica should work with its treaty partner to improve the treaty to ensure that it is consistent with the international standard.

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

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

191. 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.

192. Costa Rica has agreements providing for exchange of information with 17 jurisdictions. This includes agreements with OECD member countries and regional partners like Guatemala, Honduras, Argentina and Mexico.

193. Costa Rica's biggest trading partner is the US, which accounts for over half of Costa Rica's exports and imports as well as more than two-thirds of its foreign investment. Trade between the US and Costa Rica exceeded USD 10.3 billion in 2010. Less than 8% of investment in Costa Rica comes from Central and South America. The EU accounts for over 14% of investment, mainly from Germany, Spain, Switzerland and the Netherlands. While Hong Kong, China and China are somewhat significant trading partners with Costa Rica, there is very little investment in Costa Rica coming from Asia.

194. Although Costa Rica does have a network of treaties, including with its biggest trading partner (the US), with Spain, Mexico and the Netherlands (three other somewhat significant trading partners), as discussed in section C.1., none of Costa Rica's treaties are to the standard as deficiencies in Costa Rica's domestic laws prevents them from being effective. Costa Rica advises that it is currently negotiating more TIEAs and that it has approached the US to bring the current TIEA up to the international standard. Costa Rica has also been invited to join the Multilateral Convention.

195. 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.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place	
Factors underlying recommendations	Recommendations
Costa Rica does not have any exchange of information mechanisms in force to the standard.	Costa Rica should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with all of its relevant partners.
	Costa Rica should continue to develop its EOI network with all relevant partners.

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)

196. 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.

197. Thirteen 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 the US contains a confidentiality provision to the standard. In addition, its DTC with Spain contains the equivalent of Article 26(2) of the OECD Model Convention and is therefore to the standard.

198. The 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.

199. The 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.

200. 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.”

201. There is a penalty in the Tax Code that applies when anyone in the Tax Administration 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.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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)

202. 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.

203. Thirteen of 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 TIEA 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.

204. The 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 overbroad. Therefore, this could affect Costa Rica's ability to exchange information to the standard under the Mutual Assistance Convention.

205. Notification requirements do not exist in Costa Rica's domestic laws. Although the Tax Administration must go to a criminal court to obtain bank information only the bank, not the taxpayer would be notified.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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)

206. 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

207. Thirteen 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. Its TIEA with the US does not provide for a timeline to respond to an information request.

208. The Spain-Costa Rica DTC does not provide for a specific timeline to respond to a request for information from a treaty partner. However, the protocol to the DTC provides that the competent authorities agree to comply with the information requirements within a period of six months from receipt of the request.

209. The 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.

210. In addition, the 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.

Organisational process and resources (ToR C.5.2)

211. It is important that a jurisdiction have appropriate organisational processes and resources in place to ensure a timely response. A review of the practical application of these processes and the resources available will be conducted in the context of Costa Rica's Phase 2 review.

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

212. 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. Costa Rica's domestic laws have generally been aligned to allow for the exchange of information without restrictive conditions, with exceptions noted throughout this report. Whether these actually restrict exchange of information in practice is an issue more appropriately considered in a Phase 2 review of Costa Rica.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
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 companies and partnerships that fail to register or update registration information. In addition, there is no penalty for a company that fails to maintain a share register.	Costa Rica should put in place effective enforcement provisions to ensure the availability of information for companies and partnerships.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is not in place.	There is no mechanism to enforce the accounting record requirements in the Commerce Code.	Costa Rica should implement a mechanism to ensure that reliable accounting records are kept for all relevant entities consistent with the international standard.
	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.
	Underlying documents are only required to be kept for 4 years pursuant to the Commerce Code, not 5 years as required by the international standard and accounting records generally are only required to be retained for 4 years after the end of operations, not 5 years.	Costa Rica should ensure that accounting records, including underlying documents, are required to be kept for a minimum of 5 years.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		

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) (<i>ToR B.1</i>)		
The element is not in place.	The Costa Rican authorities cannot access bank information without an order from a criminal judge, which is only obtainable by showing evidence of an unlawful act, the taxpayer's name and identification number and that the taxpayer could have been subject to an audit pursuant to the National Audit Plan.	Costa Rica should ensure that it has the power to obtain information held by banks and other financial institutions pursuant to a request from a treaty partner.
	The Costa Rican authorities may not be able to access ownership, identity and accounting information when the information is not relevant to taxes in Costa Rica.	Costa Rica should ensure that it can obtain ownership, identity and accounting information notwithstanding that it may not need the information for its own tax purposes.
	Costa Rica's attorney-client privilege standard is overbroad and could impede access to information.	Costa Rica ensure that its attorney-client privilege standard it is limited to communications between an attorney and client and to a lawyer acting in his/her legal capacity.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
The element is not in place.	Because of a lack of legislative powers to overcome bank secrecy in Costa Rica's domestic laws and a possible domestic tax interest requirement, its treaties cannot be considered effective.	Costa Rica should amend its domestic laws to allow for effective EOI.
	One of Costa Rica's agreements does not meet the international standard as it is specifically limited to tax fraud.	Costa Rica should work with its treaty partner to improve the treaty to ensure that it is consistent with the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The element is not in place.	Costa Rica does not have any exchange of information mechanisms in force to the standard.	Costa Rica should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with all of its relevant partners.
		Costa Rica should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Review Report*

The Costa Rican delegation would like to thank the Assessment Team and the Peer Review Group for evaluating thoroughly Costa Rica’s legal and regulatory framework during the Phase 1 Peer Review. From a general standpoint, the report represents Costa Rica’s situation in an accurate and fair manner.

Costa Rica wishes to reiterate our 2009 commitment towards the international agreed exchange of information standards. Since then, Costa Rica has signed 13 Tax Information Exchange Agreements (TIEAs) and most recently the Multilateral Convention on Mutual Administrative Assistance on Tax Matters and its Protocol. Furthermore, as part of the ongoing commitment, the recommendations included in this report will be taken into consideration during the legislative debate on approval of the Transparency Bill.

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

Annex 2: List of All Exchange-Of-Information Mechanisms in Effect

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1	Guatemala (Mutual Assistance Convention)	TIEA	25 Apr 2006	11 Feb 2011
2	El Salvador (Mutual Assistance Convention)	TIEA	25 Apr 2006	N/A
3	Honduras (Mutual Assistance Convention)	TIEA	25 Apr 2006	11 Feb 2011
4	Nicaragua (Mutual Assistance Convention)	TIEA	25 Apr 2006	N/A
5	Argentina	TIEA	23 Nov 2009	N/A
6	Australia	TIEA	1 Jul 2011	N/A
7	Canada	TIEA	11 Aug 2011	N/A
8	Denmark	TIEA	29 Jun 2011	N/A
9	Faroe Islands	TIEA	29 Jun 2011	N/A
10	Finland	TIEA	29 Jun 2011	N/A
11	France	TIEA	16 Dec 2011	14 Dec 2011
12	Greenland	TIEA	29 Jun 2011	N/A
13	Iceland	TIEA	29 Jun 2011	N/A
14	Mexico	TIEA	25 Apr 2011	N/A
15	Netherlands	TIEA	29 Mar 2011	N/A
16	Norway	TIEA	29 Jun 2011	N/A
17	Spain	DTC	4 Mar 2004	1 Jan 2011
18	Sweden	TIEA	29 Jun 2011	N/A
19	United States	TIEA	15 Mar 1989	12 Feb 1991

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)
- Law for Compliance of the International Transparency Standards (draft bill)
- Commerce Code
- Law No. 7558, Central Bank Act
- GSFE Agreement 8-08
- Civil Code
- Law No. 8204, AML Law
- SUGEF Agreement 11-06
- Law No. 5338, Foundations Law
- Regulation on Public Offering of Securities
- Executive Decree No. 36948 of 17 January 2012
- Legal Opinion C-156 of 1997

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: COSTA RICA

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 100 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.

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 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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