



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

COSTA RICA



Table of Contents

About the Global Forum	5
Executive Summary	7
Introduction	11
Information and methodology used for the supplementary review of Costa Rica . . .	11
Compliance with the Standards	13
A. Availability of Information	13
Overview	13
A.1. Ownership and identity information	14
A.2. Accounting records	17
A.3. Banking information	20
B. Access to Information	21
Overview	21
B.1. Competent Authority’s ability to obtain and provide information	22
B.2. Notification requirements and rights and safeguards.	28
C. Exchanging Information	29
Overview	29
C.1. Exchange of information mechanisms	30
C.2. Exchange of information mechanisms with all relevant partners	34
C.3. Confidentiality	35
C.4. Rights and safeguards of taxpayers and third parties.	36
C.5. Timeliness of responses to requests for information	36
Summary Of Determinations and Factors Underlying Recommendations . . .	37

Annex 1: Jurisdiction’s Response to the Supplementary Review	41
Annex 2: Request for a Supplementary Report Received from Costa Rica . . .	42
Annex 3: List of All Exchange of Information Mechanisms	46
Annex 4: List Of All Laws, Regulations and Other Material Received	49

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 is a supplementary report on the amendments made by Costa Rica to its legal and regulatory framework for transparency and exchange of information. It complements the Phase 1 review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purpose in March 2012 (the 2012 Report).

2. Costa Rica has amended its legal framework and new legislation to address the deficiencies identified in the 2012 Report was approved by the Costa Rican Legislative Assembly and entered into force in September 2012. These amendments pertain to the determinations and recommendations made in respect of availability of ownership information (element A.1); availability of accounting information (element A.2); access to information (element B.1); exchange of information mechanisms (element C.1); and Costa Rica's exchange of information network (element C.2). In view of these legislative amendments, Costa Rica asked for a supplementary peer review report pursuant to paragraph 58 of the *Methodology for Peer Reviews and Non-member Reviews*.

3. Costa Rica's location on the Central American isthmus provides for direct access to North and South American markets and direct maritime access to Europe and Asia. It enjoys one of the highest levels of foreign direct investment in Latin America and its economy is service based, with the services sector accounting for approximately 2/3 of Costa Rica's GDP. Costa Rica has concluded bilateral and multilateral agreements providing for exchange of information (EOI agreements) to the international standard, with 47 jurisdictions, comprising 14 tax information exchange agreements (TIEAs) and a double tax convention (DTC), a 2006 Mutual Assistance Convention with four other Central American countries signed in April 2006 and the Multilateral Convention on Mutual Administrative Assistance signed by Costa Rica in March 2012. The majority of these agreements have been concluded in the two years since its commitment to the international standards in 2009.

4. Obligations to ensure availability of ownership and identity information for companies and partnerships are in place in most cases but some

deficiencies still remain. For companies, this obligation stems from the requirement to keep a share register. For partnerships, it comes from the requirement to register and lodge any transfer of ownership with the Public Registry. However, the 2012 Report noted some shortcomings with respect to the lack of penalties to ensure that these requirements are complied with. The legislative amendments introduced by Costa Rica provide for enforcement measures with respect to the obligations to ensure availability of ownership and identity information for companies and partnerships. *Fideicomisos*, exist in Costa Rica and adequate ownership and identity requirements are found in the anti-money laundering laws, which cover all *fiduciarios* that act for two or more *fideicomisos* per year. In the 2012 Report it was noted, however, that no similar obligations are established with respect to ownership information concerning foreign law trusts administered by a Costa Rican resident. This gap has not been addressed by the legislative amendments of September 2012.

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, the 2012 Report concluded that there are no mechanisms in place to enforce these requirements. Furthermore, in most cases these documents are required to be kept for four years, not five years. The new legislation introduced by Costa Rica in September 2012 extended the penalty provided under tax law for non-compliance to the accounting record keeping requirements under the commercial law, closing the existing gap. In addition, a five-year minimum retention period requirement has been clearly established with respect to general accounting records, including underlying documentation, that must be kept by all taxpayers and responsible parties. A gap remains, however, with regard to account record-keeping obligations concerning foreign law trusts. According to the 2012 Report, bank information, including records of all transactions, is available.

6. The 2012 Report noted shortcomings with respect to the access powers derived from the Income Tax Code. Specifically, it was unclear whether the Costa Rican authorities could access information without a domestic tax interest. The legislative amendments introduced by Costa Rica expressly allows the tax administration to gather information considered foreseeably relevant for tax purposes and to provide this information to foreign authorities under EOI agreements. Furthermore, the 2012 Report observed that access to bank information was limited to cases where there was an order from a criminal judge, and such an order could only be granted when the tax authorities demonstrated evidence of an unlawful act. In order to address this issue, Costa Rica has amended the procedure to obtain information from financial entities. Under the new procedure there is no requirement to show evidence of an unlawful act, but the tax administration must approach a civil

administrative judge when a request made by a foreign authority complies with an EOI agreement. Finally, the 2012 Report concluded that the attorney-client privilege standard was overbroad, which could also limit access to information. This shortcoming has not been addressed by the legislative amendments of September 2012.

7. The 2012 Report noted that Costa Rica's 13 newest TIEAs followed the OECD Model, while one TIEA contained language that would limit the information exchange to tax fraud. It was also noted in the 2012 Report that the Protocol to Costa Rica's DTC contained language referring to access powers under domestic law that would limit the application of that DTC. Since both these treaty partners and Costa Rica are signatories to the Multilateral Convention on Mutual Administrative Assistance, these restrictions will no longer be relevant once Costa Rica ratifies the Convention. The 2012 Report also concluded that the TIEAs and DTC, as well as the 2006 Mutual Assistance Convention that is in force between Costa Rica, Guatemala and Honduras, did not allow for exchange of information to the standard due to restrictions imposed by Costa Rica's domestic law. With the legislative amendments introduced in September 2012, Costa Rica's legal and regulatory framework was brought in line with the standard in terms of the tax authority's ability to obtain and provide foreseeably relevant information pursuant to an EOI agreement. Hence, Costa Rica's EOI agreements have also been brought to the standard. However, it was found that the ratification of some of the EOI agreements signed by Costa Rica was delayed. It is, therefore, recommended that Costa Rica takes steps to expeditiously ratify these EOI agreements and to bring them into force.

8. The changes introduced by Costa Rica since the 2012 Report demonstrate its commitment to implementing the international standards for transparency and exchange of information. Costa Rica is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations in respect of availability of ownership and accounting information, as well as the overbroad scope of the attorney-client privilege. Considering the steps undertaken by Costa Rica to remedy the deficiencies highlighted in the 2012 Report, Costa Rica can now move to Phase 2. However, as only a short time has passed since the legislative amendments of September 2012 came into force, it is proposed that the Phase 2 review be postponed for one year. In the meantime, a follow up report on the steps undertaken by Costa Rica to answer the recommendations remaining to be implemented should be provided to the PRG within six months of the adoption of this report. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in Costa Rica, will be considered in detail in the Phase 2 Peer Review which is proposed to be rescheduled for the second half of 2014.

Introduction

Information and methodology used for the supplementary review of Costa Rica

9. The assessment of Costa Rica's legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum's *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Costa Rica based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at January 2013, and information supplied by Costa Rica. It follows the Phase 1 Review Report on Costa Rica which was adopted and published by the Global Forum in March 2012.

10. The *Terms of Reference (ToR)* breaks down the standards of transparency and exchange of information into ten 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 for improvement where relevant.

11. The assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Mr. Wayne Brown, Assistant Financial Secretary, Ministry of Finance, Bermuda; Mr. Fabio Seragusa, Taxation Unit – Guardia di Finanza, Italy; Ms. Renata Fontana and Mr. Bhaskar Goswami from the Global Forum

Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Costa Rica.

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

Compliance with the Standards

A. Availability of Information

Overview

13. Effective exchange of information requires the availability of reliable information. This section of the report considers the legal and regulatory framework in place in Costa Rica as of January 2013 with regards to the availability of ownership information, accounting records and banking information. Following the Phase 1 Review Report on Costa Rica which was adopted and published by the Global Forum in March 2012 (2012 Report), Costa Rica has made some amendments to its legal framework to address the recommendations made by the 2012 Report. Two new laws, the Transparency Law No. 9 068 and the Strengthening of the Tax Administration Law No. 9 069, both of 10 September 2012, have received the approval of the Costa Rican Legislative Assembly and entered into force on 28 September 2012, *i.e.* the date of their publication in the Official Gazette No. 188. These amendments to Costa Rica’s legal framework take effect on 28 September 2012 and become applicable as of the financial year commencing on 1st October 2012, without retroactive effect.

14. According to the 2012 Report, element A.1 (availability of ownership information) was found to be “not in place” due to the absence of obligations to maintain ownership information in the case of individual enterprises of limited liability (EIRLs) and foreign law trusts administered by Costa Rican resident trustees. In addition, the 2012 Report found that there were no express penalties for companies and partnerships that fail to register or

update registration information or companies that fail to maintain a share register. The legislative amendments introduced by Costa Rica in September 2012 prescribe penalties in respect of public limited companies that fail to keep a shareholder register, but are silent with respect to private limited companies and partnerships that fail to provide ownership information upon registration. Moreover, these legislative amendments do not address the shortcoming identified with respect to EIRLs or foreign law trusts administered by Costa Rican resident trustees. As a result, it is concluded that many of the significant A.1 recommendations in the 2012 Report have not been attended to and the determination under element A.1 thus remains unchanged as “not in place”.

15. Similarly, element A.2 (availability of accounting information) was also found to be “not in place” due to the lack of a mechanism to enforce accounting record requirements in the Commerce Code and the lack of record keeping requirements in respect of foreign law trusts administered in Costa Rica by a resident trustee or administrator. Furthermore, the Commerce Code required general accounting records, including underlying documents, to be kept for four years, as opposed to five years as per the international standard. In September 2012, Costa Rica introduced some changes to its General Tax Code to address the recommendation related to the lack of enforcement mechanisms for accounting records under the Commerce Code and to remedy the gap identified with respect to the minimum five-year retention period concerning accounting records and underlying documentation. However, Costa Rica has not addressed the recommendation concerning foreign law trusts. Based on the situation as it stands now, element A.2 has been determined to be “in place, but legal implementation of the element requires improvement”.

16. Finally, the 2012 Report found that element A.3 (bank information) was “in place” and no recommendations were made.

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.

Bearer Shares (ToR¹ A.1.2)

17. The 2012 Report had concluded that bearer shares have been eliminated in Costa Rica. However, the 2012 Report noted that some references to bearer shares remained in the Costa Rican laws, especially in the Commerce

1. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

Code. Costa Rica had explained that these references were mistakenly left in the Commerce Code, but would be eliminated to avoid any confusion.

18. The Transparency Law introduced by Costa Rica in September 2012 has eliminated the references to bearer shares from Costa Rica's Commerce Code. Articles 120 and 149 of the Commerce Code have been amended to clarify that all shares must be nominal shares. Article 134 of the Commerce Code has been amended to clarify that the share certificate will contain the name of the shareholder in all cases. Similarly, article 137 of the Commerce Code has been amended to clarify that all kinds of public companies must maintain records containing identity and ownership information concerning all shareholders. Furthermore, the distinction between nominal and bearer share holders as to their treatment in the shareholders register has been removed from article 140 of the Commerce Code.

Partnerships (ToR A.1.3)

19. The 2012 Report had identified three kinds of partnerships in Costa Rica. They are *sociedad en nombre colectivo* (general partnerships), *sociedad en commandia* (limited partnerships) and *empresa individual de responsabilidad limitada* (individual enterprises of limited liability or EIRLs). EIRLs are legal entities that limit the liability of the founder to his/her capital contribution. The 2012 Report had identified an issue with regard to the availability of identity and ownership information concerning EIRLs.

20. Like all partnerships, EIRLs must submit a copy of the article of formation upon registration with the Public Registry (articles 19 and 235, Commerce Code). However, unlike other partnerships, EIRLs are not required to include ownership information concerning their partners in the articles of formation. Instead, they must include the name of the enterprise, its domicile, its capital stock, its duration and the name of its manager (article 10, Commerce Code). Therefore, if the manager and the owner are not the same person, ownership information of the EIRL will not be available. The legislative amendments of September 2012 have not addressed this issue. Accordingly, the recommendation that was made concerning EIRLs in the 2012 Report is retained.

Trusts (ToR A.1.4)

21. The 2012 Report had identified certain issues with respect to trusts established under foreign law. Under the Costa Rican law, there are no impediments that would prevent a person residing in Costa Rica from serving as a trustee of a foreign law trust. Costa Rica's anti-money laundering laws do not apply to resident trustees of a foreign law trust. Due to Costa Rica's territorial tax system, a foreign law trust would be relevant for tax purposes

in Costa Rica only if it generates Costa Rican sourced income. However, even with respect to such foreign law trusts, the General Tax Code does not impose a requirement on resident trustees to keep or disclose the names of other trustees, settlors and beneficiaries of a foreign law trust.

22. Therefore, the 2012 Report concluded that Costa Rica had not taken reasonable measures to ensure that ownership information is available to its competent authorities in respect of foreign law trusts administered in Costa Rica or in respect of which a trustee is resident in Costa Rica. The legislative amendments of September 2012 have not addressed this shortcoming and the recommendation that was made in the 2012 Report concerning foreign law trusts is therefore maintained.

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

23. The 2012 Report noted that Costa Rica had no express enforcement measures in relation to companies and partnerships that fail to register or update registration information. In addition, no enforcement provisions were found in place with regards to companies that fail to maintain a share register. Therefore, the 2012 Report concluded that identity and ownership information would not be available with respect to companies and partnerships.

24. Joint stock corporations (*sociedades anominas* or SAs) that issue 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 (article 137, Commerce Code). However, this requirement was not supported by penalties to ensure compliance. The Transparency Law, which came into force on 28 September 2012, introduced a new article 84 bis of the General Tax Code, establishing a penalty for legal persons who fail to keep the shareholder register pursuant to article 137 of the Commerce Code. The penalty is equivalent to one base salary², and currently the base salary amounts to CRC 374 400, or approximately USD 740.³

25. The legislative amendments introduced in September 2012 are silent, however, with regard to similar deficiencies identified by the 2012 Report with respect to limited liability companies (*empresas de responsabilidad limitada* or LTDAs) and partnerships. Accordingly, the recommendation concerning the lack of enforcement provisions to ensure that identify and ownership

2. Base salary is the minimum monthly wage that is fixed by the Government of Costa Rica.

3. As at 20 November 2012, USD 1 = CRC 499 and CRC 1 = USD 0.002 (www.xe.com/ucc/convert/).

information made in the 2012 report is amended to reflect the situation that there are no express penalties for limited liability companies and partnerships that do not register themselves or maintain a share register, as the case may be.

Determination and factors underlying recommendations

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

26. The General Tax Code requires that the taxpayers keep accounting records in an “orderly manner”. It also prescribes a penalty for non-compliance with these general accounting requirements. However, the 2012 Report concluded that the general accounting requirements prescribed by the General Tax Code were not consistent with the international standards, as they did not ensure that the records could correctly explain all transactions, enable the financial position of the entity or arrangement be determined

with reasonable accuracy at any time and allow financial statements to be prepared.

27. The Commerce Code requires that all merchants keep records such that, “the business operations and financial situation may be easily, clearly and accurately set forth”. This must include a balance sheet, inventory books, journal and general ledger. While the Commerce Code establishes general accounting requirements to the standard, it does not prescribe a penalty to enforce these requirements. In this context, the 2012 Report recommended Costa Rica to ensure that reliable accounting records are kept for all entities consistent with the international standard.

28. In September 2012, the Strengthening of the Tax Administration Law amended article 84 of the General Tax Code to make explicit reference to the accounting requirements established in the Commercial Code, extending the same penalty for not keeping accounting records as required under the General Tax Code to a failure to keep accounting records in accordance with the Commerce Code. The penalty corresponds to one base salary, which currently amounts to CRC 374 400, or approximately USD 740. With this amendment in place, the gap that had been identified in the 2012 Report with reference to the lack of a mechanism to enforce accounting record requirements has been addressed and the recommendation is, therefore, deleted.

29. In addition, article 110 of the General Tax Code was amended to impose on all Costa Rican taxpayers an obligation to keep the accounting records in the fiscal domicile or any other place, authorised by the tax administration. The databases and storage sites may even be outside Costa Rican territory, as long as they are available for auditing. Article 251 of the Commerce Code was also amended to establish that the general accounting requirement include those kept in electronic formats.

30. The 2012 Report had found that resident trustees of foreign law trusts are not subject to the accounting requirements under the Commerce Code, as foreign law trusts cannot be considered “merchants” under Costa Rican law. Although business activities of the foreign law trust will be subject to accounting requirements under the General Tax Code if these activities are carried out in Costa Rica, these requirements fall short of the international standard. The 2012 Report concluded that the availability of accounting information is not ensured in respect of all foreign law trusts administered by trustees residing in Costa Rica. Costa Rica has also indicated that it does not have an estimate of the number of trusts as not all trusts are registered with a public authority. The legislative amendments introduced in September 2012 do not address this shortcoming. The recommendation made in the 2012 Report under element A.2 with respect to foreign law trusts is, therefore, retained.

Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

31. A third recommendation was made under the 2012 Report with respect to the minimum five-year retention requirement concerning accounting records and underlying documentation. On the one hand, the General Tax Code did not contain a minimum retention requirement concerning accounting records or underlying documentation. The Commerce Code, on the other hand, required that merchants maintain accounting records and underlying documentation from the start of the business until four years after ending operations, falling short of the international standard.

32. The Transparency Law introduced amendments to article 109 of the General Tax Code and articles 234, 270 and 271 of the Commerce Code relating to the minimum retention period for accounting records and underlying documents. These amendments make it clear that all taxpayers and responsible parties must keep accounting records and underlying documents for a period of five years. This is in line with the international standard. Accordingly, the recommendation concerning the lack of a minimum retention period for general accounting records, including underlying documents, has been removed and the determination for element A.2 has been upgraded to “in place but needing improvement”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
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.

Phase 1 determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
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.

33. The 2012 Report did not raise any concerns with respect to bank information. The determination for element A.3 was, and remains, “the element is in place”, and no recommendation were made in the 2012 Report with regard to the availability of bank information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

34. 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.

35. Costa Rica's 2012 Report noted that element B.1 (access to information) was "not in place". In particular, the powers available under the General Tax Code to obtain ownership, identity and accounting information were subject to a domestic tax interest. Following the changes that Costa Rica made to its legal and regulatory framework in September 2012, the competent authority of Costa Rica can now obtain and provide information considered foreseeably relevant under an international agreement providing for exchange of information for tax purposes (EOI agreement).

36. The 2012 Report also identified another significant gap concerning access to banking information. At that time, bank information was accessible only pursuant to an order from a criminal judge. Apart from that, the tax authorities had to demonstrate evidence of an unlawful act and that the taxpayer would be subject to audit pursuant to Costa Rica's National Audit Plan. In order to address these deficiencies, Costa Rica has amended the procedure to obtain information from financial entities. Under the new procedure, bank information is accessible following an order from a civil administrative judge. Specific timelines have been prescribed for the processing of the application made to the judge. An application can also be made to the judge when the information is required to comply with an EOI agreement.

37. The 2012 Report had also found that the attorney-client privilege standard was too broad. The legislative amendments introduced in September 2012 have not dealt with this issue and, therefore, the recommendation made

by the 2012 Report remains unchanged. Based on the situation as it stands now, element B.1 has been determined to be “in place”.

38. Element B.2 (notification requirements and rights and safeguards) was determined to be “in place”.

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).

Accounting records (ToR B.1.2)

39. While no recommendation was made in the 2012 Report regarding access to accounting records, changes have been made to improve procedures. Specifically, Costa Rica has amended article 104 of the General Tax Code. The effect of this amendment is that the tax administration will now be able to request books, accounting records, files and any information that may be considered relevant for tax purposes. This record could be a paper record or electronic one. Taxpayers are also under an obligation to identify every person (individual or company) that is involved in transactions. Large taxpayers can also be requested to provide financial statements provided by a certified public accountant.

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

40. The 2012 Report had noted that under the General Tax Code, the powers to obtain information were limited to information that is “justified, appropriate and expressly of tax relevance”. In addition, the law allowed for access to information “to verify correct compliance with the tax obligations”. The 2012 Report concluded that the ambiguity that prevailed in the legal framework would interfere with the competent authority’s ability to obtain and provide information.

41. Since the 2012 Report, Costa Rica has made some changes to its legal and regulatory framework to bring it in line with the standard. Article 105, of the General Tax Code has been amended by the Transparency Law, as follows.

“Article 105 – Third-party information

Every person, individual or corporate, public or private, is under the obligation to provide to the tax administration information considered ~~important tax-wise~~ *foreseeably relevant for tax purposes* that can be deduced from its economic, financial and professional relationships with other persons. The information will be provided in the manner established by the tax administration through regulations or individual requirements. ~~This information requirement~~ The request made must be justified, ~~appropriate and expressly of tax relevance in regards to the foreseeable relevance in the tax area.~~ [...]” (emphasis added)

42. In addition, the Transparency Law introduced a new article 115 bis in the General Tax Code, which (i) expressly overrides the restriction imposed by article 115 of the same statute on the use of and transmission of information obtained or gathered by Costa Rica’s tax administration for domestic tax purposes only, and (ii) makes it clear that the same procedures and facilities which are available to collect information for domestic tax purposes are also available for treaty purposes. The article provides as follows.

“Article 115 bis. – Exchange of information with other jurisdictions

The prohibition indicated in the above article does not prohibit exchange or use the information required by common courts or *by administrations of other jurisdictions with which Costa Rica has an international treaty contemplating exchange of information for tax purposes*. In this respect, the manner and procedures in which the information will be exchanged are those established in the treaty and the Costa Rican legislation. *The procedures and faculties that the tax administration will have to gather information pursuant to a treaty are the same established in the Costa Rican legislation for the tax administration gathering information in respect to taxpayers in Costa Rica.*” (emphasis added)

43. The Costa Rican authorities have indicated that the term “treaty” used in article 115 bis of the General Tax Code covers all EOI agreements regardless of form. Given the changes that have been made to its legal and regulatory framework, it can be concluded that Costa Rica is now in a position to access information without being affected by a domestic tax interest.

Compulsory powers (ToR B.1.4) and Secrecy provisions (ToR B.1.5)

44. The 2012 Report noted that article 105 of the General Tax Code provides for certain exceptions with respect to access powers in relation to information held by third parties, mostly information protected by professional secrecy, which appear to go beyond the international standard. In particular, these exceptions concern information held by: (a) religious ministries about matters related to how the ministry is exercised; (b) parties who through express legal provisions may invoke professional secrecy related to the information supported by it (even though professionals may not claim professional secrecy to block the checking of their own tax situation); (c) employees who are legally forced to keep data, correspondence, and general communications secret; and (d) the forebears and descendants to the third degree of consanguinity or affinity, including the spouse of the party being overseen.

45. These restrictions that were present in the original article 105 of the General Tax Code have not been altered by the Transparency Law. Nevertheless, Costa Rica's Tax Administration Directorate issued Resolution No. DGT-R-003-2013, which was published and entered into force on 18 January 2013, to facilitate the implementation of article 105 of the General Tax Code, as amended by the Transparency Law. This resolution is binding on the tax administration. Article 4 of Resolution No. DGT-R-003-2013 clarified that the exceptions provided for in sections (a), (b), (c) and (d) of article 105 of the General Tax Code do not apply when the request is based on an economic relationship between the person under investigation and the third party from whom information is sought.

46. The 2012 Report concluded that Costa Rica's attorney-client privilege exception is too broad and could impede access to information. Since there is no change in the position as regards attorney-client privilege, the recommendation made in the 2012 Report is retained. With regard to the exception provided under article 105(d) of the General Tax Code concerning information held by a relative or spouse, Costa Rica has indicated that it is narrowly interpreted and would not apply if the holder had any economic, financial or professional relationship with the person under investigation. In such cases, it would not be necessary for a requesting jurisdiction to demonstrate the existence of an economic, financial or professional relationship, but simply to indicate that there is a reason to believe that such a relationship exists between the person under investigation and the third party from whom information is sought. The practical impact of these restrictions on the effectiveness of access of information will be considered as part of the Phase 2 review of Costa Rica.

47. The 2012 Report had noted that, 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”, being a criminal judge from a corresponding domicile. In addition to this, the tax authorities had to demonstrate the existence of solid evidence of a potentially unlawful act under Costa Rican law. They also had to show that the taxpayer would have been subject to audit under the National Audit Plan. Hence, the access to bank information in Costa Rica was significantly limited.

48. Since then, Costa Rica has amended the procedure for obtaining information from financial entities. This new procedure is described under new articles 106 bis and 106 ter of the General Tax Code, as amended by the Transparency Law. In addition, article 615 of the Commerce Code was also amended by the Transparency Law to enable the tax administration to access bank information when duly authorised.

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

“Article 106 ter. – Procedure to request information from financial entities

In any of the cases of the preceding article, the request made by the tax administration must be made through the general director and must comply with the following procedure:

- 1) Written request addressed to the civil administrative judge pursuant to section 5) of article 110 of the Organic Law of the Judicial Power.
- 2) The request made through the general director of the tax administration must indicate the following:
 - a) Identity of the person under investigation.
 - b) If known, any other information such as domicile, date of birth and other information.
 - c) Details about the information requested, including the fiscal period covered, and the nature and manner in which the tax administration wished to receive the information.

- d) Specify if the information is required for an auditing process conducted by the tax administration, or to comply with an international treaty contemplating exchange of information for tax purposes.
- e) Details of the circumstances motivating the auditing process, as well as why the information is foreseeably relevant for tax purposes.
- f) In the event the request for information is to comply with a request made by another jurisdiction by virtue of an international treaty contemplating exchange of information for tax purposes, the tax administration will provide an affidavit indicating that the request for information has been verified and complies with such treaty.”

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

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

52. Articles 5 and 6 of Resolution No. DGT-R-003-2013 state that information obtained through an EOI agreement, including a request made by the requesting jurisdiction, is considered confidential information and must be protected in the same manner as information obtained for domestic purposes, in accordance to domestic legislation. Article 3 of Resolution No. DGT-R-003-2013 also clarified that, when approaching the judge to seek authorisation to obtain banking information, the Costa Rican tax administration does not have to provide a copy of the request made by the requesting jurisdiction.

53. If satisfied, the judge must, within five working days, issue a resolution authorising the tax administration to send the request to the financial

entity. Pursuant to article 106 ter (3) of the General tax Code, the judge's resolution presented to the financial entity may not give the circumstances, or provide details, of the request or investigation, and the confidentiality obligations established under Costa Rica's EOI agreements must be observed. Costa Rica has indicated that neither the taxpayer nor any third party is notified under this new procedure. In case the judge is of the opinion that the request does not fulfil the requirements, the judge must issue a resolution to this effect to the tax administration, giving them three days (extendable to ten days at the request of the tax administration) to correct the defects. This new procedure to request information from financial entities remedies the gaps that were identified in the 2012 Report of Costa Rica and its effectiveness will be tested under Costa Rica's Phase 2 review.

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

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

56. Having considered all these factors, the first two recommendations made in the 2012 Report, concerning access to banking information and domestic interest, are deleted. Even though the recommendation concerning the attorney-client privilege is retained, the determination under element B.1 is upgraded from "not in place" to "in place".

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)

57. The 2012 Report did not raise any concerns with respect to this element and no recommendations were made. The determination for B.2 was, and remains, “the element is in place”.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging Information

Overview

58. 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 arrangements that allow it to achieve the effective exchange of information in practice. Costa Rica’s 2012 Report found elements C.1 (exchange of information mechanisms) and C.2 (network of exchange of information mechanisms) to be “not in place”, mainly due to a lack of legislative powers to overcome bank secrecy and a possible domestic tax interest requirement in Costa Rica’s domestic laws.

59. The 2012 Report had noted that Costa Rica had restrictions in its domestic laws that would impede access to information pursuant to its EOI arrangements. The 2012 Report also noted that Costa Rica’s tax information exchange agreement (TIEA) with the United States (its most significant economic partner) limited the exchange of bank information to “possible tax fraud matters”. It was also noted that, under Costa Rica’s double tax convention (DTC) with Spain, its access powers to bank information were limited to information related to a “possible unlawful act”. Based on all these facts, the 2012 Report concluded that Costa Rica did not have EOI agreements to the standard, in particular with all its economically significant partners. Accordingly, elements C.1 and C.2 were determined to be “not in place”.

60. Since the 2012 Report, Costa Rica has made changes to its legal and regulatory framework that has now allowed it to access and exchange all types of information under its EOI agreements. The restriction on access to banking information and the issue of domestic tax interest has also been resolved, as discussed in detail under section B.1 of this report. Hence, the effect that the earlier determination of element B.1 had on the determinations of elements C.1 and C.2 has ceased to operate.

61. Since the 2012 Report, Costa Rica has also signed the Multilateral Convention on Mutual Administrative Assistance (Multilateral Convention).

On the face of it, this will bridge the gap that was found in the EOI agreements that Costa Rica has with the United States and Spain. In addition, Costa Rica has also signed a TIEA with South Africa. However, the process of ratification of EOI agreements signed by Costa Rica is delayed on some occasions. As a result, some of the EOI agreements signed in 2011 are not yet in force. Given the issue of delay in ratification of EOI agreements signed over a year ago, element C.1 has been determined to be “in place but certain aspects of the legal implementation need improvement”. Element C.2 has been determined to be “in place”.

62. The 2012 Report found elements C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) to be “in place” and the assessment of element C.5 (timelines of responses to requests for information) was deferred to the Phase 2 review, as it involves issues of practice.

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard (ToR C.1.1) and In respect of all persons (ToR C.1.2)

63. The 2012 Report had found that all the EOI agreements entered into by Costa Rica meet the foreseeably relevant standard and that Costa Rica was able to exchange information in respect of all persons under these EOI agreements. The same conclusions apply with respect to the new TIEA signed with South Africa.

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

64. The 2012 Report had found that Costa Rica’s TIEA with the United States limits the exchange of bank information to cases of tax fraud as defined under the Costa Rican law. Therefore, the 2012 Report concluded that Costa Rica’s TIEA with the United States did not meet the international standard. Given that the United States is Costa Rica’s biggest trading partner, this was considered a significant gap.

65. On 1 March 2012, Costa Rica signed the Multilateral Convention. It must be noted, however, that while Congressional approval was given on 21 January 2013, ratification by the Constitutional Court is necessary before the process is complete. Costa Rica has indicated that this ratification process will be completed shortly. The United States is also a signatory to the Multilateral Convention, which will supersede this TIEA once the Multilateral Convention is ratified by both parties. Under these circumstances, the gap identified in relation to the TIEA with the United States should shortly be bridged.

66. Similarly, in the protocol to Costa Rica’s DTC with Spain, it was stated that the parties agree to exchange all kinds of information, including bank information “exercising the same powers that the Constitution and the domestic laws confer on such authorities regarding its residents for the purposes of tax investigation or information. Such powers shall, whenever appropriate, be exercised through court intervention”. The 2012 Report concluded that access to bank information was severely limited by the domestic laws of Costa Rica as even when there was an EOI request, they could exercise their information gathering powers only when they needed the information for themselves.

67. The gap that existed in connection with the limited access to banking information under Costa Rica’s domestic law has now been addressed, as discussed under section B.1.5 of this report. Accordingly, the perceived problem in the DTC with Spain is now resolved. In addition, Costa Rica and Spain are signatories to the Multilateral Convention.

68. The new TIEA with South Africa contains a provision equivalent to Article 5(4) of the OECD Model TIEA spelling out the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information.

Absence of domestic tax interest (ToR C.1.4)

69. In addition to the general ambiguity about domestic tax interest, the 2012 Report had found that the protocol to Costa Rica’s DTC with Spain specifically for all purposes referred to the domestic laws of the parties, providing that the parties should exercise the same powers that the Constitution and domestic laws confer on the authorities for purposes of tax investigation and information. The 2012 Report also found that Costa Rica’s TIEA with the United States did not expressly provide that information should be exchanged without regard to domestic tax interest.

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

71. The new TIEA signed by Costa Rica and South Africa contains a provision equivalent to Article 5(2) of the OECD Model TIEA, which obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

Absence of dual criminality principles (ToR C.1.5)

72. The 2012 Report has found that the Costa Rica-United States TIEA required that bank information could only be exchanged where a case involves tax fraud as defined under the Costa Rican law. Therefore, this TIEA did not meet the standard. Costa Rica has now joined the Multilateral Convention, which will fill the gap in the TIEA once the Multilateral Convention is ratified by both parties.

73. The new Costa Rica-South Africa TIEA is not restricted by the dual criminality principle. Costa Rica's policy in this regard is to exchange information under its EOI agreements irrespective of whether the conduct being investigated would constitute a crime in Costa Rica.

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

74. The 2012 report had pointed out that the Costa Rica-United States TIEA limited exchange of bank information to cases of tax fraud which would involve only criminal matters. Now that Costa Rica has joined the Multilateral Convention, this gap will be closed once the Multilateral Convention is ratified by both parties.

75. In addition, the new TIEA with South Africa provides for exchange of information in both civil and criminal tax matters.

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

76. There are no restrictions in Costa Rica's domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. The new TIEA signed by Costa Rica and South Africa expressly allows for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws.

In force (ToR C.1.8)

77. The 2012 Report stated that, though five of Costa Rica's EOI agreements with its treaty partners were in force, they could not be considered effective because of the deficiencies in the domestic laws of Costa Rica. As discussed under section B.1 of this report, the deficiencies in the domestic laws of Costa Rica have been remedied and, as a result, these TIEAs are now considered effective as per the international standard. Moreover, since the 2012 Report, five TIEAs entered into force, *i.e.* those with Argentina, Australia, Canada, Mexico and Netherlands. In addition, the new TIEA

recently concluded between Costa Rica and South Africa in October 2012 has not yet been ratified.

78. As of January 2013, one DTC with Spain and seven of the 15 TIEAs entered into by Costa Rica are in force. However, it is apparent that the time gap between the signature of an EOI arrangement and its entry into force can be quite long. Seven of the EOI arrangements signed between June and August 2011 with the Nordics are not yet in force, in addition to the TIEA signed with South Africa in October 2012. Costa Rica has indicated that these EOI arrangements are awaiting the approval of Congress, but priority has been given to the ratification of the Multilateral Convention since it will close this gap with respect to most of these jurisdictions.

79. Costa Rica has indicated that the Multilateral Convention received congressional approval on 21 January 2013 and ratification by the Constitutional Court will be completed shortly. The Multilateral Convention will enter into force from the first day of the month following the expiration of a period of three months after Costa Rica has deposited the ratification instrument. Once the Multilateral Convention is ratified by Costa Rica and enters into force, this gap will be closed with respect to the TIEAs with Denmark, Finland, Iceland, Norway, South Africa and Sweden. Nevertheless, it is recommended that Costa Rica takes steps to expeditiously ratify the EOI agreements that it has signed and bring them into force.

In effect (ToR C.1.9)

80. The 2012 Report found that the domestic tax interest requirement and the domestic laws preventing access to bank information impede exchange of information. On 27 August 2012, the Legislative Assembly of Costa Rica approved the Transparency Law and the Strengthening of the Tax Administration Law, which entered into force on 28 September 2012, as published in the Official Gazette. These laws introduced amendments to the General Tax Code and the Commerce Code, which allow Costa Rica to give effect to its EOI agreements, in accordance with the international standards.

Conclusion

81. Given the progress made by Costa Rica on the one hand, and the delay in ratifying some of its EOI agreements on the other hand, the recommendation that were made in the 2012 Report for the element C.1 are deleted, a new recommendation is added and this element is determined to be in “in place, but needing improvement”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place but certain aspects of the legal implementation of the element need improvement.	
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.
<u>Costa Rica has not ratified eight of its 15 EOI agreements. Seven of these EOI agreements were signed more than 18 month ago by Costa Rica.</u>	<u>Costa Rica should ensure that that its EOI agreements are ratified and brought into force expeditiously.</u>

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

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

82. The 2012 Report had concluded that Costa Rica's network of EOI agreements covered its relevant partners, including the United States (its biggest trading partner), Spain, Mexico and the Netherlands. However, the gaps identified in respect of element C.1 led to the conclusion that none of Costa Rica's EOI agreements were to the standard.

83. Since that time, Costa Rica has taken various steps to attend to the gaps in its domestic laws, as discussed in section B.1 of this report. The gaps that had been identified in respect of domestic tax interest and bank secrecy in the 2012 Report have been addressed. These were among the factors that led to element C.1 being "not in place". Those factors have now ceased to be relevant. Furthermore, Costa Rica has also joined the Multilateral Convention since March 2012 and signed a TIEA with South Africa in October 2012, substantially widening the coverage of its network of EOI agreements that

meet the standard to 47 jurisdictions.⁴ Accordingly, the first recommendation for element C.2 was deleted and the element is determined to be “in place”. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction indicated that Costa Rica had refused to negotiate or conclude EOI agreements with it.

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.

84. The 2012 Report did not raise any concerns with respect to this element. The new TIEA with South Africa contains a confidentiality provision with all the essential elements of Article 8 of the OECD Model TIEA. In addition, articles 5 and 6 of Resolution No. DGT-R-003-2013, of 18 January 2013, state that information obtained by the Costa Rican tax administration through an EOI agreement, including a request made by the requesting jurisdiction, is considered confidential information and must be protected in the same manner as information obtained for domestic purposes, in accordance with domestic legislation. Furthermore, the response to a request made by the requesting jurisdiction and all the information sent to that jurisdiction in accordance with an EOI agreement, must contain a stamp indicating that the information is confidential and provided pursuant to the EOI agreement

4. Azerbaijan has not yet signed the 2010 Protocol amending the Multilateral Convention to bring it in line with the international standard and to open it up to all jurisdictions.

(article 7, Resolution No. DGT-R-003-2013). Therefore, the determination for C.3 was, and remains, “the element is in place”.

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.

85. The 2012 Report did not raise any concerns with respect to this element. The new Costa Rica-South Africa TIEA contains a provision on rights and safeguards which mirrors Article 7 of the OECD Model TIEA. Therefore, the determination for C.4 was, and remains, “the element is in place”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
<u>Costa Rica’s attorney-client privilege standard is too broad and could impede access to information.</u>	<u>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.</u>

C.5. Timeliness of responses to requests for information

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

86. The 2012 Report did not raise any concerns with respect to this element. The determination for C.5 was, and remains, “the element is in place”.

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 Determinations⁵ 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 limited liability companies, private joint stock corporations and partnerships that fail to register or update registration information. In addition, there is no penalty for a limited liability company that fails to maintain a share register.	Costa Rica should put in place effective enforcement provisions to ensure the availability of information for limited liability companies, private joint stock corporations and partnerships.

5. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

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 in place, but certain aspects of the legal implementation of the element need improvement.	Costa Rican legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts which are administered in Costa Rica or in respect of which a trustee is resident in Costa Rica	Costa Rica should ensure that all relevant entities and arrangements maintain accounting records, including underlying documentation.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		
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 in place.	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.
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.		
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
The element is in place but certain aspects of the legal implementation of the element need improvement.	Costa Rica has not ratified eight of its 15 EOI agreements. Seven of these EOI agreements have been signed more than 18 month ago by Costa Rica.	Costa Rica should ensure that that its EOI agreements are ratified and brought into force expeditiously.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The element is in place.		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.	Costa Rica's attorney-client privilege standard is too broad 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.
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 Supplementary Review⁶

Costa Rica would like to thank the Global Forum in Transparency and Exchange of information for the opportunity to present the new legislative amendments introduced, which allow the country to move forward to Phase 2 of the review. We take this opportunity to thank specially the assessment team for the hard work into the drafting of this report, which accurately addresses Costa Rica’s situation in regards to transparency and exchange of information.

Costa Rica is satisfied with the progress made since the Phase 1 review took place. Aside from the legislative developments discussed in this report, one other important development was made. Costa Rican Congress gave final approval to the Convention on Mutual Administrative Assistance in Tax Matter. The approval contains endorsement from the Constitutional Court, which has indicated that the Convention does not contravene in any way the Costa Rican Constitution. The ratification is to be published in the upcoming days in the Official Gazette and we expect that soon after the depositing of the corresponding instrument can take place.

The commitment taken by Costa Rica to the international standard remains today. Implementation has been launched in the country and we expect that the exchange of information processes are successful and contribute to the international dynamic of transparency. Our support remains strong for the Global Forum’s work and we look forward to continue in the same path.

6. 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: Request for a Supplementary Report Received from Costa Rica

Costa Rica's peer review phase 1 was adopted on March 2012. At that time, it was determined that some international standards were not in place and others required improvement. Since March 2012, Costa Rica has achieved important progress towards compliance with the agreed international standards. On 27 August 2012, the Legislative Assembly approved two laws, the Transparency Bill and the Strengthening of the Tax Administration Bill. Both of them introduce amendments to the General Tax Code and the Commerce Code, which allows Costa Rica to be in a better position in respect to the international standards. Both laws entered into force on 28 September 2012, date in which both were published in the Official Gazette (see attached file).

The transparency bill introduced the following amendments:

- A penalty is established through a new article 84 bis for *sociedades de capital* (companies formed by capital) who fail to keep the shareholder register. The obligation to keep such register is found in article 137 of the Commerce Code, and the newly approved is contemplated in the General Tax Code, but has a direct reference to article 137 of the Commerce Code. The penalty is of one base salary, and currently the base salary amounts to CRC 360 600, approximately USD 714.
- The first paragraph of article 105 is amended to reflect the obligation every person has to provide the tax administration with foreseeable relevant information. The term “foreseeable relevant information” was included in the law as such. Information is considered foreseeable relevant for tax purposes when required for the administration, determination, adjustment, to charge or verify any tax, exemption, remittance, tariff, which may be useful for an auditing process or to determine an eventual non-compliance in tax matters, criminal or administrative, including, among other, fraud, infractions, non-payment, that may result in fines or penalties. No concrete evidences of a criminal or administrative non-compliance is required. It is also

considered foreseeable relevant for tax purposes any information required to comply with a request pursuant to an international treaty contemplating the exchange of information for tax purposes.

- The procedure for the tax administration to obtain bank information changes with this Bill. It is accessible through the order of an administrative judge, rather than a criminal judge as it used to be. It is no longer necessary that evidence of an unlawful act exist. Today, access to the information can be requested from the judge when required for an auditing process, or when requested by another jurisdiction with which Costa Rica has an exchange of information agreement (can be a tax information exchange agreement, a double tax convention or a multilateral instrument contemplating this possibility). This means that Costa Rica has now a specific law empowering the competent authority to obtain information in response to a request from a treaty partner. This procedure to obtain bank information allows Costa Rica to exchange the information in a timely manner, and does not involve any safeguards to the tax payer that may delay such exchange of information.
- Amendments made to the article 109 of the General Tax Code and articles 234, 270 and 271 of the Commerce Code relate to the document retention. Costa Rica used to have a retention requirement of 4 years, and it is now of 5, thus complying with the international standard. Underlying documents must also be kept for 5 years.
- Bearer shares were eliminated since 1997 but such references to bearer shares were mistakenly left. Articles 120, 134, 137, 140 and 149 of the Commerce Code were amended to eliminate such references.
- Article 615 of the Commerce Code was amended for the tax administration to be able to access bank information when duly authorized. Before, there was an express prohibition for the tax administration to access this information directly from the banks. However, with the new procedure the tax administration will access the information from the banks when having the judge's order.
- The General Tax Code contains a prohibition for the tax administration to share tax information with third parties. Therefore, a new article 115 bis was introduced, which states that this prohibition is not applicable to information that needs to be shared with courthouses or competent authorities from other jurisdictions with which Costa Rica has an exchange of information agreement. This eliminated any doubts on Costa Rica having a domestic tax interest. All of the amendments introduced by the Transparency Bill have a direct impact on legislation evaluated by the Global Forum

on Transparency and Exchange of information. This is not the case with the Strengthening of the Tax Administration Bill. Therefore, this report will only address the relevant elements for transparency purposes.

Amendments introduced through the Strengthening of the Tax Administration Bill are the following:

- Article 83 of the General Tax Code, which refers to the penalty for not providing the tax administration with information, was amended. The penalty for not providing the information will be of 2% the gross amount of the taxpayer, with a minimum of 10 base salaries and a maximum of 100 base salaries. Currently the base salary amounts to CRC 360 600, approximately USD 714. In the event information is provided, but contains error, the penalty will be 1% of a base salary for every incorrect data.
- Article 84 of the General Tax Code was amended to the one reflecting the penalty for not keeping accounting records. The penalty remains to be the same, one base salary. Currently the base salary amounts to CRC 360 600, approximately USD 714. The phase 1 peer review report indicated the accounting requirements in the General Tax Code were not consistent with the international standard, as they did not ensure that records correctly explain all transactions. At that time, Costa Rica advised that requirements were to be interpreted along with the Commerce Code. Given this situation, a specific reference to the Commerce Code was included in article 84 of the General Tax Code.
- Article 104 of the General Tax Code, which refers to requests of information made to the taxpayer, was Amended. The tax administration will be able to request books, accounting records, files and any information considered to be relevant for tax purposes, disregarding if it is in paper or recorded by any other electronic means. All taxpayers may be request to provide accounting record, information regarding the computer software and system, any electronic record containing relevant information, as well as information regarding credit operations, trust agreements, lease agreements with private or public enterprises. Taxpayers are in the obligation to identify every person (individual or company) involved in the transactions. Large taxpayers may be requested to hand financial statements audited by a certified public accountant.
- Article 110 of the General Tax Code is amended for all *sujetos pasivos* (Costa Rican taxpayers) to keep the accounting records in the fiscal domicile or else, in a place authorized by the tax administration,

without prejudice that the data bases and storage sites may be established elsewhere, even outside Costa Rican territory, as long as it is available for auditing processes. This must be advised to the tax administration.

- Article 115 of the General Tax Code was amended for the tax administration to be able to share tax information with the Costa Rican Social Security Board. An express reference to the confidentiality article (117 of the General Tax Code) was made.
- Article 251 of the Commerce Code was amended for the general accounting requirement to include those kept in electronic formats.

In respect of exchange of information Costa Rica has also made progress. Actions taken include:

- Costa Rica signed the Convention on Mutual Administrative Assistance on March 1, 2012. This instrument not only expands Costa Rica's network but also brings to the standard agreements signed by Costa Rica which did not meet the standard (United States of America and Spain). The Convention was filed for legislative approval in April 2012, and is now in advanced technical stages. Approval is expected towards the end of 2012.
- Given the amendments to the General Tax Code through the Transparency Bill, Costa Rica is now able to overcome bank secrecy and there are no hesitations as to the country having a domestic tax interest. Therefore, all agreements signed up to date can be considered effective. Mechanisms are now in force to the standard.
- Since the peer review took place, the Legislative Assembly has approved the tax information exchange agreements signed with Argentina, Canada, Mexico and the Netherlands. These agreements were published in the Official Gazette and duly notified to all treaty partners. All of them entered into force in the following dates:
 - Argentina: 12 July 2012
 - Canada: 14 August 2012
 - Mexico: 26 June 2012
 - Netherlands: 1 July 2012.

Annex 3: List of All Exchange of Information Mechanisms

List of EOI agreements signed by Costa Rica as at January 2013, including Tax Information Exchange Agreements (TIEAs), Double Tax Conventions (DTCs), a Mutual Assistance Convention with four other Central American countries and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC). The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters.

The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/document/14/0,3746,en_2649_33767_2489998_1_1_1_1,00.html.

	Jurisdiction	Type of EO arrangement	Date signed	Date entered into force
1	Argentina	TIEA	23 Nov 2009	12 Jul 2012
		MAC	Signed	Ratified by Costa Rica*
2	Australia	TIEA	1 Jul 2011	14 Aug 2012
		MAC	Signed	Ratified by Costa Rica*
3	Azerbaijan	MAC (Original)	Signed	Ratified by Costa Rica*
4	Belgium	MAC	Signed	Ratified by Costa Rica*
5	Brazil	MAC	Signed	Ratified by Costa Rica*
6	Canada	TIEA	11 Aug 2011	14 Aug 2012
		MAC	Signed	Ratified by Costa Rica*
7	Colombia	MAC	Signed	Ratified by Costa Rica*
8	Costa Rica	MAC	Signed	Ratified by Costa Rica*
9	Czech Republic	MAC	Signed	Ratified by Costa Rica*
10	Denmark	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	Ratified by Costa Rica*

	Jurisdiction	Type of EO arrangement	Date signed	Date entered into force
11	El Salvador	Mutual Assistance Convention	25 Apr 2006	Not yet in force
12	Faroe Islands	TIEA	29 Jun 2011	Not yet in force
13	Finland	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	Ratified by Costa Rica*
14	France	TIEA	16 Dec 2010	14 Dec 2011
		MAC	Signed	Ratified by Costa Rica*
15	Georgia	MAC	Signed	Ratified by Costa Rica*
16	Germany	MAC	Signed	Ratified by Costa Rica*
17	Ghana	MAC	Signed	Ratified by Costa Rica*
18	Greece	MAC	Signed	Ratified by Costa Rica*
19	Greenland	TIEA	29 Jun 2011	Ratified by Costa Rica*
20	Guatemala	Mutual Assistance Convention	25 Apr 2006	11 Feb 2011
21	Honduras	Mutual Assistance Convention	25 Apr 2006	11 Feb 2011
22	Iceland	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	Ratified by Costa Rica*
23	India	MAC	Signed	Ratified by Costa Rica*
24	Indonesia	MAC	Signed	Ratified by Costa Rica*
25	Ireland	MAC	Signed	Ratified by Costa Rica*
26	Italy	MAC	Signed	Ratified by Costa Rica*
27	Japan	MAC	Signed	Ratified by Costa Rica*
28	Korea, Republic of	MAC	Signed	Ratified by Costa Rica*
29	Malta	MAC	Signed	Ratified by Costa Rica*
30	Mexico	TIEA	25 Apr 2011	26 Jun 2012
		MAC	Signed	Ratified by Costa Rica*
31	Moldova	MAC	Signed	Ratified by Costa Rica*
32	Netherlands	TIEA	29 Mar 2011	1 Jul 2012
		MAC	Signed	Ratified by Costa Rica*
33	New Zealand	MAC	Signed	Ratified by Costa Rica*
34	Nicaragua	Mutual Assistance Convention	25 Apr 2006	Not yet in force

	Jurisdiction	Type of EO arrangement	Date signed	Date entered into force
35	Norway	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	Ratified by Costa Rica*
36	Poland	MAC	Signed	Ratified by Costa Rica*
37	Portugal	MAC	Signed	Ratified by Costa Rica*
38	Romania	MAC	Signed	Ratified by Costa Rica*
39	Russia	MAC	Signed	Ratified by Costa Rica*
40	Slovenia	MAC	Signed	Ratified by Costa Rica*
41	South Africa	MAC	Signed	Ratified by Costa Rica*
		TIEA	27 October 2012	Not yet in force
42	Spain	DTC	4 Mar 2004	1 Jan 2011
		MAC	Signed	Ratified by Costa Rica*
43	Sweden	TIEA	29 Jun 2011	Not yet in force
		MAC	Signed	Ratified by Costa Rica*
44	Tunisia	MAC	Signed	Ratified by Costa Rica*
45	Turkey	MAC	Signed	Ratified by Costa Rica*
46	Ukraine	MAC	Signed	Ratified by Costa Rica*
47		MAC	Signed	Ratified by Costa Rica*
48	United States	TIEA	15 Mar 1989	12 Feb 1991
		MAC	Signed	Ratified by Costa Rica*

* On 28 January 2013, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters was ratified by Congress, following the technical opinion issued by the Constitutional Court (see paragraph 79 of this report).

Annex 4: List Of All Laws, Regulations and Other Material Received

Request for supplementary report

Phase 1 Peer Review – Follow-up actions taken on recommendations

Amended legislation

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

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

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

