

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**EL SALVADOR**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: El Salvador 2015**

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

March 2015  
(reflecting the legal and regulatory framework  
as at December 2014)

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## About the Global Forum

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

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

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

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

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

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





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in El Salvador. 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 partners. While El Salvador has a well-developed legal and regulatory framework, the report identifies the lack of a mechanism to identify the holders of bearer shares as the main shortcoming in the legal framework of El Salvador and a recommendation has been made in this regard.

2. The Republic of El Salvador as located in Central America is bordered by Guatemala to the north, Honduras to the east, the Pacific Ocean to the west, and Honduras and Nicaragua to the southeast. It is a constitutional republic with a democratically elected president who is both Chief of State and head of the government. El Salvador committed to implement the international standard of transparency and exchange of information in 2011 and is a member of the Global Forum. El Salvador has signed one Double Taxation Convention and is also a signatory to the Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations.

3. Relevant legal entities in El Salvador include joint stock and limited liability companies as well as partnerships limited by shares, collective partnerships, and limited liability partnerships for which there are sufficient ownership information requirements under the Commercial Code. Whilst common law trusts are not recognised in El Salvador, there is the possibility of establishing a *Fideicomiso*, which has certain trust like characteristics and has an obligation to maintain ownership and identity information under the Commercial Code. In the case that an El Salvadoran resident were to act as a trustee for a foreign trust or if a foreign trust were to invest in El Salvador, there are a combination of requirements under the Commercial Code, the Tax Code and the regulatory laws in place ensuring the availability of trustee,

settlor and beneficiary ownership information in all cases. Foundations are possible in El Salvador but may only be formed as not for profit entities.

4. It is noted that there are currently no mechanisms in place to identify the holders of bearer shares in El Salvador which can be issued by both joint stock and limited liability companies. As a result, a recommendation has been issued addressing this deficiency and element A.1 was found not to be in place.

5. All relevant entities are subject to the provisions of the Commercial Code, which requires all “merchants” which extends to all relevant entities (i.e. companies, partnerships, foreign companies and partnerships, trusts and foundations) to maintain a full range of accounting records, including underlying documentation for a period of ten years. As a result, element A.2 was found to be in place.

6. Full bank information, including all records pertaining to account holders as well as related financial and transaction information, is required to be kept by El Salvadoran banks under AML legislation. As a result, element A.3 was found to be in place.

7. El Salvador’s competent authority is the Minister for Finance who delegates this power to the Commissioner of the General Directorate for Customs and Internal Tax (DGII, *Direcciones Generales de Aduanas e Impuestos Internos*). The DGII has significant information resources at its disposal, including ownership, identity, banking and accounting information.

8. In respect to access to information, the DGII is invested with broad powers to compel the provision of any information not already contained in its possession. These measures can be used for EOI purposes in the same way as for domestic purposes. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Whilst there are statutory provisions in place protecting the disclosure of banking information in El Salvador, these can be overridden for the purposes of accessing banking information for exchange of information purposes in which case the DGII can directly access the information without a court order. Secrecy or confidentiality provisions (including attorney-client privilege) do not impede on the powers of the DGII to access all types of information and therefore do not affect the exchange of information in practice.

9. El Salvador has an EOI network covering five treaty partners under two exchange of information mechanisms comprised of one DTC with Spain and one multilateral convention facilitating the exchange of information in tax matters between Guatemala, Nicaragua, Honduras and Costa Rica. Both of these agreements are in force and meet the internationally agreed standard containing sufficient provisions to enable El Salvador to exchange all

relevant information. Further, El Salvador continues to expand its network of exchange of information instruments with 1 further TIEA under negotiation.

10. El Salvador's response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of El Salvador which is scheduled for the first half of 2015.



## Introduction

### Information and methodology used for the peer review of El Salvador

11. The assessment of the legal and regulatory framework of El Salvador 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 information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 15 December 2014, El Salvador's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant information.

12. The *Terms of Reference* breaks 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) exchange of information. This review assesses El Salvador'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: (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.

13. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr Lars Aarnes, Senior Advisor, Directorate of Taxes, Norway; Ms. Margarette Edwards, Field Auditor, Inland Revenue Division, Trinidad and Tobago and Ms. Mary O'Leary from the Global Forum Secretariat.

## Overview of El Salvador

14. The Republic of El Salvador is located in Central America bordered by Guatemala to the north, the Pacific Ocean to the west, Honduras to the east, and Nicaragua to the southeast. The territory of El Salvador is divided into 14 departments grouped into three geographical zones: the Western Zone, the Central Zone, and the Eastern Zone, which make up 39 districts and 262 municipalities. It is a constitutional republic with a democratically elected president who is the Chief of State, the head of the government and the Commander-in-Chief of the armed forces (art. 157, Constitution). It follows the classical model of the separation of powers, with the following independent branches of government: the Executive, the Legislative and the Judiciary.

15. The Executive is composed of a President, who is directly elected by universal suffrage for a five-year term (who may not be re-elected) and a Vice President, elected for a non-extendable period of five years and the Cabinet Ministers as appointed by the President. Each of the 13 appointed Cabinet Ministers is responsible for one of the 13 different cabinet departments, namely, Agriculture, Economy, Learning, the Environment and Natural Resources, Finance, Foreign Relations, Government, Sports, Labour and Social Welfare, Public Security and Justice, Public Works, Tourism and the office of the Attorney-General.

16. The Legislative branch is composed of the unicameral legislative assembly consisting of 84 deputies who are elected through universal suffrage for a three-year term with the option of re-election. The legal basis for this body is set out under Chapter 1 of the Constitution and its powers and responsibilities are clarified in the Rules of Procedure of the Legislative Assembly. This body is essentially responsible for legislating and may make decrees, and may also give interpretation, amend and repeal secondary laws. It is also the body responsible for the ratification of treaties, such as DTCs and TIEAs.

17. The Judicial Branch is composed of the Supreme Court of Justice, which is the highest court consisting of 15 judges, the Courts of Second Instance, and the remaining Courts that are established by secondary laws. Other courts consist of constitutional, civil, penal and administrative conflict divisions. No other authority is able to intervene in the administration of justice.

18. El Salvador is the smallest and most densely populated country in Central America covering an area of 21 041km<sup>2</sup> with an estimated population

of 6.13 million as of September 2014<sup>1</sup>. The capital city of El Salvador is San Salvador and the official language is Spanish. The Salvadoran colon (SVC) is its national currency (8.75 SVC = 1US dollar as of 28 September 2014)<sup>2</sup>.

19. El Salvador had a GDP per capita of USD 7 500 in 2013<sup>3</sup> with approximately 60% derived from services, approximately 30% from industry and 10% from agriculture. The main exports are offshore light assembly products, coffee, sugar and textiles with its largest export partners being the United States, Guatemala, Honduras and Nicaragua. In terms of imports, Mexico, China and Germany are also important trade partners.

20. El Salvador ratified the Central American Free Trade Agreement (CAFTA) with Costa Rica, Guatemala, Honduras, Nicaragua and the United States in March 2005. Subsequently the Dominican Republic joined the negotiations, and the agreement was renamed DR-CAFTA. This agreement represents the largest trade group within the region. DR-CAFTA countries are the third-largest Latin American export market for US producers, behind only Mexico and Brazil<sup>4</sup>.

### ***General information on the legal system***

21. El Salvador's legal system follows a civil law tradition. Regarding the hierarchy of the legal system with respect to tax matters, article 5 of the Tax Code, establishes the following sources of tax law in rank order:

- The Constitution of the Republic of El Salvador;
- Ordinary laws, treaties and international conventions ratified by Congress;
- Regulations issued by the Executive Branch; and
- Jurisprudence concerning the constitutionality of provisions of the Tax Code.

22. Pursuant to Article 168 of the Constitution, international conventions are entered into by the President and must be approved by the legislative assembly. Article 144 of the Constitution specifically sets out that in the event of a conflict between the treaty and any domestic law, the provisions of the

- 
1. Central Intelligence Agency, World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>.
  2. [www.xe.com/finance/currencyconverter/convert/?Amount=1&From=USD&To=SVC](http://www.xe.com/finance/currencyconverter/convert/?Amount=1&From=USD&To=SVC).
  3. Central Intelligence Agency, World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>.
  4. [www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta](http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta).

treaty shall prevail. Further, a law of a higher rank will prevail over a law of a lower rank when they concern the same subject matter, and a law which is later in time will revoke an older law of equal hierarchy.

23. According to article 140 of the Constitution, tax treaties and exchange of information agreements, same as for domestic laws, enter into force across the national territory eight days after their publication in the Official Gazette.

### ***Taxation***

24. The General Directorate for Customs and Internal Tax (DGII, *Direcciones Generales de Aduanas e Impuestos Internos*) is an independent government agency responsible for revenue collection on behalf of the Government of El Salvador. The Director of the DGII is the Commissioner of Taxation (Commissioner) who is appointed by the Minister of Finance.

25. The imposition of income tax is governed by the Tax Code (*Código Tributario*) which also sets out the general tax principles, rules for the administration of taxes, penalties, procedures and collections.

26. El Salvador operates on a mixed tax system with some elements of worldwide taxation. Since December 2009, any resident individual or entity that derives income from certain foreign sources must declare and pay taxes from that income in El Salvador (article 16, Income Tax law). Those foreign sources are returns on securities and financial instruments, interest from loans or financing as given by El Salvadoran persons or entities to foreign persons or entities located outside of El Salvador and interest on deposits in financial institutions located outside of El Salvador.

27. A company is resident in El Salvador if it is incorporated under the laws of El Salvador or its day to day management and control are exercised in El Salvador at any time during the year of assessment. Foreign companies and entities and branches of foreign companies not having their effective management and control in El Salvador are subject to income tax on certain income from sources in El Salvador, such as income attributable to a permanent establishment in El Salvador.

28. El Salvador imposes a range of taxes which are collected at the national level by DGII, the main ones being income tax and capital gains tax (*impuesto sobre la renta y complementarios*), a value added tax (*impuesto de valor agregado*) and a financial transactions tax (*gravamen a los movimientos financieros*).

29. Tax rates for individuals are progressive with a maximum rate of 30% depending on the amount of the net income. Non-resident individuals are subject to income tax at a flat 30% rate and the corporate income tax rate is 30%.



30. Withholding income taxes apply for certain income including royalties, dividends, income from deposits and securities. The basic tax rate varies from 5% to 25% depending on the type of payment.

31. Most Services, sales of goods and imports are subject to Value added Tax (VAT) at a rate of 13%. Exports are levied at 0% rate and certain imports and services such as health care and house rent are exempt under VAT Law.

### ***Commercial Laws***

32. Generally, commercial activity in El Salvador is regulated by the Commercial Code, Procedural Civil and Commerce Code, Trade Registration Law along with several related laws. The Commercial Code provides the regulatory framework that governs activity of traders and commercial transactions. The companies in El Salvador are mostly divided into partnership companies and stock companies.

33. Foreign companies may operate in El Salvador either through a branch or an agency.

### ***Free Trade Zones***

34. One of the incentives to attract investments offered by El Salvador is a Free Zone system regulated by the *Ley de Zonas Francas Industriales y de Comercialización* (Free Zones and Commercialisation Law). Companies established in a free zone, whether it's domestic or foreign, and owned by individuals or legal entities, and those that are engaged in production, assembly, manufacturing, processing, transformation and marketing goods, can apply for benefits as applicable to companies that operate in the Free Zones.

35. Companies operating within the Zones are fully exempt from income tax for 15 years. Other benefits include an exemption from municipal taxes on its assets for 10 years for companies starting up operations outside of the metropolitan area, full exemption from duties on imports of machinery, equipment and tools to be used in production for holders of a company.

### ***Overview of financial sector and relevant professions***

36. The financial sector in El Salvador is regulated by the Central Bank (*Banco Central de reserva*), which controls the currency rate and governs certain economic activities. El Salvador has 13 banks, two of which, the Agricultural Development Bank (*Banco de Fomento Agropecuario*) and Mortgage Bank (*Banco Hipotecario*) are state owned. As at November 2014, banking deposits in El Salvador were valued to be approximately USD 9.9 billion.

37. The Superintendence of the Financial System (*Superintendencia del Sistema Financiero*) is the regulator of all financial institutions such as banks, insurance companies, credit institutions and monitors their compliance with the Banking Laws and the Anti-Money Laundering regime. As of October 2014, there were 31 financial entities under the supervision of the Superintendence of the Financial System.

## Recent developments

38. In July 2014, several tax reforms were approved by the legislative assembly of El Salvador affecting changes regarding the Tax Code. Significant for exchange of information purposes, article 120 of the Tax Code was amended making it explicit that the powers to request information can be used equally for the purposes of responding to a request under an Exchange of Information agreement as for domestic purposes. Further, a provision was also inserted into article 120 to specify that a tax audit procedure is no longer required to access banking information. The tax authorities can now proceed to access the banking information directly from the banks without prior notification of the taxpayer.

39. El Salvador is currently negotiating one further exchange of information agreement and is currently in the process of joining the multilateral Convention on Mutual Administrative Assistance in Tax Matters which it hopes to have signed by March 2015.

40. El Salvador is currently drafting an amendment for the Commercial Code to abolish the issuance of bearer shares by joint stock and Limited liability Companies. However, as of December 2014 these amendments have been submitted to the legal secretariat of the President and will shortly be submitted to parliament.

## Compliance with the Standards

### A. Availability of Information

#### Overview

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

42. The main laws that govern entities in El Salvador are the Commercial Code, the Law on the Superintendence of the Financial System, the Anti-Money Laundering Law, and the Tax Code. All companies and partnerships (including foreign companies) are deemed to be "merchants" and are subject to the requirements of the Commercial Code. All companies must register with the Commercial Registry and also keep a series of books and records, including minutes of shareholder meetings, books of account and a shareholder register. Further, all companies and partnerships must be formed by a public notarised deed, containing all ownership information, a copy of which will be maintained by the notary.

43. Nominees as such do not exist, although a similar institution called *mandato mercantil* exists in which case all parties are identified in a written deed. El Salvadoran law also provides for the creation of a *fideicomiso*

arrangement, which has certain trust like features. Only financial entities authorised by the financial regulator are permitted to act as a fiduciary in a *fideicomiso* arrangement and are subject to the AML laws, which require a covered entity or person to know the identity of the settlor and beneficiaries. In the case of an El Salvadoran resident acting as the trustee of a foreign law trust or of a foreign trust investing in El Salvador, a combination of information-keeping requirements in the Commercial Code, the Tax Code and the AML Law ensure that information on the settlor, trustee and beneficiaries of foreign trusts will be available in all cases. Foundations in El Salvador can only be established for non-profit, charitable activities.

44. However, a deficiency has been identified under element A.1. in relation to bearer shares which may be issued by joint stock and limited liability companies and there is currently no mechanism in place in El Salvador to ensure that the owners of such shares can be identified. There is currently a draft bill before the legal secretariat of the President which will shortly be submitted to parliament to eliminate all bearer shares and a recommendation has been made for El Salvador to ensure that it eliminates all bearer shares expeditiously. However, El Salvador authorities are unable to quantify the number of bearer shares issued or in circulation. As a result, element A.1 has been found to be not in place.

45. All merchants (which includes all relevant commercial entities) must keep reliable accounting records and underlying documentation for at least 10 years under the Commercial Code. Under tax law, all private legal entities (companies, partnerships, *fideicomisos* and trustees of foreign trusts) are required to keep reliable accounting records for at least ten years. Hence, element A.2 was found to be in place.

46. Banks and other financial institutions have to comply with detailed know-your-customer obligations and must keep all records pertaining to account holders, as well as related financial and transaction information, for at least five years. Element A.3 was therefore found to be in place.

## 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.

47. The various types of entities in El Salvador are not categorised as companies or partnerships, but rather the main type of entity is called a *sociedad*, which is defined in the Commercial Code as a legal entity separate from its owners (art. 18, Commercial Code) and forms the basis of El Salvador's commercial law. A distinction can be made between *Sociedades de Capital* (companies formed by capital) and *Sociedades de Personas* (companies

formed by persons). Both types of *sociedad* are treated as separate entities liable to taxes.

48. To facilitate a comparison with other reports, *Sociedades anónimas* (joint-stock corporations or SA), and *Sociedades en comandita por acciones* (limited liability companies or SCA) are most comparable to companies in common law countries and therefore dealt with in the Companies section of this report. *Sociedades colectivas* (SCs), *Sociedades por acciones simplificadas* (SAS) (limited liability partnerships or LLPs) and *Sociedades de responsabilidad limitada* (SRLs) and are best described as partnerships and therefore considered in the Partnership section of this report.

## **Companies (ToR A.1.1)**

### *Types of Companies*

49. Under El Salvadoran law, companies (*sociedades de capital*) are incorporated pursuant to the Commercial Code. There are two types of companies:

- *Sociedades anónimas* (SA, Joint Stock or Public Limited Company): The company's capital is divided into nominative shares represented by negotiable share certificates. Shareholders can be either entities or individuals and the SAs are managed and legally represented by a single manager or a board of directors, which may appoint the general or specific manager (articles 191 to 206 of the Commercial Code). As a general rule, shareholders' liability is limited to the amount of their capital contributions (except in case of fraud, and other specific exceptions provided for in the law). As of November 2014, there were 34 469<sup>5</sup> SAs in El Salvador.
- *Sociedades en comandita por acciones* (SCA, Limited Liability Company): The company's capital is divided into nominative shares represented in negotiable share certificates. SCAs have two different kinds of members: (i) general partners (*socios comandatrios or gestores*) with joint and unlimited liability who are responsible for the company's management and (ii) limited partners (*socios comanditarios*) whose liability is limited to the amount of their capital contributions. SCAs are governed by articles 296 to 305 of the Commercial Code. As of November 2014, there were 11 SCAs in El Salvador.

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5. All figures for numbers of entities have been accessed from the Integrated Tax Information System (JSIIT) as administered by the tax administration (DGII) in El Salvador.

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

50. SAs and SCAs must be formed by a public deed as authorised by a notary (art. 21, Commercial Code). Pursuant to Article 22, the deed must include the name, founders' identity information (name and address), domicile, duration of activities, capital, contributions and shares. In particular, the deed must include information concerning the capital and the share that each of the founding shareholders contributes as well as the terms governing the relationship between the owners. The deed is then registered in the "protocolo" or notary's register. Any modification of the deed, is required to be done with the same formalities as the creation of the original deed (art. 21, Commercial Code).

51. Once constituted by public deed, SAs and SCAs must then register the deed with the Commercial Registrar within one month from the date of its registration with the notary's register (art. 23, Commercial Code). In the case of any modification to the deed such as in the event of a transfer of shares, an updated copy of the deed must be submitted to the Commercial Registrar by the company. At the time of registration with the Commercial Registrar, the company must pay a fee as determined under the Commercial Code (art. 63, Commercial Code). All registrations must be carried out in person by a legal representative of the company and each founding partner is required to fill in a form in order to obtain a Tax identification Number (NIT). The authorities of El Salvador have advised that all documents submitted to the Commercial Registrar are maintained indefinitely.

*Tax Law*

52. All SAs and SCAs are required to register with the General Directorate for Customs and Internal Tax (DGII, *Direcciones Generales de Aduanas e Impuestos Internos*) at the Tax Registry 15 days after the commencement of a commercial activity (art 86, Tax Code). Registration includes the completion of a company tax registration form as well as the presentation of other documents such as identification documentation for the company's legal representative. The tax registration form requires the name of the company, the company address in El Salvador, 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 and the names of all shareholders. Details of all share transfers must also be provided to the DGII by the company within 10 days of the modification of shares (art. 86, Tax Code). The updated copy of the deed as authorised by the notary must also be attached.

53. Pursuant to Article 124 of the Tax Code all entities are required to provide updated information to all information filed at the time of tax registration, including updating the names of all shareholders, in January of each year. There are fines set out under the Tax Code for non-provision of this information (See section A.1.6 of the report, *Enforcement provisions to ensure availability of information*). Further, under article 121 of the Tax code, each semester the Registrar of Commerce must provide the DGII with the name, all shareholder information and the name of the legal representatives for all companies which have been newly registered, transformed, merged, dissolved or liquidated during the semester.

54. In the case that companies and partnerships operate in free trade zones, they are exempt from income tax for 15 years. However, these entities are still subject to the requirements to register and upon registration, to provide ownership information to the DGII as well as the ongoing requirements to update the DGII of any changes to this information (Art. 4, Law of the Industrial and Free Trade Zones). Further, these companies and partnerships will also be subject to the obligation to register with the Commercial Registrar (art. 9, Law of the Industrial and Free Trade Zones) at which stage all ownership information must be submitted as described above (see section *Company ownership and identity information required to be provided to government authorities*).

#### *Company ownership and identity information required to be held by companies*

55. The ownership information pertaining to all nominative shares as issued by a company must be recorded in a shareholder register as kept by the company (art. 148, Commercial Code) and the following information must be maintained (art. 149, Commercial Code):

- Shareholder's name, shares' class, series, number;
- Payments associated with the shares; and
- Changes in ownership.

56. In order for a transfer of nominal shares to be effective, the transfer must be registered in the shareholders' register (art. 154, Commercial Code).

57. Information referring to books and records, including registries of shareholders, must be kept by the company for at least 10 years (art. 340, Commercial Code).

### *Regulated entities*

58. Entities regulated by the Superintendence of the Financial Sector (SFS) include public and private banks, non-banking financial institutions, savings and loan organisations, insurance companies and the stock exchange (art. 7, Supervision and Financial Sector Regulation Law (SFS Law)).

59. Those entities that are supervised by the SFS are subject to additional requirements to those under the Commercial Code and Tax Code and are also subject to a program of audit by the SFS (art. 84, SFS Law). All supervised entities are subject to a requirement to maintain an updated shareholder register, which should be available to the public (art. 78, SFS Law).

### *Foreign Companies*

60. Article 358 of the Commercial Code sets out that foreign companies that wish to carry on business in El Salvador can either do so by establishing a domicile in El Salvador or by means of a branch which must be registered with the Commercial Registrar.

61. At the time of registration with the Commercial Registrar, the foreign company must provide, amongst other information (art. 358, Commercial Code):

- Documents which demonstrate that it is duly incorporated according to the laws of the country in which it was incorporated;
- Documentation demonstrating that the decision to establish a domicile in El Salvador or to operate in the country has been validly executed in accordance with the statutes of the company; and
- The name of its legal representative who must reside in El Salvador.

62. Further, in the case of foreign companies that do business or invest in El Salvador, they must also be registered with the Ministry of Economic Affairs. At the time of registration, a copy of the company's constitution as well as a copy of its shareholder register must be submitted. The company must also have registered with the tax authorities and supply its tax identification number.

63. For tax purposes, foreign companies that have branches or other permanent establishments in El Salvador are subject to the Tax Code and similar to domestic companies would also be required to register with the Tax Administration (DGII) within 15 days of the commencement of a commercial activity (art. 86, Tax Code). All foreign companies will be under the obligation to provide an annual tax return including updated shareholder information and details of any transfer of shares (art. 124, Tax Code). Further,



details of all share transfers must also be provided to the DGII within 10 days of the modification of shares (art. 86, Tax Code).

64. For foreign companies carrying on business in El Salvador, there are legal requirements under the Commercial Code and Tax Code for ownership information to be submitted to the authorities. All foreign companies must also submit a shareholder register to the Ministry of Economic Affairs prior to the commencement of business in El Salvador. Therefore, there are sufficient requirements in El Salvador to ensure that ownership information on foreign companies is available in all cases.

### *Nominees*

65. The concept of nominee shareholding and the distinction between legal and beneficial owner that exists in other jurisdictions, in particular common law jurisdictions, does not exist in El Salvador. Where a person purports to hold property for the benefit of a third person, that third person would have no rights under El Salvador law to claim the property. Consequently, shares issued by companies registered in El Salvador are in principle held by their beneficial owner, whose identity is known to (or accessible by) the company and the El Salvador authorities. Finally, there are no references to nominee ownership in any of El Salvador's laws, including its AML regime.

66. While the concept of *mandatario* or *mandato mercantil* exists in El Salvador, it is quite different from the concept of nominee ownership and is provided for under Articles 1083–1097 of the Commercial Code. In these cases, a principal (*mandante*) authorises another party (*mandatario*) to act on its behalf, usually in business negotiations. However, it should be noted that under this arrangement, a *mandatario* is not the legal or beneficial owner of the property or shares of the entity for which it acts. Instead, a *mandato mercantil* allows the *mandatario* to essentially conduct all business of the person for which he has been expressly permitted (art. 1066, Commercial Code) and in most cases this will entail acting as the intermediary between the principal and third parties. The *mandato mercantil* arrangement must be in writing and must clearly identify both the *mandatario* and the *mandante*.

### ***Bearer shares (ToR A.1.2)***

67. Closed corporations (i.e. those not open for public subscription) (SCA) and joint stock companies (SA) may issue bearer shares in El Salvador (art. 153, Commercial Code) as well as bearer coupons (art. 680, Commercial Code). The transfer of bearer shares requires only the physical transfer of the share certificate (Commercial Code, art. 154). Bearer shares must be fully-paid and may only be issued in those cases where the governing laws of the

company expressly provide for it (art. 134, Commercial Code). For SAs and SCAs, there is an obligation for the shareholder register to make mention of where nominative shares have been converted into bearer shares (art. 154, Commercial Code). However, this obligation does not ensure the maintenance of any ownership information.

68. There is currently no mechanism in place in El Salvador to ensure that ownership and identity information on the holders of the bearer shares is being kept. While, El Salvadorian authorities have reported that the Superintendence of Corporate Obligations has never encountered bearer shares in the course of its regular company audit program, El Salvadoran authorities were unable to provide statistics on the number of non-listed companies that may issue bearer shares or the possible number of bearer shares in existence. There is currently a draft bill being prepared to prohibit the issuance of bearer shares and to convert all existing bearer shares to nominal shares. However, this legislation has not as yet been considered by parliament. It is recommended that El Salvador establishes a mechanism for the identification of holders of all shares, including bearer shares in all cases.

### ***Partnerships (ToR A.1.3)***

69. There are three types of partnership (*sociedades de personas*) that can be set up in El Salvador:

- *Sociedad Colectiva* (SC) is a commercial entity with at least two members (either natural or legal persons), who are jointly, personally and severally liable for the partnership's obligations without any limitation. Partners can be represented in the shareholders' meeting by a proxy. SCs are governed by articles 73 to 92 of the Commercial Code. As of November 2014, there were 281 SCs in El Salvador.
- *Sociedad de responsabilidad limitada* (SRL) is a commercial entity whose capital is divided into quotas rather than shares. SRLs are governed by articles 101 to 125 of the Commercial Code. The quota holders can be either entities or individuals. The quota holders' liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of November 2014, there were 350 SRLs in El Salvador.
- *Sociedad en comandita simple* (LLP, limited liability partnerships) is a commercial entity whose capital is divided into parts or quotas (rather than shares). LLPs are governed by articles 93 to 100 of the Commercial Code. The transfer of quotas requires an amendment to the partnership's by-laws. The partnership has two kind of members: (i) *socios gestores* which are jointly and severally liable for the partnership's obligations such as in the *Sociedad Colectiva*, and

(ii) *socios comanditarios* who are the equivalent to quota holders in a *Sociedad de responsabilidad limitada*; hence their liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of November 2014, there were 34 LLPs in El Salvador.

70. SCs, SRLs and LLPs must be formed by a public deed which must include the name, the partner's identity information (name and address), domicile, duration of activities, capital, contributions and shares relating to the partnership. In particular, the deed must include information concerning the capital and the share that each of the founding shareholders contributes as well as the terms governing the relationship between the owners. The deed is then registered in the "*protocolo*" or notary's register. Any modification of the deed, is required to be done with the same formalities as the creation of the original deed.

71. This deed and its modifications must be registered not only in the Notary's register but also in the Registrar of Commerce within one month (art. 21, Commercial Code). If this obligation is not complied with, all acts and documents which should have been registered, will have no effect against third parties until such time as they are properly registered (see also section A.1.6 *Enforcement provisions to ensure availability of information*).

72. SCs, SRLs and LLPs are taxed at the entity level in El Salvador and are taxpayers subject to registration and record keeping obligations under the Tax Code, and the obligation to maintain information that must be provided to DGII (art. 86, Tax Code). In addition, any changes to the partnership, including change in partners must be reported to the DGII along with a copy of the updated notarised deed within 10 days (art. 86, Tax Code). There are specific penalties set out under the Tax Code for failing to comply with this requirement (art. 235, Tax Code).

### *Foreign partnerships*

73. A legal arrangement created in accordance with the law of any foreign country, whether or not described as a partnership, cannot operate in El Salvador unless it registers as a partnership under the Commercial Code. While the Commercial Code explicitly allows for the registration of foreign companies, there is no provision made for registration as a foreign partnership. In the case that any association of persons, whether local or foreign, may wish to operate as a partnership in El Salvador, it must register the partnership under El Salvadoran law in which case it would take the legal form of a *Sociedad Colectiva*, a *Sociedad de responsabilidad limitada* or a *Sociedad en comandita simple* as outlined above. Therefore, the possibility to carry on business as a foreign partnership does not exist in El Salvador.

74. Upon registration a foreign partnership will be obliged to submit the same ownership information as domestic partnerships (i.e. identity information on all of the partners) and comply with the filing of annual returns and the registration of changes in composition of partners.

75. Further, similar to domestic partnerships, foreign partnerships that are carrying on business in El Salvador or which have income from a El Salvador source are also required to register with the DGII 15 days after commencing a taxable activity (art. 86, Tax Code). Similar to that for domestic partnerships, where there is a change in the constitution of the partners in the partnership, this change along with a copy of the updated notarised deed must be provided to the DGII within 10 days of this change taking place (art. 86, Tax Code). Therefore, there are comprehensive obligations to ensure that identity information on all partners of relevant partnerships is being maintained.

### *Trusts (ToR A.1.4)*

76. The concept of “trust” as it is under the common law does not exist under El Salvadoran Law and El Salvador 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 El Salvadoran domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in El Salvador.

### *Fideicomisos*

77. El Salvadoran law provides for the establishment of a *fideicomiso* arrangement, which shares some common law trust like features and is governed by Chapter G of the Commercial Code. The *fideicomiso* is an arrangement by which a *fideicomitente* (settlor) transmits certain rights and assets to the *fiduciario* (trustee) subject to the obligation to pass that property to a determined *fideicomisario* (beneficiary) once a specific condition established in the constitution has been met (art. 1233, Commercial Code). In the time from which the assets and rights are transferred to the fiduciary before being passed on to the beneficiary, the trustee is responsible for their management for a fee as paid by the settlor. Only financial entities are permitted to act as fiduciaries and must acquire prior authorisation from the financial regulator before entering into such an arrangement (art. 1238, Commercial Code).

78. While the arrangement exists, the *fiduciario* is the owner of the property and has the right to benefit from the property as long as the condition is pending (for not more than 25 years, in which case the property and rights will revert to the *fideicomitente*) (art. 1236, Commercial Code). Once the condition has been met, the full property is then transferred to the *fideicomisario* without restriction.

## *Ownership information provided to the government authorities*

### Commercial Code

79. The act creating the *fideicomiso* arrangement must be written in a public notarised deed identifying the *fideicomitente*, *fiduciario* and the *fideicomisario* which must be registered with the Commercial Register. Any subsequent modification or cancellation of the *fideicomiso* must also be registered with the Commercial Registrar (act. 1250, Commercial Code). In the case of a transfer of real property the public deed must also be registered with the Land Registry and every further creation, modification or termination of the trust must also be submitted (art. 1249, Commercial Code).

80. The *fiduciario* can only be a bank or a credit institution authorised by the SSF, which would in either case be a person subject to anti-money laundering rules and therefore subject to the obligation to carry out customer due diligence and maintain updated ownership and identity information (art. 1238, Commercial Code).

### Tax Law

81. For tax purposes, a *fideicomiso* is a taxable arrangement (art. 53(c), Tax Code). However it is the *fiduciario* who is responsible for ensuring the *fideicomiso* meets its obligations under the tax laws, such as registration with the DGII, filing of tax returns and payment of any taxes due (art. 127, Tax Code). Fiduciarios are subject to record-keeping requirements for the determination of *fideicomiso*'s income. Thus, all records that are necessary for determining the *fideicomiso*'s income that is taxable must be kept for ensuring compliance with its tax obligations.

82. Both the Commercial Code and tax law obligations ensure the availability of ownership information at all stages within the *fideicomiso* when the property transfers from the owner of the assets at any given time; i.e. from the *constituyente*, the *fiduciario* or the *fideicomisario*. Further, as the *fiduciario* must agree to carry out the arrangement as requested by the *constituyente*, the *fiduciario* would necessarily have to know the identity and retain ownership information of the *constituyente* and the *fideicomisario*.

### *Foreign trusts*

83. The El Salvadoran authorities have advised that the situation of an El Salvadoran resident acting as trustee for a foreign trust has not yet arisen in El Salvador. This is attributable mainly to the fact that as El Salvador does not recognise the concept of trusts, this creates a legal risk for any persons who would act as trustee of a foreign trust. and it is unlikely that an El

Salvadoran resident would take on such a liability. However, the fiduciary relationship between the trustee, settlor and beneficiaries may be relevant in specific situations, in which case the resident trustee will be subject to information keeping requirements under the AML regime, Commercial Code and Tax Code as further outlined below.

### *AML Regime*

84. In certain cases, the trustee of a foreign trust in El Salvador would be subject to obligations to maintain information about the trust. Where the trustee is a person that is subject to the Anti-Money Laundering (AML) regime, then the customer due diligence (CDD) rules will apply. Pursuant to a September 2014 amendment to the AML Law, the persons that are subject to the AML regime include (art. 2, AML Law):

- Every society, company or entity of any kind, domestic or foreign, who integrates an institution, association or financial body supervised and regulated by the Superintendence of the Financial Sector;
- Institutions and individuals that make systematic or substantial fund transfers;
- Imports or exports of agricultural products and raw materials and new vehicles;
- Casinos and Gambling Houses;
- Persons dealing in precious stones;
- Real estate agents;
- Travel and shipping agencies;
- Construction companies;
- Private security agencies;
- The Hospitality industry;
- National and international investors; and
- Trust and Company Service providers.

85. Further, in the case of transactions over USD 10 000, all lawyers, accountants and auditors will also be subject to the AML requirements to maintain updated client ownership information.

86. Pursuant to a 2014 amendment to the AML Law, trust and company service providers are now named persons subject to the scope of the AML Law in El Salvador. All persons subject to the AML Law are required to

conduct CDD on those clients for whom they act and to maintain information on the identity of their customer. In the course of performing CDD those institutions subject to the AML regime must verify the identity, name of the client and the beneficial owner, age, occupation or corporate purpose, marital status, address, nationality and legal capacity. (art. 13, AML Law). With regard to beneficial ownership, the rules specifically require the maintenance of information concerning “the identification of the beneficiary or recipient of the transaction” (art. 13, AML Law).

### *Commercial Code*

87. El Salvador has indicated that in the case that an El Salvadoran resident was to act as a professional trustee who performs services of administering assets on behalf of another person for profit then that person would be considered a merchant (*comerciante*) for the purposes of the commercial law (art. 2(I), Commercial Code). As a merchant, the trustee must register with the Commercial Registry, providing his/her identification, and a description of the activity carried on. Further, a merchant must keep records relating to the business administered including any contracts or agreements relating to the trusteeship. Therefore, in these cases it is possible that ownership and identity information on the settlor, trustee and beneficiary would be maintained by the trustee.

88. Further, in the event that an El Salvadoran resident purported to act as the trustee of a foreign trust, in a professional capacity, the Ministry of Finance of El Salvador (Hacienda) has confirmed that this would be deemed as conducting the activities of a *fiduciario* in a *fideicomiso* arrangement. As outlined above (see section *Fideicomisos*), in a *fideicomiso* arrangement, similar to a trust relationship, assets or rights are transmitted to the trustee to manage and eventually pass on to the beneficiary. Such activity by the *fiduciario* would only be permitted to the extent that the resident trustee was an approved bank or financial institution as required under article 1238 of the Commercial Code.

89. In this case, the foreign trust would then be subject to the information keeping requirements under the Commercial Code and tax laws for the *fideicomiso* (as outlined above). In the event that the trustee was not a financial entity authorised to do so by the financial regulator, this trust arrangement would not be recognised. In addition, in the case that a bank or financial institution has not been appointed at the time of the coming into force of the trust (such as in the case of an unapproved foreign trustee) it is explicitly stated in the Commercial Code that they shall be removed or asked to resign (art. 124, Commercial Code). In this instance a judge of the one of the branches of the Commercial Court shall be assigned as a trustee.

### *Tax Law*

90. The El Salvadoran tax law does not contain specific provisions on the taxation of assets or income derived through foreign trusts with a link to El Salvador. Nevertheless, ownership information must be kept if a trustee (professional or not) is resident in El Salvador, the trust is administered in El Salvador or certain assets are located in El Salvador.

91. El Salvadoran authorities have indicated that for income tax purposes, the assets and income of a foreign trust, as well as any benefit attributed to the beneficiaries, would be subject to tax. Firstly, the trustee would be required to register with the DGII and keep accounting records (see section A.2. *Accounting Information* below). In the event that a trustee claimed that a portion of his taxable income was generated from assets he held on trust, the resident trustee could only avoid the tax liability for that revenue by providing evidence of the existence of such a fiduciary relationship (most typically the trust deed) and disclosing the identity of the settlor and beneficiaries to the DGII. El Salvadorian authorities have reported that in that case, the income would be classified as income of a “non-domiciled” entity and article 158 of the Tax Code (“Withholding tax for non-domiciled entities”) would apply. The trustee would then be subject to an obligation to withhold tax on income earned in El Salvador (art. 158, Tax Code) and would be obliged to submit a tax return to the DGII by means of a “Form 910” which requires information pertaining to the owner of the asset as well as the person acquiring the income. Therefore, information on the settlor and the beneficiaries of the trust would be made available in these cases.

### *Conclusion*

92. El Salvador does not recognise the common law concept of trust. However, the Commercial Code provides for a *fideicomiso* which is an arrangement with certain trust like features. Only financial entities may act as the fiduciary in a *fideicomiso* and must obtain prior authorisation from the Superintendence of the Financial System at which time full ownership information on the *fideicomiso* will have to be submitted. In addition, all trustees of a *fideicomiso*, as financial entities, will come under the AML regime and be subject to due diligence procedures in order to maintain full ownership information in respect of the *fideicomiso*. Therefore, the information keeping requirements in the Commercial, together with the AML requirements on *fiduciarios* under the AML laws ensure that ownership information on *fideicomisos* is fully available.

93. Further, in the event that a resident trustee was acting in the capacity as trustee of a foreign trust, El Salvador has reported that this activity would be deemed to be that of a *fideicomiso* and in the event that the trustee was



not authorised to engage in fiduciary services, there are strict enforcement measures and penalties in place for failing to do so. In addition, the combination of the requirements of the AML Law for trust service providers, the tax obligations to maintain and submit information to the DGII and obligations under the Commercial Code permit that information regarding the settlors, trustees and beneficiaries of all trusts will be available to the El Salvadoran authorities. It can, therefore, be concluded that El Salvador has reasonable measures in place to ensure that ownership information is available to its competent authorities in respect of foreign trusts administered in El Salvador or in respect of which a trustee is resident in El Salvador. A practical assessment of the effectiveness of the requirements for ownership information for foreign trusts will take place in the Phase 2 peer review of El Salvador.

### ***Foundations (ToR A.1.5)***

94. The concept of private foundation does not exist under the laws of El Salvador. However, pursuant to the Non-profit Associations and Foundations Law, foundations may be formed but only as non-profit entities whose overall goal is the use of assets, activities of an educational, beneficial, scientific, artistic or literary nature and, in general, all activities that represent social well-being.

95. Foundations must be formed by a public deed or will which must include the name and address of the foundation, the names and addresses of the founders, the names and identity numbers of the legal representatives and the board of directors, the object of the foundation and details on how it will be administered (art.26, Non-profit Associations and Foundations Law). In the event of a change in this information, the public deed must be updated within 14 days of the change (art.28, Non-profit Associations and Foundations Law). El Salvadoran foundations are not considered to be relevant entities under the terms of reference.

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

96. El Salvador should have in place effective enforcement provisions to ensure the availability of information, one such possibility among others being sufficiently strong compulsory powers. This section of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in Section A.1 are enforceable and failures are punishable.

### *Companies and Partnerships*

97. All companies and partnerships are required to keep an updated share register. The transfer of shares has no legal effect for the company and for third parties until the share register has been updated to reflect this transfer (art. 27, Commercial Code). Furthermore, in the case that the company does not register with the Commercial Registry or update changes to the information within 15 days, each shareholder is entitled to commence a legal or administrative procedure against the company or partnership (art. 353, Commercial Code).

98. All companies and partnerships must be registered and file an annual income tax return with the DGII. Under the Tax Code, penalties are quantified in regards to the monthly minimum salary, which is defined at a set level as determined each year by the DGII. The monthly minimum wage in El Salvador for 2014 was USD 242.20 (Decree 104/13). At the time of registration, shareholder information must be provided and in the event of non-registration with the DGII, every taxpayer will be subject to a fine of 3 times the monthly minimum salary. In January of each year every company and partnership must update shareholder information with the DGII. In the event of non-compliance with this tax filing obligation, the entity may be subject to a fine of 8 times the monthly minimum salary (art. 235, Tax Code) and in the case of continued non-compliance, this fine will be applied each year.

99. All companies and partnerships must be formed by a deed authorised by a notary, who records ownership and identity information in a register. Pursuant to the Notarial Law, all notaries who do not comply with the obligations of a notary as set out under the law including the recording of the deed in the notarial register is subject to a fine of up to SVC 250 (USD 22) for each omission (Art. 63). The notary's licence may also be suspended or the notary disqualified.

### *Trusts*

100. The trustee of a *fideicomiso* arrangement in El Salvador, which can only be carried out by financial entities will be subject to the AML laws, which require them to take customer due diligence measures. Failure to comply with the obligations of the AML laws, including customer due diligence requirements, is punishable by a fine of up to 500 times the minimum wage (art. 44, Financial System Regulatory Law).

101. All entities, including persons or business that may carry on services as a professional trustee in El Salvador are considered “merchants” under the Commercial Code. In the event that a merchant does not maintain accounting books and other books required by law, a fine up to SVC 5 00 (USD 110) applies (art. 86, Law of the Commercial Registrar).

102. The effectiveness of the enforcement provisions that are in place in El Salvador will be considered as part of the Phase 2 Peer review.

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Bearer shares may be issued by joint-stock and limited liability companies in El Salvador and there are no mechanisms to ensure that the owners of such shares can be identified.	El Salvador should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.

## 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.

### *Commercial Code*

104. The Commercial Code contains accounting requirements for all *comerciantes* or “merchants”. Pursuant to article 2 of the Commercial Code, merchants are defined as natural persons who conduct a commercial enterprise as a sole trader and companies who are referred to as social merchants. Further this provision also specifically sets out that foreign persons and companies incorporated under foreign laws are permitted to carry on business in El Salvador but are subject to all provisions of the Commercial Code and other laws of El Salvador.

105. Therefore, regardless of their activities, all relevant entities including domestic companies, foreign companies and partnerships are considered

merchants. In the case of a *fideicomiso*, the financial institution which acts as the *fiducario* will also be considered a merchant. Trustees of trusts formed under foreign law that perform their duties professionally and are resident in El Salvador will also be considered as merchants and subject to the obligations set out under the Commercial Code.

106. Second Book, Title II (Professional Obligations of Traders), sets out the requirements on every “merchant” in respect of accounting records. Merchants must keep an organised accounting system using generally accepted accounting double entry principles (art. 435, Commercial Code). El Salvador has indicated that International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) are equally applicable in El Salvador. Merchants are obliged to maintain the following accounting books: Financial Statements, Journal, General Ledger and all other accounting books that may be required by law or under the accounting requirements (art. 435, Commercial Code).

107. All merchants must maintain all accounts separately and may use electronic means or other technical means to record accounting transactions and accounts may be maintained in colons or dollars (art. 436, Commercial Code). Records must be maintained in El Salvador, even in the case of branches and subsidiaries of foreign companies operating in El Salvador (art. 436, Commercial Code).

108. At the close of each fiscal year, all merchants must clearly establish the financial position of the company via a balance sheet and profit and loss statement. The accounts of the company, including the balance sheet, the Financial Statements and a statement documenting all changes in the equity of a company are to be certified by an authorised public accountant and must be deposited at the Commercial Registry (art. 441, Commercial Code).

109. The merchant must establish, both at the beginning of their operations and at least once a year, the company’s financial situation, through the balance sheet and also the losses and earning statement, which must be certified by an accountant (Commercial Code, art. 441).

110. The Financial Statement book should include the ordinary and extraordinary balance sheets, the summary of inventories as relative to each balance, the overall financial position and any other statement which the merchant considers necessary in order to reveal their financial situation (Commercial Code, art. 442).

111. Sole traders whose asset value is equal to or higher than US 12 000 are obliged to deposit their annual year-end financial statements to the registry of Commerce and must be duly signed by the owner of their legal representative and their accountant. In the case that assets amount to more than US 34 000 the accounts must be certified by an external auditor (art. 441, Commercial Code).

112. In the case of failure to comply with the accounting record requirements as set out under the Tax Code, a penalty of 9-16 times the minimum monthly salary (approximately USD 2178 to 3 872) may be applied (art. 242(c) (4) Tax Code. Further, in the case that failure to comply with the requirements to maintain accounting information was deemed to be a serious offence (such as in the case of falsification of documents), merchants may be subject to a sanction of up to three years imprisonment (art. 18, Penal code).

113. These requirements are sufficient to correctly explain all transactions, the financial position of the merchant, and to allow financial statements to be prepared. The requirements apply to all relevant entities and arrangements.

114. In the case of a trustee acting for a foreign law trust, they will be considered as a “merchant” under El Salvadorian Law. Therefore, the accounting obligations as set out under the Commercial Code would equally apply in these cases. In the event that an El Salvadorian resident was not acting as a professional trustee they will not be subject to the accounting requirements under the Commercial Code. However, as set out above (see section A.1.3) it is concluded that an El Salvadorian resident acting for a foreign trust will only occur in very rare circumstances. Further, officials from the DGII have reported that a non-professional resident trustee holding foreign trust’s assets and income as their own would have to declare them in their annual income tax return and maintain accounting records pertaining to this income under the Tax Code as set out below. However, the application of the obligations for trustees of foreign trusts to maintain accounting records remains largely untested in practice and the matter should be closely monitored in El Salvador’s Phase 2 review.

### *Tax Code*

115. Article 139 of the Tax Code sets out that taxpayers are required to maintain accurate accounting books such as registers and financial statements, as well as auxiliary ledgers and underlying legal documentation as required by the Commercial Code. The accounting books must be prepared using one of the internationally recognised methods of accounting. Article 147 of the Tax Code sets out that taxpayers must keep records related to tax obligations, including accounting books, for a period of ten years from their date of issue.

116. Articles 139 and 141 of the Tax Code set out that accounting information must be retained by taxpayers at their address in El Salvador as provided to the tax authorities upon registration.

117. Taxpayers required to maintain full accounting must keep a general balance sheet, profits and losses and production costs at the close of each tax

period in addition to supply the necessary information required by the Tax Administration.

118. In the case of failure to present a balance sheet, income statement and other necessary accounting documents to the DGII as required each year, the person may be subject to a penalty equal to 0.5% of the amount of the equity shown on the balance sheet which may not be less in value to the average monthly wage (Tax Code, s.238A).

### ***Underlying Documentation (ToR A.2.2)***

119. The requirement to maintain underlying documents is found in the Commercial Code and the Tax Code. Pursuant to article 435 of the Commercial Code, all merchants are required to maintain accounting books such as financial statements, general ledgers and journals as well as being subject to an explicit obligation to maintain “supporting documents” for accounting purposes. El Salvadoran authorities interpret the term “supporting documents” to include contracts, vouchers, debit and credit notes, expenses receipts and invoices.

120. Pursuant to article 139 of the Tax Code all formal accounts must be supplemented by “subsidiary ledgers” and “supported with all of the necessary legal documentation in order to verify the financial position”. Similarly, while these terms are a matter of interpretation, El Salvadoran authorities have confirmed that these terms refer to underlying documentation such as contracts, vouchers, debit and credit notes, expenses receipts and invoices.

### ***Document retention (ToR A.2.3)***

121. The Commercial Code requires that all merchants should keep all business records including all accounting books and underlying documents for a minimum period of ten years. In the case that a business is liquidated, all books of the company must be maintained for an additional five years (Commercial Code, art. 451).

122. For tax law purposes, all documents, including accounting records must be kept for a minimum period of ten years from their date of issue (art. 147, Tax Code).

### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>

### A.3. Banking information

Banking information should be available for all account-holders.

#### *Record-keeping requirements (ToR A.3.1)*

123. 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.

124. All financial entities in El Salvador are subject to the regulatory requirements as set out by the financial regulator, the Superintendence of the Financial System, including the maintenance of records concerning all accounts and transactional information. In addition, El Salvador's AML law requires that all financial institutions record the incoming and outgoing cash transactions.

125. In El Salvador, financial institutions include banks, financial companies, credit institutions, bonding companies, insurance companies, general deposit warehouses, exchange houses, financial groups and entities controlling financial groups, and all other persons carrying out "financial intermediation" activities. Financial institutions are regulated in El Salvador by the Commercial Code, the Banking Law and the AML regime

126. The Bank of El Salvador (Central Bank) is the authority responsible for monetary policy and price control (Central Bank Organic Law, art. 3), and the Superintendence of the Financial System, provides vigilance and inspection to banks, credit institutions, financial companies, bonding companies, insurance companies and other financial institutions (art.3, Financial Supervision and Regulation Law).

#### *AML Regime*

127. Pursuant to the AML regime, Customer Due Diligence (CDD) measures must be applied by all financial institutions not only for regular business relationships, but also for occasional customers, regardless of the amounts involved. Pursuant to article 10 of the AML Law, banks must maintain all account holder and transaction information including:

- Full ownership and identity information;
- Records of all domestic and international transaction information;
- A record of the economic activity of their clients including details of the magnitude, frequency and basic characteristics of all currency transactions and in particular those with regular deposits, installments, savings accounts, safe deposit boxes and goods which are in the care of a trustee in a *fideicomiso* arrangement.

128. Further, the AML Law requires that all financial institutions record the incoming and outgoing cash transactions in reports which should contain the following information:

- The identification of the person who performs the transaction, including the full name, date of birth, nationality, domicile and residence, profession and signature;
- Identification of the person on whose behalf the transaction is conducted;
- Identification of the beneficiary or recipient of a transaction;
- The type of transaction;
- The identity of the institution where the transaction occurred;
- The office or employee of the institution which handled the transaction;
- The amount of the transaction;
- The location, time and date of the transaction.

129. El Salvadoran authorities indicate that this requirement is interpreted as requiring financial institutions to maintain information concerning all transactions related to any account in all cases. El Salvador is a member of the *Grupo de Accion Financera del Caribe* (GAFIC). It's most recent Mutual Evaluation Report, which took place in 2010, also analyses the AML requirements for banks to maintain updated client information and has found these requirements to be sufficient. Therefore, it is clear that banking information is available for all account holders in El Salvador.

### *Updating and Record Keeping*

130. Article 12 sets out that all information should be maintained for a period of 5 years from the date of completion of every transaction. There is no limitation of this requirement to transactions over a specific amount. Article 14 of the AML regime sets out that institutions must ensure the maintenance and updating of all records and forms set out under the Law, including the information collected in the course of carrying out CDD. In summary, banking information, including records of all transactions is available in El Salvador.

131. Entities that fail to comply with the obligations set out under the AML Act may incur a fine of 50 to 2 500 times the minimum salary (AML Act, Art. 4). Furrher, all entities subject to the requirements under the AML regime are subject to the general sanctions contained in the Penal Code for breach of the obligations (AML Law, art. 26).



### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>



## B. Access to Information

### Overview

132. 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 El Salvadoran 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.

133. El Salvador's competent authority under its one signed DTC (Spain) is the Minister of Finance who delegates this role to the Commissioner of the General and Internal Tax Directorate (*Dirección General de Impuestos y Ingresos*) (DGII). The competent authority under the Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations Convention (herein after referred to as the “Central American Multilateral Convention”) is the tax commissioner or his authorised representative. The DGII has significant information resources at its disposal, including ownership, identity, banking and accounting information. In addition, the DGII has broad access powers to obtain information for international EOI purposes and measures to compel the production of such information.

134. These powers are consistent regardless from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual) and whether or not the information is required to be kept pursuant to a law. This information can be accessed by various means: in writing, visits to business premises, during tax examinations or by testimonies. Whilst there are statutory provisions in place protecting the disclosure of banking information in El Salvador, these can be overridden for the purposes of accessing information for EOI purposes and do not restrict the tax authorities' access

powers or prevent effective exchange of information. Element B.1 was found to be in place.

135. Application of rights and safeguards in El Salvador do not restrict the scope of information that the DGII can obtain and there are no notification procedures in El Salvador. Therefore, element B.2 was found 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).

136. 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.<sup>6</sup> Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.<sup>7</sup>

137. The competent authority under El Salvador’s one signed DTC (Spain) is the Minister for Finance who delegates this role to the Director of the DGII (Tax Commissioner). In the case of the Central American Multilateral Convention the competent authority is the Tax Commissioner of the DGII. Therefore, the acting competent authority in El Salvador is always the Tax Commissioner.

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

138. Pursuant to article 120(1) of the Tax Code:

All authorities, administrative and judicial entities, as well as institutions, estates, trusts, individuals and legal persons, whether taxable or not, are required to provide the Tax Administration with any information, documentation, data, explanations, history or evidence as requested by them. The tax authorities may then carry out any necessary investigations in order to verify the data

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

7. See JAHGA Report paragraphs 6 and 22.

and reports which have been provided to them. Information may be requested by the DGII in either original form or via a certified copy.

139. Further, pursuant to article 120(2) of the Tax Code:

The Tax Administration is empowered to request or require any information, documents, data, explanations, records or documents, either to be incorporated into their databases or computer records or for use in the lawful exercise of its powers of auditing, verification, investigation, inspection, control, billing, collection and other matters relating to the taxes administered.

140. Article 120 of the Tax Code also sets out that the DGII is specifically authorised to examine the “*protocol*” or Notary register as regulated under the Notary Law. The provision sets out that the information collected by the DGII can relate to any act, contract or statement that has been performed before a Notary which may be relevant to tax matters.

141. The fact that the audit examination period may have expired is not an impediment to any request for information made by the DGII under this provision of the Tax Code. Further, persons from whom information is requested may not object to the request by claiming that the information is of a secret or confidential nature (art. 120, Tax Code).

142. The DGII also has the power of audit, inspection, investigation and control to ensure the effective fulfilment of the obligations by taxpayers and those persons who have been exempted from tax (art. 173, Tax Code). In exercise of its powers of audit, inspection, investigation and control, the DGII is specifically authorised to require the production of tax receipts, books, accounting documents, business correspondence and documents of third parties in order to effectively explain its business transactions.

143. The DGII may also conduct offsite investigations of business premises and any other place where the taxpayer carries on business and may also request any taxpayer to appear for oral or written questioning (art. 173 (a), (c) and (d), Tax Code). The Tax Code also authorises the DGII to obtain information from other government entities (art. 173 (i), Tax Code).

144. In the case of banking information, previously the DGII was required to commence a tax audit before banking information could be accessed (art. 232, Banking Law and art. 143, Cooperative Banks and Savings and Credit Associations Law). The opening of a tax audit procedure meant that the subject of the audit had to be informed prior to the information being requested.

145. The access power of the DGII, set out under section 120 of the Tax Code is outlined above. Pursuant to a July 2014 amendment to the Tax Code, the following provision (s. 120(7)) was added to the access power:

The information that is stated in this article constitutes a special regime, which will apply notwithstanding where in laws or regulations it is expressed that the confidentiality of the information is also extended to the Tax Administration.

146. This article was inserted in order for the direct access powers under article 120 of the Tax Code to trump the special audit procedure that is specified under the Banking Laws in El Salvador. Therefore, there is now no requirement for the DGII to open a tax audit in order to access banking information. Significant for the international standard, this means that there is no longer a requirement to notify the taxpayer and banking information can be accessed directly from the banks for all purposes including for the purposes of exchange of information.

#### ***Accounting records (ToR B.1.2)***

147. The DGII has full access to accounting information where it is relevant for tax purposes or for exchange of information, as well as ownership information. There is no special provision regarding access to accounting information. The access powers under article 120 of the Tax Code are equally applicable for accessing accounting information.

148. Further, in February of each year all financial institutions are required to submit the Financial Statement and Profit and Loss accounts to the DGII for any clients that submitted this information to the financial institution as a requirement to obtain a loan (art. 120-B, Tax Code). Therefore, the DGII will already have some accounting information for entities in their possession.

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

149. 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.

150. Pursuant to section 120 of the Tax Code, the Tax Administration is authorised to request or require any information, documentation, data, explanations, history or evidence, either for incorporation into their databases or for use in the lawful exercise of its powers of control, verification, investigation, inspection, control, billing, collection and other matters relating to the taxes administered. A definition of the “taxes administered” is not provided for in

the Tax Code. El Salvador has stated that reference to “taxes administered” in this provision is not restricted to taxes assessed under the Tax Code but also extends to those taxes that may be assessable in the jurisdiction of the treaty partner. There is no time limitation in respect of which the powers under section 120 may be exercised by the DGII.

151. The use of El Salvador’s domestic powers for EOI purposes is based on treaties and the way in which they have been given effect in domestic law. Both the Constitution and certain provisions of the Tax Code include specific provisions on the integration of El Salvador’s international treaty obligations into domestic laws such as the Tax Code. In particular, article 2(6) of the Constitution provides that:

International treaties concluded by El Salvador with other states or international organisations, constitute laws of the Republic to take effect in accordance with the provisions of the treaty and of this Constitution. The Law cannot amend or repeal what has been agreed in a treaty in force for El Salvador. In the case of conflict between the treaty and the law, the treaty shall prevail.

152. In this way, El Salvador’s international agreements form part of the laws of El Salvador and are given effect for purposes of the Tax Code by provision 7 of article 120 Tax Code, which provides:

The Tax Administration will be able to exchange information in tax matters with other Tax Administrations of foreign jurisdictions. For these reasons, it will subscribe agreements for the compliance of that purpose, which will be subject to the procedure of signing and ratification, in accordance to the national legislation.

153. El Salvador’s authorities have indicated that this provision was introduced for the purpose of allowing El Salvador to fulfil its obligations under tax information exchange agreements. Therefore, the tax authorities of El Salvador have the power to request information both for the taxes under the Tax Code as well as related to taxes of a jurisdiction with which it has an exchange of information agreement permitting El Salvador to use its powers under article 120 to access information pursuant to an EOI request. Nevertheless, this issue should be followed up in the Phase 2 assessment of El Salvador.

### ***Compulsory powers (ToR B.I.4)***

154. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In El Salvador, penalties exist for failure to provide information requested by the DGII and also it has powers to compel information.

155. Pursuant to article 241 of the Tax Code, taxpayers are obliged to provide all requested information either relating to their own activities or to those of a third party. In the event, that this obligation is not complied with persons will be subject to a fine equivalent to 0.5% of their taxable income which may not be less than a fine equivalent to the minimum monthly wage (USD 242.20).

156. In addition, the DGII can also obtain a judicial order to oblige the requested person to provide the information (art. 176 and 177, Tax Code) and in case of non-compliance the person may incur criminal liability (art. 74, 75 and 76, Criminal Code).

### ***Secrecy provisions (ToR B.1.5)***

157. Jurisdictions should not decline on the basis of its secrecy provisions to respond to a request of information made pursuant to an exchange of information mechanism. El Salvador's access powers are found in the Tax Code, which requires that taxpayers and liable parties provide the tax administration with all of the information which they may request. Article 120 of the Tax Code specifically provides that any one obliged to provide information under this article may not object to doing so for reasons that the information is "secret" or of a special "reserve" nature as described below

### ***Bank Secrecy***

158. Article 1185 of the Commercial Code obliges all banks to maintain absolute confidentiality regarding the operations of its customers except in those cases where the production of banking information has been "mandated by law". El Salvadoran authorities have confirmed that the request of banking information from a bank for tax purposes including for the fulfilment of an EOI request is one of those cases where there would be an exception to bank secrecy "as mandated by law".

159. Article 201 of the Banking Law sets out that any person who discloses any information related to the operations of the bank or any banking matters will incur criminal penalties. However, an exception to the confidentiality of banking information is explicitly provided for in cases where banking information is requested by the tax authorities in the exercise of their powers (art. 201(3)).

160. Previously, in order to access banking information, a tax audit had to be opened by the tax authorities (art. 232, Banking Law). However, pursuant to a 2014 amendment to section 120 of the Tax Code which contains the access powers of the DGII (see section B.1.1 *Bank, Ownership and identity information* above), even in those cases where information is expressed as



being confidential in nature, the DGII is enabled to access this information directly. The DGII has reported that this new provision was inserted into the Tax Code in 2014 to ensure that the DGII has direct access to all types of information, including banking information.

161. Therefore, there are exceptions to bank secrecy in El Salvador and in the case that banking information was requested for exchange of information purposes, the DGII would be able to access this information directly from the bank where required.

### *Professional secrecy and attorney-client privilege*

162. Under El Salvadoran criminal law, violations of professional secrecy are punishable by imprisonment and a fine (art. 187, Penal Code). The relevant article of the Penal Code, “Revelation of Professional Secrets” provides that:

Anyone who reveals a secret that has been imposed because of their profession or trade, shall be punished with imprisonment from six months to two years and disqualification of profession or trade from one to two years.

163. El Salvadoran authorities have indicated that professional secrecy is not defined in their laws. However, the scope of professional secrecy in El Salvador is interpreted broadly, and at the very least would appear to cover lawyers, notaries, accountants and other professionals.

164. Nevertheless, the El Salvadoran authorities maintain that the attorney-client privilege does not relieve any person, including the taxpayer or third parties, from the obligation to disclose information to the DGII under articles 120 and 173 of the Tax Code due to the express override of all confidentiality provisions under section 120 which sets out its access powers:

The information that is stated in this article constitutes a special regime, which will apply notwithstanding where in laws or regulations it is expressed that the confidentiality of the information is also extended to the Tax Administration.

165. Therefore, the scope of attorney-client privilege in El Salvador does not impede on the effective exchange of information as even in those cases where the holder of information did not provide information to the tax authorities as they claimed it was subject to attorney client privilege, this would not be accepted by the tax authorities. Nevertheless, the scope of attorney-client privilege and its effect on EOI should be followed up in the Phase 2 report of El Salvador.

### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

## 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)*

166. Rights and safeguards should not unduly prevent or delay effective exchange of information. 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).

167. There are no notification rules in El Salvador nor are there any requirements for prior authorisation or court order to obtain banking information. The DGII is not obliged to inform any persons that are the subject of an EOI request of the existence of the request or to notify them prior to contacting third parties to obtain information. The procedure to obtain information is described under B.1.

168. Further, it is noted that there are no grounds for objection or appeal in the case that information is requested by the DGII and there is no specific appeal procedure to challenge any of the actions of the Commissioner such as the exchange of information under an EOI request.

### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

## C. Exchanging Information

### Overview

169. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In El Salvador the legal authority to exchange information is derived from Exchange of Information Agreements (EOI agreements) once they become part of El Salvador’s domestic law as well as original domestic law. This section of the report examines whether El Salvador has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

170. El Salvador’s EOI network consists of 1 Double Taxation Convention (DTC) with Spain and it is also a member of the Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations Convention (herein after referred to as the “Central American Multilateral Convention”). El Salvador signed the Central American Multilateral Convention’ on April 25th 2006 with the other members of the Central American Common Market (CACM), namely; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua of which Costa Rica, Guatemala and Honduras are amongst its largest trading partners. The Convention provides for exchange of information in all tax matters. To date, this convention has been ratified and brought into force by all members with the exception of Nicaragua. Elements C.1 and C.2 were found to be in place.

171. Both the Central American Multilateral Convention and its one DTC, as signed with Spain, contain confidentiality provisions to ensure that the information exchanged can be disclosed only to persons authorised. Further, the Central American Multilateral Convention does not contain the possibility of declining a request for information and the reasons for declining a request under its DTC with Spain are in line with the international standard. Elements C.3 and C.4 were found to be in place.

172. With respect to the timeliness of responses to EOI, there are no legal restrictions on the ability of El Salvadoran competent authority to respond to

requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

### C.1. Exchange-of-information mechanisms

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

#### *Foreseeably relevant standard (ToR C.1.1)*

173. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “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.”

174. El Salvador’s DTC with Spain uses the language “foreseeably relevant” and is therefore in line with the international standard regarding foreseeable relevance.

175. Article 4 of the Central American Multilateral Convention lays down the main rule about its scope: “This Convention shall be applied to the information and documentation related to taxes in effect ...”

176. Although the language differs from article 1 of the OECD Model TIEA, it does not automatically mean the Convention does not comply with the standards. The Commentary to article 26 of the OECD Model Tax Convention (para. 5) states that Contracting States may agree to an alternative formulation of this “foreseeable relevance” 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, the Convention appears to meet the standard by using the word “related”. The term “related” seems to have a wider meaning than “foreseeably relevant”, but it still requires a certain level of connection.

177. Article 4 of the Convention does not restrict the type of taxes covered by the agreement. It refers to “taxes in effect and all the legislation that modifies

them or establishes new taxes after the signature of this Convention.” The Explanatory Note indicates the Convention covers all taxes currently levied in each country, including direct, indirect, customs duties and excise taxes.

### ***In respect of all persons (ToR C.1.2)***

178. For exchange of information to be effective, it is necessary that a jurisdiction’s obligations 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.

179. El Salvador’s DTC with Spain specifically mentions that the exchange of information is not restricted by Article 1 (Personal scope). Therefore, this agreement provides for the exchange of information in respect of all persons.

180. The Central American Multilateral Convention does not restrict the scope of information exchange to just some persons, such as those that are considered residents of one of the states. The Convention specifically provides that it shall be applied in the territory of the states that are party to the agreement. The concept of territory would be interpreted according to each contracting party’s domestic law.

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

181. 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 Tax Convention and the OECD Model TIEA which are primary 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 is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

182. El Salvador’s DTC with Spain includes the provision as contained in paragraph 26(5) of the *OECD Model Taxation Convention*, which provides that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Therefore, there is no restriction to exchanging information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity under this agreement.

183. Pursuant to the Central American Multilateral 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 (Convention, article 8).

184. 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 international standard. Further, the Explanatory Note to the Central American Multilateral 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.

185. Finally, as outlined under section B.1 above, El Salvadoran law does not have any provisions that limit the exchange of banking information. Therefore, the exchange of all types of information, including banking information, is permitted by El Salvador both under the terms of its domestic law and international agreements.

### ***Absence of domestic tax interest (ToR C.1.4)***

186. 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 be able to use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. The term “information gathering measures” means laws and administrative or judicial procedures that enable a contracting state to obtain and provide the requested information.

187. El Salvador’s DTC with Spain includes the provision contained in paragraph 4 to Article 26 of the OECD Model Tax Convention, which states that the requested party “shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes”. Therefore, the exchange of information

without the requirement for a domestic tax interest in the requested information is permitted under this agreement.

188. The Central American Multilateral Convention provides for the exchange of information that is related to the taxes of the requesting state, and therefore there is no domestic tax interest requirement in the Convention itself. The Explanatory Note states that it will make no difference whether the requested assistance or co-operation is useful or not for the functions of the requested Administration (Paragraph 8, article 2). Therefore, El Salvador can exchange all information under the Convention with other members without requiring a domestic tax interest in the information being exchanged.

***Absence of dual criminality principles (ToR C.I.5)***

189. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the 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.

190. El Salvador’s DTC with Spain does not apply the dual criminality principle and similarly, there are no dual criminality provisions in the Central American Multilateral Convention.

***Exchange of information in both civil and criminal tax matters (ToR C.I.6)***

191. 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”).

192. El Salvador’s DTC with Spain does not limit information exchange to information involving criminal matters. Similarly, the Central American Multilateral Convention provides for the exchange of information in both civil and criminal tax matters.

***Provide information in specific form requested (ToR C.I.7)***

193. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the

information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

194. There are no restrictions in El Salvador's DTC with Spain that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

195. The Central American Multilateral Convention does not contain a provision regarding a specific form for the information provided, and therefore there is also nothing that would limit requests for information in a specific form made under the Convention, so long as this is consistent with a jurisdiction's own administrative practices.

### *In force (ToR C.I.8)*

196. 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.

197. In El Salvador, in order for an exchange of information agreement to be ratified, it must first be presented before the Legislative Assembly (Article 131, Constitution). Once approved, it must be ratified by signature of the President and pursuant to article 139 of the Constitution, the text must be published 15 days after ratification in the Official Gazette or any other major newspaper of the Republic. According to article 140 of the Constitution, a law comes into force 8 days after its publication in the Official Gazette. This also applies to international treaties.

198. El Salvador has completed all the steps necessary to bring its one DTC and the Central American Multilateral Convention into force. Among the other countries which have signed the Convention, all other members have ratified the agreement with the exception of Nicaragua.

### *In effect (ToR C.I.9)*

199. 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.

200. International agreements are explicitly given effect for the purposes of the Tax Code under article 120 (provision 7) which provides:



The Tax Administration will be able to exchange information in tax matters with other Tax Administrations of foreign jurisdictions. For these reasons, it will subscribe agreements for the compliance of that purpose, which will be subject to the procedure of signing and ratification, in accordance to the national legislation.

201. According to the hierarchy of legal norms, international agreements have the same ranking as ordinary laws but pursuant to article 144 of the Constitution, in the event of a conflict between the treaty and the ordinary law, the treaty shall prevail. Once the Legislative Assembly has approved the treaty, through a ratification process described above, the treaty partner will be informed of the completion of the El Salvadoran procedures in accordance with the entry into force of the treaty, usually via diplomatic channels.

#### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>

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

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

202. 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.

203. To date, the policy of El Salvador with respect to expanding its EOI network has been to focus on jurisdictions with which El Salvador has commercial relations. Its treaty network consists of two agreements (1 DTC and 1 multilateral Convention) extending its treaty network to five jurisdictions.

204. Through the Central American Multilateral Convention, El Salvador has signed EOI agreements with its most relevant partners, namely Guatemala, Costa Rica, Nicaragua and Honduras, all of whom have ratified the agreement with the exception of Nicaragua. Further, El Salvador also has a DTC in place with Spain, which it has signed and ratified, another one of its main trading partners.

205. Comments were sought from the jurisdictions participating in the Global Forum, and in the course of preparation of this report, no jurisdiction advised that El Salvador had refused to negotiate an agreement.

206. As of September 2014, El Salvador was negotiating a TIEA with a jurisdiction located in the South American region. Further, El Salvador has completed all of the formal procedures to join the multilateral Convention on Mutual Administrative Assistance in Tax Matters which it is scheduled to have signed by the end of March 2015.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	El Salvador 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) and all other information exchanged (ToR C.3.2)***

207. 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.

208. The EOI agreements concluded by El Salvador meet the standards for confidentiality including the limitation on disclosure of information received and use of the information exchanged, which are provided in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA. These confidentiality obligations are also reflected in domestic law provisions and respective enforcement measures.

*Exchange of information agreements*

209. El Salvador’s DTC with Spain contains the same wording as that of the Model OECD DTC and specifically provides that the information exchanged can be disclosed in public court proceedings or in judicial decisions. Further, the agreement also provides for the exchanged information to be communicated to the authorities responsible for combatting money laundering where such use is permitted by the laws of the requested State.

210. The Central American Multilateral Convention provides for the confidentiality of information exchanged under Articles 2 and 9 of the Convention. Article 2 states that information should be confidential according to the domestic law of the contracting states. Article 9 states that all the information provided by a requested administration to an applicant administration is confidential and limits the use of information to the functions performed by the tax administration of the party receiving the information. The function 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.

211. The Convention does not provide for the possibility to use the information for other purposes than its general purpose or provide the information to any other entity, authority or jurisdiction. The Explanatory Note expressly states that a requested state is not allowed to provide the information received to another party to the Convention and in such circumstances, that party should make its own request.

*Domestic law*

212. In addition, El Salvador’s domestic laws provide for sufficient confidentiality protection for information obtained by the Tax Administration. Specifically, Article 28 of the Tax Code provides that:

All information submitted in the tax returns and other documents held by the Tax Administration, shall be considered confidential information. As a result, employees and officers who by reason of the performance of their duties are aware of [this information] may only use this information for the control, collection, determination... [of tax] ... and for purposes of information impersonal statistics.

213. Confidentiality for all members of the Tax Administration is also provided for under Article 31 of the Civil Service Law which sets out the duty of confidentiality for all public officials and employees even after the term of their employment has ended. In the event of breach of confidentiality, there are a number of administrative penalties set out ranging from suspension

without pay to dismissal. Further, Article 324 of the Penal Code provides that any public official or employee who divulges confidential information or documentation shall be subject to imprisonment for a period of four to six years. Further El Salvadoran authorities have confirmed that there is no right of inspection to taxpayer files by taxpayers in El Salvador.

#### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>

### **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.

214. 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. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

215. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, information resulting from and relating to any such activity cannot be declined to be exchanged because of the attorney-client privilege rule.

216. The EOI agreements concluded by El Salvador meet the standards for protection of rights and safeguards of taxpayers and third parties, which are provided in Article 26(3) of the OECD Model Tax Convention and Article 7 of the OECD Model TIEA. These rights and safeguards are also reflected in domestic law provisions. Nevertheless, the scope of attorney-client privilege and its application in the context of exchange of information should be followed up in the Phase 2 review of El Salvador.

### *Exceptions to requirement to provide information (Tor C.4.1)*

#### *Exchange of information agreements*

217. The limits with which information can be exchanged, as provided for in Article 26(3) of the OECD Model Tax Convention, are included in El Salvador’s DTC with Spain. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged. Professional secrecy is not defined under the agreement. Therefore, it is necessary to look to the domestic laws of the jurisdiction which are discussed further below.

218. With regards to the Central American Multilateral Convention, although the possibilities of declining a request based on reciprocity and a constitutional limitation are respectively stated in article 2 and 10 of the Convention, the effect of rights and safeguards are not specifically provided for in the Convention.

219. The Central American Multilateral 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).

220. Article 8 of the Explanatory Note explicitly states that the provisions of the Convention do not impose an obligation to provide information that could disclose confidential communications between a client and a lawyer or other accredited legal representative, when such communications are held with the purpose to obtain or provide legal advice or are held to be used during an ongoing or foreseen legal proceeding.

221. The Explanatory Note limitations are equivalent to the restrictions mentioned in article 26 of the OECD Model Tax Convention and the OECD Model TIEA. It includes restrictions for information which is subject to legal privilege which would disclose any commercial, business, industrial or professional secrets; or would be contrary to the public order. It states that information held by banks cannot be considered a professional or commercial secret solely for this reason. The requested Party can also refuse a request that may discriminate against a citizen of the requested Party in comparison to a citizen of the applicant Party under the same circumstances.

#### *Domestic Law*

222. Pursuant to Article 120 of the Tax Code, which sets out the obligation for all entities and individuals to share any information as requested with the Tax Administration, secrecy provisions or should the information have been classified as “reserved information” (as discussed above under Section B.1)

shall not be accepted as a reason for not providing the requested information to the DGII.

223. In El Salvador, provisions concerning the protection of industrial and commercial secrets are provided for in the *Ley de Propiedad Intelectual* (Intellectual Property Law). The law sets out that “all information having commercial value of industrial application or trade ... which a person or entity guards as confidential and conveys a competitive advantage with means adopted to preserve their confidentiality shall be considered an industrial or commercial secret” (art. 177, Intellectual Property Law).

224. The scope of industrial and commercial secrecy as set out under the Intellectual Property Law is in consistent with the commentary to article 26 of the Model Tax Convention. Further, as outlined in section B.1, confidentiality or secrecy provisions are not accepted as reason for denying to supply information to the DGII as requested under its access powers. Therefore, the scope of industrial and commercial secrets in El Salvador will not affect the exchange of information.

225. Further, El Salvadoran authorities have advised that there is no provision in domestic law relating to the circumstances where an exchange of information may be declined. In respect of its DTC with Spain, El Salvadoran authorities have advised that they would refer to the guidance in the commentary of Article 26 of the OECD Model Tax Convention to determine circumstances where requests for exchange of information should be declined and in respect of the Central American Multilateral Convention, El Salvador would follow the commentary to the agreement which follows that of the Model DTC in this regard.

#### *Attorney-Client privilege*

226. El Salvadoran authorities have reported that the scope of attorney-client privilege is not specifically set out under any legal instrument in El Salvador and a Code of Ethics for lawyers in does not exist. However, reference to “professional secrets” is made in the Penal Code, whereby violations of professional secrecy are punishable by imprisonment and a fine (art. 187, Penal Code). The relevant article of the Penal Code, “Revelation of Professional Secrets” provides that:

Anyone who reveals a secret that has been imposed because of their profession or trade, shall be punished with imprisonment from six months to two years and disqualification of profession or trade from one to two years.

227. However, the scope of professional secrecy in El Salvador is interpreted broadly, and at the very least would appear to cover lawyers, notaries, accountants and other professionals.

228. However, as noted previously in section B.1 of the report, professional privileges in El Salvador would not prevent access by the DGII to information requested in order to respond to an EOI request. Nevertheless, the scope of attorney-client privilege and its application in the context of exchange of information should be followed up in the Phase 2 review of El Salvador.

### 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)*

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

230. Article 15 of the Central American Multilateral Convention provides for a deadline to respond to a request for information as short as 15 working days from the receipt of the request. This is considerably shorter than the deadlines set in 5(6) of the OECD Model TIEA, where a party is given 60 days to confirm 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, easily in accordance with the standard in this point.

231. Because of the short deadline, it is important to have a mechanism in place in case information cannot be provided within the deadline. Under article 15 it is possible to extend the deadline, but no special extension term is indicated. To this end, the requested state has to inform the requesting state about the reasons for not providing the information on time. The Explanatory

Note mentions as reasons, the complexity of the actions to obtain the information, the volume of data required or other administrative circumstances.

232. In case no response is received within the time period, the applicant administration will inform the authorities of the requested administration so that the requested information be provided, or the reasons for the non-compliance be indicated.

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

233. 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 El Salvador’s Phase 2 review.

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

234. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of the Convention that appear to impose restrictive conditions on exchange of information except for constitutional limitation. El Salvador’s domestic laws have some restrictive provisions such as confidentiality provisions, professional secrecy, banking secrecy and in certain scope bearer shares. Whether these actually restrict exchange of information in practice is an issue more appropriately considered in a Phase 2 review of El Salvador.

**Determination and factors underlying recommendations**

Phase 1 Determination
<b>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.</b>



## 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> )		
<b>The element is not in place.</b>	Bearer shares may be issued by joint-stock and limited liability companies in El Salvador and there are no mechanisms to ensure that the owners of such shares can be identified.	El Salvador should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The element is in place.</b>		
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place.</b>		
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> )		
<b>The element is in place.</b>		
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> )		
<b>The element is in place.</b>		
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place.</b>		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is in place.</b>		El Salvador 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> )		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>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.</b>		

## **Annex 1: Jurisdiction’s response to the review report<sup>8</sup>**

First of all, El Salvador would like to express its gratitude to the Global Forum Secretariat and particularly to the assessment team for its dedication and devotion to the analysis of our report, which shows strengths and opportunities for improvement of which we are quite aware.

In the same way, we would like to express that we are convinced that transparency it is indeed be an indispensable part of the institutional framework. It manifests in the congruence between our thinking and our doing in favour of citizenship; through which we strive every day to provide each person with what is due, giving legal certainty to those we manage and being responsible for the issuance of founded judgments, supported on values that we have promised to take care of. That same philosophy leads to the belief that the country is able to move to be part of international transparency and exchange of information for tax purposes, convinced it was clear when we took the decision to adhere to the Forum without involving any instance or authority order, but on our own initiative.

We are aware that El Salvador also suffers from tax harmful effects arising from the globalization of the world economy and the rise of raised operations among companies based in the country with offshore entities, tax havens, low or null taxation jurisdictions or non-cooperative jurisdictions, interaction resulting in evasion and tax avoidance. However, we are not a passive country and we are in a permanent fight against tax evasion, tax avoidance and laundering of money and assets, among others tax crimes.

The above sample, in the recent tax reforms implemented, is perfected the applicability of methods in the field of transfer pricing, is enabled to the tax administration for the subscription of agreements of exchange of information, it allows obtaining information bank not only in control processes, but also in the exercise of any of the legal powers of the tax administration, including the exchange of information and sets a tax on financial transactions to exercise greater control over cash flows that can involve individuals and

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

entities operating in the field of formal and informal. The law against the laundering of money and assets, was also reformed to expand the range of persons subject to verification

The above, forces to recognize that El Salvador has not achieved this in an automatic manner but that has counted over time with the collaboration and support of international technical organizations and best practices of other Tax Administrations which also allowed to position the country demonstrating its strengths and improving their performance.

Finally, El Salvador expresses that its has deeply examined the text of the report, made the clarifications that have been estimated necessary, and taken into account the observations and comments made by the evaluation team, attitude that is materialized in a series of actions or measures aimed at the significant increase in transparency and exchange of information in the tax areas well as the adoption of common international standards, for which we are aware that it requires a process of continuous evolution, which we are willing to take the highest responsibility.

## Annex 2: List of all exchange-of-information mechanisms

	Jurisdiction	Type of Eol arrangement	Date signed	Date entered into force
1	Costa Rica	Central American Multilateral Convention	25 Apr 2006	30 Aug 2012
2	Guatemala	Central American Multilateral Convention	25 Apr 2006	30 Aug 2012
3	Honduras	Central American Multilateral Convention	25 Apr 2006	30 Aug 2012
4	Nicaragua	Central American Multilateral Convention	25 Apr 2006	Not in force
5	Spain	DTC	7 July 2008	1 Jan 2010

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

### **Fiscal Legislation and Regulations**

- Tax Code
- Income Tax Law

### **Primary Government Authorities**

- El Salvadorian Constitution

### **Commercial Laws**

- Commercial Code
- Co-operatives General Law
- Law of the Commercial Registrar
- Law of the Industrial and Free Trade Zones
- Intellectual Property Law

### **The Financial Sector**

- Banking Law
- Law of Supervision and Regulation of the Financial System
- Law of Co-operative Banks and Savings Societies
- Anti-money laundering Law

### **Other Legislation**

- Penal Code
- Civil Code
- Notary Law

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: EL SALVADOR

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

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

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

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.

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

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