GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

PORTUGAL

OECD

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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
as at January 2015)

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Portugal, as well as the practical implementation of that framework. 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 the information can be effectively exchanged with its exchange of information partners.

2. Portugal is situated in the south-western corner of Europe bordered by the Atlantic Ocean to the West and South and by Spain to the North and East. It has a diversified and service-based economy with a population of approximately 10.5 million. Portugal has a comprehensive income tax system for individuals and companies and has been concluding double taxation conventions (DTCs) and tax information exchange agreements (TIEAs) allowing for the international exchange of information since the late 1960s. In addition, as of 1 March 2015 Portugal will be able to exchange information also on the basis of the multilateral Convention on Administrative Assistance in Tax Matters.

3. Portugal's legal and regulatory framework for the maintenance of ownership information results in such information being available for all relevant entities and arrangements. Bearer shares may be issued by Joint Stock Companies, Partnerships Limited by Shares and European Companies. Information identifying the owner of such bearer shares is generally available with the tax authority but the filing obligation may not ensure that such identity ownership information can be provided to the tax authority in a timely manner to enable Portugal to effectively exchange information with its EOI partners.

4. The Accounting Standard and the tax law together ensure that reliable accounting records, including underlying documentation, must be kept for a period of 12 years in respect of companies, partnerships and foundations.

5. Banks and other financial institutions are obliged to keep all banking information including full records of the financial transactions and identity information of their clients pursuant to the Anti-Money Laundering Law and other regulations issued by the financial supervisors.

6. Portugal has substantial experience in EOI and it is considered by its EOI partners as an important partner. Over the period of review from 1 July 2010 through 30 June 2013 Portugal has received 320 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 52%, 67 % and 82 % of the time respectively.[1]

7. The Portuguese tax authority has significant information resources and broad powers to obtain ownership, identity and accounting information and has measures to compel the production of such information. The powers of the Portuguese tax authority to obtain tax information are mainly set out in the Portuguese General Tax Law and Complementary Regime of the Tax Inspection Procedure. The use of these access powers for information exchange purposes is *prima facie* derived from the DTCs and TIEAs binding on Portugal upon publication in the official gazette in accordance with Article 8(2) of the Portuguese Constitution. Further, Decree-Law 61/2013 clarifies that the powers and obligations of the Tax and Customs Authority in relation to its duties of collection and transmission of data apply to all of Portugal's bilateral or multilateral international EOI agreements. With regard to the access to information held by lawyers and solicitors which are protected by professional secrecy law, there are some uncertainties as to whether the professional secrecy may unduly restrict the access to information by the competent authorities in certain circumstances. In this regard, Portugal is encouraged to clarify the scope of the professional secrecy applicable to lawyers and solicitors to ensure consistency with the standard.

8. During the review period, Portugal rarely accessed bank information directly from the banks in order to reply to an exchange of information request. The Portuguese competent authority interpreted the conditions for lifting bank secrecy narrowly and in many instances failed to initiate the process to access bank information in order to reply to requests for exchange of information. Portugal amended and streamlined its laws with regard to access to banking information for EOI purposes as of 1 January 2015. This amendment affects requests made after that date and in relation to banking operations or transactions that took place after 1 January 2015, covering only a part of the banking information that EOI partners can be expected to be asking in practice from Portugal in the coming years. A rather complicated

1. These figures are cumulative.

layered system of legal provisions still applies to any requests in relation to periods prior to 1 January 2015. Portugal should therefore ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place.

9. Decree-Law 61/2013 of 10 May 2013 introduced a prior notification requirement applicable to exchange of all types of information (i.e. not restricted to the exchange of banking information) under any EOI instrument. There are exceptions in line with the international standard e.g. if the request is of an urgent nature, or in cases where the notification may undermine the investigation if there are indications of tax evasion or tax avoidance in the other jurisdiction. Furthermore, specifically relating to bank information, Portugal amended article 63B of the LGT as of 1 January 2015 and introduced exceptions to this prior notification for all EOI requests regarding bank information and irrespective of when the relevant operations or transactions took place. This amendment in combination with the exceptions included in Decree law 61/2013 put beyond doubt that an exception can be provided for in relation to all requests for bank information. Consequently, notification exemptions are available for any EOI request made after 1 January 2015.

10. Portugal has an extensive network of DTCs and TIEAs and Portugal is actively updating its older agreements to the international standard. The agreements generally contain the necessary provisions to allow Portugal to exchange all foreseeably relevant information. However, during the review period, Portugal did not provide banking information in respect of a significant number of requests, as the EOI team interpreted the standard of foreseeably relevance in this respect narrowly and considered that many requests were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy. Portugal should ensure that it implements the standard of foreseeably relevant in line with the international standard in all cases.

11. Portugal has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Portugal's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Portugal has been assigned the following ratings: Compliant for elements A.2, A.3, B.2, C.2, C.3 and C.4, Largely Compliant for elements A.1 and C.5; and Partially Compliant for element B.1 and C.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Portugal is Largely Compliant.

12. Portugal has in place appropriate organisational processes to ensure effective exchange of information. Recommendations have been made where elements of Portugal's EOI regime have been found to be in need of improvement. A follow up report on the steps undertaken by Portugal to answer these recommendations should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Portugal

13. The assessment of the legal and regulatory framework of Portugal as well as its practical implementation was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment has been conducted in two stages: the Phase 1 review assessed Portugal's legal and regulatory framework for the exchange of information as at January 2013, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 July 2010 through 30 June 2013) as well as amendments made to this framework since the Phase 1 review up to 2 January 2015. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

14. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 2 January 2015, Portugal's responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by Portugal, information supplied by partner jurisdictions, and explanations provided by Portugal during the on-site visit that took place from 6-9 May 2014 in Lisbon, Portugal. During the on-site visit, the assessment team met with a wide range of officials and representatives of the Ministry of Finance and the Tax and Customs Authority (AT), of the Madeira Regional Tax Inspectorate (*DRAF, Direção Regional dos Assuntos Fiscais)*, as well as representatives of the Commercial registry (IRN), the Portuguese Securities Market Commission *(Comissão do Mercado de Valores Mobiliários* – CMVM), Bank of Portugal, FIU of Portugal, as well as the Portuguese Bar Association (*Ordem dos Advogados*), and the Portuguese Audit Institute (*Ordem dos Revisores Oficiais de Contas*), among others.

15. 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 Portugal's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place; *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Portugal's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

16. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. The 2013 Phase 1 assessment was conducted by a team which consisted of two assessors and two representatives of the Global Forum Secretariat: Mr. Luis Antonio Gonzalez Flores of Mexico; Mr. Andrew Cousins of Jersey; Ms. Renata Teixeira and Mr. Robin Ng of the Global Forum Secretariat. For the Phase 2 assessment Mr. Robin Ng was replaced by Mr. Boudewijn van Looij, also from the Global Forum Secretariat, while Mr. Luis Antonio Gonzalez Flores was replaced by Ms. Marycelia Garcia Valle of Mexico.

Overview of Portugal

17. The Portuguese Republic (Portugal) is a country situated in the south-western corner of Europe bordered by the Atlantic Ocean to the West and South and by Spain to the North and East. The Atlantic archipelagos of the Azores and Madeira are part of Portugal. Portugal has a total land area of about 92 090 square kilometres and a population of approximately 10.5 million. Lisbon is the capital of Portugal.

18. Portugal has a diversified and service-based economy and joined the European Union in 1986. The country joined the Economic and Monetary Union in 1998 and began using the euro on 1 January 2002 along with 11 other EU members.

19. Portugal's economy had grown by more than the EU average for much of the 1990s but fell back in 2001-08, and contracted 2.9% in 2009, before growing 1.9% in 2010. GDP fell again in the period 2011-13 as the

government is implementing a number of austerity measures pursuant to the adjustment program agreed with the European Commission, the European Central Bank and the International Monetary Fund, but recovered 0.9% in 2014. GDP per capita stands at USD 22 930 in 2013.

20. The EU countries account for significant share of trade among Portugal's trading partners. In the first semester of 2014, this group accounted for 72.1% of Portuguese exports and 71.8% of imports. Portugal's major trading partners are Spain, Germany, France, Angola, the United Kingdom, and the United States. Foreign direct investment (FDI) in Portugal amounted to between EUR 32 and 48 billion in gross terms during the last five years. EU countries are also main investors in Portugal. Investments from these countries account for over 6.3% of total FDI in the first semester of 2014. In same period the main investors in Portugal have been Brazil, Spain, France, Germany and Luxembourg.

General information on legal system and the taxation system

Legal system

21. The Constitution is the country's supreme law. It enshrines the fundamental rights that pertain to citizens, the essential principles that govern the Portuguese State, and the major political guidelines with which the latter's entities and organs must comply. The Constitution of the Portuguese Republic was passed in 1976, and has been amended several times over the years. The constitution grants the division, or separation, of powers among legislative, executive, and judicial branches. The four main institutions as described in this constitution are the President of the Republic, the Parliament, known as the Assembly of the Republic *(Assembleia da República)*, the Government, headed by a Prime Minister, and the courts.

22. The Portuguese legal system is a civil law or continental legal system, based on Roman law. It is similar to other civil law legal systems found in other European countries such as France, Italy and Spain.

23. The President of the Republic is the most senior figure in the State hierarchy. His/her functions are to guarantee national independence and unity and the operation of Portugal's democratic institutions, and to command the armed forces. The President of the Republic is directly elected by all Portuguese citizens, and can only serve two consecutive terms, which are for five years each.

24. The legislative branch is a unicameral Assembly of the Republic, composed of 230 members who are elected to represent the country's citizens. Elections to the Assembly of the Republic take place every four years.

However, under certain conditions, which are laid down in the Constitution, the Assembly can be dissolved, in which case elections may be held earlier than the 4 years interval.

25. The head of the Government is the Prime Minister, who co-ordinates the work of the different ministers and represents the Government in its relations with the President and the Assembly of the Republic. The Prime Minister is appointed by the President of the Republic and he invites the other members to form the Government. The Government possesses legislative, administrative and political functions, which include proposing laws (on the matters which the Constitution places within the competence of the Assembly of the Republic), drafting laws (in the areas for which competence pertains to the Government itself) and drawing up regulations designed to make it possible to actually implement laws.

26. The Courts administer justice and are independent of the other entities that exercise power. Judges are not only independent, but also enjoy security of tenure as they cannot be removed from their position. The judges are also immune from personal liability to enable them to decide freely, in accordance with their conscience, and without any duty of accountability to other entities that exercise power. The courts' decisions override those of any other authority.

27. The Portuguese judicial system includes judicial courts and administrative courts, both of them falling within the appellate jurisdictions of two supreme courts: respectively, the Supreme Court of Justice *(Supremo Tribunal de Justiça)* and the Administrative Supreme Court *(Supremo Tribunal Administrativo)*. There are also the Constitutional Court *(Tribunal Constitucional)* which deals with matters concerning the constitutionality of the laws, and the Court of Audits *(Tribunal de Contas)* which reviews legal issues on public expenditure.

28. There are three levels of Judicial Courts, the Courts of First Instance *(Tribunais de Primeira Instância)*, the Courts of Appeal *(Tribunais da Relação)* and the Supreme Court *(Supremo Tribunal de Justiça)*. Similarly, there are also three levels of Administrative courts, the Courts of First Instances, the Courts of Appeal *(Tribunal Central Administrativo),* and the Administrative Supreme Court *(Supremo Tribunal Administrativo)*.

29. The Portuguese Constitution is the fundamental law of the Portuguese Republic and therefore the highest source of Law in Portugal. In addition, Portugal also respects the principle of the Primacy of European Union Law. This effectively means that Portugal must interpret its law in conformity with the European Union Law. According to article 112 of the Portuguese Constitution the hierarchy of laws in Portugal may be summarised, in a descending order, according to the following scale: *(i)* the Constitution;

(ii) the International Conventions and the European Union Treaties as well as secondary legislative acts enacted by the European Institutions; *(iii)* Laws and Decree-Laws; *(iv)* Regional Legislative Decrees; and *(v)* Regulations (i.e. Regulatory Decrees, Regional Regulatory Decrees, Resolutions of the Council of Ministers, Ministerial Orders and Normative decisions).

30. As regards the application and enforceability of international agreements, the Portuguese Constitution adopts a Monist system, which means that regularly ratified international, bilateral or multilateral agreements are directly applicable in the Portuguese internal law once they are officially published in the official gazette (*Diário da República*) under Article 8(2) of the Portuguese Constitution. Therefore, obligations established in international agreements entered into by Portugal are directly binding and do not need to be transposed into Portuguese law by a domestic legislative act. Therefore, those obligations binding on Portugal are directly enforceable in Portuguese courts and lack of transposition is not considered acceptable grounds to oppose to compliance of the obligations and rights enshrined in such agreements.

Tax system

31. The Tax and Customs Authority (AT) is responsible for managing taxes and custom duties, monitoring the common external border of the European Community and the national customs territory for fiscal, economic and protection purposes, according to the policies defined by the Government and to the Law of the European Union (Article 2 of the Decree-Law 118/2011).

32. The AT was created on 1 January 2012 as a result of the merger of the Directorate General for Taxes with the Directorate General for Customs and Excises and the Directorate General for Tax and Customs Information Technologies. The AT is under the purview of the Ministry of Finance who routinely delegates its tax powers and competences to the Secretary of State for Fiscal Affairs.

33. Taxes are subject to the general principles, procedures and rules established by the Constitution of the Portuguese Republic and the General Tax Law (LGT) and other tax laws and regulations.

34. The main taxes in Portugal are the Personal Income Tax *(Imposto sobre o Rendimento das Pessoas Singulares or IRS)*, the Corporate Income Tax *(Imposto sobre o Rendimento das Pessoas Coletivas or IRC),* the Value Added Tax *(Imposto sobre o Valor Acrescentado or IVA)*, the Stamp Tax *(Imposto do Selo)*, common excise taxes, the Municipal Property Tax *(Imposto Municipal sobre Imóveis or IMI)* and the Municipal Property Transfer Tax *(Imposto Municipal sobre as Transmissões Onerosas de Imóveis or IMT).*

Excise taxes include taxes on petroleum and energy products, alcohol and alcoholic beverages and tobacco.

35. Taxes levied to finance municipalities are the IMI, the IMT, the Tax on the Circulation of Vehicles (IUC) and the local surtax on corporate income *(Derrama municipal)*.

36. Resident individuals are liable to IRS on their worldwide income while non-resident individuals are liable to IRS only on income derived in the Portuguese territory (Article 15 of the Personal Income Tax Code, CIRS)[2]. The Personal Income Tax Code defines six categories of taxable income: (a) employment income, including fringe benefits, and director's fees; (b) independent professional and business income; (c) investment income; (d) income from immovable property; (e) capital gains and other increases in wealth; and (f) pensions, including annuities and alimony payments. There are five taxable income brackets in Portugal with the highest being EUR 80 000 with a top marginal rate of 48% in mainland Portugal. The tax rate is temporarily increased by a surcharge of 3.5% in 2014. An additional solidarity surcharge of 2.5% for annual taxable income between EUR 80 000 and EUR 250 000 and 5% for annual taxable income above EUR 250 000 is also applicable (Articles 1, 68, 68-A of CIRS and Article 191 of Law 82-B/2014, of 31 December 2014).

37. The IRC is levied on legal entities that are resident in Portugal or that derive income sourced in the Portuguese territory, namely through a permanent establishment situated in the Portuguese territory (Article 3 of the Corporate Income Tax Code, CIRC). Legal entities are resident in Portugal when they have their registered legal seat or place of effective management in Portugal (Article 2, CIRC).

38. Resident legal entities are taxable on their worldwide income, including capital gains while non-resident legal entities are liable only on income derived in the Portuguese territory (Article 4 of CIRC).

2. Individuals who meet the criteria to qualify as tax resident in Portugal and that not have been taxed as tax resident in Portugal in the previous five years, may apply for a special tax regime for non-habitual residents (Article 16(8) CIRS), i.e. employment income from Portuguese sources and self-employment income deriving from certain "high value added" activity (as defined by Ministerial Order), are taxed at a rate of 20% with an additional surcharge of 3.5% (Article 72(6) CIRS). In addition, for certain types of foreign source income, such as for rental income, investment income and capital gains, a tax exemption may apply. Furthermore, for pensions, the exemption is granted provided that the income is *(i)* taxed in the country of its source based on the double tax treaty rules, or *(ii)* not considered as Portuguese source income under the Portuguese domestic rules (Article 81 CIRS).

39. The general IRC rate in mainland Portugal is 21% as of 1 January 2015.[3] A "state surtax" is levied at a 3% on annual taxable profits between EUR 1.5 and EUR 7.5 million; 5% on annual taxable profits between EUR 7.5 million and EUR 35 million and 7% on annual taxable profits above EUR 35 million. Municipalities may levy a local surtax of up to 1.5% on the annual taxable profits. (Articles 87(1) and 87-A of CIRC and Article 18 of Law 73/2013, of 3 September 2013).

40. A withholding tax at a rate of 25% is levied namely on dividends, interest, royalties, income from immovable property and from the leasing of equipment, commissions and fees for technical services paid to non-resident companies and other legal entities, which are not attributable to a permanent establishment situated in Portugal (Articles 94 and 87(4) of CIRC).

Autonomous Regions of Azores and Madeira

41. The archipelagos of Azores and Madeira are autonomous regions with separate political-administrative statutes. They are granted the power to establish regional taxes and to adapt the national taxes to their specific regional interests, limited by the Constitution and by the Regional Statute.

42. Legal entities incorporated in Azores or Madeira are subject to the same legal framework, including registration requirements and tax filing obligations established at the national level and applicable to other Portuguese legal entities.

43. Over the period of review Portugal has received 320 requests for information. Portuguese authorities report that 29 of these requests related to Madeira. Peer input did not identify any specific issues during the period under review with regard to Madeira.

Overview of the Madeira Free Trade Zone

44. The Madeira Free Trade Zone (Madeira FTZ) was formally created in1980 by Decree-Law No. 500/80 to develop the region. The Madeira FTZ offers a set of tax related incentives aimed at attracting inward investment into Madeira as it was recognised by Portugal that offering these incentives is the most efficient mechanism to modernise, diversify and internationalise Madeira's regional economy.

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3. The IRC rate in the Autonomous Region of Azores is 16.8%. In the Autonomous Region of Madeira, the general IRC rate is the same as in mainland Portugal (21%). A regional surtax (*derrama regional*) is applicable to companies resident in Madeira and permanent establishments situated in Madeira at the same rates and thresholds of the national surtax.

45. Entities operating under the framework of the Madeira FTZ are subject to reduced Portuguese corporate tax rates and unless specifically excluded, qualify for benefits of the DTCs concluded by Portugal. The Madeira FTZ does not provide for a separate class of companies or entities and all companies incorporated to operate in the Madeira FTZ are considered Portuguese companies and are governed by the same Portuguese law. There is, however, a dedicated commercial registry and notary office within the Madeira FTZ that deals solely with the incorporation and registration of companies and entities operating in the Madeira FTZ (Decree-Law No. 234/88). As at 31 January 2014, there are 1.587 entities operating in the Madeira FTZ.

46. Business activities in the following fields may be carried out in the International Business Centre of Madeira:

- ***International services –*** Trading, consultancy, professional or technical services, holding or any other international services;
- ***Industrial free zone –*** Industrial or storage business activities, as long as they do not endanger public safety or national security;
- ***International shipping register –*** Maritime transportation, registration of ships, oil rigs and commercial or pleasure yachts.

Overview of the financial sector and relevant professions

47. The Portuguese financial sector is made up of a wide variety of different financial services providers. The financial sector includes credit institutions (undertakings whose business is to receive deposits or other repayable funds from the public and to grant credit), financial companies, payment institutions and electronic money institutions.

48. Banking institutions are the main source of funding for the domestic economy, with banks performing a wide range of financial activities including *(i)* acceptance of deposits or other repayable funds, *(ii)* lending, including the granting of guarantees and other commitments, financial leasing and factoring, *(iii)* money transmission services, *(iv)* issuance and administration of means of payment, e.g. credit cards, travellers cheques and bankers drafts, *(v)* trading on their own account or for customers, in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods and transferable securities, *(vi)* participation in securities issues and placement and provision of related services, *(vii)* money broking, *(viii)* portfolio management and advice, safekeeping and administration of securities, *(ix)* acquisition of holdings in companies and *(x)* trading in insurance policies.

49. Portuguese authorities state that in total there are 290 banks operating in Portugal. Their total banking assets amounts to EUR 507.58 billion as of 31 December 2012.

50. Most financial institutions are consolidated within wider banking groups and stand-alone institutions account for a small part of the banking market share. The Portuguese banking system is concentrated in five big banking groups. Their total assets represented around 70% of the Portuguese banking system's assets in December 2012.

51. The Portuguese financial system is supervised by three main regulators: the Bank of Portugal *(Banco de Portugal, the Portuguese Central Bank)*, the Portuguese Insurance Institute *(Instituto de Seguros de Portugal, ISP)* and the Portuguese Securities Market Commission *(Comissão do Mercado de Valores Mobiliários, CMVM)*.

52. The regulation and supervision of credit institutions, financial companies, payment institutions, electronic money institutions and other institutions alike as defined by law is undertaken by the Bank of Portugal; the regulation and supervision of insurance, reinsurance and pension funds is the responsibility of the ISP.

53. CMVM regulates and supervises the securities markets, including public offers, the activities of all the market operators and securities issuers; financial intermediaries in securities and collective investment institutions.

54. The National Council of Financial Supervisors *(Conselho Nacional de Supervisores Financeiros)* was set up by the Decree law 228/2000 to facilitate co-operation among the three supervisors, facilitate the exchange of information, promote the development of supervisory rules and mechanisms for financial conglomerates and adopt co-ordinated policies with foreign entities and international organisations.

55. In 2008, Portugal enacted Law No. 25/2008 (AML Law), which provides the framework for countering money laundering and terrorism financing. The AML Law transposes relevant EU Directives (Directive 2005/60/EC of the European Parliament and of the Council and certain provisions of Directive 2006/70/EC of the European Commission). The AML Law imposes obligations on a wide range of entities and professionals and these entities and professionals are required under the AML law to conduct customer due diligence (CDD) and identify and verify the identity of their customers.

Recent developments

56. Portugal has been active in signing Tax Information Exchange Agreements (TIEAs) and Double Taxation Conventions (DTCs) in accordance with the International Standard. The most recent DTCs incorporating EOI articles in line with the internationally agreed standard are those signed with Senegal (signed on 13 June 2014), Croatia (signed on 4 October 2013) and Ethiopia (signed on 25 May 2013). In addition Portugal has transposed EU Council Directive 2011/16/EU on administrative co-operation in the field of taxation through the Decree Law 61/2013, of 10 May 2013, which introduced a prior notification requirement applicable to exchange of information under any EOI instrument and also clarifies that the powers and obligations of the Tax and Customs Authority in relation to its duties of collection and transmission of data apply to all bilateral or multilateral international EOI agreements, including DTCs and TIEAs. Decree-Law 61/2013 further holds exceptions to prior notification exceptions in line with the international standard e.g. if the request is of an urgent nature, or in cases where the notification may undermine the investigation if there are indications of tax evasion or tax avoidance in the other jurisdiction. Portugal ratified the Multilateral Convention in September 2014 and deposited its instrument of ratification on 17 November 2014. The Multilateral Convention will enter into force on 1 March 2015. Furthermore, Portugal signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, on 29 October 2014. The budget law for 2015 introduced a new regime of access to bank information and new exceptions to notification requirements in line with the international standard. As these amendments enter into force on 1 January 2015, these changes will be elaborated and discussed further below.

Compliance with the Standards

A. Availability of Information

Overview

57. 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 such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[4] may not be able to obtain and provide it when requested. This section of the report describes and assesses Portugal's legal and regulatory framework for availability of information.

58. The legal and regulatory framework to ensure availability of information in Portugal is generally in place. Portuguese law provides for formation of a wide range of legal entities and arrangements. Ownership and identity information relating to Limited Liability Companies (LLCs) is filed with the Commercial Registry, the tax authority and kept and maintained by the LLCs themselves. Ownership and identity information relating to Joint Stock Companies (SAs), Partnerships Limited by Shares (PLSs) and European Companies (SEs) are generally filed with the tax authority or kept and

4. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange agreement.

maintained by the entities themselves or by a financial intermediary if the shares issued are book entry shares or are required to be deposited with a financial intermediary.

59. Bearer shares may be issued by SAs, PLSs and SEs. Ownership and identity information on the original subscribers of bearer shares is available with the issuer of the shares and any subsequent transfer of the bearer shares is an event subject to mandatory tax filing with the tax authority. There are also some instances where the owners of bearer shares are required to identify themselves to the issuing entity or the government authorities. Notwithstanding these obligations, the tax filing obligation may not ensure that ownership information is provided to the tax authority in a timely manner to enable Portugal to exchange information with its EOI partner in a timely manner.

60. Information identifying partners of General Partnerships (GPs) and Limited Partnerships (LPs) is filed with the Commercial Registry, and is kept and maintained by the GPs and LPs themselves. Information identifying partners of GPs is also filed with the tax authority. Information identifying partners of Civil Partnerships (CPs) is kept and maintained by the tax authority as well as by the individual partners.

61. Information identifying the settlor(s), beneficiaries and trustee(s) for a foreign trust operating in the Madeira FTZ is required to be indicated in the trust deed. In addition, for those trusts with terms greater than one year, the same information has to be filed with the Commercial Registry. For other foreign trusts with a Portuguese resident person acting as trustee or trust protector, some information identifying the settlor(s) and beneficiaries may be available with professional service providers providing trustee services by way of business and the information may also be provided to the tax authority. The same information may also be available if a trust (or trustee) uses the service of an obligated person that is subject to AML Law in Portugal.

62. Foundations may be formed in Portugal. Information identifying the founder(s), members of the foundation administration board, management board and supervisory board (Article 26 of the Foundation Framework Law, enacted by Law 24/2012, of 9 July 2012) and beneficiaries is furnished to the relevant competent administrative authority. This information is publicly available at the website of the Ministry of Justice (Art. 166 of PCC as amended by Law 24/2012, of 9 July 2012) and must be disclosed at the website of the foundation (Article 9(1)(d) of the Foundation Framework Law, enacted by Law 24/2012, of 9 July 2012).

63. Sanctions for non-compliance with maintaining ownership and identity information are generally provided for in Portuguese domestic legislation. Enforcement provisions are effectively applied to ensure that

information relevant for tax purposes is available. If the requested information is not already filed and at the disposal of the tax administration the tax authority enforces its availability by application of administrative sanctions.

64. Over the period of review Portugal has received in total 320 requests for information. In 77 requests (24 percent) these pertained to ownership and identity information. Most of these requests (63 cases) were related to the ownership of companies.

65. In the vast majority of cases (69 requests) the information requested was available in the databases of the tax authorities. In the remaining cases (8 requests) ownership and identity information was available with other government authorities.

66. Portugal's EOI partners having asked for information on companies have not reported any specific difficulties in this respect. During the period under review Portugal did not receive any requests relating to bearer shares, partnerships, trusts or foundations.

67. All relevant entities and arrangements are required to maintain accounting records and the underlying documents in Portugal for a period of 12 years based on the record keeping obligations under the Accounting Standard (SNC) and the CIRC (Article 123 (4) of CIRC as amended by Law 2/2014, of 16 January 2014).

68. Over the period of review Portugal has received in total 320 requests for information. In 120 requests (38 percent) these pertained to accounting information. Requests received mainly pertained to tax returns, accounting statements, bank documents, current accounts/balances of clients and suppliers. Besides this information, copies of invoices, payment documents and agreements (underlying documentation) are very often requested.

69. Portuguese authorities report that the accounting information requested was provided in all cases. Portugal's EOI partners report having asked for accounting information have in general not reported specific difficulties.

70. Legal obligations are in place for financial institutions to maintain all records pertaining to bank account holders as well as to related financial and transactional information in Portugal.

71. In Portugal, banks are regulated by the Central Bank of Portugal. The Central Bank rules establish clear requirements to keep all relevant transaction and financial records. These are complemented by the obligations of the AML regime on all Financial AML Service Providers. Portuguese officials from the Bank of Portugal state that no breach of the obligation under AML legislation to keep proper documents and records of bank accounts has been found under requested period.

72. Over the period of review Portugal has received 79 requests for banking information (25 percent out of a total of 320 requests for information). Portuguese authorities state that the documents requested are bank account statements and sometimes all the correspondence (letters, etc.) exchanged between the taxpayer and the bank, in paper form or by email. Although Portugal also sends and receives banking information automatically on a regular basis under the EU Savings Directive[5], Portugal was only able to respond to 38[6] out of 79 cases where bank information was requested by EOI partners.

73. In 41 cases[7] Portugal was not able (yet) to provide this type of information. All the cases are elaborated further under section B.1 below, as they concern access to information and not the availability of banking information as discussed within the framework of element A and the record-keeping requirement in the context of ToR A.3.1. As further explained in the context of element B.1 below banking information that could be provided, pertained mainly to companies and could be obtained based on a tax audit of the company involved.

74. Only in nine cases banking information was actually requested from a Bank in the context of an EOI request, involving the procedure as outlined in article 63B LGT. In six cases information could be requested and was obtained directly from the bank. The three other cases are currently pending.[8] Portuguese authorities explain that they did not experience any difficulty from the side of the banks in obtaining the information requested.

5. Directive 2003/48/EC, of the European Council, of 3 June) and Agreements with third countries and dependent or associated territories.
6. Portugal clarified that the Director General issued a favourable decision on 15 December 2014 in three additional cases. However, as of the cut-off date of 2 January 2015 this information has been requested from the banks but has not (yet) been provided to the two EOI partners involved that requested this type of information from Portugal.
7. S See also previous footnote.
8. Six of the nine cases (including all the pending cases) have been initiated after the onsite visit that took place in May 2014.

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.

Companies (ToR[9] A.1.1)

Types of companies

75. Companies *(Sociedades de capitais)* are generally incorporated pursuant to the Portuguese Commercial Companies Code (CSC) and are considered legal persons in Portugal. Three types of companies are mentioned in the CSC in addition to the European Companies which are governed by the EU Council Regulation and Decree-Law 2/2005.

- **Limited Liability Company (LLC)** *(Sociedade por quotas)* is a commercial company incorporated pursuant to Article 197 of the CSC. An LLC may be incorporated by one or several members and the capital of an LLC is represented by and divided into *"quotas"*. The issuance of shares (i.e. paper certificate) representing the *"quotas"* is specifically prohibited under Article 219(7) of the CSC. In addition, *"quotas"* can only be transferred with the LLC's permission; or when the transfer is between *"quotas"* holders, between spouses, or between ascendants and descendants under Article 228 of the CSC. The holders of *"quotas"* are jointly liable for all capital contributions as agreed in the articles of association in addition to the *"quotas"* allocated to the member. There is no minimum capital requirement for an LLC and its members are free to establish the agreed capital in the articles of association under Article 201 (as amended by Decree-Law 33/2011) of the CSC.
- **Joint Stock Company (SA)** *(Sociedade anónima)* is a commercial company incorporated pursuant to Article 271 of the CSC. Under Article 273(1) of the CSC, an SA needs to have at least 5 shareholders to incorporate, but an exception is provided under Article 488 of the CSC where another company may incorporate an SA as the sole shareholder of the SA. An SA's capital is divided into shares and the shares can be represented by paper certificates issued to the shareholders or as book entries (i.e. shares where no paper certificates are issued). An SA is also allowed to issue bearer shares. The shareholders' liability is limited to the value of the shares subscribed. The minimum amount of capital of a SA is EUR 50 000.

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

- **Partnership Limited by Shares (PLS)** *(Sociedade em comandita por ações)* is a legal entity incorporated pursuant to Article 478 of the CSC. It is a hybrid entity having characteristics of a limited partnership and an SA. It may be formed by one or more partners with unlimited liability and by five or more partners with limited liability. One important characteristic of a PLS is that the capital contributed by the limited partners must be divided into shares under Articles 465(3) and 479 of the CSC. The liability of the limited partners is limited to the par value of the shares they subscribed for. The minimum amount of capital of a PLS is the same as for an SA (i.e. EUR 50 000) and the rules applicable to an SA with respect to capital, shares and shareholders apply to a PLS as secondary legislation.
- **European Company (SE)** *(Sociedade anónima europeia).* SEs are governed by EU Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company and Decree-Law 2/2005. A SE can operate in all EU Member States in a single legal form common to all Member States and defined in EU law. Pursuant to Section 10 of the Council Regulation, the rules that apply to SEs should be the same as those applicable to Public Companies. In Portugal, the requirements and obligations applicable to SAs apply *mutatis mutandis* to SEs under Articles1(2) and 4(1) of Decree-Law 2/2005.

76. There are 376 486 LLCs, 32 944 SAs and 62PLS[10]as at 31 December 2013. There is one SE registered in Portugal.

Information held by government authorities

Registration of LLCs

77. Articles 3(1)(a) and 15 of the Commercial Registration Code (CRC) provides that the incorporation of an LLC is an event subject to mandatory registration with the Commercial Registry. In addition, Article 199(a) of the CSC requires the articles of association of an LLC to contain information on the amount of the *"quotas"* allocated to each holder and the identification of each holder of the *"quotas"*. As Article 72(2) of the CRC requires the articles of association to be provided to the Commercial Registry during the registration, ownership information identifying the original owners of an LLC is available with the Commercial Registry. The unification, division and transfer of the *"quotas"* of LLCs are also subject to mandatory registration

10. The statistics available contain consolidated figures concerning Partnerships Limited by Shares (PLSs) and Limited Partnerships (LPs). As at 31 December 2013 there were in total 62 PLSs/LPs.

with the Commercial Registry under Articles 3(1)(c) and 15 of the CRC. In this respect article 228 of the CSC sets out that quotas must be transferred by means of a written agreement, which is then duly registered with the relevant commercial registry (242-A and 242-B). Article 228 of the CSC further states that the transfer of quotas shall have no effect towards the company until the same gives its consent, with the exception of transfers between spouses, ascendants, descendants or among partners. Consequently, relevant ownership information is always available with the Commercial Registry. Portuguese authorities report that CMVM or the tax authorities can apply penalties in case of infringement of requirements of the Commercial Code, based on the Securities Code and the level of compliance is, by supervisory authorities, considered high.

Tax registration of LLCs

78. Information relating to the legal owners/members must also be registered with the tax authority within 15 days from the date of filing of the registration with the Commercial Registry. The requirement to register is provided under Articles 117 and 118 of the Corporate Income Tax Code (CIRC). The information that has to be furnished is reflected as a required field in the prescribed form *(Declaração de inscrição no registo/início de atividade*) used for filing with the tax authority. The LLC is required to inform the tax authority of subsequent changes to its legal owners/members in a prescribed form *(Declaração de alterações*) under Articles 117 and 118 of the Corporate Income Tax Code (CIRC).

Registration of SAs, PLSs and SEs

79. The incorporation of an SA, PLS and SE are events subject to mandatory registration with the Commercial Registry under Article 3 of the CRC. Article 281 of the CSC further requires a general meeting to be called to (a) approve the articles of association setting out the incorporation of the company, and (b) appoint office bearers. Minutes of the meeting have to be prepared and signed by all the promoters and subscribers of the shares of the company attending the meeting. The approved articles of association and minutes have to be filed with the Commercial Registry under Article 283 of the CSC. In this regard, some identification information of the promoters and subscribers of shares attending the general meeting will be available with the Commercial Registry. There is however, no express obligation to inform the Commercial Registry when there is a transfer of ownership of shares. As Portuguese authorities explain there is also the possibility to incorporate a company online. In practice incorporation would be done by a natural person (service provider), such as a lawyer or a notary and these professionals are licensed by their respective associations (lawyers, notaries). Further to this

a lawyer needs to use a digital certificate issued by the bar association as a validity check. As part of the registration the Commercial Register will issue a registry number. This number will also serve as Tax Information Number (TIN). In order to ensure that both numbers are actually the same, the Commercial Registry shares the newly issued number in real time with the tax authorities. However, as noted above, it is still necessary to register with the tax authorities separately. Further, regarding validation of the information included in the register, it can be noted that the Portuguese commercial registry checks the lawfulness of the documents presented to the registration against the information already contained in the commercial registry and against the law, assessing the substantial and formal regularity of the acts and the legitimacy of the parties. Portugal advises that, accordingly, whenever a registration act is requested, the documents presented are verified and, if there is any indication of irregularities, the companies are urged to clarify the elements that raised doubts. If they do not do so or if they are not able to dispel the doubts, the registration of the acts can be rejected. If the companies fail to have the acts registered (e.g. the appointment of directors) they are prevented from operating, participating in government tenders, etc. Portugal states that, in brief, they are prevented from proving their existence in a legal context and the powers of their directors for any purpose whatsoever.

80. Regarding supervision and oversight it can be noted that, once incorporated, the Commercial Registry has no inquiry powers over companies, but there is the possibility of penalties being applied, for instance if the company comes to the register to file documents and it turns out that the company did not meet all its registration requirements In practice other authorities such as CMVM or the tax authorities do check compliance with these requirements and will apply penalties if needed. In the case of CMVM these penalties will be based on the Securities Code (CVM). Further, all SA's must be audited annually and reporting obligations will be looked at (Article 70 CSC). Furthermore every SA needs an independent auditor. The auditor should include his opinion and must flag any irregularities if they are not corrected by the company itself. Oversight of auditors is in the hands of the National Council for Audit Supervision (CNSA, *Conselho Nacional de Supervisão de Auditoria*) and of the Portuguese Audit Institute (*Ordem dos Revisores Oficiais de Contas*), and supervision includes on-site supervision to all auditors (each auditor is reviewed at least once every six years) and penalties have been imposed regarding non-compliant situations. Portuguese officials from the Commercial Registry therefore feel confident that compliance is met and maintained. Transfer of the ownership of shares is further dealt with under the tax registration requirement discussed below.

Tax registration of SAs, PLSs and SEs

81. There are a number of filing obligations which help to identify the shareholders of SAs, PLSs and SEs under the CIRC. The obligations are applicable regardless of whether the shareholders are individuals or legal entities (Articles 128 and 129, CIRC). The obligations are as follows:

- ***Filing obligations of the transferor and transferee*** – In the case of a transfer of shares, the transferor and transferee of the shares are each personally obliged to identify themselves by submitting a prescribed form *(Declaração Modelo 4)* containing their identification details to the tax authority (Article 138, CIRS and Article 129, CIRC). A monetary penalty ranging from EUR 375 to EUR 37 500 may be imposed on the transferor and transferee if the requisite form is not submitted to the tax authority. This requirement is further enforced by requiring any person paying any income on the shares to verify that the prescribed form has been submitted to the tax authority before paying out any income on shares (Article 138(2), CIRS and Article 129, CIRC). The failure to verify this information by any person paying income on shares attracts a monetary penalty ranging from EUR 375 to EUR 37 500 under Article 125-A of the General Regime of Tax Infractions (RGIT). The Directorate of Planning and Coordination of Tax Inspection (DSPCIT) is responsible for monitoring compliance with filing obligations in respect of a transfer of shares. The transferors and transferees of shares (including bearer shares) must submit a prescribed statement (Declaração Modelo 4) to the tax authority within 30 days with details on the transfer of shares, including identification information of the transferor and the transferee. Since both the transferor and the transferee have to submit their own form model 4, DSPCIT is able to make an analysis of information contained in both tax returns by cross-checking the information submitted by the reporting transferees with the information submitted by the reporting transferors. Further cross-checks are performed by comparing the information submitted with information included in tax returns in respect of capital gains as well as information included in the annual tax and accounting statement.
- Statistics provided by Portuguese authorities show the following number of declarations of form Model 4 submitted with regard to the period 2010-12.

	2010	2011	2012
Declarations form model 4	3 235	2 683	2 841

- Statistics provided by Portuguese authorities further show the following non-compliance situations were detected during the period 2010-12:

	2010	2011	2012
Non-compliant transferors	701	475	494
Non-compliant transferees	479	512	462

- In case there is a non-compliant situation, the person involved will first be asked to submit a correct declaration form model 4; if the person involved does not co-operate, an infringement procedure will be started. As further elaborated under A.1.6 below, for the obligation to inform the tax authority about the transfer of shares, a monetary penalty ranging from EUR 150 to EUR 3750 may be imposed on the transferor or transferee if the requisite form *(Declaração Modelo 4)* is not submitted to the tax authority (Article 116 and 117, RGIT). Although data on an aggregated level is available on the number of fines in respect of these provisions in general (see A.1.6), there is no specific statistics available on the number of cases that relate to form Model 4. The Portuguese tax authority is developing a system to automate the infringement procedure on these cases.

- ***Filing obligation related to persons involved in transfer of shares*** – Notaries, record-keepers, court clerks, technical secretaries of justice and other professionals or entities who may be involved in the transfer of shares are required to submit to the tax authority a report in a prescribed form *(Declaração Modelo 11)* of all actions relating to the transfer of shares carried out by them and of all decisions and judgements handed down under Article 123 of the CIRS. The tax identification number of both transferor and transferee must be included in the prescribed form.

- ***Filing obligations related to payment of dividends*** – Article 119 of the CIRS expressly requires an entity (including companies, securities registry, depositary and or custodian as per Article 119 of the CIRS and Article 128, CIRC) making payments (including the payment of dividends) that are subject to withholding tax to maintain a register containing the names and tax identification numbers of the income owner. The entity is also required to file the same information in prescribed forms (*Declarações Modelos 10, 30, 31 and 39*) with the tax authority regardless of whether any tax is withheld. Portuguese authorities explain that most prescribed forms can be submitted online and cross-checking takes place upon filing with regard to model 10, model 30 and model 39. Failure to deliver or the

delayed delivery of the declaration of income and withholding tax concerning residents (model 10), of the declaration of income paid or made available to non-resident taxable persons (model 30), and of the declaration of income and withheld tax with final flat rate (model 39) are detected automatically. Regarding Declarações Modelo 10, statistics provided by Portuguese authorities show the following non-compliance situations were detected during the period 2010-12:

	2010	2011	2012
Detected non-compliant payees	12 735	12 864	10 189

- Portugal states there no specific statistics available on the number of cases where infringement procedure was started and/or penalties were applied.
- ***Filing obligation related to persons acting as securities registry/ depositary*** – Entities acting as securities registry or depositary/custodian are required to file a prescribed form *(Declaração Modelo 33)* with the tax authority containing the tax identification number and the state of residence of the investor owning the shares under Article 125 of the CIRS and Article 128 of the CIRC. Credit institutions and financial companies acting as intermediaries in securities are also required to file a prescribed form *(Declaração Modelo 13)* containing the tax identification number and the state of residence of the owner of the shares with the tax authority under Article 124 of the CIRS.

Information held by the companies

LLCs

82. The CSC expressly requires ownership information relating to the *"quotas"* to be recorded in the articles of association under Article 199(a) of the CSC. As the LLC is responsible for keeping and maintaining the articles of association, consequently ownership information relating to the *"quotas"* is kept by the LLC. Similarly, the transfer of *"quotas"* is subject to compulsory registration with the Commercial Registry under Articles 3(1)(c) and 15 of the CRC and Article 242-A of the CSC. As the LLC is also responsible for registering the transfer of *"quotas"* with the Commercial Registry, it would need to be notified by its *"quotas"* owner whenever a transfer takes place to enable it to comply with the statutory obligation. As noted above the transfer of quotas shall have no effect towards the company until the same gives its consent. The information regarding a transfer of quotas will therefore be available with the LLC. In practice authorities such as CMVM or the tax

authorities do check compliance with the Commercial Registry requirements and will apply penalties if needed. In the case of CMVM these penalties will be based on the Securities Code (CVM) and the level of compliance is, by supervisory authorities, considered high.

SAs, PLSs and SEs

83. Shares may be issued in certificate form or in book entry form and SAs, PLSs and SEs are required to record the identity of the original subscribers of the shares issued by them under Articles 43 and 44(1)(f) of the Securities Code (CVM). In this regard, the SAs, PLSs or SEs would have ownership information of its shareholder when the shares were first issued.

84. For shares in book entry form, Article 61 of the CVM requires an SA, PLS or SE to maintain an individualised account of each shareholder, including identity information concerning each shareholder. However, if the shares are traded in a regulated market, Article 68 of the CVM provides an alternative option for the individualised account to be maintained by a financial intermediary. The particulars that have to be recorded by the financial intermediary under Article 68 of the CVM include:

- The identification of the holder(s);
- The debit and credit entries of quantities acquired and sold, with identification of the account where the respective debit and credit entries were made;
- The total amount of securities existent at any moment.

85. Based on the above requirements, ownership information relating to shares in book entry form is kept by the SA or the financial intermediary as the case may be.

86. For shares in certificate form (but excluding bearer shares), the transfer of shares where no depositary is involved is carried out by means of the conclusion of a share transfer declaration between the transferor and transferee, followed by the registration of such declaration with the SA, PLS or SE by the transferor (Article 102(1), CVM). Pursuant to Article 102(5) of the CVM, the transfer of shares comes into effect as from the date of the request for registration with the SA, PLS or SE. Ministerial Order 290/2000 details how SAs, PLSs or SEs must maintain a register of the shares, and includes a requirement for these entities to maintain records of the transferor and transferee (Annex III, Ministerial Order 290/2000). As described above, ownership of shares is only recognised and valid if the owner is included in the shares register of the company.

87. Pursuant to Article 99 of the CVM, shares in certificate form, may be deposited with: (a) an authorised depositary entity on the voluntary initiative of the holder; or (b) a centralised system, in the cases required by law or at the issuer's initiative. Shares traded in a regulated market must be deposited with a centralised system. For certificated shares that are deposited with the depositary entity, the depositary entity must maintain an individualised account for each shareholder, including identity information concerning the shareholder. The transfer of shares is carried out through the depositary entity and the same identity information has to be updated whenever there is a transfer of the shares (Article 102(2)(a) of the CVM).

88. There are no legal provisions in Portugal that require the registry or the depositary entities to be resident in Portugal. However, Article 125(2) of the CIRS requires that the registry or the depositary entities that are not resident or do not have a permanent establishment in Portugal to appoint a representative with residence, head office or effective management in Portugal for the purpose of fulfilling their obligations required under the Portuguese law. In addition, only financial intermediaries authorised by the CMVM to exercise financial intermediation activities in Portugal are allowed to provide the service of registration and deposit of financial instruments under Article 289, 291(a) and 293(1) of the CVM. The financial intermediaries are under the supervision of the CMVM by virtue of Article 359(1)(b) of the CVM.

89. Supervisory activities carried out by CMVM pertain predominantly to those SAs, PLSs or SEs that qualify as a *"public company"* as defined in Article 13 of the CVM. This would most typically include companies for which shares have been offered to the public. A shareholder whose shareholding increases or decreases above or below the prescribed thresholds of 2%, 5%, 15% and 25% must notify this fact to the CMVM and the SA, PLS or SE. Those communications are disclosed and are publicly available on CMVM internet site. In this respect Portuguese authorities report that within the period under review nine supervisory actions were carried out the scope of which included the registration of qualified holdings. Furthermore, CMVM initiated two proceedings in 2012 and ten proceedings in 2013 for failure to comply with the obligation of the shareholder to inform the CMVM and the SA, PLS or SE of the fact that the qualified shareholding increased or decreased above or below the prescribed thresholds.

Information held by service providers

90. In 2008, Portugal enacted Law No. 25/2008 (AML Law), which provides the framework for countering money laundering and terrorism financing. The AML Law imposes obligations on a wide range of entities and professionals (the obligated persons) as defined under Article 3 and 4

of the AML Law. This includes *(i)* financial institutions, *(ii)* statutory auditors, chartered accountants, external auditors and tax advisors, *(iii)* notaries, registrars, lawyers, solicitors and other independent legal professionals under specific circumstances[11] and *(iv)* service providers to companies and other legal entities or legal arrangements. In this regard, to the extent that a LLC, SA, PLS or SE uses the services of the obligated persons, the AML customer due diligence (CDD) requirements will be applicable to the LLC, SA, PLS and SE as customers.

91. The obligated persons are required to conduct customer due diligence (CDD) to identify and verify the identity of their prospective customers or their representative under Article 7(1) of the AML Law before entering into a business relationship or carrying out any transaction for the prospective customer. These obligated persons are also required to identify the natural person who directly or indirectly owns or controls at least 25% of the shares or voting rights in a legal entity[12], or the natural person who exercises control over the management of the legal entity. Article 9(1)(a) of the AML Law further requires the obligated persons to take appropriate measures to understand the ownership and control structure of the customers which are corporate entities.

92. Obligated persons are also required under Article 14(1) of the AML Law to maintain documents establishing identity of its customers for a period of 7 years from the date of identification. In the case of a business relationship, documents have to be maintained for 7 years after the business relationship with the customer has ended. Transactions records have to be maintained for a period of 7 years from the date of the execution of the transaction under Article 14(2) of the AML Law.

93. As noted above, supervision of obligations of the AML regime on all Financial AML Service Providers is undertaken by the Bank of Portugal, while the regulation and supervision of the securities markets, including financial intermediaries in securities and collective investment institutions

11. That is when they participate or assist, on behalf of a client or otherwise in the following operations: *(i)* purchase and sale of real property, or businesses, as well as equity; *(ii)* management of funds, securities or other assets belonging to clients; *(iii)* opening and management of bank, savings or securities accounts; *(iv)* creation, operation or management of a company or similar structures, as well as legal arrangements; *(v)* acting on behalf of the client in any financial or real estate operation; *(vi)* acquisition and sale of rights over professional sportspersons.
12. With the exception of a company listed on a regulated market that is subject to disclosure requirements consistent with the EU's legislation or subject to equivalent international standards – Article 2(5)(a)(i) of Law No. 25/2008.

is undertaken by the CMVM. Supervision of obligations of the AML regime regarding notaries and registries is entrusted with IRN, I.P. (Portuguese institute of registries and notaries).

94. The Bank of Portugal performs its monitoring and enforcement actions by adopting a risk based approach. This means that all inspections are prepared and performed according to an institutions' specific ML/TF risk, which is determined by a supervisory mathematical indicator (so-called IAS). The IAS is constructed on the basis of information gathered by template reports along with on-site inspections and other pre-defined indicators.

95. The supervisory actions taken by CMVM in the context of AML are primarily based on a manual of procedures. The manual defines the actions to be carried out during the on-site supervisory visits with financial intermediaries. These actions cover compliance with customer due diligence rules (opening and identification of securities accounts). Portuguese authorities further explain, that opening and identification of securities accounts would also involve oversight from the Bank of Portugal. The reason for this is that a client must first hold a regular deposit (bank) account before the client can open a securities account, and the supervision of the first action is primarily a competence of the Bank of Portugal.

96. Regarding supervisory actions taken by CMVM, nine on-site supervisory actions were carried out during the period under review, the scope of which included the registration of clients and which covered the review of the procedures associated with AML. In addition, sixteen (16) on-site supervisory actions were carried out with other financial intermediaries and all other entities under the supervision of CMVM and which, among other aspects, covered the procedures related to AML.

97. Supervision of notaries and registries is carried out by IRN, I.P. Notaries have the duty to report suspicious transactions as well as cases of non-compliance to the central department for the purposes of opening infringement proceedings. Supervision is carried out by a team of 23 inspectors. Inspectors have the equipment and are granted with access levels that allow them remote access to all computer applications of IRN, I.P. Whenever justified by the interest of the entity and at the initiative of the inspector, special monitoring actions in person are carried out at the registration offices, which normally last for 1 to 3 days, but which may last longer where it is justified. In every assessment period, a minimum of 3 monitoring actions in person is mandatory.

98. Monitoring actions by the Bank of Portugal take place by means of on-site and off-site supervision. In respect of on-site visits Portuguese authorities report that the Bank of Portugal uses a risk based approach in order to define supervision priorities. As such, and without prejudice of regular

inspections to other financial institutions it supervises, the Bank of Portugal in 2011/2012 performed on-site visits to all payment institutions and money exchangers headquartered or with branches in Portugal. In these periodical on-site inspections supervisors perform a variety of checks, including procedure verification, data validation, and actual/potential misconduct detection, as well as the analysis of spotted business areas which may carry greater risks, and verify whether the inspected entity complies with the obligations set out by law, namely the know your client and customer due diligence duties, as well as suspicious activity reporting.

99. The Bank of Portugal initiated 23 proceedings in 2012 and 70 in 2013 (no statistics were available for 2011). Regarding administrative penalties applied for the breach of applicable AML/CFT legal provisions stated the Bank of Portugal stated that 4 fines were applied in 2012 involving an amount of total EUR 192 000, while in 2013 56 admonitions where given and 7 fines. The total amount of fines in 2013 was EUR 233 000.

Foreign companies

100. Companies and other entities formed under the laws of another jurisdiction with a registered head office or place of effective management in the Portuguese territory are considered residents in Portugal for tax purposes and are subject to the same tax and non-tax obligations as the Portuguese companies (Article 2(3) of the CIRC and Articles 3(1)(o) and (2)(c) of the CRC). For instance, under Article 117 of the CIRC, a person subject to the CIRC (i.e. the foreign company with a registered head office or place of effective management in Portugal) must provide information relating to its legal owners/members upon initial registration. In order to verify the existence of the foreign company, translated documents related to the original registration including registration of nominees have to be provided as well as the tax identification number. A Portuguese TIN is also required if a foreign company operates in Portugal by means of a branch or representative office or in cases where it transferred its effective management to Portugal. The number has to be included in the annual tax return and in all of its receipts, therefore Portuguese representatives of the Commercial Registry note that in practice it would be very difficult to operate in Portugal without such a number. Further, there is a requirement to record the identity of the original subscribers of the shares issued by the foreign companies under Articles 43 and 44(1)(f) of the CVM as described in the earlier paragraphs. In the case of a transfer of shares, the identity of the new shareholders has to be maintained by the company under Article 102 of the CVM and Annex III of the Ministerial Order 290/2000 as elaborated in the earlier paragraphs. Furthermore, all companies have to file accounting information each year with the tax authorities as part of the tax return. Based on article 70 of the Commercial Code companies

have to publish these accounts online on the Company's website, in other cases it will be available in the Commercial Registry. Regarding SA's these accounts will also include certain ownership information in case certain thresholds are met (qualified holdings of 2%, 5%, 10%, as described further below[13]). Oversight of these registration obligations is in line with the oversight that takes place with respect to companies and entities that are formed under Portuguese law. In all, Portuguese authorities state that they are confident that the information available on foreign companies and entities with tax residency in Portugal is on the same level as the information that is available on domestic companies and entities.

101. Portuguese authorities report that as of 20 February 2014, there were 1637 permanent establishments (branches) of non-resident entities (including foreign companies and foreign partnerships), registered for tax purposes in Portugal. Regarding availability of information on foreign companies peer input did not identify any specific issue during the period under review and Portugal states that there were no specific requests regarding information on foreign companies during the period under review

Nominees

102. There is no express prohibition in Portuguese law that prevents a person from acting as a nominee shareholder in Portugal. However, the concept of nominee ownership does not exist in the Portuguese Law and Portugal does not recognise the divide between legal and beneficial ownership to property. In this regard, where a person purports to hold property for the benefit of a third person, that third person would have no rights under Portuguese law to claim the property. In the case of share ownership, shares are in principle held by the owners that holds the rightful legal title to the shares that is known to the issuer.

103. In any event, under Article 4(g) of the AML Law, obligated persons that engage in the management of funds, securities or other assets belonging to clients, and fulfil the functions of director, secretary or shareholder for a company, or other legal person, or act in a similar position in relation to legal arrangement are required to comply with AML Law. In this regard, obligated persons that manage securities on behalf of their client would have to comply with AML Law and conduct CDD and identify and verify the identity of their prospective customers including the beneficial owners under Article 7 of the AML Law.

13. Different thresholds apply for both "public" and "non-public" companies. These thresholds are described below in paragraphs 114 and 115 of the report.

104. The CMVM is the authority responsible for supervising depositories that provide nominee services. Portuguese statistics indicate that there are 197 persons in Portugal that manage securities on behalf of their clients. As Portuguese officials explain, nominee ownership is not possible in relation to a Joint Stock Company (SA), as all owners are registered. As noted above CMVM carried out nine supervisory inspections during the period under review, the scope of which included the registration of clients and which covered the review of the procedures associated with AML. In addition, sixteen on-site supervisory actions were carried out with other financial intermediaries and all other entities under the supervision of CMVM and which, among other aspects, covered the procedures related to AML.

105. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information regarding nominee ownership during the period under review.

Conclusion and practice regarding the availability of ownership information on companies

106. Ownership and identity information relating to LLCs is kept and maintained by the Commercial Registry, tax authority and LLCs. Ownership and identity information relating to SAs, PLSs and SEs is generally filed with the tax authority or kept by the SAs, PLSs and SEs themselves or by a financial intermediary in the circumstances required by law, as described earlier in this section. When legal entities contract the services of entities subject to AML requirements, those obligated entities are required to conduct CDD and keep ownership information.

107. Over the period of review Portugal has received in total 320 requests for information. In 63 requests (around 20 percent of all requests received) these pertained to information on ownership of companies.

108. Portuguese authorities state that the information requested was provided in all cases.

109. Requests received mainly pertained to the identification of shareholder/capital owners – the name, the address and tax identification number – the percentage of capital held, the representatives of the entities (shareholders/partners, managers) as well as identification of companies within a group (associated companies).

110. Statistics provided by the Portuguese authorities demonstrate that in the vast majority of requests (55 cases) information requested on ownership of companies was already in the hands of the tax authorities, while in the remaining eight cases this type of information was obtained from another government authority.

111. As Portuguese authorities explain, ownership information would in most cases be available in the AT databases, or on the website of the Ministry of Justice. Whenever the information is not available in the AT databases or on the website of the Ministry of Justice, the information was directly requested from the Commercial Registry. As Portuguese authorities explain, this would mainly concern requests in respect of older periods.

112. Portugal's EOI partners report having asked for information on companies in 63 cases and have not reported any specific difficulties. One peer noted that in one case there was some difficulty obtaining ownership information, but it appears there had been a misunderstanding on the company under investigation, maybe due to a problem of very similar name and address of both companies. In order to correctly identify the relevant Portuguese company the peer provided the TIN of the company which had been acquired by the peer in the meantime. Portugal advised that the information was sent shortly after that.

Bearer shares *(ToR A.1.2)*

113. SAs, PLSs and SEs are allowed to issue bearer shares by virtue of Article 299(1) of the CSC with the exception of SAs that are incorporated to operate in the Madeira FTZ and only have one shareholder (Article 3 of Decree Law No. 212/94). Bearer shares may be issued in paper certificate form. Moreover, bearer shares may also be issued in "book-entry" form when these shares are deposited with designated financial intermediaries. The book-entry system is used mainly for shares traded in a regulated market.

114. As mentioned in section A.1.1 of this report, when issuing shares (including bearer shares) companies must keep information on the identity of the original subscriber of those shares (Articles 43 and 44(1)(f), CVM). The mechanism to identify the new owner in case the shares are transferred will vary if the shares are issued in certificate form or "book-entry" form.

Bearer shares in certificate form

115. For an SA, PLS or SE that is not a "public company" (as defined in Article 13 of the CVM), the owner of shares, including the owner of bearer shares, is required to notify within 30 days the SA, PLS or SE if he or she increases or decreases his/her shareholding above or below the prescribed thresholds of 10%, 33% and 50% under Article 448 of the CSC.

116. For an SA, PLS or SE that is a "public company" as defined in Article 13 of the CVM, there is a requirement for any person or entity that increases or decreases its shareholding (including bearer shares) above or below the prescribed thresholds of 2%, 5%, 15% and 25% to notify the

CMVM and the SA, PLS or SE. Such communication must identify the whole chain of entities to which the qualifying holding should be attributed under Articles 16(4)(a) and 20(1) of the CVM. Portuguese officials estimate that around 8 percent of all companies are public. Portuguese authorities have an active oversight of compliance with these requirements and report that between 2010 and 2013 in total 15 proceedings were opened in response to failure to correctly notify CMVM of a (change in) qualified holding in public companies.

117. Furthermore, pursuant to article 448 (4) CSC both "public" and "non-public" companies are required to disclose a list of the shareholders that hold bearer shares, including non-registered bearer shares, representing at least 10%, 33% and 50% of the share capital at the closing date of the financial year. This information has to be included in an annex to the annual financial report, and it has to be made publicly available on the SAs website for a period of at least one year (Article 289 (4) CSC) as well as with the Commercial Registry (Article 70 (1) CSC)[14]. Moreover, based on article 70 CSC the annual reports of all SAs have to be validated by an independent auditor. The auditor should include his opinion and must flag any irregularities if they are not corrected by the company itself. As this would include the information about the shareholders in the annex, Portugal is confident that information about the shareholders (including the holders of bearer shares) will be available in these cases. Oversight of auditors is in the hands of the National Council for Audit Supervision (CNSA, *Conselho Nacional de Supervisão de Auditoria*) and of the Portuguese Audit Institute (*Ordem dos Revisores Oficiais de Contas*), and supervision includes on-site supervision to all auditors (each auditor is reviewed at least once every six years) and penalties have been imposed regarding non-compliant situations.

118. Article 382 of the CSC further requires the identity of the shareholder to be recorded by the SA if a shareholder (including the owner of bearer shares) attends the Annual General Meeting or sends a personal representative to attend the meeting.

119. Moreover, members of the board of directors or supervisory board of a company are obliged to inform the company concerning their shareholdings (including bearer shares) in the company (Article 447, CSC).

120. Requirements for the identification of owners of bearer shares in certificate form also exist under the tax law (see obligations relating to SAs, PLSs and SEs elaborated in section A.1.1).Pursuant to Article 138 of the CIRS and Article 129 of the CIRC, the transferors and transferees of shares

14. Information about "public companies" including updated qualifying holdings and "public companies" annual reports are available on the CMVM website: http://web3.cmvm.pt/english/sdi2004/emitentes/part_socab.cfm.

(including bearer shares) must submit a prescribed statement *(Declaração Modelo 4)* to the tax authority within 30 days with details on the transfer of shares, including identification information of the transferor and the transferee. In addition, the transfer of shares by way of donation, inheritance or gift is subject to stamp duty and according to Articles 26 to 28 of the Stamp Duty Code, the transferee is required to declare the transfer of shares in a prescribed form (*Participação de Transmissões Gratuitas Modelo 1 and Anexo I-04*) and identify the transferor and the amount of shares transferred. The delay or failure to submit the prescribed statement/form is an offence that is sanctioned by a monetary penalty (please refer to section A.1.6 of this report).

121. As noted in section A.1.1. the Directorate of Planning and Coordination of Tax Inspection (DSPCIT) is responsible for monitoring compliance with filing obligations in respect of a transfer of shares, including the transfer of bearer shares. While both transferor as well as the transferee each have to submit their own form model 4 and both forms will include both tax numbers, DSPCIT is able to make an analysis of information contained in the both tax returns by cross-checking the information submitted by the reporting transferees with the information submitted by the reporting transferors. Model 4 also applies in case of foreign shareholders, who are requested to register on a special website in order to file model 4. In case of non EU-residents this should be done by a legal representative in Portugal. Further cross-checks are performed by comparing the information submitted with information included in tax returns in respect of capital gains, as well as information included in the annual tax and accounting statement. In case there is a non-compliant situation, the person involved will first be asked to submit a correct declaration form model 4. If the person involved does not cooperate, an infringement procedure will be started. The Portuguese tax authority is developing a system to automate the infringement procedure on these specific cases.

122. Although Portugal does not have specific statistics available regarding the number of declarations of form Model 4 submitted specifically with regard to bearer shares, statistics concerning the total number of declarations of form Model 4 submitted, including the number of non-compliance situations that were detected regarding transfer of shares, including bearer shares, during the period 2010-12 are available and were included in section A.1.1 above.

123. The tax law reinforces the above-mentioned requirement by requiring any person paying any income on the shares to verify that the prescribed statement *(Declaração Modelo 4)* has been submitted to the tax authority before paying out any income on shares (Article 138(2), CIRS and Article 129, CIRC). The failure to verify this information by any person

paying income on shares also attracts a monetary penalty (please refer to section A.1.6 of this report).

124. It is noted that penalties provided in Portuguese tax law can reach very significant levels and should provide a strong deterrent in most cases. However, it remains to be verified how the penalties imposed on shareholders may be collected in relation to non-compliant shareholders who are not resident or located in Portugal, especially in situations where no income on shares has been declared or paid by the company. Portugal states there no specific statistics available on the number of penalties applied, as this information is only available as part of aggregated information on infringement procedures and penalties applied. The Portuguese tax authority is developing a system to automate the infringement procedure on these specific cases. In addition, Portugal explains that the oversight by CMVM in respect of transfers of shares and the requirements regarding qualified holdings is mainly based on nature and the effects of the transactions (including the participants) itself, than the residence of individual shareholders involved. They feel that this also helps compliance in other areas such as tax supervision, and mitigates the materiality of the risk concerned.

125. In addition, there are concerns on the ability of the enforcement authorities to detect non-compliance of transfer of ownership in a timely manner in all cases. It appears that there are no actual impediments for the acquirer of a share to exercise shareholder rights, even if she/he complies with her/his tax filing obligations outside of the 30 day timeframe stipulated in tax law. Accordingly, a holder of a bearer share could, in effect, remain anonymous until the point where it was necessary to exercise his/her rights in the company (e.g. until he or she wishes to receive dividends). Therefore, bearer shareholders may remain undetected by the Portuguese authorities for a potentially extended period of time, notwithstanding the stipulated 30 day timeframe described above. This may be a particular concern in relation to non-trading, asset holding, closely held companies which do not regularly pay out dividends to their shareholders. In summary, there is a risk that the Portuguese authorities do not have updated information on the holders of bearer shares at the time when it receives a request to exchange information. Although Portuguese authorities do not report any difficulty in this respect and peer input did not indicate that this risk materialised in practice during the period under review, there is no evidence that the transfer of bearer shares is regularly or generally reported, apart from the obligation to present declaration form Model 4 as noted above. Moreover, although official statistics are not available, it should also be noted that a representatives of the Portuguese organisation of auditors clearly stated that bearer shares are commonly used in Portugal. Consequently, it's not certain whether updated information on the holders of bearer shares will be available in practice for EOI purposes in all cases and in a timely manner. Therefore, Portugal is recommended to

ensure its ability to respond to EOI requests for ownership information on companies regarding bearer shares.

126. For bearer shares that are traded in a regulated market, the share certificate is mandatorily deposited with a depositary. The depositary is required to keep the information on the holder of these bearer shares as required under Article 99 of the CVM and the owners of such shares are known.

Bearer shares in "book entry" form

127. For bearer shares in "book entry" form, information of its owner/holder will be captured in the individualised account maintained by the SA or the financial intermediary as required under Articles 61, 62 and 63 of the CVM. Therefore, the owners of such bearer shares are always known. The same obligations imposed on the transferor and transferee under Article 138 of the CIRS and Article 129 of the CIRC is also applicable to bearer shares in "book entry" form.

Conclusion and practice concerning ownership information in respect of bearer shares.

128. Ownership and identity information on the original subscriber of bearer shares is available with the issuer as required under the Article 43 and 44 of the CVM. Any person increasing his/her shareholding (including holding of bearer shares) in a SA, PLS or SE beyond the prescribed thresholds commencing at 2% for public companies or 10% for non-public companies has to notify the SA, PLS, SE and the CMVM of his shareholding. The same information has to be provided if the shareholder decreases his/her shareholding below the same prescribed thresholds and ownership and identity information of the shareholder will be available. Ownership and identity information on subsequent holders of bearer shares (in the case of a transfer) will also be available with the tax authority under the general tax filing obligations, and this will also include foreign owners of bearer shares (non-residents). However, during Phase 1 it was noted that the tax filing obligation may not ensure that updated ownership information is available with the tax authority that enables Portugal to exchange information with its EOI partner in a timely manner. Although this risk did not seem to have materialised in practice during the period under review, and Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning bearer shares, it should also be noted that Portuguese representatives of the organisation of auditors clearly stated that bearer shares are commonly used in Portugal. As there were no requests, it's still not certain whether updated information on the holders of bearer shares will actually be available in practice for EOI purposes in all cases. Therefore,

Portugal is recommended to ensure its ability to respond to EOI requests for ownership information on companies regarding bearer shares in all cases.

Partnerships *(ToR A.1.3)*

Types of partnerships

129. Portuguese law does not provide for entities comparable with common law partnerships as all entities have a legal personality. Notwithstanding the above, some entities give more emphasis to the relationship between the members (*affection societatis*) than others, i.e. *sociedades de pessoas*. In the *sociedades de pessoas* the owners have "social rights" or "quotas" and the capital is not divided into shares. For purposes of this report, *sociedades de pessoas* are designated as partnerships and three types of partnerships may be formed in Portugal:

- ***General Partnership (GP)*** *(Sociedade em nome coletivo)* is a legal entity formed by two or more partners under Article 175 of the CSC. The partners of a GP are not only liable for his/her capital contribution to the GP, but also jointly and severally liable with the other partners for the GP's debt. The partner's interest in a GP can only be transferred with the express consent of all partners of the GP and the transfer becomes effective only after a written notice is given to the GP or when the GP expressly or tacitly recognise the transfer under Article 182(4) of the CSC. A new partner may be admitted into the GP only if all partners unanimously agree to it. There is no minimum capital requirement for a GP. A GP is taxed just like other commercial companies.
- ***Limited Partnership (LP)*** *(Sociedade em comandita simples)* is a legal entity formed by one or more general partners with unlimited liability and one or more limited partners with limited liability under Article 465 of the CSC. The partners of an LP may be a natural person, LLC or an SA. Unless otherwise provided in the Articles of Association, the transfer of a general partner's interest in a LP only becomes effective after all the partners agree to the transfer. The provision relating to the transfer of *"quotas"* of an LLC(i.e. Articles 3(1)(c) & 15 of the CRC and Article 242-A of the CSC)is also applicable to the transfer of limited partner's interest in a LP. There is no minimum capital requirement for an LP. An LP is taxed just like other commercial companies.
- ***Civil Partnership (CP)*** *(Sociedade civil)* is formed under an agreement by which two or more persons undertake to contribute goods or services to conduct an economic activity for profit motive under Article 980 of the Civil Code.

130. There are 1 167 GPs, 62LPs[15] and 1 757 CPs as at 31 December 2013 in Portugal.

131. As noted above, both GP as well as LP have legal personality. The same goes for a Civil Partnership which adopted a commercial form. As Portugal explains these entities are seen as companies from the Portuguese perspective. This means there is basically no difference being made between companies and these partnerships, except that these entities cannot issue shares under Portuguese law. They further explain that, as a consequence, these partnerships also have to comply with registration requirements applicable to any company incorporated under the CSC, and measures regarding oversight and supervision follow the systematic measures that take place in respect of companies, and that this would include infringement procedures, application of fines. Moreover, statistical data regarding companies is also applicable to, and concerns, Portuguese "partnerships".

Information held by government authorities

General Partnerships

132. A GP is subject to registration with the Commercial Registry. More specifically, names or corporate names of all founding members and other identification information have to be included in the articles of association and filed with the Commercial Registry at the point of formation of the GP under Articles 3(1)(a) and 15 of the CRC. The transfer of interest in a GP is also subject to mandatory registration with the Commercial Registry under Articles 3(1)(e) and 15 of the CRC and updated ownership information is filed with the Commercial Registry by the GP whenever there is a transfer of interest in the GP. As noted above in the context of the registration of companies, the Commercial Registry has no inquiry powers in this regard, but there is the possibility of penalties being applied. In practice other authorities such as CMVM or the tax authorities do check compliance with these requirements and will apply penalties if needed. In the case of CMVM these penalties will be based on the Securities Code (CVM).

133. Information relating to the legal owners/members must be registered with the tax authority within 15 days from the date of filing of the registration with the Commercial Registry regardless of whether the legal owners/members are directors or members of the supervisory board of the GP. The requirement to register is provided under Articles 117 and 118 of the CIRC. The information that has to be furnished is reflected as required fields in the prescribed form *(Declaração de inscrição no registo/início de atividade*)

15. The figure is for both Partnerships Limited by Shares (PLSs) and Limited Partnerships (LPs). As at 31 December 2013 there were in total 62 PLSs/LPs.

used for filing with the tax authority. The GP is required to inform the tax authority concerning any subsequent changes to its partners in a prescribed form *(Declaração de alterações*) under Articles 117 and 118 of the Corporate Income Tax Code (CIRC).In practice, the tax authorities would check if the ownership information provided matches with the information that is included in the Commercial Registry.

Limited Partnerships

134. An LP is also subject to registration with the Commercial Registry. Under Article 466(1) of the CSC, both the general and limited partners have to be identified in the articles of association and the articles of association are filed with the Commercial Registry at the point of formation of the LP. The transfer of interest in an LP is also subject to mandatory registration with the Commercial Registry under Articles 3(1)(c) and (e) and 15 of the CRC and updated ownership information is filed with the Commercial Registry by the LP whenever there is a transfer of interest in an LP. Regarding oversight, as is the case with General Partnerships, the Commercial Registry has no inquiry powers in this regard, but there is the possibility of penalties being applied. In practice other authorities such as CMVM or the tax authorities do check compliance with these requirements and will apply penalties if needed. In the case of CMVM these penalties will be based on the Securities Code (CVM).

135. A LP must register with the tax authority; however, there is no obligation to inform the identity of all partners in the registration process. A requirement to lodge ownership information with the Commercial Registry is provided as described in the preceding paragraph. In practice therefore, the tax authorities would rely on the ownership information that is provided with the Commercial Registry.

Civil Partnerships

136. For tax purposes, a CP is treated as a tax transparent vehicle and the income of a CP is attributed to its partners under Article 6 of the CIRC. However, the CP is required under Article 117(1)(c) and 121 of the CIRC to submit a tax return in a prescribed form *(Informação Empresarial Simplificada – IES, Anexo G)* to the tax authority. The form requires particulars including the tax identification number of each partner and the respective participation percentage. In addition, each partner is required to submit his/her tax return under Article 57 of CIRS. In this regard, information that identifies the partners of a CP is available with the tax authority. Further to this, in respect of CPs which have not adopted a commercial form (i.e. do not trade on a regular basis) there is the requirement to register with the National Registry of Legal Persons (*Registo Nacional de Pessoas Coletivas*), Instituto

dos Registos e do Notariado, and be included in the Central File of Legal Persons (*Ficheiro Central de Pessoas Coletivas*), according to Articles 1, 2, 4 (1, a), 5, 6 and 11 of the Regime of the National Registry of Legal Persons, approved by the Decree-Law 129/98 of 13 May 1998. Under Article 6 of the mentioned Regime, the following events and facts shall be subject to registration in the Central File of Legal Persons: *(a)* Incorporation; *(b)* Change of the trade name or corporate name; *(c)* Change of the object or of the share capital; *(d)* Change of location of the head office or postal address, including the transfer of the head office from and into Portugal; *(e)* Change of the economic activity code; *(f)* Merger, demerger or transformation; *(g)* Cessation of activity; *(h)* Dissolution, termination of liquidation or return to business.

Foreign partnerships carrying on business activities in Portugal

137. For foreign partnerships carrying on business activities in Portugal, they are deemed to have derived their Portuguese sourced income through a permanent establishment located in Portugal and are subject to the same obligations (namely tax filling and accounting obligations) as Portuguese companies under Article 2 of CIRC. For instance, under Article 117 of the CIRC, a person subject to the CIRC (i.e. the foreign partnership) must provide information relating to its partners upon initial registration. The information that has to be furnished is reflected as a required field in the prescribed form *(Declaração de inscrição no registo/início de atividade*) used for filing with the tax authority. The foreign partnership is also required to inform the tax authority of subsequent changes to its partners in a prescribed form *(Declaração de alterações*) under Articles 117 and 118 of the CIRC.A TIN would be assigned to the foreign partnership (as well as a permanent establishment, more in general) in all these cases.

138. Portuguese authorities report that as of 20 February 2014, there were 1637 permanent establishments of non-resident entities (including foreign partnerships and foreign companies), registered for tax purposes in Portugal.

Information held by the partnership or partners

General Partnerships and Limited Partnerships

139. Articles 176 and 466 of the CSC expressly require ownership information relating to the partners to be recorded in the articles of association. As the GPs or LPs are responsible for keeping and maintaining the articles of association, information identifying the partners has to be maintained by the respective GP or LP. Similarly, the transfer of a partnership interest is an event subject to compulsory registration with the Commercial Registry under Articles 3(1)(c), (e) and 15 of the CRC. As the GPs and LPs are also

responsible for registering the transfer of partnership interest with the Commercial Registry, it would imply that they would have to maintain such information in order to comply with the statutory obligations.

Civil Partnerships

140. As a CP is required to submit a tax return in a prescribed form *(Informação Empresarial Simplificada – IES, Anexo G)* to the tax authority that includes information on the identity of the partners, the CP has to maintain information identifying all its partners to comply with the statutory obligations.

Information held by service providers

141. As indicated previously in Part A.1.1, under the Portuguese AML Law, all financial institutions and a wide range of service providers (obligated persons) are obliged to conduct CDD for all their customers. As a result, when a person commences a relationship on behalf of a partnership with one of the obligated persons, the CDD processes will result in the obligated person obtaining information on the partnership. As the AML Law allows for identification of those persons who own or control at least 25% of the entity, it is not clear that partners with less than a 25% interest in the partnership would always be identified by the obligated persons.

142. As noted above, supervision of obligations of the AML regime on all Financial AML Service Providers is undertaken by the Bank of Portugal, while the regulation and supervision of the securities markets, including financial intermediaries in securities and collective investment institutions is undertaken by the CMVM. Supervision of obligations of the AML regime regarding notaries and registries is entrusted with IRN, I.P. (Portuguese institute of registries and notaries). The IRN is a government institute; It's an administratively autonomous entity that falls under the responsibility of the Minister of Justice. Its organisation and monitoring authority are laid down in Decree-Law No. 148/2012. Regarding monitoring and enforcement actions in respect of the AML regime reference is made to the relevant paragraphs above.

Conclusion and practice the availability of ownership and identity information for Partnerships

143. Information identifying partners of GPs and LPs is filed with the Commercial Registry, kept and maintained by the GPs themselves as well as obligated persons that are subject to AML Law if the GP or LP uses the service of the obligated person. Information identifying partners of GPs must

also be filed with the tax authority. Information identifying partners of CPs is filed with the tax authority and is kept and maintained by the CP. Information identifying partners of foreign partnership carrying on business activities in Portugal is also filed with the tax authority.

144. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning ownership and identity information in respect of partnerships during the review period.

Trusts *(ToR A.1.4)*

145. The Portuguese legal system does not allow for the creation of trusts and the legal concept of trust generally does not exist under Portuguese law. Portugal has not signed the *Hague Convention on the Law of Trusts*. However, Portuguese law also does not prohibit a resident of Portugal from acting as trustee or a trust protector of a foreign trust. Moreover, trusts that have been legally constituted under foreign laws and whose settlor(s) and beneficiaries are non-residents in Portugal, can be recognised and authorised to perform business activities exclusively in the Madeira Free Trade Zone (FTZ) under the provision of Decree-Law 352-A/88 (foreign trusts in the Madeira FTZ).

Information held by government authorities

Foreign Trusts in the Madeira FTZ

146. Specific registration requirements exist for foreign trusts in the Madeira FTZ. These foreign trusts in the Madeira FTZ with terms exceeding 1 year are required to be registered with the Commercial Registry in the Madeira FTZ under Article 9 of the Decree-Law 352-A/88. The requirement to register does not apply to foreign trusts in the Madeira FTZ with a term of less than 1 year. There were 42 registered foreign trusts in the Madeira FTZ as at 31 December 2013. This number dropped significantly to 27 registered trusts as of 28 November 2014. As Portugal explains, these figures indicate a reduced relevance of this instrument within Madeira Free Trade Zone (FTZ).

147. The incorporation and operation of foreign trusts is subject to authorisation by the Madeira Regional Government (Article 15 of the Decree-law 352-A/88, of 3 October 1988). Trustees must mandatorily be SAs (see Article 21 (1) of the Decree-law 352-A/88, of 3 October 1988), whose shares are mandatorily nominative shares in a percentage rate not below 51% of the share capital (see Article 21 (2) of the Decree-law 352-A/88, of 3 October 1988). Entities must be licensed and the obligation to pay the fees applicable for the registration of trusts in Madeira FTZ triggers the awareness of the

presence of the foreign trust in Madeira. This license depends on the authorisation by the Regional Office for Planning and Finances of Madeira Regional Government (*Secretaria Regional do Plano e Finanças do Governo Regional da Madeira*). In this respect the regional office will *inter alia* look at relevance to the development of the Autonomous Region of Madeira (article 16 Article 15 of the Decree-law 352-A/88, of 3 October 1988).

148. The name and identification of the trust with the indication of the trust object, the date of creation, the duration of the trust, the name and registered office of the trustee and any additional facts modifying the trust, are required to be filed with the Commercial Registry under Article 10 of the Decree-Law 352-A/88. Information relating to settlor(s), beneficiary and trustee are expressly required to be included in the trust deed (Article 7 of the Decree-Law 352-A/88) and Portugal advised that identification of the settlor, trustee and beneficiaries constitutes a clause of the trust instrument that must be mandatorily checked upon registering. However, there is no express obligation to file the trust deed or this information with the Commercial Registry. It is however noted that Article 11 of Decree-Law 352-A/88 indicates that names of the settlor(s) and the beneficiaries are subject to secrecy and may only be disclosed by way of a court decision.

149. With regard to registration, Portuguese authorities state that the general registry processes, the laws regarding the registry as well as supervision in Madeira FTZ are the same as in the rest of Portugal, in principle there are no differences. The Registrar of the Commercial Registry is competent to apply fines in case of failure to comply with the registration obligations (article 4 of Decree-law 149/94, of 25 May 1994). The Commercial Registration Office basically checks compliance with the legal requirements either when it receives the deed of establishment of the trust, or at a later stage when there is an amendment of any of its elements, or at the extinction of the trust. Portugal advised that identification of the settlor, trustee and beneficiaries of the trust from the trust instrument is a mandatory requirement and this information is expressly required to be included in the trust deed under Article 7 of the Decree-Law 352-A/88. Portugal further advised that the recent decrease in the number of trusts did not show a lack of compliance, and no penalties had been applied in that respect.

150. More generally, Portuguese authorities advise that oversight follows the same plans and actions that are performed for all events subject to civil, real estate or commercial registration.

151. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning settlors and beneficiaries of foreign trusts in the Madeira FTZ during the review period.

Foreign Trusts with a Portuguese Resident Person acting as Trustee or Trust Protector

152. There are no express registration requirements in Portugal with regard to the situation where a resident of Portugal act as trustee or a trust protector of a foreign trust. However, depending on the assets held by the trustee, certain requirements apply. For instance, where a foreign trust purports to own real property in Portugal, the transfer of the legal title of the real property to the new legal owner (i.e. the trustee) has to be carried out in the presence of a notary public and the transfer must also be registered with the Immovable Property Registry *(Registo Predial)* under Articles 2 and 3 of the Immovable Property Registry Code. This obligation, however, does not ensure that the identity of the settlor(s) and the beneficiaries are filed with the authorities.

153. Portuguese authorities have indicated that they are not aware of any trusts being active in Portugal. They did not experience trustees being registered in the commercial registry, but they do report having seen entities using the word "trust" in the entities name registered in the land registry. However, they note in this respect that the trust is not recognised and the legal owners would have to act as described above in the previous paragraph.

Information held by trustees

Foreign Trusts in the Madeira FTZ

154. Information relating to settlor(s), beneficiary and trustee is expressly required to be included in the trust deed under Article 7 of the Decree-Law 352-A/88, so the trustee would have access to this information.

155. In addition, under the Articles 2(9) and 4(g) of the AML Law, any person who by way of business provides any of the following services to third parties: (a) Incorporation of companies, other legal entities or legal arrangements as well as providing related services of representation, management and administration to such legal entities or legal arrangement; and (b) Fulfilment of the functions of director, secretary or shareholder for a company, or other legal person, or acting in a similar position in relation to legal arrangement, is considered an obligated person subject to AML Law. Such obligated persons are required to conduct CDD and identify and verify the identity of their customers and beneficial owner under Article 7 of the AML Law.

156. The term *beneficial owner* is defined in Article 2(5)(b) of the AML Law to include:

- The natural person who is the beneficiary of 25% or more of the property held in trust; or
- Where the individuals that benefit from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates;
- The natural person who controls over 25% or more of the property of the trust.

157. Article 9(1)(a) of the AML Law further requires obligated persons to take appropriate measure to understand the ownership and control structure of the customer which are legal arrangement (i.e. trust).

158. As a result of these requirements, persons acting as trustee by way of a business are required to identify and verify the identity of the settlor(s) and those beneficiaries who have at least 25% interest in the trust. Portuguese authorities advise that the percentage defined in article 2 (5) of the AML/CFT Law (25% of shares or voting rights) should be seen as a minimum limit in the determination of the beneficial owner, and does not exclude the institutions to perform a stricter control below the 25% threshold. In this respect reference is made to the Notice of Banco de Portugal No 5/2013 of 18 December 2013, which regulates the conditions, mechanisms and procedures needed for effective compliance of the financial institutions subject to the supervision of *Banco de Portugal* with the anti-money laundering and terrorist financing obligations. Following article 19 (6) of this notice credit institutions shall:

(a) In determining the beneficiary owners that fall under Article 2(5)(a) of the AML Law, consider the percentage of 25% referred to therein as a minimum standard, although there may be control of the corporate person by other means, such as a percentage sufficient for the direct or indirect control of the share capital or voting rights, even though less than 25%;

(b) Obtain sufficient information on the beneficiaries of foreign-law trusts defined in the light of characteristics or classes, so as to ensure that they are able to establish their identity at the time of payment or when the beneficiaries wish to exercise vested rights;

(c) Take other reasonable steps to ascertain the structure of ownership and control of the customer, where the latter is a corporate person or a legal arrangement, including, for example, collection of documents, data or reliable information about:

(i) The chain of controlling interests;

(ii) The identity, in the case of foreign-law trusts, of the settlor, of the guarantor and of the trustees, save where it does not result from compliance with the provisions required to open a banking account.

159. These new provisions clarify that obligations to identify the beneficiaries if they do not have at least 25% interest in the trust, or in the case of a discretionary trust, whether there is an obligation to identify the beneficiaries as the distribution from the trust is entirely at the discretion of the trustee and it could be argued that the beneficiaries do not have any interest in the trust. Within the context of the AML law there is however, no other express obligation for a trustee to maintain information relating to settlor(s) and beneficiaries if the trustee does not fall within the scope the AML Law. For instance, where a natural person is acting as a trustee in his/her personal capacity and not by way of a business of providing services, the person would not fall within the definition of a obligated person envisaged in Article 2(9) of the AML Law and the obligations under the AML Law will not be applicable to that person. Since the coverage of professionals by the AML Law is broad, it is not clear whether the potential gap for ownership information for trusts administered by non-business trustees will be material. However, as noted above, specific registration requirements exist for foreign trusts in the Madeira FTZ. These foreign trusts in the Madeira FTZ with terms exceeding 1 year are required to be registered with the Commercial Registry in the Madeira FTZ under Article 9 of the Decree-Law 352-A/88. The requirement to register does not apply to foreign trusts in the Madeira FTZ with a term of less than 1 year. Therefore, the potential gap for ownership information for trusts administered by non-business trustees is even smaller as it relates only to foreign trusts in the Madeira FTZ with a term of less than 1 year that are being administered by non-business trustees. In all, the assessment team considers that the gap is very small and most probably not material. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning trusts and there have been no specific issues during the review period.

Foreign trusts with a Portuguese resident person acting as trustee or trust protector

160. The Portuguese tax law does not include any specific provisions on the taxation of assets or income derived by a Portuguese resident trustee in connection with a foreign trust. Nevertheless, the assets and income derived in connection with the foreign trust are subject to tax as with any other assets or income of the Portuguese resident trustee and the Portuguese resident trustee is subject to record keeping requirements for the determination of their income. This typically includes the trust deeds and therefore the names of the

settlor(s) and named beneficiaries of the trust, and the nature of the assets in the trust that have generated the income. If a Portuguese resident trustee purports to avoid the tax liability and wishes to attribute the assets and income to another person (i.e. the beneficiaries or settlor(s) of the foreign trust), the Portuguese resident trustee would have to keep all relevant information concerning the fiduciary function he/she is performing (including the trust deed and the income derived from assets held under the trust) to substantiate the attribution of the income to that other person. The Portuguese authorities also have the powers to request and access information directly from the trustee to ascertain the tax liability of the relevant persons (i.e. trustee, beneficiaries and the settlor(s)).

161. In addition, the AML Law obligation will also apply to a Portuguese resident person acting as trustee by way of business. In this regard, the obligated person is required to identify and verify the identity of the settlor(s) and those beneficiaries who have at least 25% interest in the trust. This requirement is also subject to the same limitation described in the earlier paragraph.

Information held by service providers

162. To the extent that a trust (both foreign trusts in the Madeira FTZ as well as foreign trusts with a Portuguese resident person acting as trustee or trust protector) uses the services of the obligated person as described in the earlier section on companies, the AML Law will be applicable to the trusts as customers. The obligated persons are required to conduct CDD and identify and verify the identity of their customers when establishing business relationship or when they are carrying out occasional transactions with monetary value greater than EUR 15 000 for the customer. Where the customer is a legal arrangement (i.e. a trust), the obligated persons are required under Article 7(4) of the AML Law to identify the *beneficial owner* of the legal arrangement, subject to the 25% threshold as described above. Regarding supervising and overview of these obligations, Portuguese authorities state that lawyers acting as trustee or trust protector would be supervised by the bar association, while notaries would not be allowed to act in the capacity of trustee or trust protector. Article 38 AML in this respect further clarifies that banks and branches fall under supervision of the Bank of Portugal, and this would also include banks and branches located in Madeira.

Conclusion and practice regarding availability of trust information

163. Information identifying the settlor(s), beneficiaries and trustee for foreign trusts in the Madeira FTZ is expressly required to be included in the trust deed so the trustee would have access to this information. In addition, for trusts with term greater than 1 year, the same information is filed with the

Commercial Registry. A Portuguese resident trustee is also subject to record keeping requirements under tax law for the determination of their income for Portuguese tax purposes and this typically includes the trust deeds and therefore the names of the settlor(s) and named beneficiaries of the trust, and the nature of the assets in the trust that have generated the income. Moreover, professional service providers providing trustee services are required to identify the settlor(s) and beneficiaries who have at least a 25% interest in the trust. The same information may also be available if a trust (or trustee) uses the service of an obligated person that is subject to AML Law in Portugal.

164. As noted, Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning trusts during the review period. Regarding oversight in respect of trusts in the Madeira FTZ, the Registrar of the Commercial Registry is competent to apply fines in case of failure to comply with the registration obligations (article 4 of Decree-law 149/94, of 25 May 1994). The Commercial Registration Office basically checks compliance with the legal requirements either when it receives the deed of establishment of the trust, or at a later stage when there is an amendment of any of its elements, or at the extinction of the trust. Portugal advised that the recent decrease in the number of trusts did not show a lack of compliance and no penalties had been applied. More in general, Portuguese authorities advise that oversight follows the same plans and actions that are performed for all events subject to civil, real estate or commercial registration.

Foundations *(ToR A.1.5)*

165. On 9 July 2012 the Portuguese Parliament approved the new "Foundation Framework Law" (Law 24/2012 or "FFL") that comprised both of a new framework on foundations in general and modifications on articles in the Civil Code regarding private foundations in particular. Foundations can be "private" or "public", according to the legal nature of their founders (Article 4 of FFL). As the new law does not allow for the creation of new public foundations (Article 57 of FFL.) "Private" foundations may be set up by an act concluded between living parties by public deed or by will according to Article 185 of the Portuguese Civil Code (PCC) and Articles 15 and 17 of FFL. A foundation acquires legal personality when it is *"recognised"* by the competent administrative authority (Article 158(2) of the PCC and Article 6(1) of FFL).The competent administrative authority is the Prime-Minister or his authorised delegate (Articles 6 (2) and 20 of FFL).

166. A foundation is not valid if its object is physically or legally impossible, contrary to the law or indeterminable or contrary to public order or offensive to moral customs (Article 280 of the PCC). In addition, for a foundation to be recognised, the competent administrative authority has to

acknowledge that the purpose of the foundation is of social interest. This means that a foundation is not legally valid if it is created solely for the benefit of a particular person or a particular group of persons. The beneficiaries of a foundation must be an undetermined universality of citizens (Article 23 of FFL). «Recognition» of a private foundation is denied if full information on the identity of the founders and of the members of the administration board, management board and supervisory board of the foundation is not provided to the competent administrative authority (Articles 22(2)(b) and (l) and 23(1)(a) of FLL).Changes to a foundation's by-laws or purposes must be authorised by the competent administrative authority under Articles 189 and 190 of the PCC and Articles 31 to 38 of FFL.

167. Portuguese authorities report in total 13"private" foundations and no "public" foundations were registered in Portugal since the enactment of Law 24/2012. They further estimate that less than 900foundations already existed as the new law came into force.

Information held by government authorities

168. All foundations seeking to be *"recognised"* by the competent administrative authority must submit an e-form containing full information on the identity of the founders and of the members of the foundation administration board, management board and supervisory board to the competent administrative authority (Article 22(2)(b) and (l) of FFL). In addition, all foundations must submit, within 30 days, full information on the identity of the members of the foundation administration board, management board and supervisory board, and any changes to this information, as well as submit its financial statements, to the Presidency of the Council of Ministers (Article 9(1) of FFL).The information has to be updated if changes occur. Foreign foundations also have to be registered and get a clearance from the council of Ministers.

169. A foundation is also subject to the registration requirements of the RNPC (*Regime Jurídico do Registo Nacional de Pessoas Coletivas* – National Registration of Legal Persons Regime) and must be registered with the NRLP (*Registo Nacional de Pessoas Coletivas* – National Registry of Legal Persons) when the foundation is applying for certificate of admissibility of trade name or corporate name. The name, habitual residence or professional address, identification document number, tax identification number, bank identification number (where applicable) and the contact information of the applicants must be filed with the NRLP under Article 21A of RNPC. It is however uncertain as to whether identification information of founders, members of the foundation administration board, management board and supervisory board, and beneficiaries (where applicable) has to be filed with NRLP as the legislation made reference only to the *"applicants"* for trade

name or corporate name rather than the founders, members of the foundation administration board, management board and supervisory board and beneficiaries.

170. For tax purposes, the Portuguese authority has also indicated that foundations are also subject to the ancillary filing obligation under the CIRC regardless of whether they are exempt from tax. In this regard, foundations are required to register with the tax authority by filing a prescribed form *(Declaração de inscrição no registo/início de atividade)* within 90 days from the date of enrolment in the NRLP. Foundations must include in the prescribed form among other particulars, the public deed or will, the name, tax identification number and function of the members of the foundation administration board, management board and supervisory board. The foundation is also required to update the information originally filed with the tax authority if any changes are made to that information.

Information held by the foundation and members of the foundation administration board, management board and supervisory board

171. Under Article 9(1)(d) of FFL there is an express obligation for a foundation to disclose updated information relating to the founder(s) and the members of the foundation administration board, management board and supervisory board on its website Portugal explains that a systematic monitoring of these websites takes place by competent administrative authority, for instance when the foundation submits its annual accounts or applies for any form of government support (e.g. subsidies, status needed in order to qualify for tax incentives). Therefore, Portuguese officials feel confident that this information is actually disclosed and updated, as these websites will be checked by authorities and tax incentives and subsidies will not be granted to the foundation if information is not filed timely and correctly. Further, the information has to be updated if changes occur.

Information held by service providers

172. To the extent that a foundation uses the services of an obligated person, AML Law will be applicable to the foundation as customers and the obligated persons will have to conduct CDD and keep and maintain the necessary records.

Conclusion and practice regarding foundations

173. In Portugal, the beneficiaries of a foundation must be an undetermined universality of citizens and a foundation cannot be created solely for the benefit of a particular person or a particular group of persons. Information identifying

the founder(s), members of the foundation administration board, management board and supervisory board and beneficiaries (if any) is furnished to the relevant competent administrative authority. This information is available in the official site of the Ministry of Justice (Art. 166 PCC as amended by Law 24/2012, of 9 July 2012) and must be disclosed in the website of the foundation itself (Article 9(1)(d) of FFL).The same information may also be available if a foundation uses the services of an obligated person that is subject to AML Law in Portugal.

174. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning foundations during the review period.

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

175. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, including sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or with the entities reviewed in section A.1 are enforceable and failures are punishable.

176. Sanctions are in place in Portugal for non-compliance of key filing and registration obligations. For instance, failure to comply with the mandatory registration with the Commercial Registry as required under the CRC and CSC will subject the offending entity to administrative fines as set out in Article 17 of the CRC. The fine ranges from EUR 160 to EUR 720 Article 528 of the CSC further provides for administrative penalties on the manager or director of the company that fails to submit documents and information required by law to the competent corporate bodies. The fine may range from EUR 50 to EUR 1 500. As of 2013, the non-compliance with the obligation of registering the accounting statements shall lead to the refusal of registration of other events regarding the entity(Article 17 (3) of CRC as amended by the Decree-law 250/2012, of 23 November 2012) as well as to the opening of an administrative proceeding for the dissolution and liquidation of the commercial entity, if the company has not registered the accounting statements for two consecutive years (Article 5 of the Legal regime for the dissolution and liquidation of commercial entities, as amended by the Decree-law 250/2012, of 23 November 2012).

177. For the registration requirements under the RNPC, non-compliance with the requirements attracts monetary fines ranging from EUR 249.40 to EUR 2 493.99 for individuals and EUR 1 496.39 to EUR 14 963.94 for legal persons as set out in Article 75 of the RNPC.

178. Supervision in this regard is in the hands of the registrars of the commercial registry, i.e. the IRN (*Instituto dos Registos e do Notariado, I.P.,* the Portuguese Institute for Registries and Notaries) and the NRLP (National Registry of Legal Persons, *Registo Nacional de Pessoas Coletivas*). Both are competent to decide over the infringements and apply the fines (Article 17 (4) of CRC). Although in this respect no specific reason could be provided, no further data regarding the compliance or penalties is available.

179. For non-compliance of the filing and registration requirements imposed under the tax laws (i.e. CIRC and CIRS), monetary penalties ranging from EUR 75 to EUR 22 500 may be imposed on the offenders under Articles 116, 117 and 119 of the General Regime of Tax Infractions (RGIT). Regarding article 116 this includes a wide range of penalties, and a number of infringements is detected automatically, such as failures to submit/late submission of income tax returns, as well as failures to submit the annual declaration for tax and accounting information, the declaration of official model on incomes and tax withholding, the declaration on income paid or made available to taxable persons non-resident in the Portuguese territory. The table below demonstrates a rise in the total amount. For the obligation to inform the tax authority about the transfer of shares, a monetary penalty ranging from EUR 150 to EUR 3750 may be imposed on the transferor or transferee if the requisite form *(Declaração Modelo 4)* is not submitted to the tax authority (Article 116 and 117, RGIT). This requirement is further enforced by requiring any person paying any income on the shares to verify that the prescribed form has been submitted to the tax authority before paying out any income on shares (Article 138(2), CIRS). The failure to verify this information by any person paying income on shares attracts a monetary penalty ranging from EUR 375 to EUR 37 500 under Article 125-A of the RGIT.

180. The number of offences punished by each Article of the RGIT which resulted in proceedings is listed in the following table:

Number of offences (punished by corresponding article of the RGIT)	2010	2011	2012
Article 116 RGIT Failure to deliver or delayed delivery of declarations (tax returns, excluding VAT)	382 394	634 603	591 784
Article 117 RGIT Failure or delay to present or display of documents or declarations and reports	108 000	94 050	61 570
Article 119 RGIT Omissions and inaccuracies in declarations or other tax relevant documents	54 397	54 215	55 264
Article 125A RGIT Payment or making available income or gains derived from or related to securities	1	0	0

181. The amounts of fines applied corresponding to the offences listed in the previous paragraph are indicated in the following table:

Amounts of fines applied corresponding to the offences punished by each article of the RGIT (amounts in EUR)	2010	2011	2012
Article 116 RGIT Failure to deliver or delayed delivery of declarations (tax returns, excluding VAT)	25 320 694	56 137 628	70 288 961
Article 117 RGIT Failure or delay to present or display of documents or declarations and reports	15 760 317	12 037 026	6 515 434
Article 119 RGIT Omissions and inaccuracies in declarations or other tax relevant documents	10 156 780	10 282 570	10 076 909
Article 125A RGIT Payment or making available income or gains derived from or related to securities	550	0	0

182. The numbers provided in the table included in paragraph 178 represent the number of offences punished by each article of the RGIT. There's no data available regarding the exact number of taxpayers involved under each of the articles mentioned. However, it can be noted that this number is likely to be lower than the numbers included in the table as a number of offenses are detected automatically and the same taxpayer could be involved and or punished for the same type of offense more than once a year. With regard to the the number of offences punished under Article 116 of RGIT (Failure to submit or late submission of declarations) it can be noted that this covers non-compliance with general tax filing obligations pursuant to the IRS as well as IRC. Furthermore, failures to submit/late submission of income tax returns, as well as failures to submit the annual declaration for tax and accounting information, the declaration of official model on incomes and tax withholding, the declaration on income paid or made available to taxable persons non-resident in the Portuguese territory, are detected automatically, and that explains the relatively high number of infringements indicated in the table.

183. In the case of public companies, the failure on the part of the shareholder to inform the company and the CMVM when their shareholding reaches a certain prescribed threshold is considered a "very serious administrative infraction" under Article 390 of CVM. Monetary penalties between EUR 25 000 and EUR 5 million may be imposed on the non-compliant shareholder. In the case of non-public companies, the failure on the part of the shareholder to inform the company when their shareholding reaches a certain prescribed threshold attracts an administrative fine of between EUR 25 and EUR 1000 (EUR 50 and EUR 1 500 if the shareholder is a member of the board of directors or the supervisory board of the company) under Article 528 (5) of CSC.

184. Similarly, monetary penalties ranging from EUR 12 500 to EUR 5 million may be imposed on SAs that do not comply with necessary record keeping obligations imposed on them under the Article 388 of the CVM.

185. Concerning the duties of communication of qualified holding Portuguese authorities report that between 2010 and 2013 in total 9 supervisory actions were carried out by CMVM the scope of which included the communication of qualified holding.

186. Failure to comply with the AML Law requirements as set out in the AML Law by obligated persons are punishable with fines ranging from EUR 25 000 to EUR 2.5 million as set out in Article 54 of the Law No. 25/2008. Additional penalties may also be applicable under Article 55 of the Law No. 25/2008.

187. With regard to the collection of financial intelligence which is relevant in the context of the predicate offense of money laundering as well as AML law requirements, the FIU of Portugal initiated investigation proceedings and analysed communications (suspicious transaction reporting or STR's) that it received from the entities subject to AML. In cases where there are indications confirming the suspicion, these confirmed communications are referred to the judicial authorities and to the criminal police bodies with powers to (further) investigate. The following statistics from the FIU of Portugal show a steady increase in the absolute numbers of investigations (from approximately 700 to 950) and confirmed communications (from 240 to around 450) during the period under the review, and also indicate an increase of detected predicate offenses of tax fraud as a percentage of the confirmed communications (from 41 to 63 percent of the confirmed communications).

Initiated investigation proceedings, Confirmed communications and Predicate offences to money laundering

		2010	2011	2012	2013
No. of initiated investigation proceedings		703	684	745	954
No. of confirmed communications (STR's investigated by the FIU)		240	721	512	446
Predicate offences to money laundering of the confirmed communications (%)	Tax fraud	41	62	58	63
	Computer fraud	25	12	7	4
	Fraud	9	10	9	6
	Drug trafficking	8	8	11	5
	Money laundering			10	13
	Corruption-Embezzlement				3
	Others	17	8	5	6

188. Where the signals received from the entities subject to AML presented indications that were strong enough, the proposal was made to supend

the suspicious transactions. As shown in the table below the number of suspensions followed the increase in the number of issues flagged by the entities suject to AML as shown above. These proposals for the suspension of transactions derive both from cases reported under the "duty to refrain from carrying out transactions" (Article 17 of Law 25/2008) and from communications under the "duty to report" (Article 16 of Law 25/2008). In the former case, the entities suject to AML Law detect the situation and immediately suggest refraining from carrying out the operation due to the existence of enough indications that the operation is related to the practice of crimes of money laundering and terrorist financing. In the latter case, the confirmation of the indications results from the analysis carried out to the communication under suspicion. The "suspended amounts" are the total amounts referred in the communications received from the entities suject to AML Law at the time of the proposal for suspension was prepared by the FIU.

Proposals for the suspension of transactions

		2010	2011	2012	2013
No. of suspensions		14	35	49	37
Suspended amounts*	EUR	20 601 884.39	30 077 971.89	42 149 562.57	20 623 456.18
	USD	6 548 194.00	0.00	50 145 500.00	10 121 359.38

*A number of suspensions concerned amounts in USD, in addition to the suspensions in EUR. The currency of the suspensions is the same as the currency of the transactions.

189. Concerning instances of non-compliance with AML/CFT requirements and the amount of fines applied in connection the AML obligations the Bank of Portugal provided the following statistics regarding AML/CFT legal proceedings for non-compliance initiated by the Bank of Portugal. The Statistics indicate that the number of initiated proceedings increased quite strongly from 3 in 2010 to 70 in 2013. In this respect the Bank of Portugal points at a reorganisation of its supervisory structure that took place in 2011. One of the main changes was the creation of a specific Anti-Money Laundering Unit within a new Department – the Legal Enforcement Department (DAS). In 2012 the Bank of Portugal issued a new notice aimed at ensuring compliance with AML/CFT legislation as well as a self-assessment questionnaire on supervised institutions' compliance with AML/CFT legislation and the degree of risk inherent to their activity. This was followed up by enforcement action against those financial institutions that did not fully or timely respond, or failed to comply with the specific terms set out in the reports. Consequently, the absence of proceedings initiated in 2011 and the increase in 2012 and 2013 can be seen as the result of this concentration of AML/CFT tasks in 2011 and action taken following that concerning

institutions subject to its supervision. Over the same period the number of admonitions and fines (see next paragraph) also grew from 3 in 2010 to a total of 63 in 2013, indicating that most proceedings initiated eventually led to penalties being applied. In this respect the Bank of Portugal also adds that the awareness of the importance of AML/CFT risk management and compliance across the financial sector has increased.

	2010	2011	2012	2013
Initiated proceedings	3	0	23	70

190. Regarding administrative penalties applied for the breach of applicable AML/CFT legal provisions stated in the previous paragraph Portuguese authorities provided the following statistics:

	2010	2011	2012	2013
Number of admonitions	0	0	0	56
Number of fines	3	0	4	7
Total amount of fines	EUR 227 500	0	EUR 192 000	EUR 233 000

191. For foreign trusts that are allowed to carry on business activities exclusively in the Madeira FTZ, penalties relating to the failure to register the settlement, modification or extinction of the trust are provided in Article 4 of Decree-Law 149/94 and fines ranging from EUR 49.88 to EUR 498.80 may be imposed on the offender. Portugal confirms that no breach has been found and consequently there was no need for fines to be applied.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Although tax filing obligations are in place for the reporting of ownership information in relation to bearer shares, these reporting mechanisms may not sufficiently ensure that the owners of such shares can be identified within the stipulated timeframes under the tax filing obligation regime.	Portugal should legally ensure that appropriate reporting mechanisms are in place to effectively ensure that owners of bearer shares can be identified in a timely manner in all cases.

Phase 2 rating
Largely compliant

A.2. Accounting records

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

192. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The section examines whether Portuguese laws provide for clear rules regarding the maintenance of accounting records.

General requirements (ToR A.2.1)

193. For the purpose of bringing the Portuguese accounting standards in line with the IAS/IFRS as adopted within the EU, the previous official plan of accounts was repealed and the Accounting Standards *(Sistema de Normalização Contabilística – SNC)* were created by the Decree-law 158/2009. In addition, simplified accounting standards for micro-entities and for entities that do not primarily carry on a business activity were created by the Law 35/2010 and Decree-law 36-A/2011. The SNC is compulsorily applicable to *(a)* all companies set up under the CSC; *(b)* individual enterprises regulated by the Portuguese Commercial Code; *(c)* individual establishments of limited liability; *(d)* public enterprises; *(e)* co-operatives; and *(f)* complementary grouping of companies and European economic interest groupings. These entities are required to prepare their financial statements in accordance with IAS/IFRS or a special accounting standard for micro-entities and for entities that do not primarily carry on a business activity set out in Decree-law No. 36A/2011. Companies and other entities whose securities are admitted to trading in a regulated market are already required to apply the international accounting standard (IAS/IFRS) according to the Regulation (EC) of the European Parliament and of the Council of Ministers of the EU (Article 4 of the Decree-law no. 158/2009).

194. In addition to the Accounting Standard as prescribed in the SNC, companies, partnerships and legal entities are also required to maintain full accounting records under Articles 17(3), 123 to 125 of the CIRC.

Companies and partnerships

195. Companies, partnerships (including foreign partnerships) and other entities which primarily carry on a business activity and which are subject to Corporate Income Tax are required to keep organised accounting records under Articles 17(3) and 123 to 125 of the CIRC. These accounting records shall allow the determination of the taxable profit of the entity and must be:*(a)* organised in accordance with the accounting standards and other legal provisions for the sector; and *(b)* reflect all transactions carried out by the taxpayer. All accounting entries must be supported by documents with dates capable of being presented and verified. Transactions must be recorded chronologically and any amendments or deletions of the records are prohibited. Errors identified may only be corrected by a corresponding accounting entry. Delays of over 90 days in updating the accounts, counting from the last day of the month to which the transactions arises are not allowed (Article 123 of the CIRC).

196. Resident entities subject to Corporate Income Tax but which do not primarily carry on a business activity are required to have the following records:

- A register of receipts, organised according to the several categories of income;
- A register of expenditures, arranged so as to distinguish the specific costs for each category of income subject to tax and other charges to be deducted in whole or in part from the total income;
- A register of inventory on 31 December and of assets that may give rise to taxable capital gains.

197. However, if such an entity derives any income from a business activity, it must keep organised accounting in accordance with the general rules in the CIRC, unless the total income derived in the previous two years does not exceed EUR 150 000.

198. Under Articles 117(1)(c) and 121 of the CIRC, a statement of accounting and tax information must be filed annually with the tax authority in a prescribed form *(Informação Empresarial Simplificada – IES)*.

199. Entities operating in the Madeira FTZ are required to prepare and keep their accounts duly organised and are bound to present such accounts whenever requested by a duly accredited agents, relevant public services or the FTZ concessionaire*(Sociedade de Desenvolvimento da Madeira, S.A.)* under Article 25(1) of the Regional Regulatory Decree No. 21/87/M. In addition, the account and record keeping requirements under the SNC and CIRC are also applicable to entities operating in the Madeira FTZ.

200. Under Article 120 of the RGIT, the absence of accounting or tax relevant bookkeeping records is an offence punishable by a fine ranging from EUR 225 to EUR 22 500. The tax authority shall also notify the taxpayer to regularise and rectify the failure within a deadline not exceeding 30 days and a fine ranging from EUR 375 to EUR 75 000 may be imposed on the taxpayer if he or she fails to comply with the deadline under Article 113 of RGIT.

201. Under Article 121 of the RGIT, failure to maintain accounting records in accordance with the rules required under the accounting standards as well as delays in the implementing the accounting standard or keeping the necessary records, shall be punished with a fine ranging from EUR 75 to EUR 2750. Similarly, the tax authority shall notify the taxpayer to regularise and rectify the failure within a deadline not exceeding 30 days. Fines ranging from EUR 375 to EUR 75 000 may be imposed on the taxpayer if he or she fails to comply with the deadline under Article 113 of RGIT.

202. Under Article 125 of the CIRC, the accounting and bookkeeping function must be centralised in a facility or a permanent establishment situated within the Portuguese territory. The location of this facility must be reported in a prescribed form *(Declaração de inscrição no registo/início de atividade)* filed with the tax authority and, if there are changes, to be reported in another prescribed form filed with the tax authority.

Mandatory audits in respect of SAs

203. Moreover, based on article 70 CSC the annual reports of all SAs have to be validated by an independent auditor. The auditor should include his opinion and must flag any irregularities if they are not corrected by the company itself. As this would include the information about the shareholders in the annex, Portugal is confident that information about the shareholders (including the holders of bearer shares) will be available in these cases. Oversight of auditors is in the hands of the National Council for Audit Supervision (CNSA, Conselho Nacional de Supervisão de Auditoria) and of the Portuguese Audit Institute (*Ordem dos Revisores Oficiais de Contas*), and supervision includes on-site supervision to all auditors (each auditor is reviewed at least once every six years) and penalties have been imposed regarding non-compliant situations.

204. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by SAs. Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands of the tax authority.

Trusts

Foreign Trusts in the Madeira FTZ

205. Under Article 25(1) of the Regional Regulatory Decree 21/87/M, trusts that are legally constituted under foreign laws but recognised and authorised to perform business activities exclusively in the Madeira FTZ must prepare and keep their accounts duly organised. They are bound to present such accounts whenever requested by duly accredited agents, relevant public services or by the FTZ concessionaire. The language setting out the accounting records keeping requirements in the Regional Regulatory Decree 21/87/M merely uses the phrase "must prepare and keep their accounts duly organised" and it is not as comprehensive as the requirements set out in the CIRC.

206. The Portuguese authorities have explained that a Portuguese resident trustee (including a trustee licensed in the Madeira FTZ) is also subject to the record keeping requirements under the CIRC and the SNC, as other tax residents in Portugal. Moreover, as noted in part A.1.4, the assets or income derived in connection with a foreign trust are subject to tax as with any other assets or income of the Portuguese resident trustee and the Portuguese resident trustee is subject to record keeping requirements for the determination of its income under the CIRC.

207. Moreover, Decree-Law 352-A/88 sets out the regulatory framework applicable to foreign trusts having a trustee licensed in the Madeira FTZ. By virtue of Article 2 of the Decree-Law 352-A/88, a trust has the following characteristics:

1. The assets of a trust are totally segregated from the assets of the trustee;
2. Title of ownership in respect of the assets of the trust shall remain in the name of the trustee or its representative;
3. The trustee is vested with the powers and bound to the obligations to administer, manage and dispose of the assets of the trust, under the terms of the trust deed and in accordance with the law governing the trust, being also bound to render the relevant accounts thereof.

208. The Portuguese authorities confirmed that the requirement to "render the relevant accounts thereof" means that a trustee is expected to render separate accounts in respect of each trust it administers in addition to its own accounts. They consider that the record keeping requirements under the CIRC and SNC are also applicable to the business activities conducted by the trust and the trustee is expected to maintain a set of accounts detailing the business activities of the trust in accordance with the requirement under the CIRC and the SNC in addition to the accounts of its own business activities.

209. Trust companies (SAs) must be audited annually and must retain a statutory auditor on their board of directors (Article 24 Decree-law 352-A/88, of 3 October 1988). They must keep books of account relating to the trusts being administered. Based on the decisions no. 918/2004-XV of 4 April 2004 and no. 1370/2008-XVII of 3 December 2008 of the Secretary of State for Tax Affairs, each individual trust is treated as taxable person liable to IRC, subject to the tax declaration obligations. Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands of the tax authority. The Regional tax authority in Madeira is the entity responsible for the oversight of these obligations, including the accounting obligations of the trustee. Portugal states that SA trustees are included in the inspection activities of the Madeira Regional Tax Inspectorate just like any other companies operating in Madeira. The audit methods used by DRAF in Madeira are the same that are used in mainland Portugal, by complying with the guidelines contained in the Audit Manual of the Tax Authority (AT), and the inspection procedures are governed by the same legal principles (RCPIT – Complementary Regime for Tax Inspection Procedure). The tools and resources (e.g. computer programs, databases, manuals) for inspection in Madeira are the same as those used in mainland Portugal.

210. As stated above trustees are subject to a statutory audit, and they are required to prepare an annual report, including the auditor's report and the financial statements. As Portugal explains this includes the activities of the trust. The auditor should include his opinion and must flag any irregularities if they are not corrected by the company itself. Oversight of auditors is in the hands of the National Council for Audit Supervision (*CNSA, Conselho Nacional de Supervisão de Auditoria*) and of the Portuguese Audit Institute (*Ordem dos Revisores Oficiais de Contas*), and supervision includes on-site supervision to all auditors (each auditor is reviewed at least once every six years) and penalties have been imposed regarding non-compliant situations. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all persons which have their accounts audited.

211. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records are kept with regard to foreign trusts in the Madeira FTZ. Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands of the tax authority. As of 28 November 2014 there are 27 trusts registered in Madeira. Peers did not raise any specific issue in relation to availability of accounting information in respect of foreign trust in Madeira.

Foreign Trusts with a Portuguese Resident Person acting as Trustee or Trust Protector

212. As noted in part A.1.4, the assets or income derived in connection with a foreign trust are subject to tax as with any other assets or income of the Portuguese resident trustee and the Portuguese resident trustee is subject to record keeping requirements for the determination of its income under the CIRC. The Portuguese authorities consider that the record keeping requirements under the CIRC and SNC are also applicable to the business activities conducted by the trust and the trustee is expected to maintain a set of accounts detailing his/her business activities, including the business activities of the trust, in accordance with the requirement under the CIRC and the SNC.

Foundations

213. Foundations are subject to the same accounting standards (SNC) established by Decree-law 36-A/2011. Under Articles 5, 6 and 11(1) and (2) of Decree-law 36-A/2011, foundations must submit a balance sheet, and income statement by nature or by functions, a cash-flow statement and they may also be required by public donors to submit a statement of changes in their assets. This requirement is not absolute. For instance, under Article 10 of Decree-Law 36-A/2011, foundations with sales and other income not exceeding EUR 150 000 per year during the two previous taxation periods are exempt from applying the accounting standards unless the exception applies.

214. Failure to comply with the accounting standards is punishable by a monetary penalty ranging from EUR 250 to EUR 15 000 depending on the severity of the non-compliance and depending on whether the offence is considered a wilful non-compliance or negligence under Articles 17 and 18 of the Decree-law 36-A/2011.

215. The Portuguese authority has also advised that foundations are also subject to the requirements of the CIRC and must keep accounting records in accordance with Articles 17(3) and 123 to 125 of the CIRC. Non-compliance with this requirement is punishable with fines similar to those described in the earlier paragraphs.

Tax audits and penalties applied

216. Based on the analysis of the legal and regulatory framework presented above all relevant entities and arrangements are required to maintain accounting records and the underlying documents in Portugal.

217. The tax administration conducts on-site inspections, desk audits, and uses computer software to detect any discrepancies or irregularities in the provided accounting information or accounting information kept by the taxpayer when inspected.

218. In 2008 Portugal introduced the obligation to produce a standardised audit file for exporting data containing accountancy and invoicing records.

219. This so called Standard Audit File for Tax (or SAF-T) is an international standard for electronic exchange of accounting data from entities to the tax administration or external auditors. The standard was defined by the OECD in May 2005 and is based on XML. The standard was adopted in 2008 by Portugal and has since been adopted by other European countries.

220. This development provided the tax administration with a tool to analyse and run tests on the total amount of records and not only on random samples or based on statistical methods. In its selection of taxpayers that should be inspected, a risk based approach was adopted which covers all types of information available with the tax authorities, both from internal as well as external sources. These sources include internal databases (registration, property, tax litigation, tax debts, results of inspections), tax returns submitted by the taxpayer as well as third parties, information made available by other Government entities (information in external databases can be cross checked with information available within the tax authorities), or collected in inspection procedures concerning other taxpayers as well as information that is publicly available in reports, the media or on the internet.

221. Portuguese authorities state that the tax authorities have a wide range of tax relevant information available such as income paid and made available to non-resident entities, on cross-border financial transfers whose beneficial owner is an entity located in a jurisdiction, or region that benefit from a more favourable taxation regime, on the amount of the payments made by credit and debit cards, acquisitions and transfers of immovable property inside or outside the stock market, transfer of immovable property, capital income subject to withholding tax, etc.

222. Based on information from all these internal and external sources tax inspectors target taxpayers that represent a higher likelihood of a correction of the taxable amount and the taxes due. Selection of audits is based on centrally defined risk criteria and the results are made available to the regional tax Offices for inspection. Portuguese authorities report that there are 420 000 corporate taxpayers and 91 000 individual entrepreneurs in Portugal. Based on the statistics provided by Portugal it can be noted that around 3% of all corporate taxpayers are selected each year on a risk based approach and audited on-site, e.g. on the taxpayer's premises However, it can be noted that no (further) breakdown is available in terms of different types of companies. Accounting records are also subject to the enquiries. For individual tax payers the rate of on-site inspections is higher and fluctuates between 6.5% in 2010 and 5% in 2012. Further it can be noted that the data provided seems to indicate that the number of corporate taxpayers in Madeira that is being

audited on-site is relatively high compared with the number of individuals in Madeira that is audited on-site.

Number of onsite tax audits (e.g. at the taxpayers' premises) performed in Portugal and Madeira

Portugal	2010	2011	2012
Legal persons	13 984	13 318	12 286
Individuals	5 941	5 397	4 519

Madeira	2010	2011	2012
Legal persons	232	195	178
Individuals	40	47	17

223. Regarding the number of offenses punished by the respective articles of the RGIT and fines applied, data provided by Portugal demonstrate that the number of offenses punished and the fines applied are fairly stable over the years 2010-12. The refusal to deliver, display or present books and tax relevant documents, Absence of accounting or tax relevant bookkeeping records or the failure to organise the accounting in accordance with the rules of the accounting standards and delays in its implementation.

Number of offences (punished by each Article of the RGIT)	2010	2011	2012
Article 113RGIT Refusal to deliver, display or present books and tax relevant documents	915	1 026	893
Article 120 RGIT Absence of accounting or tax relevant bookkeeping records	364	351	334
Article 121 RGIT Failure to organize the accounting in accordance with the rules of the accounting standards and delays in its implementation	729	629	535

The amounts of fines applied in relation to the offences stated in the previous paragraph are indicated in the following table:

Amounts of fines corresponding to the offences punished by each Article of the RGIT (EUR)	2010	2011	2012
Article 113RGIT Refusal to deliver, display or present books and tax relevant documents	467 146	518 487	449 612
Article 120 RGIT Absence of accounting or tax relevant bookkeeping records	99 959	90 271	83 494
Article 121 RGIT Failure to organize the accounting in accordance with the rules of the accounting standards and delays in its implementation	58 852	50 766	42 918

Underlying documentation (ToR A.2.2)

224. For entities (i.e. companies, partnerships and foundations) that are subject to the CIRC, underlying documentation must be kept for a period of 12 years as required under Article 123(4) of the CIRC (as amended by Law 2/2014, of 16 January 2014).

225. While Article 25(1) of the Regional Regulatory Decree 21/87/M imposes the requirement to maintain accounting records for trusts operating in the Madeira FTZ, there is no explicit language obligating the maintenance of underlying records and document in the Regional Regulatory Decree 21/87/M. However, as explained in earlier paragraphs, the Portuguese resident trustee (for both trusts operating in Madeira FTZ and other foreign trusts with a Portuguese resident person acting as trustee or trust protector) is subject to record keeping requirements for the determination of its income under the CIRC and this would include the underlying documentations as required under Article 123(4) of the CIRC.

Document retention (ToR A.2.3)

226. Under the CIRC, accounting books, ancillary records and supporting documents must be kept for a period of 12 years (Article 123 (4) of CIRC as amended by Law 2/2014, of 16 January 2014). Where there is computerised accounting, the same retention requirement also applies to the documentation concerning analysis, programming and implementation of the computer programs under Articles 123(4), (5) and 124(5) of the CIRC. Failure to comply with these requirements is punished with fines ranging from EUR 75 to EUR 750 under Article 122(2) of the RGIT. Furthermore, in case of liquidation of a company or partnership, the owners or partners (sócios) are required to appoint a custodian of the accounting books, documents and of all other accounting elements of the company or partnership which shall be required to be kept for a period of five years (Article 157(4) of CSC).

Conclusion and practice regarding the availability of accounting information

227. All relevant entities and arrangements are required to maintain accounting records and the underlying documents in Portugal. Furthermore, under the CIRC, accounting books, ancillary records and supporting documents must be kept for a period of 12 years.

228. Over the period of review Portugal has received in total 320 requests for information. In 120 requests (38 percent) these pertained to accounting information.

229. Statistics provided by the Portuguese authorities show that in the majority of requests (76 cases) information requested was obtained from the taxpayer, while in the remaining 44 cases information already in the hands of the tax authorities. However, one peer noted that in a request for accounting documents concerning the sale and purchase of art (purchasing agreements, invoices, contracts, etc.), Portugal advised that they were unable to locate the entity and the individual involved could also not be contacted by Portugal because he was living in the requesting jurisdiction. However, the individual involved was identified and the information available in the database was sent to the requesting jurisdiction.

230. Portuguese authorities explained that in practice they would first seek to obtain information from the Tax Authority databases. Accounting information has to be filed with the annual tax return, and this information will flow into the Tax Authority databases. If more information is needed or the request is more complex the tax audit unit will be asked. However, if it is a relatively simple request (e.g. a contract or alike) they will go directly to the company and ask the company to provide the requested information.

231. Requests received mainly pertained to tax returns, accounting statements, bank documents, current accounts/balances of clients and suppliers. Besides this information, copies of invoices, payment documents and agreements (underlying documentation) are very often requested.

232. Portuguese authorities report that the information requested was provided in all cases.

233. Portuguese authorities further explain that accounting information would usually be available in the Tax Authority's databases. This would most typically be the case in respect of financial statements, such as the balance sheets, the profits and losses, and other information such as expenses, as well as the number of employees and assets owned by a company.

234. In cases where other supporting documents are requested, namely invoices, payment documents, account sheets, the tax authorities state that they would notify the taxpayer (or its tax representative) to provide the documents and/or ask for the intervention of the Tax Inspectorate.

235. Tax audits are based on a risk based approach and covered all relevant entities and compliance is further enhanced by use of the standard audit file. Oversight conducted by the tax authorities in combination with the system of mandatory audits in respect of SAs including foreign trusts in Madeira as well as penalties applied during the period under review generally ensure that accounting information is available in practice.

236. Portugal's EOI partners report having asked for accounting information have in general not reported any specific difficulties.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirement (ToR A.3.1)

237. In Portugal, financial institutions are required to maintain full identity information of their clients by virtue of Notice No. 5/2013 issued by the Bank of Portugal acting in the capacity as the Central Bank for Portugal. These regulations set out very detailed procedures relating to the identification processes and the elements (e.g. names, date of birth, nationality, full address, professions) that have to be identified and verified by the financial institutions. It also has a detailed requirement as to the evidence (i.e. the identity information verified) that has to be maintained by the financial institutions for Bank of Portugal's supervisory purposes.

238. In addition to the above regulations, financial institutions are also subject to the AML Law which requires them to maintain full identity information of their clients. More specifically, financial institutions are required to maintain records establishing the identity of their clients for a period of 7 years from *(a)* the date of identification; or *(b)* the date on which the relationship has ended, under Article 14(1) of the AML Law.

239. Financial institutions are also explicitly required to keep full records of their financial transactions under Article 14(2) of the AML Law. More specifically, article 14(2) of the AML Law provides that "Original documents, copies, references or any other durable support systems, equally admissible in court proceedings as evidence, of the demonstrative documents and of the records of the transactions, shall always be kept to enable the reconstruction of the transaction, for a period of 7 years after its execution, even if the transaction is part of a business relationship that has already ended". In this respect Portuguese authorities explain this would include documents related to occasional transactions and that all information has to be kept for 7 years after a business relationship has ended.

240. Furthermore, all entities subject to CIRC or SNC, including banks, must keep accounting books, records and supporting documents for 12 years, under the record keeping obligations provided by the Accounting Standard (SNC) and the CIRC (Article 123 (4) of CIRC).

241. Article 23(2) of AML Law explicitly provides that "Under no circumstance can anonymous bank accounts or anonymous passbooks exist". In this regard, it is not possible for a financial institution in Portugal to allow its client to maintain anonymous bank accounts or anonymous passbooks.

242. For individuals as well as companies a TIN is obligatory when opening up a bank account in Portugal. This requirement was introduced in 2005 and Portuguese authorities state that banks were required to gather all TIN's since (Article 13 of the Bank of Portugal Notice no. 11/2005). Portuguese tax authorities state they do check bank account details as a standard procedure in case of any refund. Although there is no obligation for banks to inform the tax authorities automatically upon opening of a new account, Portuguese authorities feel confident that at present a TIN can be linked to all existing bank accounts in Portugal.

243. Furthermore, updated information on all bank accounts is available through a database that's kept by the Bank of Portugal. The Bank of Portugal is the Portuguese authority responsible for managing the database on deposit, payments, credit and financial instrument accounts (Article 81. º-A of the RGICSF). Information included in the Database of Banking Accounts is reported by participating entities (credit institutions, financial companies and payment institutions).Entities participating in the Database of Banking Accounts must send to Bank of Portugal, by the 15th of each month, information on the identification of accounts and the participating entity where the accounts have been opened, their opening and closing date and the identification of account holders and signatories, including proxies, agents or other representatives, thereby reporting any changes in the previous month. This database is accessible to judicial authorities (only in case of criminal procedures), to the Attorney General, and more recently also to the Portuguese FIU. This information is also available to the tax authorities after lifting of bank secrecy under the proceedings of Article 63B of the LGT, as explained further in section B.1 of the report. The database includes all accounts and accountholders in respect of Portuguese banks.

Conclusion and practice

244. There are sufficient legal obligations in place for financial institutions to maintain all records identifying all bank account holders as well as all related financial and transactional records in Portugal.

245. In Portugal, banks are regulated by the Central Bank of Portugal. As noted, the Central Bank rules establish clear requirements to keep all relevant transaction and financial records. These are complemented by the obligations of the AML regime on all Financial AML Service Providers. In this regard Portuguese authorities explain that 46 on-site AML inspections were carried out during the 2010-13 period (13 in 2010, 19 in 2012 and 14 in 2013). They state that specifically in 2013, the majority of inspections took place regarding credit institutions. This resulted in 62 sanctions being applied in respect of reporting obligations to the Bank of Portugal (see table below).

246. An AML service provider that does not comply with the obligations to keep information established by the AML Law, including obligations to keep client identity information, is liable to a penalty pursuant to article 53 (j) of the AML Law. In this regard, Portuguese authorities state that no breaches have been found in 2010, 2011 and 2012. Portuguese authorities report there is an annual plan for inspections, and the Bank of Portugal would do inspections outside this planning if needed. Within the Bank of Portugal a specific AML Unit was created in 2011 to deal with these inspections. Portuguese authorities further report that this unit is currently staffed with 17-18 employees and that under the review period no breach of obligations was detected during inspections.

247. Before 2011 AML/CTF supervision was divided among several units within the Banking Supervision Department and AML/CFT inspections were sometimes part of broader on-site actions, mainly based on prudential requirements. Due to these circumstances specific data concerning AML duties and sanctions applied came only available for years after 2011.

248. Regarding the main breaches noted and sanctions applied Portugal provided the following statistics

AML Duties	2012	Sanctions applied	2013	Sanctions applied
Customer Due diligence	0	0	1	Fine
Transaction examination	3	Fines	1	Fine
Reporting to FIU	2	Fines	0	0
Reporting to Bank of Portugal	0	0	62	Fines and admonitions
Training	2	Fines	2	Fines
Control systems	2	Fines	2	Fines

249. Portuguese officials from the Bank of Portugal state that no breach of the obligation under AML legislation to keep proper documents and records of bank accounts has been found during the review period.

250. Overall, Portugal has sufficient legal obligations and oversight in place regarding financial institutions to maintain all relevant transaction and financial records.

251. Over the period of review Portugal has received 79 requests for banking information (25 percent out of a total of 320 requests for information). Portuguese authorities state that the documents requested are bank account statements and sometimes all the correspondence (letters, etc.) exchanged between the taxpayer and the bank, in paper form or by email. Although Portugal also sends and receives banking information automatically on a regular basis under the EU Savings Directive[16], Portugal was only able to respond to 38 out of 79 cases where bank information was requested by EOI partners. In the remaining 41 cases Portugal was not able to provide this type of information. All the cases are elaborated further under section B.1.4 below, as they concern access to information and not the availability of banking information as discussed within the framework of element A and the record-keeping requirement in the context of ToR. A.3.1.

252. Banking information that could be provided, pertained mainly to companies and could be obtained based on a tax audit of the company involved[17]. Only in nine cases banking information related to individuals accounts was actually requested directly from a Bank in the context of an EOI request, following the procedure under article 63B LGT. In six cases permission was granted and information was obtained directly from the bank. Three of these cases were only initiated after the onsite visit that took place in May 2014. Three more cases are currently pending. Portuguese authorities explain that they did not experience any difficulty from the side of the banks in obtaining the information requested.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

16. Directive 2003/48/EC, of the European Council, of 3 June) and Agreements with third countries and dependent or associated territories.
17. Portugal clarified that this intervention should not be seen as a full tax audit, and there is no reassessment of the tax liabilities of the company involved. They further add that the tax audit unit has the exclusive right to decide what type of intervention is best suited to collect the requested information.

B. Access to Information

Overview

253. 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 Portugal's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

254. The access powers to obtain and provide information of the Portuguese competent authorities are set out in the Portuguese General Tax Law (LGT) and the Complementary Regime of Tax Inspection Procedure (RCPIT). The use of these access powers for information exchange purpose is interpreted by the Portuguese tax authority to be derived from the implementation of DTCs and TIEAs into domestic law based on the procedures and requirements set out in the Portuguese Constitution. Moreover, Decree-Law 61/2013 of 10 May 2013, which transposed the EU Council Directive 2011/16/EU into domestic law, clarified that the information gathering powers may be used for EOI purposes regardless of domestic tax interest, in relation to exchange of information with EU Member States as well as under other bilateral and multilateral instruments adopted by Portugal.

255. The Portuguese competent authority has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Portugal and stored in the Tax and Customs Authority (AT)'s institutional databases. During the review period, the Portuguese competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information.

256. Portuguese tax authorities have powers to access banking information without the need of prior consent of the holder of the protected data or the taxpayer in the circumstances defined in the LGT. The circumstances are broadly defined and can potentially cover most if not all exchange of information cases. If the circumstances are not met, the access of banking information would depend on judicial authorisation. In practice, however, the Portuguese competent authority appears to have interpreted the conditions for lifting bank secrecy narrowly and in many instances has failed to initiate the process to access bank information in order to reply to requests for exchange of information. During the period under review Portugal was not able to respond to 41 out of 79 cases where bank information was requested. Only in six cases information could be obtained directly from the bank without the prior consent of the taxpayer involved[18].

257. Portugal amended and streamlined its laws with regard to access to banking information for EOI purposes as of 1 January 2015. However, it can be noted these changes only affect requests made after that date and only in relation to banking operations or transactions that took place after 1 January 2015. A rather complicated layered system of legal provisions still applies to any requests in relation to periods prior to 1 January 2015. Requests relating to banking operations and transactions prior to September 2009 would still be covered by the access powers that existed under the legal framework that was in place between January 2005 and September 2009. The relevancy of these (older) provisions can be exemplified by the fact that only 6 out of 79 requests for banking information made during the period under review regarded periods after June 2010. Although Portugal initiated a number of positive steps recently in respect to its access powers to banking information, and Portugal states that it revised its internal procedures in May 2014, both changes remain complicated by the fact that the streamlining of its access powers in article 63B of the LGT only apply to, and insofar as, requests for banking information pertain to periods after 1 January 2015. Portugal should ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place.

258. With regard to the access to information held by lawyers and solicitors which are protected by professional secrecy law as set out in Law No. 15/2005 and Decree Law 88/2003, there are some uncertainties as to whether the professional secrecy may unduly restrict the access to information by the competent authorities in certain circumstances. In this regard, Portugal is encouraged to clarify the scope of the professional secrecy applicable to lawyers and solicitors to ensure consistency with the standard.

18. Three additional cases are currently pending. These cases were initiated after the onsite visit that took place in May 2014.

259. Up until 2013, a prior notification procedure was provided under Portuguese law (Decree-Law no. 127/90), but it was applicable only to exchanges that took place under the EU Directive 77/799/CEE and not to exchange of information under any other EOI instruments. There were exceptions to the notification when it could undermine the investigation and there was the indication of tax evasion and tax avoidance in the other Member State.

260. Effective as of 11 May 2013, Decree-Law 61/2013 introduced a prior notification requirement applicable to the exchange of all types of information under all EOI instruments. There are exceptions in line with the international standard e.g. if the request is of an urgent nature, or in cases where the notification may undermine the investigation if there are indications of tax evasion or tax avoidance in the other jurisdiction

261. In the context of the Phase 1 report it was noted that, for access to banking information and documents of a person related to a taxpayer, prior notification of the person by the Director-General was required under the LGT before he/she could request the information from the bank. There was no express provision in Portuguese law providing for the waiver or suspension of the statutory obligation of the Director-General to provide prior notification in all cases and it was found that this may hinder effective exchange of information.

262. However, specifically relating to banking information Portugal amended article 63B of the LGT as of 1 January 2015 and introduced exceptions to this prior notification for all EOI requests and in line with the standard for all EOI requests regarding bank information and irrespective of when the relevant operations or transactions took place. This amendment in combination with the exceptions included in Decree law 61/2013 put beyond doubt that an exception in line with the standard can be provided for in relation to all requests for bank information. Therefore, although it should be noted that access powers in relation to banking information are still layered and being dependent on when the actual operations and transactions took place, notification exemptions are applicable for any request made after 1 January 2015 and irrespective of when the relevant operations and transactions took place.

263. In practice, requesting jurisdictions have not asked the Portuguese tax authorities not to notify the accountholder in the cases where they accessed bank information directly from the bank during the review period under the proceedings of Article 63B. However, peer input indicated and Portugal confirmed that provided exceptions to prior notification based on Decree-Law 61/2013 of 10 May 2013 in cases where it was able to obtain the bank information directly from the company (as part of the accounting information). Although the notification procedure and the exceptions to

notification provided under Decree-Law 61/2013 in respect of all requests only entered into force on 11 May 2013 and was further extended to requests in respect of family members in 2015, there has been experience with operating exceptions to prior notification in the context of Decree-Law no. 127/90 and therefore the assessment team does not foresee any particular problem in practice with the more recent extensions.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

The competent authority

264. The designated competent authority for exchanging information for tax purposes under all Portuguese exchange of information instruments is the Minister of Finance, the Director General of the Tax and Customs Authority or their authorised representative. In addition, pursuant to the Ministerial Order 320-A/2011, the powers to exchange information on income tax matters were delegated to International Relations Department (DSRI, *Direção de Serviços de Relações Internacionais*) of the Portuguese Tax and Customs Authority which should act in co-operation with the tax inspectorate departments. The International Relations Department functions as the EOI Team.

265. The contact information of the Portuguese competent authority is fully identifiable in the OECD and Global Forum websites. Moreover, Portugal generally provides the contact information of its competent authority to treaty partners when finalizing treaty negotiations.

Bank, ownership, and identity information *(ToR B.1.1)* ***and accounting records*** *(ToR B.1.2)*

Ownership and identity information and accounting records

266. The Portuguese tax authorities' powers to collect information are derived from statutory provisions, mainly the General Tax Law (LGT) and the Complementary Regime of Tax Inspection Procedure (RCPIT). Moreover, ownership and accounting information is, in many instances, already available in the hands of the tax authorities, as Portuguese tax law provides for extensive tax reporting obligations, as described in Part A of this report.

267. Article 63(1) of the LGT sets out the general powers of the tax authority to access information (i.e. ownership and identity information and accounting records) and the actions that it may take to assess a "taxpayers' tax situation". The powers of the Portuguese tax authority include:

- the access to the installations and places where there may exist elements related to activity of taxpayers or to the activity of other taxable persons;
- the power to examine and mark taxpayers' accounting and book-keeping records, as well as all other elements that may explain their tax situation;
- the power to access, consult and test taxpayers' computer system, including the documentation on its analysis, programming and implementation;
- the power to request the collaboration of any government entity deemed as necessary for assessing their tax situation or the tax situation of third parties with whom the taxpayers maintain economic relations;
- the power to request documents from notaries, registrars and other official entities and to use their installations where it shall be necessary for conducting the inspection procedure.

268. The RCPIT regulates the tax inspection procedure and specifically establishes that *"tax inspection"* comprises the tax authorities' actions in "the co-operation under international conventions or [European] community regulations on the prevention and repression of tax avoidance and tax fraud" (Article 2(2)(j), RCPIT). Moreover, Article 29(2) of this Regime details the tax authorities' powers in the context of a tax inspection. It specifically provides that the following documents can be requested to elucidate the taxpayer's situation *(i)* accounting records and related documents; auxiliary accounting records; *(ii)* other documentation relating to internal or external economic and financial transactions conducted with customers, suppliers, credit institutions, companies and other entities, including extracts processed by credit institutions and financial companies, *(iii)* contracts, budgets, price lists; *(iv)* reports, opinions and other documentation issued by chartered accountants, auditors, lawyers, tax consultants and external auditors; and *(v)* correspondence sent and received in connection to the taxpayer's business and activities.

In practice

269. In practice, the Portuguese competent authority (the EOI team) has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Portugal and stored in the Tax and Customs Authority (AT)'s institutional databases.

270. Ownership and identity information in relation to companies and partnerships (with the exception of information on shareholders of joint stock companies and partnerships limited by shares) is available from the AT's databases. The EOI team has direct access to the database and can access the relevant information in order to reply to EOI requests. In order to access ownership information concerning joint stock companies and partnerships limited by shares, the EOI team needs to obtain the information directly from the company or partnership, as the case may be.

271. With regard to accounting information, the AT databases also contain a number of accounting records including financial statements (balance sheets and profit and loss accounts), information on the assets owned by the taxpayer and the number of employees. The EOI team also has direct access to this information.

272. If underlying documentation is requested, including copies of invoices, account sheets, or contracts, these need to be obtained from the taxpayer. As a rule, if specific documents are being requested by the EOI partner (such as a copy of an agreement between company A and company B), the EOI team would normally send a letter directly to the taxpayer referenced requesting the relevant document(s). If the EOI request covers a broad range of documents or is more general (i.e. copies of all transactions carried out in a given year), the EOI team will as a rule request the assistance of the tax inspectorate.

273. The following procedures are followed to collect information:

- *information held by the tax authorities in its databases:* the EOI team has direct access to the databases and collects the information directly;
- *information held by the Commercial Registry:* the EOI team has direct access to a wide range of information (including initial registration, change in the name, and change in the address). Registration information is also publicly available. Moreover, the Commercial Registry directly reports to the AT, under the integrated system of commercial registration – SIRCOM, a series of events concerning the registered legal entities, including new registration, amendments to statutes/articles of associations, changes in the administrative and supervisory bodies, dissolution and liquidation. The EOI team can also directly contact the Commercial Registry and request its co-operation;

- *information is held by other Portuguese governmental authorities :*the EOI team will contact the relevant authority which is required to co-operate based on Article 49 of the CPPT. No timelines are set but it has been the experience of the Portuguese competent authority that all requests are responded to in a timely manner;
- *information held by the taxpayer:* for "simple" requests where the information is clearly specified in the EOI request, the EOI team will usually send a letter directly requesting the taxpayer to provide the information within 10-30 days. Where the request is complex or when it involves, for instance, a visit to the taxpayers' premises, the EOI team will request the assistance of other departments of the AT/other authorities such as the District Tax Directorates, the Large Taxpayers Unit or the Regional Tax Inspectorate in the Autonomous Region of Madeira (further details below). The requests are treated as a priority by these departments/authorities and, under the EOI Manual, must be replied by these authorities within a maximum period of five months;
- *information is in possession or control of a third party such as a service provider:* the same procedures established for gathering information from taxpayers also apply to this case.
- *information is in possession or control of a bank:* please see details in the next sub-section which deals specifically with access to bank information.

274. As mentioned above, in order to reply to requests that require contacting the taxpayers or third-parties (e.g. certain requests for accounting information and underlying documentation), the EOI team will request the assistance of other departments of the Tax Authority or in some cases the tax authorities in the Autonomous Region of Madeira. The EOI team shares background information about the request with these authorities, including information about the foreign competent authority and the foreign investigation. The most common authorities relied upon when taxpayers/service providers need to be contacted are the District Tax Inspectorate Directorates, the Large Taxpayers Unit and the Regional Tax Inspectorate in the Autonomous Region of Madeira. The Madeira authorities are involved in cases where taxpayers are registered in the Autonomous Region of Madeira and the other two authorities are involved in relation to taxpayers in the rest of the Portuguese territory.

275. The EOI team has reported delays in the co-operation with the Regional Tax Inspectorate of Madeira. The EOI team reported that in most of the six cases it took more than one year to receive a reply from the Autonomous Region of Madeira in case intervention of the Madeira authorities

was needed. In this respect Portugal notes that in the case of Madeira Autonomous Region, the delays were due to the lack of human resources, as there is only one tax inspector who replies to EOI requests, and the work related to this is only one part of his total work package. At the end of 2012, the Tax Inspectorate in the Autonomous Region of Madeira (*DRAF, Direção Regional dos Assuntos Fiscais*) was staffed with 16 tax inspectors in total.

276. During the review period, the Portuguese competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information, as confirmed by peer input (requests concerning bank information are dealt with separately in the section below). The requests for ownership and identity information could be replied in the great majority of the cases with information available in the tax databases; and, in some cases, with information obtained from other government authorities. In order to reply to requests for accounting information, in most cases, information requested was obtained from the taxpayer, while in the remaining cases information already was in the hands of the tax authorities.

277. Peers were generally satisfied with the timeliness and completeness of the responses received from Portugal. However, one peer reported that it never received assistance from Portugal on its request for third-party interviews. This appears to have been caused by an organisational issue faced by the Portuguese competent authority when replying to that specific requests rather than a difficulty in accessing the information. This issue is dealt with in section C.1.7 of this report.

Banking information

278. The tax administration's powers to access banking information or documents are provided in Article 63B of the LGT. Under Article 63B(1) of the LGT, effective from 6 September 2009 the tax administration shall have powers to access all banking information or documents, without the need for consent of the holder of the protected data or the taxpayer,

(a) Where there is an indication of crime on tax matters;

(b) Where there is an indication of lack of accuracy of what has been declared or in the absence of any tax return required by law;

(c) Where there is an indication of non-justified increments in property, according to the provisions of Article 87(1)(f) of the LGT;

(d) Where it concerns the verification of the compliance of the supporting documents for accounting records of IRS (Personal Income Tax) and IRC (Corporate Income Tax) taxpayers who shall be subject to organised accounting;

(e) Where there is a need to monitor the conditions of the preferential tax schemes of which the taxpayer shall take advantage;

(f) Where it becomes impossible to certify and quantify, directly and accurately, the taxable amount, under Article 88 of the LGT and, in general, where the requirements to undertake an indirect measurement are met;

(g) Where there are proven debts to the tax administration and social security.

279. As of 1 January 2015 Portugal introduces a significant change regarding access to banking information for EOI purposes. In November 2014, the Portuguese Parliament proposed a number of alterations to the 2015 Budget Law (Law 82-B/2014, of 31 December 2014), including an amendment of Article 63B of the LGT. The budget law was adopted in 25 November 2014, and effective as of 1 January 2015 Article 63B(1) of the LGT is complemented with the following new sub-paragraph:

(h) Where it concerns information requested under international agreements and conventions on tax matters to which the Portuguese Republic is bound.

280. As Portugal explains this new paragraph effectively enables the Portuguese tax authorities to access all banking information or documents, based on an EOI request, without the need for consent of the holder or the tax payer, in cases where the request:

- is made on or after 1 of January 2015; and
- regards *banking operations and transactions* carried out after 1 January 2015 (art. 63B(9) of the LGT).

281. Although this can be considered a significant change in the powers to access to bank information, it can also be noted that this change will typically affect requests made after 1 January 2015 and only insofar these requests relate to *banking operations and transactions*[19] that took place after 1 January 2015(Article 63B(9) of the LGT). Therefore these changes do not have an impact on the 79 requests for bank information that Portugal received during the period under review. These request, as well as all other requests that can be made after 1 January 2015 but that would involve access to *banking operations and transactions* carried out *before* 1 January 2015, are exclusively governed by previous versions of Article 63B of the LGT as further described in this section. The following paragraphs, unless otherwise

19. However, it can be confirmed that information regarding signature cards, account opening documentation can be provided, even if the transaction took place at a later moment (after 1 January 2015).

mentioned, therefore describe the most widespread situation where a request for information regards bank information pertaining to periods up until 1 January 2015.

282. The Director-General of the Tax and Customs Authority is required to issue a decision based on a reasoned opinion explicitly stating the circumstances (i.e. the circumstances listed in Article 63B(1) (a) to (g) of the LGT) justifying the access of the information. In the case where banking information is accessed for EOI purposes, the same procedure is applied (i.e. the Portuguese competent authority, upon receiving an EOI request, verifies if the situation described by the foreign competent authority falls within one of the circumstances of Article 63B(1) of the LGT). This procedure is also applicable for those requests that fall within the scope of the new sub-paragraph h) of Article 63B(1) of the LGT. In all these cases, the Director-General issues a decision accordingly (Articles 63(7) and 63B(4) of the LGT).

283. In the event where the EOI request does not fall within any of the circumstances referred in Article 63B(1) of the LGT, the Portuguese competent authority may still obtain the relevant banking information by applying to the Court for an order to compel the information holder to release the information to the competent authorities under Article 63(6) of the LGT. This procedure would involve hearing the accountholder as part of the process to lift bank secrecy. Although in practice Portugal was not able to provide the requested bank information in a substantial number of cases during the period under review (Portugal was not able to respond to 41 out of 79 cases), Portuguese authorities did not resort to obtaining the Court order to access banking information for EOI purposes and the court procedure was never invoked. Nevertheless, there are no known legal impediments which may prevent the competent authority from obtaining the Court order. In addition, based on other tax cases relating to application of DTC by the Portuguese court (i.e. cases not related to EOI), the Portuguese authorities have observed that the Court has consistently treated the Commentary to the OECD *Model Tax Convention* as ambulatory and interpreted Portugal's obligations under its DTC in accordance with the principles and guidance provided in the Commentary. In this regard, the Portuguese authorities are of the view that the Court will adopt the same approach in interpreting Portugal's treaty obligations on EOI matters. However, it can be noted that Court order to access banking information for EOI purposes was requested implicitly by a jurisdiction as part of a broader EOI request also pertaining to periods prior to the 2000, but the access power was not used by Portugal in that situation.

284. The legal framework for accessing bank information described above has been in effect from 6 September 2009. The Portuguese authorities report that this framework only applies to collect information dated from that day onwards. Similarly, future requests that fall within the scope of the new

sub-paragraph h) of Article 63B (1) of the LGT will only be applicable to requests for bank information pertaining to periods after 1 January 2015. The legal basis and procedures for accessing bank information in Portugal has been significantly amended throughout the years, and different legal regimes and procedures will continue to apply depending on the year the information relates to. For example, if an EOI request relates to bank information from years 2005 to 2010, a different framework will apply concerning the collection of bank information from 1 January 2005 to 5 September 2009 and from 6 September 2009 to 31 December 2010. The same example can be given for the situation where a (future) EOI request relates to bank information from years 2013 up until 2015. Also in this example different frameworks will apply concerning the collection of bank information from 1 January 2013 to 31 December 2014 and from 1 January 2015 to 31 December 2015. The relevance of these different frameworks can be exemplified by the fact that 73 out of 79 requests for banking information made during the period under review regard operations or transactions that took place before June 2010. The different frameworks applicable for the collection of information from years 1999 until the present are summarised below:

Years	Legal basis for access	Summary of the procedure to access bank information
01.01.1999-31.12.2000	Article 63(2),(4) (b) and (5) of LGT	Indirect access – Court order always needed, unless the person concerned (i.e. the accountholder) authorised the access to bank information
01.01.2001-31.12.2004	Article63B(2)(c), (3) and (4) and Article 146 B of CPPT	Direct access via decision of the Director General when there is serious indication of intentional tax crime and other situations where there is indicia of untruthful statements from the taxpayer, with prior hearing of the person concerned (i.e. the accountholder). The person concerned may appeal in court against the access in the 10-day period following the notification and the appeal has "suspensive effects" concerning the use of the information. For other cases, only indirect access via court order.

Years	Legal basis for access	Summary of the procedure to access bank information
01.01.2005-05.09.2009	Art. 63B (1) (a) and (b), (4), (5) as amended by Law 55B/2004 and Article 146 B of CPPT	Direct access via decision of the Director General when there is indicia of tax crime and other situations where there is indicia of untruthful statements from the taxpayer, without prior hearing of the person concerned (i.e. the accountholder). The person concerned may appeal in court against the access in the 10-day period following the notification and the appeal has "devolutive effects" only (no "suspensive effect"). For other cases, only indirect access via court order.
06.09.2009-31.12.2014	Art. 63B (1) and (4) as amended by Law 94/2009 and Article 146 B of CPPT	Direct access via decision of the Director General, without the need for consent of the holder of the protected data or the taxpayer, in the following circumstances: a) Where there is an indication of crime on tax matters; b) Where there is an indication of lack of accuracy of what has been declared or in the absence of any tax return required by law; c) Where there is an indication of non-justified increments in property, according to the provisions of Article 87(1)(f) of the LGT; d) Where it concerns the verification of the compliance of the supporting documents for accounting records of IRS (Personal Income Tax) and IRC (Corporate Income Tax) taxpayers who shall be subject to organised accounting; e) Where there is a need to monitor the conditions of the preferential tax schemes of which the taxpayer shall take advantage; f) Where it becomes impossible to certify and quantify, directly and accurately, the taxable amount, under Article 88 of the LGT and, in general, where the requirements to undertake an indirect measurement are met;

Years	Legal basis for access	Summary of the procedure to access bank information
06.09.2009-31.12.2014 *(cont.)*	Art. 63B (1) and (4) as amended by Law 94/2009 and Article 146 B of CPPT *(cont.)*	g) Where there are proven debts to the tax administration and social security. Notification must be given to the account holder within 30 days from the date of the Director General's decision. The person concerned may appeal in court against the access in the 10-day period following the notification and the appeal has "devolutive effects" only (no "suspensive effect"). For other cases, only indirect access via court order.
01.01.2015 – to date	Art. 63B (1) and (13) as amended by Budget Law for 2015	Direct access via decision of the Director General, without the need for consent of the holder of the protected data or the taxpayer, in the following circumstances: a) Where there is an indication of crime on tax matters; b) Where there is an indication of lack of accuracy of what has been declared or in the absence of any tax return required by law; c) Where there is an indication of non-justified increments in property, according to the provisions of Article 87 (1) (f); d) Where it concerns the verification of the compliance of the supporting documents for the accounting records of IRS and IRC taxpayers who shall be subject to organised accounting; e) Where there is a need to monitor the conditions of the preferential tax schemes of which the taxpayer shall take advantage; f) Where it becomes impossible to certify and quantify, directly and accurately, the taxable amount, under Article 88 and, in general, where the requirements to undertake an indirect measurement are met;

Years	Legal basis for access	Summary of the procedure to access bank information
01.01.2015 – to date *(cont.)*	Art. 63B (1) and (13) as amended by Budget Law for 2015 *(cont.)*	g) Where there are proven debts to the tax administration and social security; h) Where it concerns information requested under international agreements and conventions on tax matters to which the Portuguese Republic is bound. In the cases covered by sub-paragraph h), there shall be no notification of the concerned persons nor prior hearing of the relative or third person where the request for information is of an urgent nature or such hearing or notification may endanger the investigation in the requesting State or Jurisdiction and where such shall be expressly requested by such State or Jurisdiction (Art. 63B(13). [This provision applies retrospectively unlike the amendment to the access power that is included under paragraph h, see also below under section B.2].

285. The notification procedures that apply pursuant to the different legal frameworks described above are further reviewed in section B.2 of this report.

In practice

286. During the review period, Portugal has received 79 requests for the provision of bank information. Of the 79 requests, 33 refer to bank information of companies and 46 refer to bank information of individuals. In practice, Portugal adopts different procedures to access bank information depending on whether they related to legal entities (corporate taxpayers) or individuals and in only nine cases the procedure to lift bank secrecy based on a decision from the Director General was actually successfully pursued by the competent authority and information has been exchanged in six of these cases. In three of these cases the Director General has issued a favourable decision, but the information has not been obtained from the banks and exchanged with EOI partners yet. In six out of nine cases the procedure was initiated only after the onsite visit that took place in May 2014, and during which all pending cases were discussed.

287. The file for the Director-General's decision is prepared by the EOI-team (DSRI – *Direção de Serviços de Relações Internacionais*), and in practice the Director-General will follow the advice given by DSRI. During the period under review only three cases were actually presented to the Director-General for his decision, as the other requests did not make it to this stage for various reasons, but all based on a judgement within the DSRI.[20] In practice DSRI made a judgement how to obtain the requested banking information. As elaborated below, during the period under review the EOI team concluded in a significant number of cases that the request would not meet the requirements as put forward under article 63B of the LGT, or considered that more information was needed to meet the requirements. In most cases DSRI decided to take an alternative route, effectively circumventing the procedure of article 63B of the LGT, and obtained the information with the consent of the tax payer involved, or, in cases where the account was held by a company or an individual entrepreneur, the EOI team decided to gather the information directly from the taxpayer – through the intervention of the tax inspectorate – and take it from the accounting information.

288. With regard to the 33 requests for bank information related to companies, bank information has been accessed as follows:

- in relation to 26 requests, the information was obtained directly from the companies. Portuguese law requires that bank statements are kept as part of underlying documentation to support the accounting records. In terms of procedure, the Portuguese competent authority requests the tax inspection directorate to obtain copies of bank documents containing the information requested by the foreign competent authority. An inspector will as a rule visit the company and request to see the accounting documentation, including bank statements, and make copies of the documents relevant to the EOI request. The tax inspector is not required to inform the company that these documents are going to be provided to a foreign authority as per an EOI request. The inspection powers under the RCPIT are broad comprising both actions in relation to domestic matters and in co-operation in international matters, in what concerns the prevention and repression of tax avoidance and tax fraud.
- two requests refer to companies that could not be identified neither in the Portuguese tax Authority databases nor in the National Registry

20. As noted six more files that related to requests made during the period under review were presented for the Director-General's decision after the onsite visit. In three of these cases information has been provided to the EOI partners since, the remaining three cases are pending.

of Legal Persons and, therefore no information could be provided; and

- in relation to five remaining requests, bank information was not provided to the requesting jurisdiction. One request referred to a company that had been dissolved, and as such Portugal was not able to access the information from the company. Although, as stated above, in case of liquidation of a company or partnership, the owners or partners (*sócios*) are required to appoint a custodian of the accounting books, documents and of all other accounting elements of the company or partnership which is required to be kept for a period of five years (Article 157(4) of CSC). This information could not be obtained in this specific case. However, the assessment team does not know the reason why this information could not be obtained in this specific case. In the remaining requests Portugal explained that it considered the requests not to be sufficiently justified. All these cases were re-assessed after the onsite visit and in 2 cases, additional information was requested from the requesting jurisdiction. In one of these cases, the requesting jurisdiction has withdrawn the request. In the other case, Portugal explained that it was waiting for the requesting jurisdiction to send the additional information as requested.[21]

289. In relation to the 46 requests for bank information pertaining to individuals, Portugal has provided information in response to twelve requests. In relation to these twelve requests, bank information was gathered as follows:

- in relation to five requests, the information was obtained from the taxpayer (accountholder) by the Portuguese tax inspectors as those taxpayers were also professionals and required to keep accounting information, including bank account statements;
- regarding one request the information was obtained from the bank but with the accountholder's consent (i.e. the requesting jurisdiction obtained the consent of the taxpayer when making the request to Portugal);
- in relation to six requests, the information was gathered directly from the banks following a (positive) decision from the Director-General.

21. Portugal notes that in relation to one request the information was obtained directly from the bank after the cut-off date, following a positive decision from the Director-General issued in December 2014. The requested information was sent to the requesting jurisdiction on 27th January 2015.

290. In relation to the remaining 34 requests concerning accounts held by individuals, the situation is the following:

- in relation to two requests, the requesting state has withdrawn the request.
- in relation to seven requests, the accountholder was not found in the tax databases and Portugal has not consulted the banks. As Portuguese authorities explain for identification of a taxpayer in the AT databases they need the Portuguese TIN or the name of the taxpayer and/or any other element which allows the correct identification of the concerned taxpayer (where there are two or more identical names or where the name of the taxpayer is incomplete, which is very common, the Portuguese authorities need the place of birth of the taxpayer involved or any other element, such as the address, relating to such taxpayer). The Portuguese authorities further report that only persons having a Portuguese TIN can open a bank account in Portugal. Indeed, since 2005, financial institutions are required to request a Portuguese TIN to any person that wishes to open a bank account in Portugal pursuant to Article 21 of Bank of Portugal's Notice 5/2013 (which replaced Article 13 of the Bank of Portugal Notice 11/2005) Banks were required to gather all TIN's since. In addition, Portuguese tax authorities do check bank account details as a standard procedure in case of any refund. Although there is no obligation for banks to inform the tax authorities automatically upon opening of a new account, Portuguese authorities feel confident that at present a TIN can be linked to all existing bank accounts in Portugal.
- 25 requests were not answered as the EOI team considered that they were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy. In such cases, the EOI team provided a summary to the circumstances where bank secrecy could be lifted under Portuguese law to the requesting jurisdiction. Following the onsite visit all 25 cases were re-assessed by DSRI. In this respect Portugal reports that in 4 cases further information was requested from the requesting jurisdiction (Portugal did not yet receive an answer yet in these cases) and in relation to 6 cases the procedure for lifting of banking secrecy was initiated by DSRI. Three of these cases are all still pending. However, Portugal advises that the relevant information is already requested from the Banks, and expects that this information can be

provided to the EOI partners shortly[22]. In the 15 remaining cases, 2 requests have formally been withdrawn by the requesting jurisdiction and 13 cases are being reassessed by specialists.

291. Access to bank information was a recurring theme in the collected peer input. Peers reported difficulties in obtaining bank information from Portugal and considered the conditions for access to be restricted and not in line with the international standard. Nine peers that provided input to this review reported having requested bank information and six of them reporting having had difficulties to obtain information during the review period or anticipating no replies. It may also be noted that they were told different reasons for that. The main issues raised by the peers were:

- a peer was told that evidence of tax crime was required in order to ask for bank information;
- a peer was requested to provide proof and ground that the request met the conditions of Article 63B(1) of the LGT;
- a peer was told that access to bank information was only available in limited circumstances;
- some peers were told that prior approval of the taxpayer was required to obtain the information.

292. The Portuguese competent authority acknowledged that there may have been some communication problems and that some letters sent to EOI partners contained the wrong translation of the Portuguese legal requirements (for instance, requiring partners to provide "evidence" of a tax crime rather than fulfilling one or more of the "indicia"). Portugal reported that it sent correspondence to its treaty partners in April 2014 to clarify this situation and inform that it is open to assist the partners in reopening the requests for bank information that were not replied during the review period. Portugal also reported that some requests contained very little information about the foreign investigation or the behaviour of the tax payer in the requesting jurisdiction and it was not sufficient to allow them to verify whether the request met the requirements of the Portuguese domestic legislation. It further stated that as rule Portugal is able to provide information to its EOI partners even when very little information on the requests are provided, but when it comes to requests for bank information it needs more information on the behaviour of the tax payer in the requesting jurisdiction, justifying the request.

22. In relation to three cases the Director-General has issued a positive decision to lift bank secrecy in December 2014 and information was sent in 2015 after the cut-off date.

293. During the on-site visit, the assessment team had the opportunity to review some anonymised requests for bank information received from Portugal and it was of the view that some requests did provide sufficient information for Portugal to proceed with accessing bank information directly from the banks by applying the procedure involving the Director-General's decision. At the time of the on-site visit it did not appear that all persons responsible within DSRI or the EOI team seemed to be aware of the details of these requests and the decisions taken. Formal procedures also seemed absent in this specific context. Therefore decisions taken not to proceed with accessing banking information directly from banks seem to be taken implicitly, on the level of single administrators within the EOI unit, and not on the level of the management of DSRI or the Director-General. Portugal's lack of sufficient internal procedures and narrow interpretation of its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period (see also section C.1 of this report).

294. Portugal states that it revised its internal procedures in May 2014 in order to address these weaknesses. Moreover, following the onsite visit, any request involving banking information must be reported immediately to the management who assigns it to a specialised legal expert, and all pending requests were re-assed by specialised legal experts since. However, it should also be noted that generally, investigation is a time bound manner and if it is not taken to its logical end in a timely manner, it may not serve its ultimate purpose. Regarding the type of revision has been initiated by Portugal in its internal procedures, all internal procedures regarding access to banking information have been reviewed and discussed with all staff involved. The internal manual has been updated and a specific chapter on the processing of requests for bank information has been included. The manual is now submitted for final approval, and will be distributed among a group of circa 80 staff that is directly involved (EOI unit, tax audit units). immediately after that. In the meantime, however, any request involving banking information must be reported immediately to the management who assigns it to specialised legal experts and all unanswered requests were re-assessed by specialised legal experts since. A first sign of these changes is a badge of 20 approvals that the DG took in late December. In a number of cases information was exchanged, and the cases that have been exchanged before the cut-off date have been included in the report. Communications have been sent to treaty partners, explaining the situation and whether information was still useful to them and offered to reassess all cases. In this respect, and in relation to information provided in pending cases after the on site visit (e.g. to two main European EOI partners), Portugal stated that their impression is that the information is still needed and appreciated.

295. Moreover, during the period under review, the Portuguese competent authority did not consider applying for a court order under Article 63(6) of the LGT when, in its view, the requests did not meet the requirements for direct access pursuant to the Director-General's decision. In practice Portugal chose a more practical approach, and based access on the voluntary authorisation by the accountholder or gathered bank statements and other bank documents, from accounting information that's available with companies in the great majority of the cases.

296. The statistics provided by Portugal on the derogation of bank secrecy covering both domestic and exchange of information cases confirm that, in practice, Portugal requests the consent of the accountholder to access bank information in the great majority of the cases. Bank information was accessed based on the voluntary authorisation by the accountholder in 599 cases in 2009, 411 cases in 210, 357 in 2011 and 249 in 2012. Bank information was accessed directly from the bank based on a decision from the Director General both for domestic and exchange of information purposes in 46 cases in 2009, 29 cases in 2010, 203 cases in 2011 and 81 cases in 2012. As Portugal explains the sharp increase in 2011 is related to the changes regarding access to banking information that took effect in 2009 and that were followed by a special tax inspection campaign in 2011 on the oversight of loans *vs.* acquisitions of immovable property, giving rise in 2011 to an increase of the number of proceedings for the lifting of banking secrecy.

297. In relation to one case, the EOI request did not contain the name of the account holder. As Portugal explains in this case the request was sent to the Tax Inspection Directorate jointly with a description of the investigations made by the requesting State. The taxpayer was notified to authorise the providing of the banking information requested concerning the period 2004 to 2007. The taxpayer was willing to co-operate. As Portugal further explained he reported the facts and provided the supporting banking documents.

Conclusion and practice regarding access to banking information

298. During the period under review Portugal received 79 requests for banking information. All these requests regarded bank information pertaining to periods prior to 1 January 2015, and therefore access was not affected by the recent amendments contained in the budget Law for 2015. These requests were generally dealt with unsatisfactorily, as Portugal was not able to respond to 41 out of 79 cases. Only in six cases information was obtained directly from the bank without the prior consent of the taxpayer pursuant to the Director-General's decision, and three of these cases were initiated only after the onsite visit in May 2014[23]. Further, Portuguese competent authority

23. As noted three more cases are pending at the cut-off date.

did not consider applying for a court order under Article 63(6) of the LGT when, in its view, the requests did not meet the requirements for direct access under Article 63B of the LGT pursuant to the Director-General's decision. Where banking information could be accessed it was mainly based on a tax audit of the company involved, or the voluntary authorisation by the accountholder. Consequently, the procedure to lift bank secrecy under article 63B of the LGT as well as the possibility to obtain a court order under article 63(6) of the LGT in practice represents a threshold that is, in its effect, higher than the standard of foreseeably relevance. It is the assessment team's view that this implicit and procedural threshold also explains most of the 41 cases where banking information could not be provided. As stated most of these requests were, in the view of the EOI team, not duly justified and/or documented in the light of the standard of "foreseeably relevance" as well as the domestic legislation that provides for the possibility of lifting banking secrecy. However, peer inputs as well as cases inspected during the onsite suggest that many of these requests actually met the standard of foreseeably relevance. In practice, however, Portugal was not able to successfully process these requests and access banking information in these cases. Instead, it seems likely that requests received are implicitly judged on the chance of success with the Director-General's decision. However, with only 6 out 79 requests actually passing through this procedure successfully, this procedure significantly hampers effective exchange of bank information[24]. Overall, Portugal's lack of sufficient internal procedures and narrow interpretation of its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period.

299. Portugal amended and streamlined its laws with regard to access to banking information for EOI purposes as of 1 January 2015. However these changes only affect requests made after that date and only in relation to banking operations or transactions that took place after 1 January 2015. A rather complicated layered system of legal provisions still applies to any requests to be made in relation to periods prior to 1 January 2015. The relevancy of these provisions can be exemplified by the fact that only 6 out of 79 requests for banking information made during the period under review regard periods after June 2010. Furthermore, although Portugal initiated a number of positive steps recently in respect to its access powers to banking information, and Portugal states that it revised its internal procedures in May 2014, these steps are also very recent and the effects of these changes could not be fully assessed in the context of the current review. Portugal should ensure that its access powers and procedures concerning the access to bank information are

24. As noted three more cases are pending at the cut-off date.

effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place.

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

300. 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.

301. In Portugal, the powers to gather information for tax purposes are primarily provided under the General Tax Law (LGT). Moreover, the Complementary Regime of Tax Inspection Procedure (RCPIT), approved pursuant to Decree Law 413/98, provides for a detailed framework concerning the power to conduct tax inspections.

302. Article 63(1) of the LGT specifically provides *"the competent bodies may, under the law, carry out all the actions necessary for the assessment of the taxpayers' tax situation"*. The article contains neither an express language allowing the competent bodies to carry out actions solely to assess a *"taxpayers' tax situation"* in a foreign jurisdiction nor an express language limiting the actions only to assessing a *"taxpayers' tax situation"* in Portugal. Similarly, there is neither an express provision in Article 63B(1) of the LGT providing for the access of banking information solely for EOI purposes nor an express provision restricting the access only for domestic tax purposes.

303. Article 1(1) of the LGT does provide that "This law regulates tax relations, subject to [European] Community law and other provisions of international law that are directly in force in the domestic legal system and subject to special legislation". In addition, under Article 64(2) of the LGT, it is provided that "The duty of confidentiality shall cease where (c) mutual assistance and co-operation between the [Portuguese]tax administration and tax administrations of other countries resulting from international conventions [i.e. Agreements] to which Portuguese State is bound, whenever reciprocity is provided". Taken these provisions together and as a general principle, the Portuguese tax authority interprets its domestic law in a manner that allows them to comply with a request for exchange of information with its EOI partners using the domestic powers and resources at its disposal. The Portuguese tax authority's interpretation is based upon its constitutional provisions.

304. Under Portugal's Constitution, the obligation to exchange information results directly from the provisions of tax treaties or other international agreements (e.g. TIEAs) concluded by Portugal as these international legal instruments apply directly in the Portuguese internal law once they are duly ratified and published (Article 8, Portuguese Constitution).The Constitution also provides that international treaties take precedence over domestic law

in case of conflict (Article 8). Portugal's Constitutional Court has confirmed the general principle of supremacy of treaties over domestic law (Decision No. 67/85).As Portugal has obligations under its international agreements to exchange information, it must give effect to such agreements and use all powers at its disposal to fulfil these obligations.

305. Moreover, Decree-Law 61/2013 of 10 May 2013, which transposed the EU Council Directive 2011/16/EU into domestic law, clarified that the information gathering powers may be used for EOI purposes regardless of domestic tax interest, in relation to exchange of information with EU Member States but also under other bilateral and multilateral instruments signed by Portugal. In this respect, Article 14(1) of Decree-Law 61/2013 provides that:

> For compliance with the obligation of providing the information requested by a Member State pursuant to this Decree-law, all powers granted by law to the Tax and Customs Authority shall be used, subject to the rights and guarantees of taxpayers and of other tax liable persons, to access and collect data and information necessary for the assessment of the taxpayers' situation, even though it may not need such information for its own tax purposes. (emphasis added)

306. Article 21(1), on the extension of the scope of application of Decree-Law 61/2013, clarifies that "the rules and procedures laid down in the Decree-law shall apply, with the necessary adjustments, whenever assistance and administrative co-operation on tax matters results from international bilateral or multilateral agreements or convention to which the Portuguese Republic is bound".

307. Further the power to conduct a tax inspection in the context of EOI generally is clear. The RCPIT, regulating the tax inspection procedure, establishes that *"tax inspection"* comprises the tax authorities' actions in "the co-operation, under the provisions of international conventions or [European] community regulations, in what concerns the prevention and repression of tax avoidance and tax fraud" (Article 2(2)(j), RCPIT).

308. In practice, the Portuguese competent authority reports that there have been no instances where Portugal failed to gather information to reply to an EOI request because it did not have a tax interest in that information. The peers that provided input to this review have not raised any issues in this respect.

Compulsory powers *(ToR B.1.4)*

309. Sanctions are applicable for non-compliance of orders to produce or furnish requisite information requested by the tax authority. For instance, Article 32 of the Complementary Regime of Tax Inspection Procedure

(RCPIT) provides that the refusal to co-operate and the resistance to any actions taken by the tax inspector, where illegitimate, may result in disciplinary, administrative and criminal liability action against the offender.

310. In addition to the RCPIT, penalties are also provided for in the RGIT. Article 113 of the RGIT provides that the refusal to deliver, display or present books and tax relevant documents shall be punished with a fine ranging from EUR 375 to EUR 75 000. Article 113(3) and (4) of the RGIT further clarifies that the delivery, display or presentation of books, accounting or tax relevant documents shall be deemed as refused where the offender shall not allow the free access or use by the competent officials of the locations subject to inspection by tax administration officials. Tax relevant documents are the books, other documents and respective computer versions absolutely necessary for the assessment and inspection of the taxpayer's tax situation. Under Article 29(1)(e) of the RCPIT, the competent authorities also have powers to take statements from the taxpayer, member of corporate bodies, chartered accountants, statutory auditors or from any other person, whenever their statement is relevant for establishing the taxable events.

311. During the review period, the Portuguese tax authorities applied the sanction provided under Article 113 of the RGIT for the refusal to deliver, display or present books and tax relevant documents. The number of offences identified and the amount of penalties applied in years 2010 to 2012 are summarised in the table below (there is no breakdown available specifying the proportion of the figures presented in the table that specifically relates to access to information for EOI purposes).

	2010	2011	2012
Number of offences	915	1 026	893
Amount of penalties imposed	EUR 467 146	EUR 518 487	EUR 449 612

312. Under Article 63(5) of the LGT, failure to co-operate with the competent bodies for actions provided in paragraph 63(1) of the LGT may be considered legitimate where it involves (a) the access to the taxpayer's home; (b) the information relates to elements covered by professional secrecy or any other legally regulated secrecy duty; (c) the access to facts of the intimate life of the citizens; and (d) the breach of rights relating to the personality and other citizens' rights, freedoms and guarantees under Portuguese Constitution and in the laws. When such failure to co-operate is considered legitimate, the action listed in Article 63(1) of the LGT may only be carried out upon authorisation granted by the district court based on a reasoned request submitted by the tax administration (Article 63(6), LGT).

313. The Portuguese competent authorities report that in one instance the taxpayer has refused to provide information in order to reply to an EOI

request on the grounds that the information would be covered by commercial secrecy. When the tax inspectors went to the taxpayer premises to collect the requested information, the taxpayer argued that in order to collect the elements requested, the inspectors needed to consult information covered by commercial secrecy. The claim was analysed by the Director of the Regional Department concerned, who decided against the position of the taxpayer. The EOI team notified the taxpayer that the requested information was going to be sent to the requesting jurisdiction. Following this notification, the taxpayer requested a protective measure to the Fiscal and Administrative Court. The court ruled against this protective measure and the taxpayer immediately filed for a second protective measure. A decision concerning the second protective measure is pending. However, Portuguese authorities are confident that information can be accessed and exchanged in this situation.

314. There have been instances where the EOI team has requested information directly from the taxpayer and the taxpayer failed to reply. In those cases, the EOI team has asked for the intervention of the Tax Inspection Directorate. This has resulted in the taxpayer co-operating and providing the information requested (with the exception of the case described in the paragraph above).

315. The Portuguese competent authority reports that there have been no instances where third-party information holders (such as a bank) refused to co-operate with the tax authorities.

316. Portugal has not made use of search warrants to collect information during the period under review. Search warrants in Portugal constitute a judicial order through which the judicial authority (judge or public prosecutor) demand a public authority with police powers (which may include the tax authority) to conduct searches in a specified location. This order is issued in the context of criminal investigation proceedings. In addition, the tax authority, through the Tax Inspectorate, has the power to seize documents as a precautionary measure of acquiring and preserving evidence. Under Article 30 (1) (a) of RCPIT, the tax authority can seize accounting items or any other items, including computer media, supporting the tax situation of the taxable person or of third parties. Portugal reports that it is not aware of any refusal by any taxable person or third parties to co-operate in relation to EOI cases.

Secrecy provisions *(ToR B.1.5)*

Professional secrecy

317. Article 63(2) of the LGT indicates that the powers to access information which are covered by professional secrecy are subject to, as a general rule, on an authorisation granted by the district Court based on a reasoned request submitted by the tax authority.

318. Portugal's domestic legislations provide for professional secrecy for three categories of professionals. They are:

- Lawyers and solicitors under Article 87 of Law No. 15/2005 and Article 110 of Decree-Law No. 88/2003;
- Accountants and auditors under Article 3 & 10 of Decree-Law No. 310/2009, Article 54 of Decree-Law No. 452/99 and Article 72 of Decree-Law No. 487/99; and
- Notaries under Article 32 of Decree-Law No. 207/95 and Article 37 of Decree-Law 27/2004

319. The professional secrecy law applicable to lawyers as provided under Article 87 of Law No. 15/2005 is reproduced below:

1. The lawyer shall be required to keep professional secrecy in what concerns all facts of which he becomes aware by the exercise of their functions or the provision of their services, namely:
   (a) Facts regarding professional issues which became known only by disclosure of the client or because he ordered their disclosure;
   (b) Facts of which he became aware due to a position held at the Bar Association;
   (c) Facts regarding professional issues disclosed by a colleague with whom he shall be associated or with whom he shall collaborate;
   (d) Facts disclosed by his client's co-author, co-defendant, or co-interested person or by the respective representative;
   (e) Facts of which he became aware by the client's opposing party or his respective representative during negotiations to reach an agreement to settle the controversy or dispute;
   (f) Facts of which he became aware during failed negotiation, orally or in written, where he shall participate.
2. The requirement of professional secrecy shall apply whether the service that was requested or attributed to the lawyer shall involve or not judicial or extrajudicial representation, whether it shall be remunerated or not, whether the lawyer had or not in fact accepted and performed the representation or service, and the same shall apply to all lawyers who, directly or indirectly, shall intervene in any way in the service.
3. The professional secrecy shall even cover documents and other elements that shall be, directly or indirectly, connected with the facts subject to secrecy.

4. The lawyer may reveal facts covered by professional secrecy provided that it shall be absolutely necessary for the defence of the dignity, rights and legitimate interests of the lawyer or of the client or his representatives, upon previous authorisation granted by the president of the corresponding district council, with right to appeal to the President of the Bar Association, under the provisions of the corresponding regulations.

5. The acts performed by the lawyer in breach of the professional secrecy may not be used as evidence in court.

6. Even where the lawyer might be exempt under the provisions of Paragraph 4, he shall keep the professional secrecy [The professional secrecy obligation under this paragraph seeks to protect information which the disclosure are not for purposes expressly provided for in paragraph 4. For instance, if a lawyer is exempt from professional secrecy under paragraph 4, he still may not disclose the information to any other person(s) if the disclosure is not related to purposes envisaged in paragraph 4.].

7. The duty of secrecy in relation to the facts set out in Paragraph 1 shall also apply to all persons who collaborate with the lawyer in carrying on his professional activity, subject to the penalty provided for in Paragraph 5.

8. The lawyer may require from the persons mentioned in the previous paragraph the compliance with the duty provided for therein in a moment previous to the beginning of the collaboration."

320. The scope of the professional secrecy applicable to lawyers appears to be wide. The Portuguese Bar Association explained that *"professional issues"* mentioned in Article 87(1)(a) of Law No. 15/2005 would cover every act or procedure, judicial or non-judicial, which is developed and performed by the lawyer for the defence and protection of any persons or entities' rights and interests. In addition, the phrase "acts of lawyers and solicitors" as defined in Article 1(5) and (6) of Law no. 49/2004, includes (a) legal representation; (b) legal advice; (c) drafting contracts and the practice of preparatory acts for the establishment, alteration or termination of legal contracts, namely those carried out in registration offices and notaries; (d) the negotiation aiming at the collection of debt-claims; (e) the exercise of legal representation in administrative or judicial claims of administrative or tax decisions by lawyers and solicitors. In addition, under Article 87(7) of Law No. 15/2005, it appears that the professional secrecy is not confined to communication between the lawyer and the client but also involves communications with third parties.

321. The Portuguese Bar Association, in its Opinion No. 49/2006, advises that the duty of confidentiality only covers facts that a lawyer becomes aware

in the exercise or performance of his or her functions or services as a lawyer. The duty of confidentiality does not bind a lawyer when he or she is engaged in other professions or activities outside the legal profession, and to the extent that the pertinent facts become known by the lawyer when performing such professions or activities (i.e. outside the legal profession). The Bar Association's decision clarifies that when a lawyer acts simultaneously in the capacity of a lawyer and a manager of a commercial company, the duty of confidentiality does not cover the facts the lawyer becomes aware solely in the capacity of a manager. However, a question may still arise when a lawyer becomes aware of certain facts in his capacity as both a lawyer (e.g. drafting of legal agreements) and as performing a different activity or profession.

322. From the above analysis, it appears that the professional secrecy applicable to lawyers and solicitors may in certain circumstances go beyond confidential communications in the context of obtaining advice or representation in proceedings as permitted under the standard. In this regard, Portugal should ensure that the professional secrecy law applicable to lawyers and solicitors conforms with the standard and does not unduly restrict the access to information by the competent authorities.

323. For accountants, there is a specific provision in Article 54(1)(c) of the Decree-Law No. 452/99 that obliges accountants to provide information to the tax authority and, by virtue of *lex specialis* character of this provision, it overrides the general rule of requiring authorisation from the court under Article 63(2) of the LGT. Similarly for auditors, there is a specific provision in Articles 28(2)(f), 29(1)(a), (e) and 29(2)(f) of the RCPIT which obliges auditors to provide information to the tax authority and the general rule of requiring authorisation from the court is not required for obtaining information from auditors.

324. The professional secrecy applicable to notaries under Article 32 of Decree-Law No. 207/95 is lifted under Article 63(1) of the LGT. More specifically, under Article 63(1)(e) of the LGT, the competent bodies may carry out all actions necessary for the assessment of the taxpayers' tax situation which may include requesting documents from notaries. This effectively means that professional secrecy for notaries is not applicable in relation to tax matters in Portugal and the tax authorities can access information maintained by notaries without the need of a court order.

In practice

325. The Portuguese competent authority reports that, during the period under review, there have been no instances where attorney-client privilege/ other professional privileges ever been claimed in Portugal in order not to provide information to the tax authorities in exchange of information related

cases. However, attorney-client privilege has been claimed in order not to provide information in domestic tax cases.

326. One peer that provided input to this review reported that it requested Portugal to provide documents held by attorneys, including billing information concerning an attorney. Portugal has not replied to this request. The Portuguese tax authorities report that this request was overlooked as it was made as part of a more complex request for banking information covering a period of ten years. The competent authorities believe that it would not have a problem to access this type of information. However the Portuguese EOI team thought that the issue was closed after the requesting jurisdiction withdrew its request. The request was made before the review period, but was revived at the beginning of the review period but withdrawn later in 2011. The request has not been revived after that date. Apart from this request, which was made before the review period, Portugal confirms that the competent authority did not have any (other) cases during the period under review where it had to obtain this type information for EOI purposes.

Secrecy law applicable in the Madeira FTZ

327. Pursuant to Article 11 of Decree-Law 352-A/88, the names of the settlor(s) and the beneficiaries of the foreign trusts authorised to conduct business in the Madeira FTZ are subject to secrecy. As of 28 November 2014 there are there are 27 foreign trusts registered in the Madeira FTZ (See discussion in A.1.4). The secrecy may be lifted by an authorisation granted by the district court based on a reasoned request submitted to it by the tax authority. The procedure for obtaining the district court order is similar to other information protected by the professional secrecy law.

328. During the review period, Portugal has received no requests concerning foreign trusts authorised to conduct business in the Madeira FTZ. Therefore, there have been no instances where the secrecy concerning the names of the settlor(s) and the beneficiaries of these foreign trusts has been lifted for exchange of information purposes. Portugal reports that there also were no cases where secrecy was lifted for domestic purposes.

Banking secrecy

329. Banking secrecy in Portugal is provided in Decree-Law No. 298/92 (Legal Regime of Financial and Credit Institutions). Article 78 of the Decree-Law No. 298/92 provides:

- Members of the management or audit boards of credit institution (i.e. banks), their employees, representatives, agents and other persons providing services to them on a temporary or permanent basis

shall not divulge or use information or facts or data regarding the activity of the institution or its relations with clients which come to their knowledge solely as a result of the performance of their duties or the provision of their services;

- The names of clients, deposit accounts and their movements as well as other bank operations are in particular subject to professional secrecy;
- The obligation of professional secrecy shall not end with the termination of functions or services.

330. The banking secrecy laws in Portugal are not absolute and may be lifted for tax purposes. Decree-Law No. 298/92 authorises banks and other financial institutions to disclose facts and data subject to secrecy to the tax authorities for purposes of the performance of their duties. Moreover, Article 63B(1) of the LGT provides that the tax administration shall have the powers to access all banking information or documents, without the need for consent of the holder of the protected data or the taxpayer under prescribed circumstances listed out in Article 63B(1) However, as analysed above, in practice Portugal's lack of sufficient internal procedures and narrow interpretation of its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period. Although Portugal initiated a number of positive steps recently in respect to its access powers to banking information, and Portugal states that it revised its internal procedures in May 2014, these steps are also very recent and the effects of these changes could not be fully assessed in the context of the current review. Portugal should therefore ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place. If the circumstances where banking information is required are other than the ones established under Article 63B(1), the tax authority would need judicial authorisation to access such information (LGT, Article 63(2) and (6)). Nevertheless, as stated above, this authorisation was in practice never requested during the period under review.

Tax secrecy

331. Article 64 of the LGT requires the managers, officials and servants of the tax administration to "maintain the confidentiality of data collected on the tax situation of the taxpayers and of the items of a personal nature that they learn in the proceedings, including data covered by professional secrecy or any other legally regulated duty of secrecy". The duty of confidentiality is

lifted for EOI purposes subject to reciprocity by Portugal's EOI partner under Article 64(2)(c) of the LGT.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
There are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly restrict the access to information by the competent authorities.	Portugal should ensure that the professional secrecy law applicable to lawyers and solicitors conforms with the standard and does not unduly restrict the access to information by the competent authorities.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the review period, Portugal rarely accessed bank information directly from the banks in order to reply to an exchange of information request. The Portuguese competent authority interpreted the conditions in its domestic law for lifting bank secrecy narrowly and in many instances failed to initiate the process to access bank information in order to reply to requests for exchange of information. Although Portugal states it revised its internal procedures in May 2014 and amended its access powers regarding bank information as of 1 January 2015, both changes are very recent and are further complicated by the fact that the streamlining of its access powers in article 63B of the LGT only apply to, and insofar as, requests for banking information pertain to periods after 1 January 2015.	Portugal should ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took 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)

332. The *Terms of Reference* provides that 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).

333. Up until 2013, a prior notification procedure was provided under Portuguese law (Decree-Law no. 127/90), but it was applicable only to exchanges that took place under the EU Directive 77/799/CEE and not to exchange of information under any other EOI instruments. There were exceptions to the notification when it could undermine the investigation and there was the indication of tax evasion and tax avoidance in the other Member State.

334. Effective as of 11 May 2013, Decree-Law 61/2013 introduced a prior notification requirement applicable to the exchange of all types of information under all EOI instruments. There are exceptions in line with the international standard e.g. if the request is of an urgent nature, or in cases where the notification may undermine the investigation if there are indications of tax evasion or tax avoidance in the other jurisdiction.

335. For access to banking information, there is a requirement under Article 63B(4) of the LGT where the Director-General of the Tax and Customs Authority must issue a decision based on a reasoned opinion stating explicitly the specific reasons (i.e. the reasons listed in Article 63B(1) (a) to (g) of the LGT) justifying the access of the banking information. In principle this is also applicable for those requests that fall within the scope of the new sub-paragraph h) regarding EOI requests of Article 63B(1) of the LGT as amended 1 January 2015 (see above under B.1). The decision must be provided to the concerned parties (i.e. the taxpayer, a family member or a person otherwise related to the taxpayer) within 30 days from the date it is issued by the Director-General.

336. The Director General's decision may be subject to judicial review if appealed by the taxpayer but the appeal only has "devolutive effects"[25]

25. An appeal has *"devolutive effect"* if it does not suspend the effect or execution of an appealable order or decision.

(Articles 63(7) and 63B(4), (5) and (6) of the LGT) and, therefore, the taxpayer can neither stop the access to the information nor the subsequent exchange with the foreign competent authority.

337. While the decision has to be provided to the concerned parties within 30 days, Article 63B of the LGT as of 1 January 2015 is complemented with a new paragraph 13. This new paragraph provides for an exception to notify the concerned parties where a request is of an urgent nature or such hearing or notification may endanger the investigation in the requesting State[26]. These exceptions are in line with the standard.

338. This amendment provides for an exception to prior notification in line with the standard concerning all requests for banking information made on or after 1 January 2015, and regardless of what period the request relates to[27]. It should be noted that this exception is added to the exceptions that already exist in the context of EOI based on Decree-Law 61/2013. Nevertheless, the amendment of Article 63B(13) LGT provides for the possibility to provide for an exception to notification in the situation where a non EU partner would make a request after 1 January 2015 in relation to banking operations or transactions that took place up until 11 May 2013. Such a request would not be covered by the exceptions to notification that Decree-Law no. 127/90 provided for in relation to exchanges that took place under the EU Directive 77/799/CEE.

339. In addition, it can be noted that the 2015 addition of article 63B(13) of the LGT also provides for an exception to prior notification in cases where banking information is requested from "a family member or a person(s) otherwise related to a taxpayer" as described under Article 63B(5) of the LGT. Consequently, the recommendation made in this regard in the context of the Phase 1 report has been deleted.

In practice

340. In practice most information requested was readily available in the AT databases. As Portugal explains, it was only in 17 out of 320 – about 5% – requests received during the review period where the intervention of the Tax

26. Article 63B (13) LGT states that in case of an EOI request, "there shall be no notification of the concerned person nor prior hearing of the relative of third person where the request for information is of an urgent nature or such hearing or notification may endanger the investigation in the requesting State or Jurisdiction and where such shall be expressly requested by such State or Jurisdiction.".
27. Article 63B(9), that provides for a ban of retroactive effect, is only applicable to situations described in the "preceding paragraphs" and not to the application of paragraph 13 of article 63B LGT.

Inspectorate was required to obtain the requested information directly from the taxpayer.

341. In these cases the taxpayer was usually informed about the reasons why the information was being requested (i.e. pursuant to an EOI request sent by the competent authority of Country X). If for instance the requesting jurisdiction asked for records concerning dealings between a Portuguese company and a foreign company that is under investigation, the EOI team would make reference to the fact that the information was being requested by the competent authorities of Country X under the applicable EOI instrument.

342. Regarding access to banking information it can be noted that access powers are still layered being dependent on when the banking operations and transactions took place (see above under B.1). However, notification exemptions are applicable for any request made after 1 January 2015. In this context Portugal reports that there has been no instance where an accountholder or the bank has appealed against or challenged the disclosure of bank information pursuant to an EOI request.

343. Regarding notification, Portugal notes that requesting Jurisdictions have not asked the Portuguese tax authorities not to notify the accountholder in the cases where they accessed bank information directly from the bank following the proceedings under Article 63B during the review period. However, peer input indicated and Portugal confirmed that it provided exceptions to prior notification based on Decree-Law 61/2013 of 10 May 2013 in cases where it was able to obtain the bank information directly from the company (as part of the accounting information). Although the notification procedure and the exceptions to notification provided under Decree-Law 61/2013 in respect of all requests only entered into force on 11 May 2013 and was further extended to requests in respect of family members in 2015, there has been experience with operating exceptions to prior notification in the context of this law and Decree-Law no. 127/90 and therefore the assessment team does not foresee any particular problem in practice with the more recent extensions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging Information

Overview

344. This section of the report examines whether Portugal has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

345. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multilateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law.

346. There are a variety of instruments – bilateral and multilateral agreements as well as EU Directives – through which Portugal can assist other tax authorities and seek assistance from them in relation to both direct and indirect tax liabilities. A list of these instruments can be found in Annex 2, and it covers Portugal's relevant partners. These instruments are:

- Double taxation conventions (DTCs);
- Tax information exchange agreements (TIEAs);
- Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) (Portugal deposited its instrument of ratification on 17 November 2014. The Multilateral Convention will enter into force on 1 March 2015);
- EU Council Directive 2011/16/EU on administrative co-operation in the field of taxation, replacing Council Directive 77/799/EEC[28] concerning mutual assistance by the competent authorities of the Member States of the EU in the field of direct taxation and taxation of insurance premiums;

28. Council Directive 77/799/EEC has been repealed with effect from 1 January 2013.

- Regulation (EC) 904/2010 concerning administrative co-operation by the EU Member States in the field of value added tax;
- Regulation (EC) 2073/2004 concerning administrative co-operation by the EU Member States in the field of excise duties; and
- Directive 2010/24/EU on mutual assistance by the EU Member States for the recovery of claims relating to certain levies, duties, taxes and other measures.

347. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member which also applies EU Council Directive – the problem of overlap is generally addressed within the instruments themselves (see in particular Article 27 of the Multilateral Convention, Article 11 of the Council Directive 77/799/EEC and paragraph 21 of the preamble to the Council Directive 2011/16/EU). There are no domestic rules in Portugal requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate.

348. As noted above (see section B.1),Portuguese domestic tax law was changed to provide expressly that the information gathering powers of the Portuguese competent authority can be used solely for EOI purposes.

349. Peers have indicated that Portugal asked for clarifications regarding the foreseeable relevance as well as requirements under Portuguese law of the information sought in cases in respect of banking information. During the review period, Portugal did not provide banking information in respect of a significant number of requests, as the EOI team interpreted the standard of foreseeably relevance in this respect narrowly and considered that many requests were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy. Portugal's lack of sufficient internal procedures and narrow interpretation of its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period and led to anticipated no replies as noted by peers. Portugal should therefore ensure that it implements the standard of foreseeably relevant in line with the international standard in all cases.

350. The confidentiality of information exchanged with Portugal is protected by obligations implemented in the Double Taxation Conventions and Tax Information Exchange Agreements, complemented by domestic legislation which provides for tax officials to keep information confidential. This is also ensured in practice. Consequently there was no case where information was unlawfully disclosed during the period under review.

351. The designated Competent Authority for exchanging information for tax purposes under all Portuguese exchange of information instruments is the Minister of Finance, the Director General of the Tax and Customs Authority or their authorised representative. The EOI Unit in *Direção de Serviços de Relações Internacionais* (DSRI) of the Portuguese Tax and Customs Authority is practically handling all incoming and outgoing requests. There are no legal restrictions on the ability of the 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. Portugal has received 320 requests for information over the period of review. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 52%, 67 % and 82 % of the time respectively.[29]

352. In general, Portugal has in place organisational processes to ensure effective exchange of information. However, there are certain areas which need improvement in order to ensure that information is provided in a timely manner in all cases (see section C.5). Portugal should also provide status updates in cases where it is not in a position to meet the 90 day deadline.

C.1. Exchange-of-information mechanisms

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

353. Portugal has an exchange of information relationship with 110 jurisdictions. With 27 jurisdictions, information can be exchanged either through a DTC or through *Council Directive 2011/16/EU*. Of the other exchange of information relationships, 45 are through a DTC or through the Multilateral Convention, and 11 are through a TIEA or through the Multilateral Convention. With 22 jurisdictions information can only be exchanged through the Multilateral Convention and with the 5 remaining jurisdictions information can only be exchanged through a TIEA (see Annex 2). This section of the report explores whether these mechanisms allow Portugal to effectively exchange information.

354. The responsibility for negotiating international tax agreements lies with the Ministry of Finance and the Ministry of Foreign Affairs. A negotiation of DTCs and EOI instruments is done by a team comprising of four persons. Portugal's policy is to propose an exchange of information provision in accordance with Article 26 of the OECD Model Tax Convention as amended in July 2012.

29. These figures are cumulative.

355. In addition to its network of DTCs and TIEA's, Portugal signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 27 May 2010. The Multilateral Convention was ratified by Portugal on 16 September 2014 Portugal deposited its instrument of ratification on 17 November 2014 and the Multilateral Convention will enter into force on 1 March 2015. Portuguese authorities explain that the rather lengthy ratification process was mainly due to technical work including translation issues and required internal co-ordination with other ministries as well as a dissolution of Parliament in Portugal. Once it enters into effect, Portugal will have the possibility to exchange information with each of the other parties to it.

356. In addition to the exchange of information on request, Portugal sends information for tax purposes to other jurisdictions on a regular basis, both spontaneously and automatically.

357. For the last three years Portugal has received spontaneous information regarding more than 300 cases from its EOI partners. Such information was forwarded by DSRI to the Directorate for Planning and Coordination of Tax Inspection (DSPCIT) or directly to other tax inspection departments for further use.

358. Portuguese authorities state that the results of using the spontaneous information are reflected in feedback to the EOI partner involved, and state that feedback would usually be provided.

359. As Portuguese authorities explain, DSRI is also responsible for sending spontaneous information that has, or that might have, tax relevance to an EOI partner jurisdiction. They add that Portugal sent information spontaneously to more than 20 jurisdictions and in more than 800 cases in the years 2010 to 2013. While spontaneous information was sent only in three cases in 2010 this number increased significantly to over 300 in 2011 and has stabilised at around 250 cases in the years 2012 and 2013.

360. With regard to automatic information, Portugal sends this type of information on a regular basis to more than 30 jurisdictions. One of the main categories is information sent automatically under the EU Savings Directive (Council Directive 2003/48/EC of 3 June 2003) as well as the Agreements with third countries and dependent or associated territories. VAT related information is also sent automatically to the other EU Member States.

361. Automatic information sent from EOI partners to Portugal is received by DSRI, which sends it subsequently to the Data Warehouse of Taxpayers' Management and Inspection Area, where it is uploaded to the database. At the same time, the information is made available to the Directorate for Planning and Coordination of Tax Inspection (DSPCIT) which is responsible for its review and referring to the other tax inspectorate organic units, in

accordance with the criteria set in the National Plan for the Activities of the Tax and Customs Inspectorate (PNAITA), taking into account the confidentiality rules.

Foreseeably relevant standard (ToR C.1.1)

362. 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 26(1) of the OECD *Model Tax Convention* set out below:

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

363. Portugal has concluded 16 TIEAs as at 5 December 2014. All but 1 of the 15 TIEAs use the term "foreseeably relevant" in the text of the agreement. For the TIEA with Bermuda, only the word "relevant" was used.

364. Portugal has also concluded 72 DTCs with an EOI article as at 5 December 2014. 22 of the DTCs use the term "foreseeably relevant", 2 of the DTCs use the term "relevant" and 48 of the DTCs use the term "necessary".

365. The terms "relevant" and "necessary" are recognised in the commentary to Article 26 of the OECD *Model Tax Convention* as allowing for the same scope of exchange as does the term "foreseeably relevant".[30] Portugal also interprets the term "relevant" and "necessary" to allow for the same scope of exchange as allowed under the term "foreseeably" relevant.

366. More generally, a number of peers have indicated that Portugal asked for clarifications regarding the foreseeable relevance as well as requirements under Portuguese law of the information sought in cases relating to banking information. 25 requests were not answered as the EOI team considered that

30. The word "necessary" in paragraph 1 of Article 26 of the 2003 OECD *Model Tax Convention* was replaced by the phrase "foreseeably relevant" in the 2005 version. The commentary to Article 26 recognises that the term "necessary" or "relevant" allows for the same scope of exchange as does the term "foreseeably relevant".

they were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy. In such cases, the EOI team provided a summary to the circumstances where bank secrecy could be lifted under Portuguese law to the requesting jurisdiction. Access to bank information was a recurring theme in the collected peer input. Peers reported difficulties in obtaining bank information from Portugal and considered the conditions for access to be restricted and not in line with the international standard. However, as mentioned above Portugal initiated a number of positive steps following the onsite in respect to its access powers to banking information, and Portugal states that it revised its internal procedures in May 2014. Portugal states it reassessed all 25 requests requested further clarification from the requesting jurisdiction in 4 cases (Portugal did not yet receive an answer yet in these cases) and proposed lifting of bank secrecy in 6 cases. Three of these cases are all still pending. However, Portugal advises that the relevant information is already requested from the Banks, and expects that this information can be provided to the EOI partners shortly. In the 15 remaining cases, 2 requests have formally been withdrawn by the requesting jurisdiction and 13 are still under appreciation.

367. Nevertheless, as stated under element B.1 nine peers that provided input to this review reported having requested bank information and six of them reporting having had difficulties to obtain information during the review period or anticipating no replies. The main issues raised by the peers were:

- a peer was told that evidence of tax crime was required in order to ask for bank information;
- a peer was requested to provide proof and ground that the request met the conditions of Article 63B(1) of the LGT;
- a peer was told that access to bank information was only available in limited circumstances;
- some peers were told that prior approval of the taxpayer was required to obtain the information.

368. The Portuguese competent authority acknowledged that there may have been some communication problems and that some letters sent to EOI partners contained the wrong translation of the Portuguese legal requirements (for instance, requiring partners to provide "evidence" of a tax crime rather than "indicia"). However, it should be noted that even requesting indicia cannot be considered to be in line with the standard for requests in civil tax cases, as a request can be considered valid if the request meets the condition of foreseeably relevance. Portugal further reported that it sent correspondence to its treaty partners in April 2014 to clarify this situation and inform that it is

open to assist the partners in reopening the requests for bank information that were not replied during the review period. Portugal also reported that some requests contained very little information and it was not sufficient to allow them to verify whether the request met the requirements of the Portuguese domestic legislation. It further stated that as rule Portugal is able to provide information to its EOI partners even when very little information on the requests are provided, but when it comes to requests for bank information it needed a justification from the requesting jurisdiction.

369. It appears, however, that some requests did provide sufficient information for Portugal to proceed with accessing bank information directly from the banks by applying the procedure involving the Director-General's decision. It appears that not all persons responsible within DSRI or the EOI team seemed to be aware of the details of these requests and the decisions taken. Formal procedures also seemed absent. Therefore decisions taken not to proceed with accessing banking information directly from banks seem to be taken implicitly, on the level of single administrators within the EOI unit, and not on the level of the management of DSRI or the Director-General. As Portugal explains, internal procedures were revised at the end of the review period in May 2014 in order to address these weaknesses. Portugal states that since then, any request involving banking information must be immediately reported to the management who assigns it to a specialised legal expert. Portugal further states that all requests that were pending at that time have been re-assessed since by specialised legal experts.

370. Portugal's lack of sufficient internal procedures during the period under review and narrow interpretation of its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period and led to anticipated no replies, i.e. requests were not made because partners did not expect to receive a response. It is therefore recommended that Portugal should ensure that it implements the condition of foreseeably relevance in line with the international standard in all cases. In response Portugal states that the interpretation of the tax authorities' access powers to bank information under the previous regimes are under review.

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

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

372. All of Portugal's 16 TIEAs provide for exchange of information with respect to all persons.

373. As regards Portugal's DTCs, all but 11[31] of the DTCs contain a specific clause to indicate that the exchange of information is not restricted to the persons covered in Article 1 of the DTC. While these 11 DTCs only apply to resident of the contracting parties, 8[32] are covered under the EU Council Directive 2011/16/EU, while the remaining 3[33]will be covered by the Multilateral Convention when it enters into force. In this regard, the restriction in these 11 DTCs would not pose any practical issues for Portugal in exchanging information to the international standard as the scope of the EU Council Directive and the Multilateral Convention extends the exchange of information to all persons. Moreover, to the extent that non-residents are subject to the domestic laws of the contracting states, these DTCs provide for the exchange of information in respect of all persons.

374. In practice, no issue restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of information has been indicated by Portuguese authorities or peers.

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

375. 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. The OECD *Model Tax Convention*, which is an authoritative source of the standards, stipulates 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.

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31. The 11 DTCs are with Austria, Belgium, Finland, France, Germany, Indonesia, Ireland, Italy, Korea, Turkey and United Kingdom.
32. The following 8 jurisdictions are part of the European Union and Council Directive 2011/16/EU is applicable: Austria, Belgium, Finland, France, Germany, Ireland, Italy and United Kingdom.
33. The 3 jurisdictions are Indonesia, Korea and Turkey. Of these 3 jurisdictions, only Korea has ratified the Multilateral Convention as at 24 December 2014. The Multilateral Convention was ratified by Portugal on 16 September 2014 by the Decree 68/2014 of the President of the Portuguese Republic. Portugal deposited its instrument of ratification on 17 November 2014 and the Multilateral Convention will enter into force on 1 March 2015.

376. All of Portugal's 16 TIEAs allow Portugal to exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity.

377. It is Portugal's policy to include Article 26(5) in all of its new agreements. In this regard, all the 20 DTCs or Protocols concluded after 2008 included provisions akin to Article 26(5) of the OECD *Model Tax Convention*, which provides that a contracting party 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.

378. 49 of Portugal's older DTCs do not include provisions akin to Article 26(5) of the OECD *Model Tax Convention*. Out of these 49 DTCs, 24[34]are covered by the EU Council Directive 2011/16/EU and 11[35] are covered by the Multilateral Convention (when it enters into force) which allows exchange of information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. For the remaining 14 DTCs, 8[36] are with Global Forum members and 6[37] are with non-Global Forum members. While no issues have been identified for four Global Forum members (Chile, China, Israel and Macau) who have undergone the peer review before the current review, other Global Forum members which have not undergone the peer review or other non-Global Forum member jurisdictions may have restrictions in accessing information in the absence of an express provision corresponding to Article 26(5) of the OECD *Model Tax Convention*. In this regard, Portugal is encouraged to continue to renegotiate its older DTCs to include paragraph 26(5) of the OECD *Model Tax Convention*.

379. In practice, Portugal has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers. However, as noted under element B.1, bank information that relates to periods up until 2014 can only be accessed without the consent of the taxpayer involved in

34. The 24 jurisdictions are Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom.
35. The 11 jurisdictions are Canada, India, Indonesia, Korea, Mexico, Russia, South Africa, Turkey, Ukraine and United States.
36. The 8 DTCs with GF members are Chile, China, Iceland, Israel, Macau (China), Morocco, Pakistan and Tunisia.
37. The 6 DTCs with non-GF members are Algeria, Uzbekistan, Cuba, Cape Verde, Venezuela and Mozambique.

cases if the Director-General has issued a decision based on a reasoned opinion, or in cases where a court order is obtained. As described in section B.1 these limitations on the exercise of access powers in respect of banks for the purpose of EOI restricts effective exchange of bank information. This has also been confirmed by six peers and Portugal should take steps to address this issue. In this regard the assessment team considers the recent legislative amendments to broaden its access powers as a positive step. Nevertheless, it should also be noted that these changes only relate to banking information pertaining to periods after 1 January 2015, covering only a part of the banking information that EOI partners in practice can be expected to be asking from Portugal in the coming years.

Absence of domestic tax interest (ToR C.1.4)

380. The concept of *"domestic tax interest"* describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

381. All of Portugal's 16 TIEAs contain language that allows Portugal to use their information gathering measures to exchange information without regard to a domestic tax interest.

382. It is Portugal's policy to include Article 26(4) in all of its new agreements. In total 25 of Portugal's DTCs contain provisions akin to Article 26(4) of the OECD *Model Tax Convention*, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. 47 of the DTCs do not contain a provision akin to Article 26(4) of the OECD *Model Tax Convention.* Out of these 47 DTCs, 24[38] are covered by the EU Council Directive 2011/16/EU and 10[39]are covered by the Multilateral Convention which allows exchange of information without regard to a domestic tax interest (when the Multilateral Convention enters into force).For the remaining 13 DTCs, 6[40] are with Global

38. The 24 jurisdictions are Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom.
39. The 10 jurisdictions are Brazil, Canada, India, Indonesia, Korea, Mexico, Russia, South Africa, Turkey and Ukraine.
40. The 6 DTCs with GF members are China, Iceland, Israel, Macau (China), Morocco and Tunisia.

Forum members and 7[41] are with non-Global Forum members. While no issues have been identified for four Global Forum members (Chile, China, Israel and Macau (China)) who have undergone the peer review before the current review, other Global Forum members which have not undergone the peer review or other non-Global Forum member jurisdictions may have restrictions in accessing information in the absence of an express provision corresponding to Article 26(4) of the OECD *Model Tax Convention*. Nevertheless, Portuguese authorities advise that all DTCs are interpreted by Portugal as also allowing access to all information in the absence of domestic tax interest even if there is no explicit reference to that principle in the respective agreement. In practice Portugal does not exercise reciprocity on this basis and therefore does not question whether a requesting party has the requirement of a domestic tax interest. No issue has been reported by peers in this respect. There was also no case during the period under review where request was declined because of absence of domestic tax interest. Nevertheless, it is recommended that Portugal continues its program to update DTCs including to incorporate wording in line with Article 26(4) of the OECD Model Tax Convention.

Absence of dual criminality principles (ToR C.1.5)

383. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

384. There are no dual criminality requirements in Portugal's agreements for exchange of information in tax matters. Accordingly, there has been no case when Portugal declined a request because of a dual criminality requirement.

385. In practice, no peers have raised any issues regarding dual criminality.

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

386. 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

41. The 7 DTCs with non-GF members are Algeria, Uzbekistan, Cuba, Pakistan, Cape Verde, Venezuela and Mozambique.

information requested for tax administration purposes (also referred to as "civil tax matters").

387. All of Portugal's exchange of information agreements provide for exchange of information in both civil and criminal tax matters.

388. In practice, peers have requested information in both civil and criminal tax matters, and no issues were raised.

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

389. There are no restrictions in the exchange of information provisions in Portugal's DTCs that would prevent Portugal from providing information in a specific form, as long as this is consistent with its own administrative practices.

390. In practice, no particular problems were raised by peers regarding the form in which the information was exchanged. Portugal received one request prior the period under review, which asked for assistance with a third-party interview. At the time of the request (April 2009) this was foreseen under Portugal's domestic law and practice, but only on tax matters. The EOI-team explained at that at present such an interview ("attendance of an official") would be possible under Decree law 61/2013 as well as the Multilateral Convention.

In force (ToR C.1.8)

391. 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.

392. Portugal has TIEAs in force providing for EOI with 7 jurisdictions (see Annex 2 for signing and entry into force dates). 9[42] TIEAs signed after 2010 are not in force as at 2 January 2015. In the context of the Phase 1report it was noted that Portugal was in the process of obtaining approval to ratify these agreements. However, as noted, none of these arrangements are in force as at 2 January 2015. Although it can also be noted that EOI relationship with a number of these jurisdictions is also covered by the Multilateral Convention

42. The 9 TIEAs that are not in force are with Anguilla (signed in Feb 2011), Antigua and Barbuda (signed in Sep 2010), Belize (signed in Oct 2010), British Virgin Islands (signed in Oct 2010), Dominica (signed in Oct 2010), Guernsey (signed in Jul 2010), Liberia (signed in Jan 2011), St. Kitts and Nevis (signed in Jul 2010) and Turks and Caicos Islands (signed in Dec 2010).

(which will enter into force in Portugal on 1 March 2015), this is not the case with the TIEA's that were signed with Antigua and Barbuda, Dominica, Liberia, St Kitts and Nevis and St Lucia. Most of these TIEA's were signed more than four years ago, and it is recommended that Portugal brings these agreements into force expeditiously.

393. Portugal has DTCs in force providing for EOI with 63 jurisdictions (see Annex 2 for signing and entry into force dates). 9[43] DTCs signed after 2001 are not in force as at 24 December 2014. Portugal has ratified 6[44] of these DTCs and is in the process of obtaining approval to ratify the remaining 3[45] DTCs. The Portuguese Authority advised that the DTC with Uzbekistan signed on 10 February 2001 has not been ratified mainly because of divergences found between the equally authentic English, Uzbek and Portuguese texts and a technical issue concerning the wording of Article 10 of the DTC. The solution to rectify these issues is difficult to be implemented because Uzbekistan had already ratified the DTC. Nevertheless, the Portuguese Authority advised that this DTC will be renegotiated. Portugal advises that it sent in 2014 a draft DTA and a proposal for a round of negotiations through the diplomatic channels to the Authorities of Uzbekistan. Portugal further states that the Authorities of Uzbekistan have confirmed through diplomatic channels that these proposals are being considered.

394. As stated above Portugal is a signatory to the Multilateral Convention. The Multilateral Convention was ratified by Portugal on 16 September 2014 by the Decree 68/2014 of the President of the Portuguese Republic. Portugal deposited its instrument of ratification on 17 November 2014 and the Multilateral Convention will enter into force on 1 March 2015.

395. Portuguese authorities explain that any international treaty in force has priority over national legislation. This is also the case regarding national legislation that took effect after the treaty entered into force. However, ratification takes a long time. The Multilateral Convention was signed in on 27 May 2010, and was ratified on 16 September 2014.

396. The average time for ratification of a treaty is between 6 months to three years. Ratification of a treaty can only take place based on an official Portuguese translation and this process has been very lengthy in the case of the Convention. As Portuguese officials explain, ratification has been

43. The 9 DTCs that are not in force are with Barbados, Colombia, Croatia, Ethiopia, Georgia, San Marino Senegal, Timor-Leste and Uzbekistan.

44. The 6 DTCs that are ratified by Portugal as at 11 December 2014 are Barbados, Colombia, Ethiopia San Marino, Senegal and Timor-Leste.

45. The 3 DTCs that are not ratified by Portugal as at 5 December 2014 are, Croatia (signed in Oct 2013) Georgia (signed in Dec 2012) and Uzbekistan (signed in Feb 2001).

complicated further due to technical work related to it and due to dissolution of Parliament in Portugal. It is recommended that Portugal brings agreements into force expeditiously.

Be given effect through domestic law (ToR C.1.9)

397. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement. The negotiation of international treaties is a competence of the Government under Article 197(1)(b) of the Portuguese Constitution (CRP). The *"authentication"* of the text can be made by signature *ad referendum*, when the representative has full powers for that purpose, or by simply initialling the text, which becomes definitive after confirmation. The Council of Ministers may adopt a proposal of Resolution to approve the treaty, which is submitted to the Parliament. Under Articles 161(i) and 135(b) of CRP, international treaties on matters of the exclusive competence of the Parliament must be approved by the Parliament and, once they have been duly approved, they are ratified by the President. International treaties (i.e. DTCs, TIEAs and the Multilateral Convention), as well as related ratification notices or other notices in relation thereto must be published in the Official Gazette of the Portuguese Republic *(Diário da República)*, as a condition for its legal effectiveness under Article 119(1)(b) and (2) of CRP.

398. Duly ratified or approved international agreements come directly into force in the Portuguese internal law once they are officially published under Article 8(2) of the Portuguese Constitution. No legislation needs to be enacted to implement the Multilateral Convention.

399. In addition, the Portuguese authorities have published Decree-Law 263/2012 to implement the EU Council Directive 2010/24/EU on mutual assistance for the recovery of claims relating to taxes, duties and other measures on 20 December 2012. The Decree-Law is effective from 21 December 2012.

400. Portugal has transposed EU Council Directive 2011/16/EU on administrative co-operation in the field of taxation through the Decree Law 61/2013, of 10 May 2013, which also clarifies that the powers and obligations of the Tax and Customs Authority in relation to its duties of collection and transmission of data apply to all bilateral or multilateral international EOI agreements, including DTCs, TIEAs as well as the Multilateral Convention.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
A significant number of agreements for the exchange of information signed over the past four years are not yet in force and have not been ratified by Portugal.	Portugal should ensure that its exchange of information mechanisms are brought into force expeditiously.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the review period, Portugal did not provide banking information in respect of a significant number of requests, as the EOI team interpreted the standard of foreseeably relevance in this respect narrowly and considered that many requests were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy.	Portugal should ensure that it implements the condition of foreseeably relevance in line with the international standard in all cases.

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

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

401. 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.

402. Portugal's major trading partners are mainly the EU member states which accounted for approximately 74% of Portugal's exports and 73% of Portugal's imports in 2011.[46]In this regard, while most of Portugal's DTCs with EU countries do not contain the 2005 version of the Article 26 of the OECD *Model Tax Convention*, the EU Council Directive 2011/16/EU are applicable and it must be concluded that Portugal does have effective exchange of information mechanisms in place with most of its major trading partners.

403. Comments from Global Forum members with regard to Portugal as an EOI partner are generally positive and there were no comments indicating that Portugal has rejected any request to enter into EOI agreement or negotiations.

404. The wording of Portugal's domestic access powers would permit access to information for the purpose of Multilateral Convention, to the same extent as they currently do for its DTCs and TIEAs.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Portugal should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect expeditiously.

Phase 2 rating
Compliant

46. Portugal's major export destinations for 2011 are Spain (24.8%), Germany (13.6%), France (12.0%), Angola (5.5%), United Kingdom (5.1%) and Netherlands (3.9%). Portugal's major imports are from Spain (31.6%), Germany (12.4%), France (6.9%), Italy (5.4%), Netherlands (4.8%) and United Kingdom (3.3%).

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)

405. 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, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

406. All exchange of information articles in Portugal's TIEAs and DTCs have confidentiality provisions modelled on Article 8 of the OECD *Model Agreement on EOI on Tax Matters* and Article 26(2) of the OECD *Model Tax Convention*.

407. As noted, Portugal has transposed the EU Council Directive 2011/16/EU on administrative co-operation in the field of direct taxation, through the Decree Law 61/2013 of 10 May 2013. In respect of confidentiality, Decree-Law 61/2013 has further clarified that the powers and obligations of the Tax and Customs Authority in relation to its duties of collection and transmission of data apply to all bilateral or multilateral international EOI agreements, including DTCs and TIEAs. In particular Article 16 of Decree Law 61/2013 establishes that all exchange of information shall be subject to the provisions of Law no. 67/98 of 26 October on the protection of personal data which transposed the Directive 95/46/EC.

408. The confidentiality provisions of Portugal's DTCs are further backed by general confidentiality provisions in Article 64 of the Portuguese General Tax Law. Non-compliance with the general confidentiality provisions is punishable with imprisonment or fines under Article 91 and 115 of the General Regime of Tax Infractions.

All other information exchanged (ToR C.3.2)

409. The confidentiality provisions in Portugal's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such

information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

In practice: confidentiality and correspondence regarding EOI requests

410. As Portuguese authorities explain, all EOI concerning direct(income) taxes is handled and processed by DSRI.

411. When a request for information is received, the official in the EOI unit will first try to find all the information requested in the AT databases. Only in cases where this doesn't enable him to provide a complete reply, the official involved will ask for the co-operation of other units of the AT. In that case all paper correspondence between DSRI and other organic units of AT involved in EOI (Tax inspectorate) is ensured by internal secure mail of the Tax Authority.

412. As Portuguese authorities report, a number of general rules and procedures apply for sending information to other units of AT. First, all documents must mention as note "information protected by tax secrecy". Further, information received from the competent authority may be disclosed to other services of the Tax Authority or to whom reveals a legitimate interest on obtaining it, but he may not have access to the original document or a fully copy thereof.

413. Both at DSRI and at the other units within AT involved in EOI, paper documents are stored in closed archives, with officials responsible for it. Access to paper archives is limited to the persons responsible for them and the tax official to whom the request has been assigned must ask those persons to provide any needed file or document. Information pertaining to an EOI request must be kept in an individual cabinet to which only the competent official and the person responsible for the unit have access. The number of copies sent must be recorded, along with the identification of the persons who possess them.

414. Information received electronically is stored in the central system with limited and password-protected access. The Portuguese Tax Authority ensures that access to confidential tax information is kept on secure and password-protected servers. Access to databases containing confidential information is limited to officials who need to use it. Computers are password-protected and the passwords must be changed periodically.

415. In addition to the statutory confidentiality provisions, the employment contract of EOI officials contains a provision concerning the employee's

obligations with respect to confidentiality. Further to this, there are procedures for terminating the access to confidential information for those officials leaving the office. Furthermore, under Article 115 (Breach of tax secrecy) of RGIT, the disclosure or exploitation of a tax secret due to negligence and which came to someone's knowledge in the exercise of his duties or because of his duties shall be punished with a fine of EUR 75 to EUR 1 500. In addition, under the disciplinary statute of employees exercising public functions, disciplinary sanctions may be applied (Law 58/2008 of 9 September 2008). As Portugal explains, three different situations as well associated sanctions can be distinguished in this respect: *(i)* undue consultation of information, i.e. non-authorised – it results in disciplinary sanctions; *(ii)* undue consultation of information and disclosure of such information – it results in disciplinary and criminal sanctions, since it qualifies as a crime. *(iii)* corruption – it results in disciplinary and criminal sanctions, since it qualifies as a crime. Within the scope of the disciplinary power, sanctions range from a written warning or fine to suspension and dismissal. In relation to the penalty framework of the crimes concerned, it may involve fines, suspension and imprisonment.

416. Regarding (physical) access to buildings the following can be said. The Portuguese Tax Authority restricts the entry into its buildings for security reasons. There is an access card for each official and a permanent surveillance system. Other officials may have access to DSRI facilities only when authorised by the person responsible within DSRI.

417. As Portuguese authorities report, a number of general rules and procedures apply for sending information to another competent authority. As a security rule all information is always sent to the competent authority which was previously communicated by the EOI partner jurisdiction. Further to this, regular mail must only be sent by international registration made by DSRI. When an email is used, information must be encrypted or sent through a secure platform to which only authorised users may have access; when these requirements are not met, procedures limit any correspondence by email to clarification requests or other situations where there is no exchange of confidential information and there is no reference to the identification of the taxpayer involved.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

418. 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 secret may arise.

419. All of Portugal's DTCs contains explicit language to ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy (*ordre public*), in a manner consistent with Article 26(3)(c) of the OECD *Model Tax Convention*.

420. The TIEAs of Portugal contain similar provisions (based on the Model TIEA), as well as an express reference to the professional secrecy duties of lawyers (legal privilege), based on Article 7, paragraphs 2 and 3, of the Model TIEA.

421. However, as noted in section B.1.5 of this report, there are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors under Portugal's domestic law may unduly limit the access to information for EOI purposes in certain circumstances. Portugal is encouraged to clarify the scope of the professional secrecy law applicable to lawyers and solicitors to ensure consistency with the standard.

422. The Portuguese competent authority reports that, during the period under review, there have been no instances where attorney-client privilege or other professional privileges ever been claimed in Portugal in order not to provide information to the tax authorities in exchange of information related cases. However, attorney-client privilege has been claimed in order not to provide information in domestic tax cases.

423. However, as noted under element B.1. one peer that provided input to this review reported that it requested Portugal to provide documents held by attorneys, including billing information concerning an attorney. Portugal has not replied to this request. The Portuguese tax authorities report that this request was overlooked as it was made as part of a more complex request for banking information covering a period of ten years. The competent authorities believe that it would not have a problem to access this information, however Portugal thought that the issue was closed after the requesting jurisdiction withdrew its request. The request was made before the review period, but was revived at the beginning of the review period but withdrawn

later in 2011. The request has not been revived after that date. Apart from this request, which was made before the review period, Portugal confirms that the competent authority did not have any (other) cases during the period under review where it had to obtain this type information for EOI purposes.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
There are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly limit the access to information.	Portugal should clarify the scope of the professional secrecy applicable to lawyers and solicitors to ensure consistency with the standard.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

424. 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.

425. With the exception to the issues discussed in section B.2.1 of this report, there are no specific legal or regulatory requirements in place which would prevent Portugal from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

426. Portugal has received 320 requests for information over the period of review. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within

90 days, 180 days and within one year in 52%, 67% and 82% of the time respectively.[47]

427. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the 3 year period from 1 July 2010 to 30 June 2013.

	Jul-Dec 2010		2011		2012		Jan-Jun 2013		Total	
	num.	%	num.	%	num.	%	num.	%	num.	%
Total number of requests received* (a+b+c+d+e)	41	100%	87	100%	128	100%	64	100%	320	100%
Full response**: <90 days	17	41%	50	57%	68	53%	32	50%	167	52%
<180 days (cumulative)	29	71%	62	71%	83	65%	40	63%	214	67%
<1 year (cumulative) (a)	33	80%	73	84%	108	84%	47	73%	261	82%
1 year+ (b)	1	2%	4	5%	4	3%	1	2%	10	3%
Declined for valid reasons (c)	0	0%	0	0%	1	1%	0	0%	1	0%
Failure to obtain and provide information requested (d)	3	7%	3	3%	3	2%	2	3%	11	3%
Requests still pending at date of review (e)	4	10%	7	8%	12	9%	14	22%	37	12%

* Until 31 December 2012, Portugal counted each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested. As of 1 January 2013, Portugal follows the Guidelines issued by the European Commission.

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

428. As the table shows the number of requests increased in 2012 and was stable in the first 6 months of 2013. Most requests were received from Spain, France, the Netherlands and the United Kingdom (in order of significance).

429. The following types of information are most commonly requested from Portugal and exchanged under its EOI instruments:

- Residence of the taxpayer;
- Tax returns submitted;
- Nature and amount of income received and tax paid;

47. These figures are cumulative.

- Real estate;
- Physical existence of companies (premises, employees);
- Identification of the company's directors;
- Turnover of a business or companies;
- Accounting of invoices, statements, bills;
- Banking information.

430. Portugal provided the requested information within 90 days for 52% of requests. In addition to the problems of obtaining banking information described in section B.1 the main difficulties Portuguese authorities experienced and where a response was not provided within 90 days related to requests that require assistance from the tax inspectorate, including visits to the premises of the taxpayers for inquiries and accountancy examinations, or cover a long period of time (e.g. more than ten years back in time). Response times also include time taken by requesting jurisdictions to provide clarification requested by Portugal. Response times were fairly stable over the period under review as Portugal was able to respond around 40% to 55% of the requests within the period of 90 days from the second half of 2010 through the first half of 2013. It has been confirmed by peers that the requested information is often provided within 90 days.

431. Around 12% of all received requests over the period under review are pending at the date of the on-site visit. In respect of requests related to banking information Portugal notes that considered that there was no refusal on the part of Portugal to provide the information. They further explain that the cases of banking information themselves were not individually accounted in all cases, since those requests did not concern exclusively banking information in all cases. However, a number of requests for banking information is included in the 37 requests that were pending at the date of the review. Around 3% of all received requests over the period under review it took Portugal more than one year to respond. As Portuguese officials explained the delay in these cases was mainly due to the complex nature of the requests in combination with human resources available, and there were no problems to obtain or collect the information. In this context the EOI team reported delays in the co-operation with the Regional Tax Inspectorate of Madeira. Portuguese authorities reported that in most of the six cases it took more than one year to receive a reply from the Autonomous Region of Madeira in case intervention of the Madeira regional tax authorities was needed.

432. In this respect Portugal notes that in the case of Madeira Autonomous Region, the delays were due to the lack of human resources as there is only one tax inspector who replies to EOI requests, and this is only part of his work package. In total, at the end of 2012, the Tax Inspectorate in the

Autonomous Region of Madeira (*DRAF, Direção Regional dos Assuntos Fiscais*) was staffed with 16 tax inspectors.

433. Where information required to process the request is missing Portugal in general supplements the missing information with information already at the disposal of the tax authority, namely in its databases. Only if this is not successful or cannot be done Portugal requests clarifications. However, as noted above, a number of peers have indicated that Portugal asked for clarifications regarding the foreseeable relevance as well as requirements under Portuguese law of the information sought in cases in respect of banking information. In total 25 requests were not answered in this respect during the period under review as the EOI team considered that they were not duly justified and/or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy Nevertheless, as mentioned above, Portugal reassessed these requests and a number of these requests are currently reopened and have been responded to or pending.

434. In such cases, the EOI team provided a summary to the circumstances where bank secrecy could be lifted under Portuguese law to the requesting jurisdiction. Nevertheless, in practice Portugal less frequently managed to access bank information directly from the banks in order to reply to an exchange of information request. Reference can be made to the findings under element B.1 above. The Portuguese competent authority interpreted the conditions for lifting bank secrecy narrowly and in many instances failed to initiate the process to access bank information in order to reply to requests for exchange of information. Formal procedures or guidance also seemed to be absent in this specific context, as noted under element B.1. The decision not to proceed with accessing banking information directly from banks seem to be taken on the level of individual administrators within the EOI unit, and not on the level of the management of DSRI or the Director-General. In all, as stated under element B.1, there is an issue regarding access to banking information. Part of this issue is related to the organisation of the EOI unit. This led to delays in a number of cases. Therefore Portugal should put in place adequate processes and guidance to ensure that all requests for banking information are answered in a timely manner.

Updates

435. According to Portuguese authorities an update on the status of the request is provided where, for any reason, Portugal has not been able to obtain and provide the information requested within 90 days of receipt of the request. In addition, Portuguese authorities report that, as of 1 January 2013, the Portuguese competent authority (EOI unit) must inform the requesting authority of the reasons for its failure to respond within the 90 days period,

and the date by which it considers it might be able to respond. Nevertheless, peer input indicates that, in practice, Portugal did not systematically provide updates where it was not able to respond to a request within the 90 days period. Therefore, Portugal should provide status updates to its EOI partners within 90 days where relevant.

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

436. Under the international agreements allowing for the exchange of information for tax purposes (EOI) the Portuguese competent authority is the Minister of Finance, the Director General of the Tax and Customs Authority (*Autoridade Tributária e Aduaneira, AT*) or their authorised representative. Within the AT this power is delegated to the Directorate for International Relations (*DSRI, Direção de Serviços de Relações Internacionai*s), in co-operation with the Tax Inspectorate.

437. DSRI is the main unit in charge of EOI on request. Within DSRI the Head of Office acts on behalf of the Director of Services, in his absence. He is authorised to sign documents with respect to the EOI on request.

438. The Director of the DSRI (*Diretor de Serviços da DSRI*) reports to the Deputy Director General for the Management of Income Taxes (*Subdiretora-geral responsável pela Área de GestãoTributária – Impostossobre o Rendimento*), who reports to the Director General of the Tax and Customs Authority (*Diretor-Geral da Autoridade Tributária e Aduaneira*).

439. DSRI is staffed with 43 officials in total.

440. The EOI team within DSRI is composed of 12 people:

- The Director of the DSRI;
- The Head of the Management Section (*Chefe de Divisão de Administração*);
- 8 operational officials;
- 1 translator;
- 1 administrative official.

441. The operational officials within the EOI team have different academic backgrounds: two have a degree in Law; three in Economics or Management; one in Statistics; one in Auditing and one in Linguistics, They have computer skills and a good knowledge of English. Some of the operational officials also have a good knowledge of French and Spanish. Translation of documents in English, French and German is available.

442. Within AT there are basically three categories units with tax inspection powers:

1. Direções de Finanças (*District tax directorate*) with territorial (district) tax inspection powers.[48] In total there are 21 of these territorial units.
2. One single Large Taxpayers Unit (*UGC, Unidade de Grandes Contribuintes*). At the end of 2012, UGCis staffed with 158 officials, including 83 tax inspectors involved in tax audits and responsible for EOI. Part of UGC are three "Tax Audit Divisions", which have powers to carry out inspection procedures regarding large taxpayers:
3. DSIFAE ("*Direção de Serviços de Investigação da Fraude e de Ações Especiais*") is a central department responsible for preparing and developing strategic actions against tax evasion which also investigates tax fraud. DSIFAE includes the Central Liaison Office (CLO) which is the competent body for the administrative co-operation and exchange of information in the field of indirect taxation between Member States of the European Union (under the Regulation (EC) 904/2010).

By 30 June 2013, DSIFAE was staffed with 78 officials (60 of which tax inspectors), including 12 operational officials on the CLO (7 of which with a University degree).

443. At 31 December 2012, the AT (Tax and Customs Authority)as a whole was staffed with a total of 11 566 employees. A large percentage of all AT employees have a higher type of education (44.2% with a University degree and 32.8% with 12th grade/high-school), and 2059 employees (17.8%) were tax inspectors.

444. Lastly, there is the Tax Inspectorate in the Autonomous Region of Madeira (DRAF, *Direção Regional dos Assuntos Fiscais*).At the end of 2012, DRAF was staffed with 16 tax inspectors.

Processing and handling of incoming EOI requests by DSRI.

445. The following procedures apply with respect to incoming requests from all EOI partners:

48. Lisboa, Porto, Aveiro, Braga, Coimbra, Faro, Leiria, Santarém, Setúbal, Viseu, Viana do Castelo, Vila Real, Angra do Heroísmo, Beja, Bragança, Castelo Branco, Évora, Guarda, Horta, Ponta Delgada, Portalegre). Each District tax directorate (*Direção de Finanças*) is headed by a Director who reports directly to the Director General of the Tax and Customs Authority.

446. First, the competent authority checks whether or not the request is valid and complete.

447. When a new EOI request is received by DSRI, it is forwarded to the EOI team manager who classifies it as confidential and assigns it to an official that shall be responsible for its analysis.

448. The official to whom the process is assigned must carry out a preliminary review in order to check the validity of the request:

449. Firstly, he or she must check if the request was made by the competent authority of the requesting jurisdiction, by checking the DSRI list of competent authorities (this list is based on previous communications). If that is not the case, all the necessary procedures must be carried out in order to determine whether the requesting entity is the competent authority.

450. The official must also analyse whether the requested information is foreseeably relevant and whether the information is covered by the Agreement under which it is requested.

451. After the process is assigned to an official, he or she must update the status of the process whenever any document is sent or received, and record namely the date and the identification of the entity to which the information has been sent or from which the information has been received.

452. In this phase a process (file) concerning an EOI request is classified with a specific code in order to differentiate it from all other types of processes (files) initiated in the DSRI.

453. Specific codes are also used to:

- classify the process as "information on request", "spontaneous EOI" or "automatic EOI";
- differentiate between a request received from another jurisdiction and an answer from another jurisdiction to a request made by Portugal;
- identify the requesting and the requested jurisdictions.

454. The receipt of the request must be acknowledged to the competent authority of the requesting jurisdiction within 7 business days and the competent authority of the requesting jurisdiction must be informed that the necessary procedures for the collection of the requested elements of information will be initiated. In case the data supplied in the request is not sufficient to identify the person or entity in relation to whom the information is requested, additional information is requested, if possible, in the letter of acknowledgment of the receipt of the request to be sent within 7 business days;

455. If the request is considered to be invalid or incomplete the competent authority will send a letter to the requesting competent authority notifying of deficiencies in the request.

456. In cases where a request is unclear or incomplete the Portuguese competent authority asks the requesting competent authority to provide clarification or additional information. In such a case the request for clarifying or additional elements must be sent to the competent authority of the requesting jurisdiction as soon as possible, within a period of one month;

457. If the request is valid and complete the competent authority basically has two options. Either, DSRI collects the information itself (if the information available to the competent authority), or, and this is the second option, DSRI forwards the request to one of the subordinate tax offices. Where the information is available to AT, the official will take the necessary steps for supplying the requested data within a period of two months.

458. The processing of incoming requests for information is carried out according to the instruction manual which is based on the OECD Manual.

459. The Portugal's instruction manual concerns incoming and outgoing requests and responses as well as spontaneous exchange of information, including procedures applicable to the EOI staff receiving requests.

460. The Portuguese competent authority uses a number of performance measures or indicators internally to monitor its EOI program. Productivity tables are prepared monthly and are reported to the Director General of the Tax and Customs Authority.

461. Further, the assessment of the annual performance of tax officials in the EOI team takes into account the "implementation rate" – decrease in the number of pending procedures (measured by the number of procedures completed annually) and speeding up of the international exchange of information (measured by the average time for sending requests).

462. As Portuguese authorities report all tax officials, more in general, are subject to annual assessment of their performance, under the terms of SIADAP (integrated system of performance assessment of the public administration, *Sistema Integrado de Avaliação do Desempenho da Administração Pública*).

463. The Portuguese authorities confirm that the performance assessment system of tax inspectors at the level of a tax inspectorate, would include the rate of reply to the information requests and the response time, as set under the terms of SIADAP III (integrated system of performance assessment of the public administration, *Sistema Integrado de Avaliação do Desempenho da Administração Pública*).

The system used to log and track requests once they are received

464. The Portuguese Competent Authority (DSRI) reports it uses a computer system to record and monitor the processing of the requests, named RELINT (System for the management of processes (files) (*Sistema de Gestão de Processos*).

465. Portuguese authorities highlight that RELINT – although not used exclusively for EOI – allows the monitoring of the whole processing of the requests, from their initial registration until their completion, and it covers both the requests received and the requests sent. It further allows the registration of all exchanged correspondence and also the monitoring of the progress of the requests. It also allows the monitoring of the time spent on each phase and to produce statistical information concerning EOI.

466. As Portuguese authorities explain the RELINT computer system records the following information items:

- specific classification allocated to a process of EOI;
- reference number of the request;
- the official to whom the request has been assigned;
- the jurisdiction to/from which the request is sent/received;
- information on the entity which is the subject of the request;
- information on the nature of information requested;
- the status of the request at each phase of the process and the corresponding dates (Opened/Pending/Completed/Re-opened);
- a summary of the information sent;
- the date of response to the request received/sent (partial or final answer).

467. In this context Portuguese authorities state that RELINT computer system facilitates to have an overview of the situation of the process. It is possible both for the official to whom the process is assigned and the head of the EOI team to check the procedures and timings concerning each request.

468. Portuguese officials state that since 2013, RELINT has progressively been adapted to the statistical needs in respect of OECD/Global Forum on Transparency and Exchange of Information for Tax Purposes and of the European Union.

469. As noted, if the request is valid and complete the competent authority will first try to respond to the request by itself based on the information available in AT databases. However, if the information is not available to the

competent authority, DSRI will forward the request to one of the subordinate tax offices. Depending on the case, this can either be 1) one of the regional or local tax units, 2) the large taxpayers unit (UGC), or 3) Tax inspectorate in the Autonomous Region of Madeira:

470. Monitoring and recording of the forwarded requests basically follows the same pattern in all three cases.

471. First, the request received from DSRI for the collection of information from the taxpayers is registered in the software application for the management of incoming mail.

472. Then, the internal or external inspection proceeding is initiated and recorded on the Integrated Information System of the Tax Inspectorate (SIIIT, *Sistema Integrado de Informação da Inspeção Tributária*) which allows recording and monitoring all actions performed: e.g. date of request, type of procedure needed for the collection of information, assignment to a tax official, notifications sent to the taxpayer, deadlines and date of response, final information, time spent, conclusion date and monitoring of the deadline for sending information to DSRI.

473. Finally, the information is sent to DSRI and that fact is registered in the software application for outgoing mail.

474. Before sending the answers to the requesting jurisdiction, DSRI reviews and assesses the obtained information.

475. In the period under review, Portugal's EOI partners have made further enquiries in a few cases after the Portuguese competent authority responded to their request. As Portugal reports here were no cases in 2010, but five requests for additional information in 2011, followed by one single request for additional information in 2012 and three requests for additional information during the first half of 2013. Portuguese authorities state that, in order to prevent such cases, checklists were prepared so that each official performs a systematic check of the elements to be included in the response. Further, Portuguese officials point out that the further inquiries were not made because of a perceived inadequate or incomplete response from the side of the Portuguese competent authority, but essentially with the aim to request additional information from Portugal.

Training

476. In the past 3 years the following specialist trainings on exchange of information took place:

- A training seminar organised by the European Union on the use of "e-forms" for EOI was attended both by the Director of DSRI and by an operational official;
- All the other operational officials in the EOI team were trained on the use of "e-forms" for EOI through an e-learning course available at the European Union website;
- E-learning language training courses were taken by operational officials of the EOI team;
- One operational official in the EOI team received specific training as assessor of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Phase 1 plus Phase 2 Peer Review training seminars) and as Phase 2 assessed jurisdiction´s contact person (workshop) and participated as assessor in the Phase 1 Peer Review of two jurisdictions and in the Phase 2 Peer Review of one jurisdiction;
- Update courses organised by the Tax and Customs Authority were attended by operational officials of the EOI team;
- Seminars on international taxation organised by Universities or private entities were attended by operational officials of the EOI team.
- One operational official in the EOI team has been participating for several years in Working Groups of the European Union on EOI.

477. One operational official in the EOI team participated, as the trainer, in a training course about international double taxation and Exchange of Information which was attended by tax officials from central and regional/local departments of AT.

478. Regarding AT in general, Portuguese authorities highlight that in 2012, 62.74% of AT officials participated in at least one training session. There were 19 064 participations in training sessions and 179 267 hours of training sessions.

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

479. With the exception to the conditional lifting of bank secrecy as highlighted in section B.2.1 of this report, there are no laws or regulatory practices in Portugal that impose restrictive conditions on exchange of information. Nevertheless, with respect to requests for banking information it can be noted that under elements C.1. and B.1 it is stated that Portugal's lack of sufficient internal procedures and narrow interpretation of the standard of

foreseeably relevance its access powers and miscommunication with its EOI partners appeared to have unduly restricted the exchange of bank information during the review period and led to anticipated no replies, meaning that requests were not made because partners did not expect to receive a response.

Determination and factors underlying recommendations

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

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
In a number of cases, Portugal has not provided status updates within the 90 day period.	Portugal should provide status updates to its EOI partners within 90 days where relevant.
Portugal's lack of internal processes and guidance with respect to requests for banking information have led to delays in answering requests for this type of information in a number of cases.	Portugal should put in place adequate processes and guidance to ensure that all requests for banking information are answered in a timely manner.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
Largely compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Although tax filing obligations are in place for the reporting of ownership information in relation to bearer shares, these reporting mechanisms may not sufficiently ensure that the owners of such shares can be identified within the stipulated timeframes under the tax filing obligation regime.	Portugal should legally ensure that appropriate reporting mechanisms are in place to effectively ensure that owners of bearer shares can be identified in a timely manner in all cases.
Phase 2 rating: Largely Compliant.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The element is in place.		
Phase 2 rating: Compliant.		
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place.		
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The element is in place.	There are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly restrict the access to information by the competent authorities.	Portugal should ensure that the professional secrecy law applicable to lawyers and solicitors conforms with the standard and does not unduly restrict the access to information by the competent authorities.
Phase 2 rating: Partially Compliant.	During the review period, Portugal rarely accessed bank information directly from the banks in order to reply to an exchange of information request. The Portuguese competent authority interpreted the conditions in its domestic law for lifting bank secrecy narrowly and in many instances failed to initiate the process to access bank information in order to reply to requests for exchange of information. Although Portugal states it revised its internal procedures in May 2014 and amended its access powers regarding bank information as of 1 January 2015, both changes are very recent and are further complicated by the fact that the streamlining of its access powers in article 63B only apply to, and insofar as, requests for banking information pertain to periods after 1 January 2015.	Portugal should ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The element is in place.		
Phase 2 rating: Compliant	.	
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	A significant number of agreements for the exchange of information signed over the past four years are not yet in force and have not been ratified by Portugal.	Portugal should ensure that its exchange of information mechanisms are brought into force expeditiously.
Phase 2 rating: Partially Compliant.	During the review period, Portugal did not provide banking information in respect of a significant number of requests, as the EOI team interpreted the standard of foreseeably relevance in this respect narrowly and considered that many requests were not duly justified and/ or documented in the light of the standard of "foreseeably relevance" or, if they were, did not meet the requirements provided under Portuguese law to derogate bank secrecy.	Portugal should ensure that it implements the condition of foreseeably relevance in line with the international standard in all cases
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		Portugal should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect expeditiously.
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The element is in place.		
Phase 2 rating: Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place.	There are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly limit the access to information.	Portugal should clarify the scope of the professional secrecy applicable to lawyers and solicitors to ensure consistency with the standard.
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant.	In a number of cases, Portugal has not provided status updates within the 90 day period.	Portugal should provide status updates to its EOI partners within 90 days where relevant.
	Portugal's lack of internal processes and guidance with respect to requests for banking information have led to delays in answering requests for this type of information in a number of cases.	Portugal should put in place adequate processes and guidance to ensure that all requests for banking information are answered in a timely manner.

Annex 1: Jurisdiction's response to the review report[49]

Portugal is fully committed to implementing the international standard on transparency and exchange of information for tax purposes. This Peer Review Report and the overall rating of "largely compliant" confirm this commitment.

Portugal concluded the first international agreements allowing for the exchange of information (EOI) for tax purposes in the late 1960s and has been exchanging information upon request for decades. Due to its commitment to the international standard, Portugal made an effort to negotiate, sign and ratify an exceptionally high number of international agreements providing for EOI in recent years and is also actively updating its older DTCs to the international standard.

At present, Portugal has an exchange of information relationship with 110 jurisdictions. Since the Phase 1 Review, Portugal has ratified 9 Double Taxation Conventions or Amending Protocols, and has brought into force 8 Double Taxation Conventions or Amending Protocols.

It is Portugal's policy not to conclude any international tax agreement which does not provide for exchange of information in accordance with the international standard.

Shortly after the Phase 1 Review, Portugal has transposed the European Union Council Directive 2011/16/EU on administrative cooperation in the field of taxation by enacting the Decree-Law 61/2013, of 10 May 2013, which introduced a prior notification requirement applicable to exchange of information under any EOI instrument, as well as exceptions to prior notification in line with the international standard (e.g. if the request is of an urgent nature, or in cases where the notification may undermine the investigation if there are indications of tax evasion or tax avoidance in the requesting jurisdiction). Decree-Law 61/2013 also clarified that the powers and obligations of the Tax and Customs Authority (AT) in relation to its duties of collection

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

and transmission of data apply to all bilateral or multilateral EOI agreements concluded by Portugal.

Portugal ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in September 2014 and deposited its instrument of ratification on 17 November 2014. The Multilateral Convention enters into force in Portugal on 1 March 2015.

Portugal has been sending banking information automatically, on a regular basis, under the EU Savings Directive for many years.

On 29 October 2014, Portugal signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, formally reaffirming its commitment to start exchanging banking and other financial information automatically under the Common Reporting Standard from 2017. Portugal is one of its early adopters. Portugal is also committed to exchange banking and other financial information with the United States on an automatic basis under FATCA, starting next September.

The budget law for 2015 (Law 82-B/2014, of 31 December 2014) introduced a simplified regime of access to bank information for EOI purposes as well as exceptions to notification requirements in line with the international standard.

Portugal is very supportive of the work carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes and has actively participated in this work, namely by providing expert assessors and financial resources.

Portugal congratulates the Global Forum for the important progress achieved in recent years in improving international tax transparency, contributing to the fight against international tax evasion and avoidance.

Portugal generally agrees with the findings of this Peer Review Report, and will carefully consider its determinations and recommendations with a view to fully comply with the international standard. Portugal has already initiated the necessary changes to address these recommendations.

New internal procedures and guidance concerning the processing of bank information requests were already adopted, and with regard to 7 requests pertaining to the period under review bank information has already been exchanged with Portugal's EOI partners, after the cut-off date (2 January 2015). With regard to further 9 requests pertaining to the period under review, the Director General of the Tax and Customs Authority has already issued decisions to access bank information for EOI purposes.

Portugal has been providing status updates to its EOI partners within 90 days where relevant, on a systematic basis.

Portugal will continue to develop its exchange of information network and take all steps necessary to bring concluded agreements into force expeditiously, as recommended by this Peer Review Report.

Finally, Portugal would like to express its appreciation for the excellent work carried out by the assessment team in this review of the changes in its legal and regulatory framework that occurred since Phase 1, and of the practical implementation of this framework in the period under review.

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

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	MAC	01-Mar-2013	Not yet in force[a]
2	Algeria	DTC	02-Dec-2003	01-May-2006
3	Andorra	TIEA	30-Nov-2009	31-Mar-2011
		MAC	05-Nov-2013	Not yet in force
4	Anguilla	TIEA	28-Feb-2011	Not yet in force
		MAC	Extension	Not yet in force[a]
5	Antigua and Barbuda	TIEA	13-Sep-2010	Not yet in force
6	Argentina	MAC	03-Nov-2011	Not yet in force[a]
7	Aruba	MAC	Extension	Not yet in force[a]
8	Australia	MAC	03-Nov-2011	Not yet in force[a]
9	Austria	DTC	29-Dec-1970	28-Feb-1972
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
		MAC	29-May-2013	Not yet in force[a]
10	Azerbaijan	MAC	23-May-2014	Not yet in force
11	Barbados	DTC	22-Oct-2010	Not yet in force
12	Belgium	DTC	16-Jul-1969	19-Feb-1971
		DTC Protocol	06-Mar-1995	05-Apr-2001
		MAC	07-Feb-1992	Not yet in force
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
13	Belize	TIEA	22-Oct-2010	Not yet in force
		MAC	29-May-2013	Not yet in force[a]
14	Bermuda	TIEA	10-May-2010	05-Apr-2011
		MAC	Extension	Not yet in force[a]
15	Brazil	DTC	16-May-2000	05-Oct-2001
		MAC	03-Nov-2011	Not yet in force

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
16	British Virgin Islands	TIEA	05-Oct-2010	Not yet in force
		MAC	Extension	Not yet in force[a]
17	Bulgaria	DTC	15-Jun-1995	18-Jul-1996
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
18	Cameroon	MAC	25-Jun-2014	Not yet in force
19	Canada	DTC	14-Jun-1999	24-Oct-2001
		MAC	03-Nov-2011	Not yet in force[a]
20	Cape Verde	DTC	22-Mar-1999	15-Dec-2000
21	Cayman Islands	TIEA	13-May-2010	18-May-2011
		MAC	Extension	Not yet in force[a]
22	Chile	DTC	07-Jul-2005	25-Aug-2008
		MAC	24-Oct-2013	Not yet in force
23	China (People's Rep.)	DTC	21-Apr-1998	08-Jun-2000
		MAC	27-Aug-2013	Not yet in force
24	Colombia	DTC	30-Aug-2010	Not yet in force
		MAC	23-May-2012	Not yet in force[a]
25	Costa Rica	MAC	01-Mar-2012	Not yet in force[a]
26	Croatia	DTC	04-Oct-2013	Not yet in force
		EU Directive 2011/16/EU	01-Jul-2013	01-Jul-2013
		MAC	11-Oct-2013	Not yet in force[a]
27	Cuba	DTC	30-Oct-2000	28-Dec-2005
28	Curacao	MAC	Extension	Not yet in force[a]
29	Cyprus[b]	DTC	19-Nov-2012	16-Aug-2013
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
		MAC	10-Jul-2014	Not yet in force
30	Czech Republic	DTC	24-May-1994	01-Oct-1997
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
		MAC	26-Oct-2012	Not yet in force[a]
31	Denmark	DTC	14-Dec-2000	24-May-2002
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
32	Dominica	TIEA	05-Oct-2010	Not yet in force
33	Estonia	DTC	12-May-2003	23-Jul-2004
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
		MAC	29-May-2013	Not yet in force[a]

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
34	Ethiopia	DTC	25-May-2013	Not yet in force
35	Faroe Islands	MAC	Extension	Not yet in force[a]
36	Finland	DTC	27-Apr-1970	14-Jul-1971
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
37	France	DTC	14-Jan-1971	18-Nov-1972
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
38	Gabon	MAC	03-Jul-2014	Not yet in force
39	Georgia	DTC	21-Dec-2012	Not yet in force
		MAC	03-Nov-2011	Not yet in force[a]
40	Germany	DTC	15-Jul-1980	08-Oct-1982
		MAC	03-Nov-2011	Not yet in force
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
41	Ghana	MAC	10-Jul-2012	Not yet in force[a]
42	Gibraltar	TIEA	14-Oct-2009	24-Apr-2011
		MAC	Extension	Not yet in force[a]
43	Greece	DTC	02-Dec-1999	13-Aug-2002
		MAC	21-Feb-2012	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
44	Greenland	MAC	Extension	Not yet in force[a]
45	Guatemala	MAC	05-Dec-2012	Not yet in force
46	Guernsey	TIEA	09-Jul-2010	Not yet in force
		MAC	Extension	Not yet in force[a]
47	Guinea-Bissau	DTC	17-Oct-2008	05-Jul-2012
48	Hong Kong	DTC	22-Mar-2011	03-Jun-2012
49	Hungary	DTC	16-May-1995	22-Feb-1999 (Hungary) 8-May-2000 (Portugal)
		MAC	12-Nov-2013	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
50	Iceland	DTC	02-Aug-1999	11-Apr-2002
		DTC Protocol	11-Nov-2005	18-Dec-2006
		MAC	27-May-2010	Not yet in force[a]

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
51	India	DTC	11-Sep-1998	05-Apr-2000
		MAC	26-Jan-2012	Not yet in force[a]
52	Indonesia	DTC	09-Jul-2003	11-May-2007
		MAC	03-Nov-2011	Not yet in force[c]
53	Ireland	DTC	01-Jun-1993	11-Jul-1994
		MAC	30-Jun-2011	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
54	Isle of Man	TIEA	09-Jul-2010	18-Jan-2012
		MAC	Extension	Not yet in force[a]
55	Israel	DTC	26-Sep-2006	18-Feb-2008
56	Italy	DTC	14-May-1980	15-Jan-1983
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
57	Japan	MAC	03-Nov-2011	Not yet in force[a]
		DTC	19-Dec-2011	28-Jul-2013
58	Jersey	TIEA	09-Jul-2010	09-Nov-2011
		MAC	Extension	Not yet in force[a]
59	Kazakhstan	MAC	23-Dec-2013	Not yet in force
60	Korea (Rep.)	DTC	26-Jan-1996	21-Dec-1997
		MAC	27-May-2010	Not yet in force[a]
61	Kuwait	DTC	23-Feb-2010	05-Dec-2013
62	Latvia	DTC	19-Jun-2001	07-Mar-2003
		MAC	29-May-2013	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
63	Liechtenstein	MAC	21-Nov-2013	Not yet in force
64	Lithuania	DTC	14-Feb-2002	26-Feb-2003
		MAC	07-Mar-2013	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
65	Liberia	TIEA	14-Jan-2011	Not yet in force
66	Luxembourg	DTC	25-May-1999	30-Dec-2000
		DTC Protocol	07-Sep-2010	18-May-2012
		MAC	29-May-2013	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
67	Macau	DTC	28-Sep-1999	01-Jan-1999
68	Malta	DTC	26-Jan-2001	05-Apr-2002
		MAC	26-Oct-2012	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
69	Mexico	DTC	11-Nov-1999	09-Jan-2001
		MAC	27-May-2010	Not yet in force[a]
70	Moldova	DTC	11-Feb-2009	18-Oct-2010
		MAC	27-Jan-2011	Not yet in force[a]
71	Monaco	MAC	13-Oct-2014	Not yet in force
72	Montserrat	MAC	Extension	Not yet in force[a]
73	Morocco	DTC	29-Sep-1997	27-Jun-2000
		MAC	21-May-2013	Not yet in force
74	Mozambique	DTC	21-Mar-1991	01-Jan-1994
		DTC Protocol	24-Mar-2008	07-Jun-2009
75	Netherlands	DTC	20-Sep-1999	11-Aug-2000
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
76	New Zealand	MAC	26-Oct-2012	Not yet in force[a]
77	Nigeria	MAC	29-May-2013	Not yet in force
78	Norway	DTC	10-Mar-2011	15-Jun-2012
		MAC	27-May-2010	Not yet in force[a]
79	Pakistan	DTC	23-Jun-2000	04-Jun-2007
80	Panama	DTC	27-Aug-2010	10-Jun-2012
81	Peru	DTC	19-Nov-2012	12-Apr-2014
82	Philippines	MAC	26-Sep-2014	Not yet in force
83	Poland	DTC	09-May-1995	04-Feb-1998
		MAC	09-Jul-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
84	Qatar	DTC	12-Dec-2011	4-Apr-2014
85	Romania	DTC	16-Sep-1997	14-Jul-1999
		MAC	15-Oct-2012	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
86	Russia	DTC	29-May-2000	11-Dec-2002
		MAC	03-Nov-2011	Not yet in force
87	San Marino	DTC	18-Nov-2010	Not yet in force
		MAC	21-Nov-2013	Not yet in force
88	Saudi Arabia	MAC	29-May-2013	Not yet in force
89	Senegal	DTC	13-Jun-2014	Not yet in force
90	Singapore	DTC	06-Sep-1999	16-Mar-2001
		DTC Protocol	28-May-2012	26-Dec-2013
		MAC	29-May-2013	Not yet in force
91	Sint Maarten	MAC	Extension	Not yet in force[a]
92	Slovak Republic	DTC	05-Jun-2001	02-Nov-2004
		MAC	29-May-2013	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
93	Slovenia	DTC	05-Mar-2003	13-Aug-2004
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
94	South Africa	DTC	13-Nov-2006	22-Oct-2008
		MAC	03-Nov-2011	Not yet in force[a]
95	Spain	DTC	26-Oct-1993	28-Jun-1995
		MAC	11-Mar-2011	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
96	St. Kitts and Nevis	TIEA	29-Jul-2010	Not yet in force
97	St. Lucia	TIEA	14-Jul-2010	28-Oct-2011
98	Sweden	DTC	29-Aug-2002	19-Dec-2003
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
99	Switzerland	DTC	26-Sep-1974	18-Dec-1975
		DTC Protocol	25-Jun-2012	21-Oct-2013
		MAC	15-Oct-2013	Not yet in force
100	Timor-Leste	DTC	27-Sep-2011	Not yet in force
101	Tunisia	DTC	24-Feb-1999	21-Aug-2000
		MAC	16-Jul-2012	Not yet in force[a]

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
102	Turkey	DTC	11-May-2005	18-Dec-2006
		MAC	03-Nov-2011	Not yet in force
103	Turks and Caicos Islands	TIEA	21-Dec-2010	Not yet in force
		MAC	Extension	Not yet in force[a]
104	Ukraine	DTC	09-Feb-2000	11-Mar-2002
		MAC	27-May-2010	Not yet in force[a]
105	United Arab Emirates	DTC	17-Jan-2011	22-May-2012
106	United Kingdom	DTC	27-Mar-1968	20-Jan-1969
		MAC	27-May-2010	Not yet in force[a]
		EU Directive 2011/16/EU	15-Feb-2011	01-Jan-2013
107	United States	DTC	06-Sep-1994	01-Jan-1996
		MAC	27-May-2010	Not yet in force
108	Uruguay	DTC	30-Nov-2009	13-Sep-2012
109	Uzbekistan	DTC	10-Feb-2001	Not yet in force
110	Venezuela	DTC	23-Apr-1996	08-Jan-1998

a. It will enter into force on 01-03-2015.

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

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

c. Indonesia has ratified the Multilateral Convention, it will enter into force in Indonesia on 1 May 2015.

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

Commercial Laws

Civil Code

Commercial Code

CRC – Commercial Registration Code

CSC – Commercial Companies Code

CVM – Securities Code

CMVM Regulation 14/2000 concerning Securities Registration Systems (with the amendments introduced by CMVM Regulation 3/2003)

Decree-Law 158/2009, of 13 July 2009, approves the accounting standards framework

Decree-law 250/2012, of 23 November 2012

Taxation Laws

CIRS – Personal Income Tax Code

CIRC – Corporate Income Tax Code

CIVA – Value Added Tax Code

CPPT – Code of Tax Process and Procedure

RCPIT – Complementary Regime of Tax Inspection Procedure

RGIT – General Regime of Tax Infractions

LGT – General Tax Law

Decree-Law 14/2013, of 28 January 2013 – Tax Identification Number

Decree-Law 62/2005, of 11 March 2005 – Transposes the Savings Directive

Decree-Law 118/2011, of 15 December 2011 – Organisation of the Tax and Customs Authority

Ministerial Order (Portaria) 320-A/2011 of 30 December 2011

Decree Law 61/2013, of 10 May 2013 – Transposes the EU Council Directive 2011/16/EU on administrative co-operation in the field of taxation

Law 73/2013, of 3 September 2013 – Financial regime of local authorities and inter-municipal entities

Law 2/2014, of 16 January 2014

Banking and Anti-Money Laundering Laws

Bank of Portugal Notice 5/2008, as amended by Bank of Portugal Notice 9/2012

Decree-Law 317/2009, of 30 October 2009 – Legal Framework of Payments and Electronic Money, Article 37

Law 5/2002, of 11 January 2002

AML Law – Law 25/2008 of 5 June 2008

RGICSF – Legal Framework of Credit Institutions and Financial Companies, approved by the Decree-Law 298/92, of 31 December 1992

Bank of Portugal Instruction 46/2012, of 17 December 2012

Bank of Portugal Notice 5/2013, of 18 December 2013

Foundation Legislation

Decree-Law 36-A/2011, of 9 March 2011 – Accounting standards applicable to foundations

Foundation Framework Law (FFL), enacted by Law 24/2012 of 9 July 2012

Professional Secrecy Legislation

Article 87 of the Law 15/2005, of 26 January 2005

Article 110 of the Decree-Law 88/2003, of 26 April 2003

Article 54(1)(c) of the Decree-Law 452/99 of 5 November 1999

Articles 3(1) f) and 10 of the Decree-Law 310/2009

Article 72 of the Decree-Law 487/99, of 16 November 1999

Article 32 of the Decree-Law 207/95, of 14 August 1995

Statute of the Statutory Auditors (OROC), approved by Decree-Law 487/99, of 16 November 1999

Other legislation

CRP – Constitution of the Portuguese Republic

RNPC – National Registration of Legal Persons Regime, approved by the Decree-Law 129/98, of 13 May 1998

Ministerial Order (Portaria) 289/2000, of 25 May 2000

Ministerial Order (Portaria) 290/2000, of 25 May 2000

Law 82-B/2014, of 31 December 2014

Legislation applicable to the Madeira Free Trade Zone

Decree-Law 500/80, of the 20 October 1980

Regulatory – Decree 53/82, of the 23 August 1982

Regional Regulatory Decree. 21/87/M, of 5 September 1987

Decree-Law 234/88, of 5 July 1988

Decree-Law 212/94, of 10 August 1994

Decree-Law 250/97, of 23 September 1997

Decree-Law 352-A/88, of 3 October 1988

Decree-Law 149/94, of 25 May 1994

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: PORTUGAL

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

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

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

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

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*** and ***www.eoi-tax.org.***

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