GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

CROATIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Croatia 2016

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

March 2016
(reflecting the legal and regulatory framework
as at December 2015)

Please cite this publication as:
OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Croatia 2016: Phase 1: Legal and Regulatory Framework*, OECD Publishing.
http://dx.doi.org/10.1787/9789264250673-en

ISBN 978-92-64-25066-6 (print)
ISBN 978-92-64-25067-3 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

Table of Contents

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 130 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 Croatia. The international standard, which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. Croatia is a state located in Southeast Europe on the coastline of the Adriatic Sea with a population of about 4.5 million. The services sector which represents about 69% of Croatia's GDP is dominated by tourism. Croatia's main trading partners are EU member states and former Yugoslav countries. Croatia is member of the European Union and many international organisations including World Trade Organization, International Monetary Fund and MONEYVAL.

3. Croatia's legal and regulatory framework ensures that ownership information regarding all relevant entities is available in Croatia in line with the international standard with the exception of joint stock companies which have issued bearer shares prior to April 2008 and limited number of foreign companies and partnerships. All companies including branches of foreign companies are required to register in the Commercial Register. All domestic companies are required to maintain a shareholder register which constitutes legal ownership in the company. In addition, limited liability companies have to provide information on all their members to the Commercial Register. Foreign companies with place of effective management in Croatia become tax residents there and are required to report their ownership to the tax authority in majority of cases. Some ownership information in respect of foreign companies is also required to be available through service providers engaged in Croatia. However these obligations do not necessarily cover all foreign companies as required under the standard. Some joint stock companies could have issued bearer shares before April 2008 and there is no direct requirement in Croatian law which would ensure that all holders of such shares are identified. Ownership information on domestic partnerships with

legal personality is required to be available with the Commercial Register. Domestic partnerships without legal personality are required to provide information on all their partners to the tax authority. Information on all partners in foreign partnerships that carry on business in Croatia or derive taxable income may not be available in all cases as the relevant tax and AML obligations are linked to certain conditions which do not necessarily apply. Croatian law does not recognise the concept of a trust however the combination of tax and anti-money laundering (AML) legislation ensures that information is available as required under the standard. Foundations and associations appear to be not relevant to the work of the Global Forum. Nevertheless, the relevant ownership information has to be available with the Register of Foundations, the tax authority or with the association.

4. All relevant entities and arrangements are required under the accounting and tax law to keep accounting records in line with the standard. The requirements under the Accounting Act are supplemented by obligations under the tax law. Obliged persons are required to collect and prepare bookkeeping documents, keep accounting books and draw up financial statements in accordance with the relevant international accounting standards and principles of orderly bookkeeping. Accounting records and underlying documentation have to be kept for at least seven years since the end of the financial year to which they relate.

5. The legal and regulatory framework in Croatia requires availability of banking information in line with the standard. Anonymous accounts, accounts on fictitious names or numbered accounts are prohibited. Obligations to maintain identity information on all account-holders and transaction records are contained mainly in the AML law and sector specific regulations. The required information has to be kept for a period of ten years after a transaction execution or the termination of a business relationship.

6. Croatia's tax authority has broad access powers to obtain and provide requested information and these powers can be used also for exchange of information purposes. These powers include right to enter premises and request information from all persons which the tax authority deems relevant. Croatia has also in place appropriate enforcement provisions to compel the production of information including search and seizure power. Nevertheless use of access powers regardless of domestic tax interest is not unambiguously provided for exchange of information under agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention. Croatia is also recommended to put beyond doubt tax authority's power to obtain information contained in the shareholder register kept by a company. Banking secrecy provisions contain appropriate exception to allow the tax authority access to banking information in line with the standard. The exception from the obligation to provide information in respect of lawyers, tax consultants

and auditors is too broad and goes beyond the standard. Croatia's law does not require notification of the persons concerned prior or after providing the requested information to the requesting jurisdiction and appeal rights contained in Croatian law do not appear to have potential to unduly prevent or delay effective exchange of information.

7. Croatia has an extensive EOI network covering 104 jurisdictions through 62 DTCs, the on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) and EU legislation for exchange of information. Croatia's EOI network covers all of its significant partners including its main trading partners. As already indicated above, an ambiguity in Croatia's domestic law may prevent the Croatian competent authority from accessing information for EOI purposes regardless of domestic tax interest under DTCs which do not contain Article 26(4) of the OECD Model Tax Convention. Since most of the treaty partners with which Croatia has concluded these treaties are covered by the Multilateral Convention and/or the EU Directive on Administrative Cooperation this may potentially limit effective exchange of information with 12 jurisdictions.[1] All Croatia's EOI instruments are in force except for one DTC which is nevertheless already ratified by Croatia. All Croatia's EOI instruments have confidentiality provisions in accordance with the standard. The provisions of Croatia's EOI agreements override domestic laws, meaning that the confidentiality provisions present therein have full legal effect in Croatia. Croatia's domestic law in combination with obligations under EOI agreements require adequate protection of information exchanged under its EOI instruments.

8. Overall, Croatia has a legal and regulatory framework in place that ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard. Croatia's response to the recommendations in this report, as well as the application of the legal framework and practices in exchange of information will be considered in detail in the next round of peer review of Croatia which is scheduled to commence in the first half of 2018. A follow-up report on the measures taken by Croatia to respond to the recommendations made in the present report will be provided to the Peer Review Group in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.

1. These jurisdictions are Belarus, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Iran, Jordan, Kuwait, Malaysia, Montenegro, Oman, Qatar, Serbia and Syrian Arab Republic (Syria).

Introduction

9. The assessment of the legal and regulatory framework of Croatia 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 was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 17 December 2015, Croatia's responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Croatia, and information supplied by partner jurisdictions.

10. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Croatia's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

11. The assessment was conducted by a team which consisted of two expert assessors: Mr. Richard Carter, Government Income Tax Division, Isle of Man and Mrs. Lela Mikiashvili, Ministry of Finance, Georgia; and two representatives of the Global Forum Secretariat: Mrs. Renata Fontana and Mr. Radovan Zídek.

12. The Republic of Croatia (Croatia) is a state located in Southeast Europe on the coastline of the Adriatic Sea bordering with Bosnia and Herzegovina, Hungary, Montenegro, Serbia and Slovenia. Croatia covers 56 594 sq km and has a population of about 4.5 million (July 2015 est.). Its capital city is Zagreb which is also the biggest city with a population of about

0.6 million. The official language is Croatian and the official currency is Croatian Kuna (HRK)[2].

13. Croatia's GDP is about EUR 77.8 billion (latest figures 2014). Services represent about 69% of Croatia's GDP, followed by industry with 27% and agriculture with 4%. The service sector is dominated by tourism which accounts for up to 20% of Croatian GDP. The main industries are shipbuilding, food processing, pharmaceuticals, information technology and wood products. The state controls important parts of the economy. Croatia experienced a slowdown in the economy in 2008. The Government has cut its spending since 2012 and raised tax revenues through more efficient tax collection and raising the Value Added Tax.

14. The main trading partners of Croatia are EU member states and former Yugoslav countries. In terms of exports the main partners in 2014 were Italy (13.7%), Bosnia and Herzegovina (12%), Slovenia (11.2%), Germany (11.1%) and Austria 6%. Main importing partners were Germany (15.1%), Italy (14.1%), Slovenia (10.7%), Austria (8.6%) and Hungary 6.5%.

15. Croatia became a member of the European Union in July 2013. Croatia is also a member of many international organisations including the United Nations, World Trade Organization, International Monetary Fund, the North Atlantic Treaty Organization (NATO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures by the Council of Europe (MONEYVAL). Croatia is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since May 2014.

General information on the legal system and the taxation system

Governance and the legal system

16. Croatia is parliamentary democracy with multi-party system of government. The executive, legislative and judiciary branches of the state are independent. The executive branch is headed by the Prime Minister. A cabinet of ministers whose members are appointed by the president on the advice of the Prime Minister is approved by the Parliament (Hrvatski Sabor). The legislative branch consists of unicameral Parliament with 151 seats. Members of Parliament are directly elected by party-list proportional representation vote for a four year term. Judicial branch entails the Supreme Court, general courts and specialised courts. General courts consist of municipal and county courts. Specialised courts include commercial courts, administrative courts, magistrates' courts, high commercial court and high administrative

2. As of October 2015: HRK 1 = EUR 0.13.

court. Tax matters are under the jurisdiction of administrative court. The Constitutional Court has jurisdiction limited to constitutional issues.

17. Croatia is a unitary state divided into 20 counties and the capital city of Zagreb. Counties are regional self-governments with sub legislative powers. Regional self-governments can influence the level of taxation in their region through surcharges to taxes levied at the national level.

18. Croatia's legal system is based upon a civil law influenced by Hungro-Austrian tradition and forms a single national law. International agreements (including agreements for exchange of information for tax purposes) which settle matters regulated by law require ratification by the Parliament. Obligations under ratified international treaties prevail over domestic law. A list of relevant legislation and regulations is set out in Annex 3.

The tax system

19. Croatia's tax system comprises direct and indirect taxes, fees and duties. Main taxes from the revenue perspective are Value Added Tax (VAT), profit tax, income tax and excise duties. Profit tax is corporate income tax.

20. Croatia taxes its tax residents (companies and individuals) on their worldwide income. All companies established under Croatia's law and foreign companies with place of effective management in Croatia are considered as tax residents in Croatia (s. 3(1) Profit Tax Act). Residents are taxed from their worldwide income (s. 5(1) Profit Tax Act). The corporate tax base is the difference between revenue and expenditure assessed in the profit and loss statement under the accounting rules, which is then increased and reduced for tax-specific items under the corporate tax provisions. The general corporate income tax rate is 20%. Individuals' income is taxed progressively with tax rates of 12%, 25% and 40%. Dividends paid to a non-resident (other than a private individual) are subject to a 12% withholding tax, unless the rate is reduced or exempt under a tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive. Interests and royalties are subject to a 15% withholding tax if paid to a non-resident (other than a private individual) unless the rate is reduced or exempt under a tax treaty or the EU interest and royalties directive. Croatia tax law includes transfer pricing and thin capitalisation rules.

21. VAT is imposed on the sale of goods, provision of services, intra-community acquisition of goods and import. The standard VAT rate is 25%, with reduced rates of 13% and 5%. Registration is compulsory for businesses with annual value of transactions exceeding HRK 230 000 (EUR 30 160).

22. The tax system is under supervision of the Tax Administration placed within the Ministry of Finance. The Tax Administration enacts laws and

regulations on rights and obligations of the taxpayers regarding all sorts of taxes and other fees established within the Croatian tax system. The main sources of tax law are the General Tax Act containing rules of taxation and tax procedure for all types of taxes, laws dealing with specific taxes such as Profit Tax Act, Income Tax Act, VAT Act or Real Estate Transfer Tax Act and the Tax Administration Act regulating organisation and responsibilities of the Croatian tax authority. Detailed taxation rules are further prescribed in tax regulations issued by the Tax Administration.

Exchange of information for tax purposes

23. Rules applicable to exchange of information for tax purposes (EOI) are mainly contained in the General Tax Act providing general tax procedures which apply also in respect of EOI. These rules apply to EOI based on international agreements and EU legislation. All taxes are administered by the Tax Administration which is also designated as the Croatian competent authority for EOI purposes.

24. Croatia provides international co-operation in tax matters based on international bilateral and multilateral instruments and EU law. The relevant EU legislation includes the EU Council Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, the EU Savings Directive 2003/48/EC (EU-SD), Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Council Regulation (EU) No. 904/2010 on administrative co-operation and combating fraud in the field of value added tax and Council Regulation (EC) 2073/2004 on administrative co-operation in the field of excise duties. These co-operation mechanisms involve exchange of information upon request, automatic and spontaneous exchange of information, multilateral controls and recovery assistance.

25. Croatia is also able to exchange information with jurisdictions with which it does not have EOI agreements based on its domestic law. Under the General Tax Act Croatia will provide the requested information to the requesting jurisdiction if (i) there is reciprocity, (ii) the requesting jurisdiction commits itself to use the received information only for the purposes in accordance with Article 26(2) of the OECD Model Tax Convention, (iii) the requesting jurisdiction displays willingness to enter into an agreement to avoid double taxation, and (iv) providing the information is in accordance with Article 26(3) of the OECD Model Tax Convention (s. 99(3) General Tax Act).

Overview of the financial sector and relevant professions

26. Croatia's financial sector comprises currency and payment system, financial markets, financial institutions and institutions regulating and monitoring their operations. Banks play a dominant role in Croatia's financial system. They are the most active of all financial institutions in the payment system as well as on money, foreign exchange and the capital markets. As of November 2015, there were 38 commercial banks (out of which 11 are undergoing bankruptcy proceedings), 1 saving bank, 5 housing savings banks, 4 representative offices of foreign banks, 5 electronic money institutions and 26 credit unions. Out of 33 banks not in bankruptcy proceedings 20 are primarily owned by resident shareholders and there are 13 banks where more than 50% of shares are in foreign ownership. There were no foreign bank branches in Croatia in 2015. The total assets of the banking sector at 31 December 2014 were HRK 403 bn (EUR 52.6 bn). The share of assets of the six largest banks in foreign ownership was 79.4 %. The operation of banks, savings banks and housing savings banks is regulated by the Credit Institutions Act and Act on Housing Savings and State Incentive to Housing Savings. All banks have to be authorised by the Croatian National Bank which is also conducting their supervision.

27. The non-banking sector of financial institutions comprises insurance companies (26),[3] leasing companies (23), factoring companies (2), pension management companies (9) and investment fund management companies (21) which are all regulated and supervised by the Croatian Financial Services Supervisory Agency (HANFA). HANFA is also responsible for regulating and supervising the operations of auxiliary financial institutions, such as investment firms (30), regulated stock exchanges (1), the Central Depository and Clearing Company (CDCC) or insurance underwriters including insurance agencies, insurance brokerage companies and natural persons acting as insurance agents and brokers.

28. Natural and legal persons can invest in capital market instruments through mediation of licensed brokers who trade in such instruments on the Zagreb Stock Exchange (ZSE). The responsibility for due settlement of securities purchase and sale transactions on the domestic market lies with the CDCC. Pursuant to the Capital Market Act the CDCC manages the central depository of dematerialised securities, manages the clearing and settlement system of securities and defines unique identification marks of dematerialised securities (ISIN and CFI marks).

29. Designated Non-Financial Businesses and Professions (DNFBPs) in Croatia comprise mainly public notaries (312), lawyers (3 447), auditing

3. The figure in brackets indicates the number of these entities or persons as at November 2015.

firms and independent auditors (214), natural and legal persons performing accountancy and tax advisory services (5 642), real-estate intermediaries (1 230), traders of precious metals (378) or traders with artistic items and antiques (90). Public notaries as regulated by the Public Notaries Law and the Public Notaries Chamber Statue. Public notaries are required to be licensed by the Public Notaries Chamber. Lawyers and law firms as regulated by the Law on Legal Professions and the Croatian Bar Association Statute and are required to be licensed by the Bar Association. Auditing firms and independent auditors as regulated by the Audit Law and are required to be licensed by the Croatian Audit Chamber. Persons performing accountancy and tax advisory services are not centrally organised but there is a number of local organisations representing their members. There are 2 registered entities that have this as a main activity providing trust and company services. Fiduciary services are mostly provided by lawyers.

30. The system of AML regulation and supervision of financial institutions and DNFBPs in Croatia is primarily based on the Anti-Money Laundering and Terrorist financing Act (AML Act) and partially on the industry laws and regulations. Regulation of AML issues is under the overall responsibility of the Ministry of Finance. Financial institutions are supervised by the National Bank, HANFA or the Financial Inspectorate according to their type of business activity. The Financial Inspectorate is an organisational part of the Ministry of Finance responsible for financial and AML supervision. The Financial Inspectorate is also responsible for AML supervision of DNFBPs (except for casinos which are under supervision of the Tax Administration). The latest report on Croatia's compliance with the international AML standards was issued by MONEYVAL in September 2013. The report concludes that Croatia has taken significant steps to remedy the deficiencies in preventive measures identified in the previous report and that the system is generally in line with the international standards.

31. Croatia signed the Multilateral Convention in October 2013 and the Multilateral Convention came into force in Croatia in June 2014.

32. Several amendments of the General Tax Act came into force in March 2015. These amendments introduced changes among others in relation to exchange of information under agreements which do not provide for avoidance of double taxation and regarding secrecy rules related to information obtained through exchange of information. Further changes of the General Tax Act and other laws are to be made mainly in relation to implementation of the Foreign Account Tax Compliance Act (FATCA), EU Council Directive 2014/107/EU and EU Council Directive 2015/2060/EU regulating mandatory automatic exchange of information in the field of taxation.

33. The Tax Administration issued an ordinance on automatic exchange of information providing detailed rules for implementation of automatic

exchange of information under EU Council Directive 2011/16/EU. The ordinance was applicable from 1 January 2015.

34. Croatia amended the Court Register Act to allow cross-border sharing of information and documents through the system of linked registers among EU member states. The amendment came into force on 7 August 2014.

Compliance with the Standards

A. Availability of information

Overview

35. 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 Croatia's legal and regulatory framework for availability of information.

36. Croatia's legal and regulatory framework ensures that ownership information regarding all relevant entities is available in Croatia in line with the international standard with the exception of joint stock companies which have issued bearer shares prior to April 2008 and limited number of foreign companies and partnerships. All companies including branches of foreign companies are required to register in the Commercial Register. All domestic companies are required to maintain a shareholder register. Until a person is entered into the shareholder register it does not have legal rights of

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 other tax information exchange agreements.

a shareholder in respect to the company. In addition, limited liability companies have to provide information on all their members to the Commercial Register upon registration and keep the information updated. Foreign companies with place of effective management in Croatia become tax residents there and are required to report their ownership to the tax authority in majority of cases. Further, some ownership information in respect of foreign companies is required to be available through service providers engaged in Croatia. Although these obligations ensure availability of ownership information in majority of cases they are linked to certain conditions which may not necessarily apply to all foreign companies with sufficient nexus with Croatia. Croatia is therefore recommended to address this limited gap.

37. Shares can be issued only as registered shares. However, joint stock companies could have issued bearer shares before April 2008 and there is no direct requirement in Croatian law which would require conversion of these already issued bearer shares into registered shares or other measure ensuring that the holder of such shares is identified. There are however several mitigation factors which limit impact of bearer shares on availability of ownership information such as that only certain joint stock companies could have issued bearer shares, AML obligations of service providers, the fact that a person becomes a shareholder in a company only upon entry into the shareholder register or reported low materiality of the issue. Nevertheless, it is recommended that Croatia takes measures to ensure that information on all holders of bearer shares is available.

38. Domestic partnerships with legal personality are required to submit information on all their partners and report any subsequent changes thereof to the Commercial Register. Domestic partnerships without legal personality are required to provide annually information on all their partners to the tax authority through their representative partners. Foreign partnerships that carry on business in Croatia through a permanent establishment or have a place of effective management there are subject to the same registration and filing requirements as domestic partnerships. Although these obligations ensure availability of ownership information in majority of cases they are linked to certain conditions which may not necessarily apply. Croatia is therefore recommended to address this limited gap.

39. Croatian law does not recognise the concept of a trust however the combination of tax and AML legislation ensures that information is available regarding the settlor and beneficiaries of a foreign trust operated by a Croatian trustee as required under the standard. The tax law requires trustees and beneficial owners of foreign trusts to keep information identifying settlor and beneficiaries of the trust in order to substantiate their tax position. Further, any person providing trustee services as a way of business is subject to AML obligations which include identification of the settlor and beneficiaries of the trust.

40. Foundations and associations appear to be not relevant to the work of the Global Forum as they can be established only for beneficial or charitable purposes and their assets cannot be distributed to their founders or members. Nevertheless, the relevant ownership information has to be available with the Register of Foundations, the tax authority or with the association.

41. All relevant entities are required under the accounting and tax law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the Accounting Act are supplemented by obligations imposed by the tax law. Obliged persons are required to collect and prepare bookkeeping documents, keep accounting books and draw up financial statements in accordance with the relevant international accounting standards and principles of orderly bookkeeping. Accounting records and underlying documentation have to be kept for at least seven years since the end of the financial year to which they relate.

42. The legal and regulatory framework in Croatia requires availability of banking information in line with the standard. Anonymous accounts, accounts on fictitious names or numbered accounts are prohibited. Obligations to maintain identity information on all account-holders and transaction records are contained mainly in the AML law and sector specific regulations. Information and documents collected pursuant to AML obligations such as customer due diligence (CDD) and transactional documentation including account opening documents, account files and business correspondence have to be kept for a period of ten years after a transaction execution or the termination of a business relationship.

43. The relevant obligations ensuring availability of the ownership, accounting or banking information are supported by corresponding enforcement provisions. Their practical effectiveness to enforce availability of the information is a matter of practice and will be further considered in the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

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[5] A.1.1)

Types of companies

44. The following types of companies can be established under Croatia's law:

- **a joint stock company** – a company in which members (shareholders) participate with their shares in the share capital divided into shares and they are not liable for the obligations of the company. The minimum share capital of a joint stock company is HRK 200 000 (EUR 26 200). A joint stock company may also have only one shareholder (ss.159, 160, 162 Companies Act). There were 1 045 joint stock companies registered in Croatia as at September 2015;
- **a limited liability company** – a company established by one or more legal or natural persons through contribution to its share capital. Members contributions need not be of the same amount and their sum must correspond to the amount of the company's share capital. Limited liability companies cannot issue share securities. Members of the company are liable for its obligations up to the amount of their contributions to the company's share capital. The minimum amount of the share capital of limited liability company is HRK 20 000 (EUR 2 620) (ss.385, 386 and 389 Companies Act). There were 117 279 limited liability companies registered in Croatia as at September 2015;
- **a European company** (Societas Europaea, SE) **-** European Companies are regulated by Council Regulation (EEC) 2157/2001 on Statute for a European Company which permits the creation and management of companies with a European dimension, free from the territorial application of national company law. The minimal capital is EUR 120 000 (Art. 4 of the Council Regulation). The rules that apply to European Companies are the same as applicable to joint stock companies in Croatia (s. 4(1) Act on Introduction of EU Company). There was no European Company registered in Croatia as at September 2015.

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

45. A company becomes a legal person upon its registration in the Commercial Register and loses the status of the legal person upon deletion from the register (s. 4 Companies Act). A company's object has to be specified in the formation deed or the company's articles of association and registered in the Commercial Register by designating its constituent activities (ss.33 and 34). A company's seat is a place in Croatia where the company's management board is located and from where the company's business is run. A company's seat has to be specified in the deed of formation or the articles of association and kept updated with the Commercial Register (s. 37).

Information kept by government authorities

Commercial Register

46. Registration of companies and other entities is carried out by commercial courts. Commercial courts keep the Commercial Register where all information provided by registered entities upon registration and afterwards should be kept (s. 60 Companies Act). Registration and subsequent filing to the Commercial Register should be made with the commercial court with territorial jurisdiction over the place where seat of the company is located (s. 67).

47. The following information has to be entered in the Commercial Register and kept updated by all registered entities:

- company registration number (MBS) and personal identification number (PIN);
- name of the company;
- legal type of the company;
- address of the company's seat in Croatia;
- subject of business;
- name and surname of persons authorised to represent the company including their PIN, address of residence, and the method of representation;
- date of delivery of the complete financial documents;
- the date of the adoption of the memorandum of association and the date and a brief content of its amendments;
- duration of the subject of registration, if limited;
- the termination of the business entity, together with the reasons for termination or reasons why the removal from the register was ordered (s. 24 Court Register Act).

48. In addition to the above information, joint stock companies have to enter names of all board members, members of the supervisory board and executive directors and their address of residence and PIN. If a joint stock company has only one shareholder the shareholder's identification has to be entered in the register using the same identificators as in case of members of board of the company. If a joint stock company does not have only one shareholder indication of this fact has to be entered in the Register as well (s. 31 Court Register Act). Consequently, no ownership information is required to be provided to the Commercial Register by joint stock companies unless they have only one shareholder. The ownership information is however required to be available with the company keeping the shareholder register and is also available through securities accounts where all shares issued by joint stock companies have to be recorded.

49. Limited liability companies have to enter into the Commercial Register the same information as joint stock companies. However in addition, limited liability companies have to provide names, addresses, PINs and MBSs of all their members (s. 31(c) Court Register Act). Limited liability companies also have to promptly report to the Register any change in the shareholder register kept by the company (s. 410(2) Companies Act).

50. European Companies (SEs) are required to enter into the Register the same information as joint stock companies (s. 4(1) Act on Introduction of EU Company). If the SE has moved its seat to Croatia from other EU member state the registered information should further include the company's previous name, its previous address, the name of the Register with which the company was registered and its registration number in the register of the previous registration in other EU member state (s. 31(a) Court Register Act). As in case of joint stock companies no ownership information has to be provided by these companies to the Commercial Register. Nevertheless the ownership information is required to be available with the company and through securities accounts.

51. Upon registration each entity receives its unique and unchangeable registration number (MBS). MBS represents unique identifier of each entity and is used in all communication with the government authorities including courts and local governments (s. 2 Court Register Act). In addition each registered entity receives unique personal identification number (PIN) issued by the tax administration on the basis of information provided by the commercial court upon registration of the entity (s. 8 Act on Personal Identification Number).

52. Changes in the information entered in the Commercial Registry should be reported by the company within 15 days since they have taken place (s. 9 Court Register Act).

53. Information contained in the register is considered as evidence of the facts stated there and can be relied upon by third parties and courts. Anyone may refer to the entry in the register as legally valid source of data and facts registered therein with exception of persons proven to have known that the actual state differs from the information entered in the register. A person acting in good faith shall not suffer any damage because he/she has relied on information contained in the register (s. 66 Companies Act).

54. There is no provision that limits the time period for which the information entered into the register should be kept. According to the information provided by the Croatian authorities the information shall therefore be kept for an unlimited period of time as the law does not prescribe a time limit to the obligation to keep information entered in the register.

Information provided to tax administration

55. All companies registered in the Commercial Register are automatically registered with the tax administration and information contained in the Commercial Register is transmitted to the Tax Administration Register. Upon registration every company receives Personal Identification Number (PIN) issued by the tax authority. PIN is a permanent identifier of a holder of the number. PIN holders are obliged to use it in all applications and other filings with government authorities and other holders of PINs, in documents used in performing their business activities (invoices, contracts, official business correspondence) and in payment transactions (s. 6(1) Act on Personal Identification Number). No ownership information is required to be provided to the tax authority upon registration or in application for a PIN.

56. Taxpayers are required to report ownership information to the tax administration in certain situations. Taxpayers who directly or indirectly acquired more than 50% share in a domestic or foreign company or participate in the system of affiliated companies[6] has to report to the tax authority this fact together with the respective information. Further, a company of which the other person has a majority membership rights has to report this other person to the tax authority. The reporting should be performed within 30 days from the date when the facts that have to be reported occurred (s. 58 General Tax Act).

6. Affiliated companies are (i) a company which has a majority share or majority vote in another company; (ii) subsidiary and parent company; (iii) companies with shares connected in the manner that every company has more than a quarter of shares in another company; (iv) companies connected by entrepreneurial agreements such as contracts regarding company's business management, contracts on profit transfer and other agreements entered into the Commercial Register.

57. Taxpayers deriving income subject to tax are required to submit an annual income tax return (s. 62 General Tax Act). Certain tax positions require that the company discloses its ownership structure to the tax administration in its annual filing (e.g. transfer pricing, utilisation of tax losses, thin capitalisation rules and exemption of dividend payments). These annual reporting obligations are linked to certain conditions which are frequent in practice however standing alone may not ensure that information on shareholders is provided to the tax administration in all cases.

Information held by companies

58. Companies (i.e. LLCs, joint stock companies and SEs) are required to maintain a shareholder register (ss.226(1) and 410(1) Companies Act). Until a person is entered into the register of shareholders it does not have legal rights of a shareholder in respect to the company (ss.226(2) and 411 Companies Act).

59. The following particulars have to be contained in the register of shareholders in respect of each shareholder:

- the firm name or name and surname;
- seat and address;
- if a company member is a legal person, the particulars relating to its registration;
- PIN;
- the par values of the shares he/she subscribed to and the contributions made;
- any additional consideration which he/she is required to give to the company or which he/she has given;
- any liabilities related to his/her share; and
- the number of votes he/she has in the decision-making by the company members.

60. A new shareholder is entered into the shareholder register by the management board upon proof of the share transfer (e.g. transfer contract). The register has to be kept accurate and up-to-date at all times (s. 410(4) Companies Act). Companies and financial institutions holding dematerialised shares on securities accounts must provide the company with the necessary information to maintain the share register. Upon entry of a new shareholder the previous shareholder should be deleted from the register (s. 226 Companies Act). As the register should be kept continuously since establishment of the company this is by Croatian authorities interpreted that

the previous shareholder is deleted from the current shareholder register however he/she remains to be entered in the archived version of the shareholder register. As there is no clear basis to confirm this, the issue will be further considered during the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

61. Although there is no direct requirement to keep the shareholder register in the company's registered address in Croatia register of shareholders should be available to members of the company for inspection without delay (s. 447 Companies Act). According to the Croatian authorities the requirement to provide shareholder register for inspection without delay in practice means that the shareholder register is kept in the company's registered office. However as ability to provide the shareholder register without delay is a matter of practice the matter will be further analysed in the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Nominee identity information

62. A person entered in the shareholder register is the legal owner of the share in the company. Although the shareholder register does not contain indication whether the legal owner holds shares on behalf of another person if the legal owner provides nominee services on a professional basis to another person on whose behalf he/she acts the person providing such services becomes AML obligated person (s. 4(15) AML Act). Service providers providing nominee services on a professional basis are under the AML Act required to perform customer due diligence measures at the moment of establishing a business relationship with a client. These measures include the identification of a customer and verification of his identification and conducting ongoing monitoring of the business relationship including ensuring that the information held on the customer is kept up-to-date (s. 8 AML Act) (see further section Information held by service providers below).

63. Non-professional nominees are not regulated under Croatian AML law. The Croatian authorities have advised that such nominees are rare and that they have not been encountered in practice. The materiality of this issue will be further examined in the course of the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Information held by service providers

64. The main obligations of service providers to maintain ownership information are contained in the Anti-Money Laundering and Terrorist Financing Act (AML Act). The AML Act stipulates AML rules in Croatia

and it is a transposition of the 3rd EU Money Laundering Directive. AML Act requires obliged entities to perform CDD. The obliged entities under the AML Act are persons performing an economic or professional activity such as:

- banks, credit unions and companies performing certain payment operations services, including money transfers;
- investment fund management companies, management companies, insurance companies and pension companies;
- companies authorised to do business with financial instruments and branches of foreign companies dealing with financial instruments in Croatia;
- legal and natural persons performing business in relation to the following activities including:
  - giving credits or loans;
  - leasing;
  - issuance of guarantees and security instruments;
  - investment management on behalf of third parties and providing advisory services thereof;
  - credit intermediation;
  - insurance agents for entering into life insurance agreements;
  - trusts or company service providers;
- legal and natural persons performing matters within the framework of the following professional activities:
  - lawyers, law firms and notaries public;
  - auditing firms and independent auditors;
  - natural and legal persons performing accountancy and tax advisory services (s. 4(2) AML Act).

65. The obliged entities are required to carry out customer due diligence measures and to assess the risk of abuse in relation with money laundering and terrorist financing specific to a customer, business relationship, transaction or a product (s. 6(2) AML Act). Customer due diligence measures should be carried out (i) when establishing a business relationship, (ii) when carrying out a transaction above HRK 105 000 (EUR 13 740), (iii) in case of doubts about the credibility and veracity of the previously obtained information, or (iv) in all instances where there are reasons for suspicion of money laundering or terrorist financing in relation to a transaction or a customer, regardless

of the transaction value (s. 9(1)). The obliged entity which is unable to conduct customer diligence as required under the law is not allowed to establish a business relationship or carry out a transaction with the respective customer and if such business relationship already exists it should be terminated (s. 13(1)).

66. Customers due diligence measures encompass the following measures:

- identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a credible, reliable and independent source;
- identifying the beneficial owner of the customer and verifying the beneficial owner's identity;
- obtaining information on the purpose and intended nature of the business relationship or transaction;
- conducting ongoing monitoring of the business relationship including due scrutiny of transactions undertaken throughout the course of the relationship (s. 8(1) AML Act).

67. The beneficial owner is defined as (i) a natural person who is the ultimate owner of a customer or who controls or otherwise manages the legal person or other entity (if the customer is a legal person), or (ii) a natural person who controls another natural person on whose behalf a transaction is being executed or who performs an activity (if the customer is a natural person) (s. 3(24) AML Act). The natural person who ultimately owns or controls a legal entity through direct or indirect ownership of 25% shares of the entity meets this requirement and should be deemed a beneficial owner (s. 23(1)).

68. Information (including the accompanying documentation) obtained pursuant to due diligence measures and transaction monitoring obligations should be kept for a period of ten years after a transaction execution or the termination of a business relationship (s. 78(1) AML Act).

Foreign companies

69. A company established under foreign law can permanently conduct business in Croatia through a branch or through establishment of a subsidiary company under Croatian law. The concept of permanent business activity does not include occasional or one-off activity or carrying out contracted particular project (s. 612 Companies Act). Having a headquarters or head office in Croatia will therefore typically trigger an obligation to establish a branch office there.

70. Foreign companies are not required to provide information on their members or shareholders to the Commercial Register upon registration or subsequently. In addition to information which has to be provided by all entities upon registration with the Commercial Register (such as name of the registered entity, its address and legal type) the application for registration of a branch office of foreign company has to include the following information:

- proof that the foreign company is registered in the country where its registered office is located, stating its legal form, date of registration, number of registration, its objects, names of persons with representative authority and the scope of their powers or, if the founder was formed in a country where such registration is not required, valid formation documents publicly certified pursuant to the laws of the country in which the founder's registered office is located, stating its legal form and date of formation, its objects, names of persons with representative authority and the scope of their powers;
- the decision of the founder on the setting-up of the branch office;
- copy of the founder's deed of formation, company agreement or the articles of association, publicly certified pursuant to the laws of the country in which the founder's registered office is located;
- publicly certified summary of the founder's last annual financial statement (s. 613(5) Companies Act).

71. In case of change in information provided to the Commercial Register the company shall within 15 days of the alteration report this change to the registry court and include the changed documents (s. 9 Court Register Act).

72. A foreign company with place of effective management in Croatia becomes tax resident in Croatia (s. 3(1) Profit Tax Act). As in case of other companies foreign companies which become tax residents in Croatia are registered with the tax authority, obtain PIN and are required to file annual tax returns in respect of their worldwide taxable income. The same information as in case of domestic companies has to be provided to the tax administration. Taxpayers who directly or indirectly acquired more than 50% share in a domestic or foreign company or participate in the system of affiliated companies has to report this fact to the tax authority and a company of which the other person has a majority membership rights has to report this other person to the tax authority as well (s. 58 General Tax Act). Further, certain tax positions require that the company discloses its ownership structure to the tax administration in its annual filing (e.g. transfer pricing, utilisation of tax losses, thin capitalisation rules and exemption of dividend payments).

73. A foreign company with headquarters or head office located in Croatia will typically engage a service provider covered by the AML obligations. This service provider can be a bank where a foreign company has opened a bank account, a notary certifying documentation required to be provided to the Commercial Register, a tax advisor or a corporate service provider. The AML Act contains broad definition of a corporate service provider. Company service providers are any legal or natural person whose business activity consists of the provision of any of the following services:

- formation of a legal person,
- performing the role of a chief executive officer or board member or enabling a third party to perform the role of a chief executive officer or board member, manager or partner;
- providing a legal person with a registered seat or rented business, postal or administrative address and other related services,
- using or enabling another person to use other people's shares for the purpose of exercising voting rights, except if it includes a company whose securities are being traded on a stock exchange or the regulated public market (s. 3(21) AML Act).

74. In view of the above obligations in particular under the tax and AML law it appears that ownership information on foreign companies is required to be available in Croatia in majority of cases. However obligations to identify all shareholders may not cover all foreign companies as they are linked to certain conditions. It is therefore recommended that Croatia addresses this limited gap.

Conclusion

75. The Croatian legal and regulatory framework ensures that ownership information regarding domestic companies is available. All domestic and foreign companies conducting business in Croatia are required to register in the Commercial Register. Limited liability companies are required to provide information on their members to the Commercial Register and keep it updated. All domestic companies are obligated to maintain shareholder register including identification of their shareholders. A person acquires shareholder rights towards the company upon entry into the shareholder register which has to be available in Croatia. These obligations are further supported by obligations under tax and AML law. Ownership information on foreign companies with place of effective management in Croatia should be available mainly based on their tax obligations and through service providers in Croatia. Although these obligations ensure availability of ownership information in majority of cases they are linked to certain conditions which may

not necessarily apply to all foreign companies with place of effective management in Croatia. Croatia is therefore recommended to ensure that ownership information on foreign companies is consistently available in accordance with the standard.

Bearer shares *(ToR A.1.2)*

76. Only joint stock companies are allowed to issue shares. Shares can be issued only as registered shares (s. 165(1) Companies Act).

77. Although bearer shares cannot be issued anymore the legal amendment abolishing the possibility to issue bearer shares came into force on 1 April 2008 and there is no direct requirement in Croatian law which would require conversion of issued bearer shares into registered shares or other measure ensuring that the holder of such shares is identified in all cases.

78. In considering impact of bearer shares on availability of ownership information in Croatia there are several mitigation factors:

- not all joint stock companies were allowed to issue bearer shares. Companies such as banks and investment fund management companies were prohibited from issuing bearer shares. It is also noted that all joint stock companies which existed prior to April 2008 represent 0.8 % of all companies currently registered in Croatia.
- Shares of joint stock companies having over 100 shareholders and equity capital of a minimum HRK 30 million (EUR 3.9 million) have to be registered with the CDCC (Central Depository and Clearing Company) that manages the central depository of dematerialised securities and entered in securities accounts of their holders.
- In order to exercise shareholder rights (including payment of dividends) a person has to be entered in the shareholder register (s. 226 Companies Act). Further, holder of a bearer share has to be identified in order to exercise voting rights during the general meeting of the company (s. 286 Companies Act). The general meeting should be normally held annually (s. 277 Companies Act).
- Under the AML Act service providers such as banks, corporate service providers professional notaries, auditors or tax advisors are required to identify their customers and carry out customer due diligence measures including identification of their beneficial owners (s. 6 AML Act). If these measures cannot be properly conducted or beneficial owners cannot be identified the service provider is prohibited to enter into business relation with the customer or has to terminate already existing contract (s. 13).

- According to the Croatian authorities the number of bearer shares still in circulation is very limited and linked to the transformation process from socially owned enterprises to private companies carried out in the 1990s. This appears to be confirmed by the fact that out of 1 030 active joint stock companies 865 (84%) are registered with the CDCC and their shares are issued in dematerialised form. The remaining joint stock companies which could have issued bearer shares if existed prior to April 2008 represent 0.1% of all companies.

79. To sum up, the Croatian law allows circulation of bearer shares of joint stock companies issued prior to April 2008. There are certain measures which allow identification of holders of these shares and the number of such shares appears to be rather limited without severe systemic impact on availability of ownership information in Croatia. In view of this it is recommended that Croatia takes measures to ensure that information on all holders of bearer shares which are still in circulation is available.

Partnerships *(ToR A.1.3)*

80. Croatian law provides for several types of partnerships:

- partnerships with legal personality:
  - general partnership - a partnership of two or more legal or natural persons who have joined in order to permanently engage in an activity under a common firm name, whereby each member of the partnership has unlimited joint and several liability to partnership's creditors with all his/her assets (s. 68 Companies Act). As of September 2015 there were 251 general partnerships registered in Croatia;
  - limited partnership - a partnership of two or more legal or natural persons who have joined in order to permanently engage in an activity under a common firm name, of which at least one has unlimited joint and several liability for the partnership's obligations with all his/her assets (general partner) and at least one is liable for the company's obligations up to the amount of assets contributed to the partnership company (limited partner) (s. 131). As of September 2015 there were 73 limited partnerships registered in Croatia;
  - economic interest grouping (EIG) and European economic interest grouping (EEIG) – a legal person formed by two or more natural and legal persons in order to facilitate and develop the performance of economic activities in such a manner that such legal person does not make profits for itself. The grouping does

not have any share capital and its activity should be related to the economic activities of its members and must not be more than ancillary to those activities (s. 583 Companies Act). As of September 2015 there were 70 EIGs registered in Croatia;

- partnerships without legal personality:
  - contractual partnership - an association of persons and property without legal personality where two or more persons mutually undertake to contribute their work and/or property to achieve a common objective (s. 637 Civil Obligations Act). Partnership assets consist of the contributions of the partners and assets acquired through operations of the partnership. The property of partners not contributed to common assets remain their own property separate from common assets (s. 638);
  - silent partnership - an agreement by which a person (silent member) invests a certain economic value into another person's undertaking (entrepreneur), on the basis of which investment this person acquires the right to participate in the profits and losses of the entrepreneur. The entrepreneur is the only party of all legal transactions and shall be the exclusive holder of all rights and duties. (s. 148 Companies Act).

81. Silent partnerships do not have any legal personality and cannot hold real estate or own assets. They have also no income or credits for tax purposes and cannot carry on business in its own name. Therefore silent partnerships are not relevant for the purpose of the review.

Information kept by public authorities

Commercial Register

82. Partnerships with legal personality (including EIG and EEIG) and foreign partnerships permanently conducting business in Croatia are required to register with the Commercial Register. Domestic partnerships obtain their legal personality upon registration (s. 4 Companies Act).

83. The same general rules regarding information to be provided to the Commercial Register as in case of companies apply. In addition to information required to be provided by all registered entities domestic general and limited partnerships and EIGs and EEIGs have to provide identification of all their partners upon registration and keep the provided information updated. This information includes the name, address of residence and PIN of each partner (ss. 29, 30 and 32 Court Register Act). Foreign partnerships are not required to provide identification of all their partners to the Commercial Register.

Information provided to tax administration

84. All partnerships are required to be registered with the tax administration (s. 58 General Tax Act). Partnerships registered in the Commercial Register are automatically registered with the tax administration and information contained in the Commercial Register is transmitted to the Tax Administration Register. Therefore information on all partners of domestic general and limited partnerships and EIGs and EEIGs is available to the tax administration upon registration and it is kept updated.

85. Taxation of partnerships with legal personality follows similar rules as in case of companies. Such partnerships are required to report ownership information to the tax administration in certain situations, i.e. if it participates in the system of affiliated entities or the other person which holds its majority rights (s. 58 General Tax Act). Further, certain tax positions require that the partnership discloses its ownership structure to the tax administration in its annual filing (e.g. transfer pricing, utilisation of tax losses, and exemption of dividend payments).

86. Partnerships without legal personality are tax transparent and identity of all partners has to be made known to the tax authority. Income (or loss) generated through the partnership is considered joint income of its partners which is divided among them pursuant to a partnership contract delimiting their contributions to the partnership. Partners generating joint income are obliged to appoint a representative partner in charge of the joint activity who is responsible for the partnership's tax compliance and filing of tax returns. A non-resident person cannot be appointed as a representative partner. The representative partner is obliged to annually report to the tax authority income generated by the partnership and its split among the partners which includes also reporting their identity (s. 34 Income Tax Act).

87. The same tax rules as for domestic partnerships apply to foreign partnerships having place of effective management in Croatia or generating taxable income there. Ownership information on foreign partnership is required to be available in Croatia in majority of cases. However as in the case of foreign companies obligations to identify all partners may not cover all foreign partnerships as they are linked to certain conditions.

Information held by the partners and service providers

88. Identity information on all partners is available through the partnership contract establishing relations among partners or with the partnership's partners. The partnership contract should be available with the partnership or to the partners as parties of the contract (ss.71 and 133 Companies Act, s. 637 Civil Obligations Act). Further, no person can become a partner in a partnership without consent of all the existing partners and leaving the partnership

becomes effective only upon notification of the remaining partners (s. 90 Companies Act, s. 654(1) Civil Obligations Act). It is therefore necessary that information on all partners must be available with the partnership and to its partners.

89. To the extent that a partnership engages the services of an AML obligated person, such as a bank, a notary, a tax advisor or a corporate service provider, the obligated person is required to identify his/her customer and carry out customer due diligence measures including identification of beneficial owners. This appears to ensure that if a partnership opens a bank account in Croatia or engages other service provider obliged to conduct CDD information on partners in a partnership should be available with the service provider.

Conclusion

90. The legal and regulatory framework in Croatia ensures that ownership information regarding domestic partnerships is available. Domestic partnerships with legal personality are required to submit information on all their partners and report any subsequent changes thereof to the Commercial Register. Domestic partnerships without legal personality are required to provide annually information on all their partners to the tax authority through their representative partners. Further, the partnership contract containing identification of all partners should be available with the partnership or its partners. Foreign partnerships that carry on business in Croatia through a permanent establishment or have a place of effective management there are required to register with the tax administration and the same registration and filing requirements as in case of domestic partnerships apply. In addition, foreign partnerships conducting business in Croatia will most likely engage an AML obligated person required to conduct CDD measures. Although these obligations ensure availability of ownership information in majority of cases they are linked to certain conditions which may not necessarily apply. Croatia is therefore recommended to ensure that information on all partners in all foreign partnerships carrying on business in Croatia or deriving taxable income therein is consistently available.

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

91. Croatian law does not recognise the concept of a trust and Croatia is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition[7]. However, there are no restrictions for a resident of Croatia to act as trustee, protector or administrator of a trust formed under foreign law.

7. www.hcch.net/index_en.php?act=conventions.text&cid=59.

Tax legislation

92. Croatian tax law requires all residents (individuals and legal entities) to pay income tax on all their income, regardless of the location of the source of wealth of such income provided they are the beneficial owners of such assets and income (s. 4 Income Tax Act, s. 5 Profit Tax Act). The General Tax Act explicitly stipulates that if a person other than the legal owner has the right to profits or right to dispose of an economic entity or assets then it shall be considered for tax purposes that the economic entity or assets belongs to that other person (s. 34 General Tax Act). Further the law states that the person which has the right to profits or right to dispose of an economic entity or assets has to prove at the request of the tax authority that the entity or assets are held in fiduciary arrangement by the fiduciary otherwise they will be considered property of the person which has the right to profits or disposal right (s. 80).

93. Thus Croatian tax law clearly distinguishes between the legal owner and the beneficial owner. In case of trust arrangements the beneficial owner has to prove that the assets are held in fiduciary relationship otherwise he/she will be taxed. In order to determine tax liability of parties of the trust the beneficial owner (or the trustee) would have to be able to provide the trust deed as well as other relevant information such as bank accounts, accounting records and underlying documentation as was confirmed by the Croatian authorities. Thus, the identity of the settlor and the beneficiary (or class of beneficiaries) would be provided to the tax authority as the aforementioned documents would include this information.

AML legislation

94. Any person providing services by way of business in the framework of a trust or any similar contractual relationship under foreign law becomes a service provider under the AML Act and is subject to AML requirements (s. 4 AML Act). An obligated person is required to conduct customer due diligence which in the case of trusts includes keeping the trust contract and identification of settlors and beneficiaries of the trust who are the beneficial owners of 25% or more of the trust's property rights (ss.8 and 23). Further, trustees have to conduct ongoing monitoring of the business relationship including ensuring that the information is kept up-to-date (ss.9 and 26).

95. Where a trustee engages an AML obligated person in Croatia, the obligated person is required to identify his/her customers and carry out customer due diligence measures including identification of client's beneficial owners which should entail provision of the trust deed to the AML obligated person (s. 6 AML Act).

96. A Croatian non-professional trustee is not covered by AML obligations. Although providing such services should generate taxable income and trigger an obligation to keep information substantiating the tax position of the person concerned, information on the settlor and beneficiaries of the trust might not be kept by such trustee in all instances. It is considered that the number of trusts operated by non-professional trustees is likely to be very limited and not likely to prevent effective EOI. The reason for that appears to be legal uncertainty connected with using legal arrangement not recognised by domestic law and lack of tradition. A practical assessment of the matter will take place in the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Conclusion

97. Croatian tax and AML legislation ensure that information is available regarding the settlor and beneficiaries of a foreign trust operated by a Croatian trustee. The tax law requires trustees and beneficial owners of foreign trusts to keep information identifying settlor and beneficiaries of the trust in order to substantiate their tax position with regards to the trust's assets and income generated from them. Further, any person providing trustee services as a way of business is expressly covered by the AML Act and is subject to AML obligations which include identification of the settlor and beneficiaries of the trust.

Foundations *(ToR A.1.5)*

98. A foundation under the Croatian law is a legal person established for beneficial or charitable purpose. Beneficial purpose is defined as cultural, educational, scientific, spiritual, moral, sport, health care, environmental or any other social activity promoting general goods of the society. Charitable is an activity supporting persons in need. The purpose of a foundation is considered generally beneficial or charitable if it refers to certain group defined by religious, national or other characteristics but cannot refer to a particular person (s. 2 Foundations Act). A foundation can use its property only for the achievement of its purposes stated in the foundation deed (s. 16). Upon liquidation foundation's property cannot be distributed to its founders but should be transferred to persons indicated in the foundation deed in accordance with purposes of the foundation or if that is not possible to any other foundation with a similar foundation purpose (s. 27). There were 225 foundations registered in Croatia as at November 2015.

99. A foundation gains its legal personality upon entry in the Register of Foundations (s. 3 Foundations Act). Foundation deed has to be provided upon registration. A foundation deed has to include (i) a statement of the will

of a founder declaring that a particular property is permanently assigned to the foundation, (ii) determination of the property assigned to the foundation and (iii) the determination of generally beneficial or charitable purpose of the foundation (s. 4 Foundations Act). After registration of the foundation the Ministry of Administration appoints its director based on the founder's nomination (s. 12). The information contained in the Register of Foundations includes register number of the foundation, its date of entry into the Register, address of its seat, the purpose of the foundation, the person legally authorised to represent the foundation and PIN number of the foundation. Information provided into the Register is required to be accurate and updated.

100. Foundations are required to be registered with the tax authority. Upon registration each foundation receives PIN. The same information as upon registration with the Register of Foundations is required to be provided.

101. To the extent that a foundation engages an AML obligated person the obligated person is required to identify his/her customer and carry out customer due diligence measures including identification of the foundation's beneficial owners.

Conclusion

102. To sum up, as foundations can be established only for beneficial or charitable purposes and their assets cannot be distributed to their founders they are of limited relevance to the work of the Global Forum. Nevertheless, information on foundations' founders and representatives has to be provided to the Register of Foundations and to the tax authority.

Other relevant entities or arrangements

103. The Croatian law provides for creation of an association. Association is defined as any form of a voluntary grouping of at least three natural or legal persons which, in order to protect and promote issues of public or mutual interest and without the intention of gaining profit, submit themselves to the rules that govern activities of that form of association (s. 2 Law on Associations). An association cannot perform economic activities for the purpose of gaining profit for the association's members or a third person. If in performing its activities the association gains profit such profit can be used only for the realisation of its statutory goals given in the association statutes (s. 5(4)). Association is govern by its members directly or through elected representatives in the association's bodies in the manner prescribed by the association's statute (s. 6)). Upon dissolution association's property cannot be distributed to its members and should be used in accordance with its statute (s. 34).

104. An association acquires legal personality upon registration in the Registry of Associations kept by the respective county office (s. 2 Law on Associations). Associations without legal personality follow rules of partnerships without legal personality (s. 3) (see further section A.1.3). Upon registration an association must provide to the Registry information including association's statute, list of founders, names of persons empowered to represent the association, consent of competent state administration body for conducting of certain activities, when prescribed by special laws and photocopy of identification card of founders and persons empowered to represent the association (s. 15 Law on Associations). The provided information has to be kept updated (s. 19(1)).

105. Any natural or legal person with capacity to act may under the conditions established in the statute of the association become a member of an association. An association shall keep a record of its members (s. 4 Law on Associations).

106. Associations are required to register with the tax authority and upon registration obtain PIN. The same information is required to be provided to the tax authority as to the Register of Associations.

107. To the extent that an association engages an AML obligated person the obligated person is required to identify his/her customer and carry out customer due diligence measures including identification of the association's beneficial owners.

Conclusion

108. As in case of foundations associations appear to be of limited relevance to the work of the Global Forum as they cannot be established for profit making purposes and their assets cannot be distributed to their members. Information on association's founders, representatives and beneficiaries is however required to be available primarily with the association.

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

109. The existence of appropriate penalties for non-compliance with key obligations requiring availability of ownership and identity information is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

110. The Companies Act contains sanctions for failure to comply with its requirements. If a legal person fails to comply it is subject to a fine up to HRK 50 000 (EUR 6 550) and a fine not exceeding HRK 7 000 (EUR 920) can be imposed upon a company's member, a member of the company's

board, a director or a liquidator who under the provisions of the Act or the company's articles of association is responsible for the failure. In the case of a more serious violation such person can be punished by a fine of up to HRK 50 000 (EUR 6 550). These sanctions are directly applicable by the registration court and apply in cases such as if a legal person

- fails to file for registration in the Commercial Register within the deadline;
- fails to provide all particulars required under the law to be registered with the Commercial Register;
- fails to keep the information provided to the Commercial Register accurate;
- fails to maintain properly the share register kept by the company;
- fails to grant access to a shareholder to information contained in the share register (s. 630 Companies Act).

111. Providing false statements to the Commercial Register or serious failure to disclose the relevant documents represents a criminal offence punishable by imprisonment of up to two years (s. 624 Companies Act).

112. Further sanctions for failure to provide information to the Commercial Register are contained in the Court Register Act. If a person fails to submit the required information within the prescribed deadline the registration court will issue a warning and an order to pay a fine of HRK 5 000 (EUR 655). If the person fails to comply with the previous court warning the fine will be increased repeatedly by additional HRK 5 000 till the pending obligations are fulfilled (s. 81 Court Register Act).

113. The General Tax Act provides for sanctions to taxpayers who fail to comply with their tax obligation including failures to provide or keep available the relevant information. The Act provides for a fine of up to HRK 500 000 (EUR 65 650) applicable against a legal person and a fine of up to HRK 40 000 (EUR 5 250) which can be imposed upon a responsible person who caused the failure. These sanctions apply in cases such as if a taxpayer

- fails to keep in its registered address business records and other documentation required under Croatian law;
- fails to report within the stipulated period the fact that he/she has acquired a majority share in another legal person, that he/she has become part of a group of affiliated companies or fails to report any changes in respect of these reported facts;
- presents in his/her tax return inaccurate or untrue information (ss.207-209 General Tax Act).

114. Further sanctions under the tax law include fines and surcharges and relate to the undeclared or unpaid tax. If the failure to provide information leads to undeclared tax in the amount of exceeding HRK 20 000 (EUR 2 620) criminal sanctions apply including an imprisonment of up to five years (s. 256 Criminal Code).

115. Failures to comply with obligations under the AML law are sanctionable by a fine ranging from HRK 50 000 (EUR 6 550) up to HRK 700 000 (EUR 92 000) applicable in respect of a legal person and a fine from HRK 35 000 (EUR 4 600) up to HRK 450 000 (EUR 59 150) applicable in respect of the responsible person who caused the failure. The sanctionable failures include failure to apply the customer due diligence measures, to identify and verify a customer's identity, to develop a risk analysis, to obtain data on the purpose and intended nature of a business relationship or a transaction or failure to obtain other data required to be obtained under the AML Act (s. 90 AML Act).

116. If a foundation does not comply with its law obligations the Ministry of Administration is required to order elimination of the established deficiencies within a set term, report the breach to the prosecution authority or undertake other measures. If the established deficiencies are still not addressed the Ministry of Administration can terminate operations of the foundation (s. 30 Foundations Act).

117. A fine of at least HRK 1 000 (EUR 130) but not exceeding HRK 10 000 (EUR 1 310) is applicable on the association which does not keep record of its members, performs activities that do not serve the realisation of its statutory goals or fails to provide accurate and updated information to the Registry of Associations. A fine between HRK 500 (EUR 65) and HRK 5 000 (EUR 655) is applicable in respect of the association's legal representative responsible for the failure (s. 39 Law on Associations).

Conclusion

118. Croatia's law provides for sanctions in respect of all key obligations to maintain ownership information. As the effectiveness of enforcement provisions is rather a matter of practice it will be further considered during the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

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**
The Croatian law allows circulation of bearer shares of joint stock companies issued prior to April 2008. However there are certain measures which allow identification of holders of these shares and the number of such shares is limited and cannot expand.	Croatia should take measures to ensure that information on all holders of bearer shares which are still in circulation is available.
Ownership information on foreign companies having their place of effective management in Croatia and on foreign partnerships carrying on business in Croatia or deriving taxable income is not consistently available.	Croatia should ensure that ownership information on foreign companies with sufficient nexus with Croatia and on foreign partnerships carrying on business in Croatia or deriving taxable income is available in all cases.

A.2. Accounting records

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

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

General requirements (ToR A.2.1)

120. General accounting requirements under Croatian law are contained mainly in the Accounting Act and in the tax law.

121. All entities covered by the Companies Act as well as taxpayers including resident trustees (hereafter accounting units) are covered by accounting

obligations contained in the Accounting Act (s. 2 Accounting Act). Accounting units are obligated to collect and prepare bookkeeping documents, keep business books and draw up financial statements in accordance with the relevant accounting standards and basic principles of orderly bookkeeping (s. 4(2) Accounting Act).

122. A bookkeeping document is a written document or an electronic record of a business transaction that has taken place. A bookkeeping document should clearly and authentically contain all relevant pieces of information about a transaction. A bookkeeping document shall be authentic, neat and prepared in such manner as to ensure its effective review. An authorised person should guarantee by his/her signature on a bookkeeping document that it is authentic and accurate (ss.5 and 6 Accounting Act).

123. Information contained in bookkeeping documents is entered into accounting books (s. 6(4) Accounting Act). Accounting books are required to be kept according to the principle of double-entry accounting. They have to include accounting diary, general accounts ledger and subsidiary ledgers. Accounting diary contains chronological records of all transactions. The general accounts ledger is a systematic bookkeeping record allowing to assess changes in the financial position and business performance of the accounting unit. The general ledger consists of balance-sheet records and off-balance-sheet records (s. 8 Accounting Act).

124. Each accounting unit is required to prepare annual financial statements. The annual financial statements comprise a balance sheet, a profit and loss account, a cash flow statement, statement on changes in equity and notes to the financial statements (s. 15(3) Accounting Act). Financial statements have to be drawn up in accordance with the Croatian Financial Reporting Standards which reflect International Financial Reporting Standards (IFRS) and the International Accounting Standards (IAS) (ss. 12 and 13).

125. Annual financial statements of medium and large sized accounting units[8] and of entrepreneurs whose shares are listed on an organised securities market are required to be audited by certified auditors (s. 17 Accounting Act). Audited annual financial statements together with the annual report and audit report have to be filed by the obligated accounting units with the Financial Agency which enters them into the Register of Annual Financial Statements (ss.20 and 21).

8. Medium and large sized accounting units are those which exceed two of the following conditions: (i) total assets of HRK 32.5 million (EUR 4.3 million); (ii) annual total revenue of HRK 65 million (EUR 8.5 million); (iii) average number of employees in the course of the financial year amounts to 50 (s. 3 Accounting Act).

126. Although the Accounting Act does not explicitly regulate the place where accounting documentation and records have to be kept the Act requires that accounting documentation and records have to be available to the tax administration for inspection (s. 28 Accounting Act). The Companies Act further stipulates that a company's accounts and records should be available to the company's supervisory board and shareholders without delay (ss.263 and 447 Companies Act).

127. Administrative and criminal sanctions are applicable in respect of responsible persons of the accounting unit which does not comply with provisions of the Accounting Act. A fine ranging from HRK 10 000 (EUR 1 310) to HRK 0.5 million (EUR 65 690) should be applied by the tax authority if an accounting unit among others fails to maintain bookkeeping documents, accounting books or to prepare annual financial statements in accordance with the accounting law or fails to have its annual financial statements audited and filed in the Register of Annual Financial Statements (ss.31 and 32 Accounting Act).

128. Accounting obligations of non-profit entities including foundations and associations in general mirror obligations of accounting units under the Accounting Act. Foundations and associations are obligated to collect and prepare bookkeeping documents, keep business books and draw up financial statements in accordance with the accounting standards and international principles of orderly bookkeeping (s. 8 Law on the Financial Operations and Accounting of Non-Profit Organizations). In case of failure to comply with their accounting obligations non-profit entities and their representatives are subject to a fine ranging from HRK 1 000 (EUR 130) to HRK 200 000 (EUR 26 200) depending on severity of the failure (s. 45 Law on the Financial Operations and Accounting of Non-Profit Organizations).

129. Accounting obligations under accounting law are further supported by accounting rules contained in tax law applicable in respect of all taxpayers (including foundations and associations). Tax base for income tax is based on the profit determined pursuant to the accounting regulations (s. 5 Profit Tax Act). Pursuant to the General Tax Act accounting records should be prepared in accordance with the accounting regulations and in the manner enabling a professional third party to understand business transactions of the taxpayer and his financial position (s. 55 and 56 General Tax Act). Accounting books and accompanying documentation has to be kept in a manner which ensures timely access to this documentation to the tax authority. This can be done by keeping it in the business premises or seat of the taxpayer, of his authorised representative or of a person designated to perform accounting for the taxable person (s. 56(9)). If a taxpayer fails to keep accounting records and underlying documentation in accordance with law requirements the taxpayer is subject to a fine of up to HRK 500 000 (EUR 65 650) and a fine of up to HRK 40 000

(EUR 5 250) which can be imposed upon a responsible person who caused the failure (ss. 207-209 General Tax Act).

Conclusion

130. All relevant entities and taxpayers registered in Croatia are required under the accounting and tax law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the Accounting Act are supplemented by obligations imposed by the tax law. Effectiveness of sanctions for breach of accounting obligations will be considered as part of the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Underlying documentation *(ToR A.2.2)*

131. Requirements to keep accounting underlying documentation are mainly contained in accounting and tax law. Under accounting law an accounting unit is required to keep bookkeeping documents. A bookkeeping document is a written document or an electronic record of a business transaction which has to clearly and authentically contain all relevant information about the transaction (s. 5 Accounting Act, s. 17 Law on the Financial Operations and Accounting of Non-Profit Organizations).

132. Under the tax law accounting entries and underlying documentation are required to be complete, accurate, timely and kept in an orderly manner. Accounting entries must be based on accurate and authentic accounting documents containing description of the nature, value and time of the transaction (ss.55 and 56 General Tax Act). Further, in order to substantiate its tax base a taxpayer is required to keep other information relevant to his/her income such as contracts and business communication (ss.10 and 59 General tax Act).

133. As Croatia is an EU Member State and hence part of the intra-community VAT system, Croatian undertakings must further fulfil specific requirements regarding documentary evidence of transactions performed. Among other things, they must keep all documents from which intra-community flows of goods and services can be traced, and, more generally, all invoices.

134. Further, AML obliged persons are required to keep documentation for monitoring transactions which they perform with or for their clients (s. 8(1) AML Act).

Conclusion

135. Accounting and tax requirements ensure that underlying documentation is required to be available in Croatia in line with the international standard for keeping and maintaining underlying documentation.

5-year retention standard (ToR A.2.3)

136. Accounting records and underlying documentation have to be kept for at least seven years since the end of the financial year to which they relate. The retention period under accounting law varies based on the type of the documentation:

- annual financial statements, pay-roll records and records of statutory contributions shall be kept permanently;
- accounting diary, the general accounts ledger and bookkeeping documents forming the basis for entries into them shall be kept for a minimum period of 11 years;
- subsidiary ledgers and documents forming the basis for entries into them shall be kept for a minimum period of seven years (ss.7(2), 10(3) and 15(13) Accounting Act, ss.16 and 18 Law on the Financial Operations and Accounting of Non-Profit Organizations).

137. Accounting books and bookkeeping documents as well as other records are required to be kept for tax purposes for at least ten years from the beginning of the year following the year in which the tax has been assessed regardless of liquidation or dissolution of the taxpayer (s. 56(16) General Tax Act).

138. In addition, annual financial statements filed with the Financial Agency are kept in the Register of Annual Financial Statements. There is no provision that limits the time period for which the information entered into the register should be kept.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

A.3. Banking information

Banking information should be available for all account-holders.

139. Access to banking information is of interest to the tax administration when the bank has useful and reliable information about its customers' identity and the nature and amount of their financial transactions.

Record-keeping requirements (ToR A.3.1)

140. The main rules regarding availability of customer and transactional information on bank accounts are contained in the AML Act.

141. Banks are prohibited from opening and keeping anonymous accounts and accounts in the name of fictitious persons or numbered accounts (s. 37 AML Act).

142. Banks are required to conduct customer due diligence measures (i) when establishing a business relationship, (ii) when carrying out a transaction above HRK 105 000 (EUR 13 740), (iii) in case of doubts about the credibility and veracity of the previously obtained information, or (iv) in all instances where there are reasons for suspicion of money laundering or terrorist financing in relation to a transaction or a customer, regardless of the transaction value (s. 9(1) AML Act). The obliged entity which is unable to conduct customer diligence as required under the law is not allowed to establish a business relationship or carry out a transaction with the respective customer and if such business relationship already exists it should be terminated (s. 13(1)).

143. Customer due diligence measures include (i) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a credible, reliable and independent source; (ii) identifying the beneficial owner of the customer and verifying the beneficial owner's identity; (iii) obtaining information on the purpose and intended nature of the business relationship or transaction; and (iv) conducting ongoing monitoring of the business relationship including due scrutiny of transactions undertaken throughout the course of the relationship (s. 8(1) AML Act).

144. Upon establishing a business relationship banks are required to obtain at least the following information:

- name, address, seat and business registration number of the legal person on whose behalf the business relationship is being established;
- name and surname of the legal representative or person authorised by power of attorney to establish the business relationship on behalf of the legal person;

- purpose and intended nature of the business relationship and date of the relationship establishment (s. 36(2)(1) AML Act).

145. In addition to information which is required to be kept by banks upon establishing a business relationship while conducting a transaction above HRK 105 000 (EUR 13 740) banks are required to obtain at least the following:

- date and time of execution of the transaction;
- transaction amount and currency in which the transaction is being executed;
- manner of transaction execution;
- purpose of the transaction;
- name and seat of a legal person for whom the transaction is intended (s. 36(2)(2) AML Act).

146. Detailed rules on application of the main obligations prescribed in the AML Act are contained in binding regulations and guidelines issued by the competent AML supervisory bodies such as the Financial Inspectorate of the Republic of Croatia, the Tax Administration, the Croatian National Bank or the Croatian Financial Services Supervision Agency. According to the provisions of the AML Act and regulations and guidelines issued on its basis obligatory CDD and transactional documentation includes identification documents, account opening documents, CDD forms, verification documents as well as records of account files and business correspondence.

147. Banks are required to keep data collected pursuant to their AML obligations and the accompanying documentation for a period of ten years after a transaction execution or the termination of a business relationship (s. 78(1) AML Act).

148. Failures to comply with obligations under the AML law are sanctionable by a fine ranging from HRK 50 000 (EUR 6 550) up to HRK 700 000 (EUR 92 000) applicable in respect of a legal person and a fine from HRK 35 000 (EUR 4 600) up to HRK 450 000 (EUR 59 150) applicable in respect of the responsible person who caused the failure. The sanctionable failures include failure to apply the customer due diligence measures, to identify and verify a customer's identity, to develop a risk analysis, to obtain data on the purpose and intended nature of a business relationship or a transaction or failure to obtain other required data (s. 90 AML Act). Nevertheless existence of effective sanctions enforcing availability of the banking information is a matter of practice therefore this issue will be considered in the context of the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

149. AML requirements are further supported by obligations contained in sector specific laws. Under the Credit Institutions Act banks are required to be authorised to provide banking services by the Croatian National Bank and obliged to keep proper accounting records of all transactions including documents relating to the opening, closing and changes in balances of their accounts and to keep contracts and other documents relating to the establishment of a business relationship (ss.56(1) and 160(2) Credit Institutions Act). Banks are required to keep their accounting records in line with accounting principles stipulated in the Accounting Act (see further section A.2.) and their annual financial statements has to be audited each year by an independent external auditor and filed with the National Bank (ss.163 and 168(1) Credit Institutions Act). A failure to comply with these obligations is subject to administrative and criminal sanctions (s. 360-367)

Conclusion

150. The legal and regulatory framework in Croatia requires the availability of banking information in line with the standard. Identity information on all account-holders and transaction records are made available mainly through AML obligations. The effectiveness of sanctions and measures to enforce availability of banking information will be considered in the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

B. Access to information

Overview

151. 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 Croatia's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

152. Croatia's tax authority has broad access powers to obtain and provide requested information held by persons within its territorial jurisdiction and these powers can be used also for exchange of information purposes. These powers include right to enter premises and request information from all persons which the tax authority deems relevant. Croatia has also in place appropriate enforcement provisions to compel the production of information including search and seizure power. Nevertheless use of access powers regardless of domestic tax interest is not unambiguously provided for exchange of information under agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention. Further, a shareholder may object allowing access to the shareholder register and it is not clear whether such objection can be applied also in respect of tax authority's request. Croatia is therefore recommended to address these issues. Banking secrecy provisions contain appropriate exception to allow the tax authority access to banking information in line with the standard. However the exception from obligation to provide information to the tax authority in respect of lawyers, tax consultants and auditors is too broad and goes beyond the standard and Croatia is recommended to address this.

153. Croatia's law does not require notification of the persons concerned prior or after providing the requested information to the requesting

jurisdiction and obtaining or providing the requested information cannot be appealed unless a tax decision concerning taxpayer's tax liability in Croatia is issued. Rights and safeguards contained in Croatian law therefore do not appear to have potential to unduly prevent or delay effective exchange of information.

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).

154. The competent authority in Croatia for EOI purposes is the Minister of Finance and Director General of the Tax Administration. Practical handling of EOI requests is the responsibility of the Tax Administration (s. 3(1) Tax Administration Act). The Tax Administration is an administrative organisation within the competency of the Ministry of Finance. Its main responsibility is to implement tax regulations and regulations concerning the payment of obligatory contributions. The Croatian competent authority has wide powers to obtain information requested for exchange of information purposes. These powers are supported by possible application of coercive measures and enforcement provisions as described further below.

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

155. The tax authority can use the following measures to obtain information relevant to taxation (s. 67 General Tax Act):

- collect information from the taxable person, other party in the tax proceedings or from and any other persons – a person is obliged to provide upon request by the tax authority any information which he/she has access to which is relevant to for taxation of any taxable person. The requested information has to be provided within eight days since the receipt of the notice by the information holder. The requested information can relate also to assets held or income obtained outside of Croatia as well as to the sources of the person's funds used in the acquisition of business assets or personal property. The tax authority may request a provision of information in a verbal form which should be recorded in official minutes (s. 69).
- engage expert witnesses – the tax authority may decide on the necessity to engage an expert witnesses. Expert witness can be a tax

adviser or expert professionals authorised by court to provide expert opinions (s. 70).

- obtain documents and records – the tax authority may request provision of accounting documentation, records, business documents and other official papers by the taxable person and other persons who may posses these documents. The tax authority may request to receive these documents in the tax authority offices or to obtain them in the premises of the information holder (s. 71).
- perform on-the-spot investigation – the tax authority may request direct observation of a site for the purpose of determining or clarifying facts relevant to taxation. Exceptionally, the on-the-spot investigation may be conducted without the presence of the taxable person if the delay of the on-the-spot investigation could jeopardise purpose of the investigation. Findings of the on-the scene investigation has to be recorded in the minutes of the performed on-the-spot investigation be signed by all its participants (s. 72).

156. In addition, the tax authority can launch a tax audit. A tax audit is a formal tax proceeding to verify or establish facts relevant to taxation of taxable or other persons (s. 102 General Tax Act). A tax audit may be performed on all taxable persons and other persons which posses facts or evidence relevant to taxation (s. 104(1)). Notification of a tax audit should be provided to the audited person not later than eight days prior to the commencement of a tax audit. However if such notification would jeopardise purpose of the audit such notification can be submitted to the audited person just before the commencement of the tax audit (s. 107).

157. There are no specific access powers stipulated for exchange of information purposes, accessing banking or accounting information or for criminal tax purposes. Domestic powers granted under section 67 of the General Tax Act are normally used also for obtaining information requested for exchange of information purposes.

158. Pursuant to powers granted under sections 67 and 102 of the General Tax Act banks are required to provide to the tax authority the requested banking information upon their written request (s. 157(3)(12) Credit Institutions Act). No special procedure such as a court order is needed to obtain the requested banking information. There is no legal requirement which would condition provision of the requested information by type of the information or by requirement to indicate a name of the account holder. Even if only a bank account number is provided banks will be able to provide the requested information. However obtaining banking information may be subject to domestic tax interest under agreements which do not contain wording akin to the Model Article 26(4) (see further section B.1.3).

159. Further, pursuant to section 101 of the General Tax Act banks are required to provide certain banking information to the tax authority automatically. This information contains information on transactions on accounts of legal persons and natural persons performing business activities with exception of transactions on savings accounts. The reported information has to be provided cumulatively for the period starting from 1 January each year on a monthly or quarterly basis (s. 101 General Tax Act).

160. Under the Companies Act a shareholder may object to allowing access to the shareholder register. The Companies Act states that a company may utilise the data in the register only for its tasks relating to the shareholders and that it may use the data for other purposes only to the extent that the shareholder does not object (s. 226(6) Companies Act). It is not clear whether a person can object allowing access to the shareholder register considering the person's own obligation to provide information relevant for taxation contained in the General Tax Act or whether request concerning the person's share in a company can be considered company's tasks related to the shareholder. Further, the ownership information contained in the shareholder register should be accessible based on the treaty prevails rule for exchange of information purposes under treaties containing wording akin to Article 26(5) of the OECD Model Tax Convention which is the case in respect of majority of Croatia's EOI partners (see further section C.1.3). According to the Croatian authorities the provision should not be interpreted in a way which allows the shareholder to object the tax authority's access to the shareholder register and such information should be accessible to the tax authority. It is also noted that ownership information regarding limited liability companies should be available with the Commercial Register and ownership information should be available to the tax authority in many cases based on tax filing obligations and through access to the shareholder information kept by the CDCC. Nevertheless, as such restriction to access ownership information would not be in line with the standard it is recommended that Croatia puts beyond doubt obligation to provide information kept in the shareholder register if requested by the tax authority and removes this ambiguity.

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

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

162. As described above the Croatian tax authority has broad access powers which can be used for exchange of information purposes. As there are no specific powers granted for exchange of information purposes domestic

powers are used to obtain the requested information. Domestic powers granted under the General Tax Act authorise the tax authority to request and obtain information relevant for taxation. Taxes are under section 2 of the General Tax Act defined as financial charges representing revenue of the budget which are used to manage public expenditure and are not occasional charges (s. 2(2) General Tax Act). This definition can be interpreted in a way which covers also taxes which represent revenue of other jurisdiction's public budget as confirmed by the Croatian authorities nevertheless such an interpretation is not unambiguously provided in the law and there has been no court case to provide guidance in this matter either.

163. This potential ambiguity does not have an impact on exchange of information under the EU Directive 2011/16/EU and international agreements which contain wording akin to Article 26(4) of the OECD Model Tax Convention. In respect of exchange of information under the EU Directive, the General Tax Act contains explicit provision stating that domestic access powers will be used to obtain the requested information pursuant to a valid request under the Directive (s. 175(3) General Tax Act). Further the Directive contains wording akin to Article 26(4) of the OECD Model Tax Convention clearly stipulating an obligation of the requested member country to provide the requested information regardless of domestic tax interest. In respect of international agreements containing wording akin to OECD Model Article 26(4) (i.e. stipulating obligation to provide the requested information regardless of domestic tax interest), the Croatian Constitution states that international treaties which have entered into force should be a component of the domestic legal order of the Republic of Croatia and should have primacy over domestic law (s. 141 Constitution). The primacy of obligations under international agreements is also supported by provision of section 99 of the General Tax Act which states that the provision of international assistance should be based on international treaties (s. 99(2) General Tax Act). Therefore domestic access powers are clearly applicable regardless of domestic interest for exchange of information under treaties which contain such an obligation, i.e. include wording akin to Article 26(4) of the OECD Model Tax Convention. Nevertheless potential ambiguity remains in respect of exchange of information under agreements which do not contain wording akin to the Model Article 26(4). Although this ambiguity relates only to a small number of Croatia's EOI partners (see further section C.1.4) and may have limited practical impact on effective exchange of information it is recommended that Croatia addresses this issue.

164. The General Tax Act explicitly prohibits the launch of a tax audit after the lapse of the statute of limitation (s. 104(2) General Tax Act). The statute of limitation is generally three years starting at the beginning of the year after the year in which tax should have been assessed (s. 94(1,2) General Tax Act). The statute of limitation may be prolonged if the tax authority takes steps aimed at assessing the tax (e.g. requests information relevant for the tax

assessment) but cannot exceed six years (ss.95 and 96). Use of access powers under section 67 of the General Tax Act is not expressly prohibited after the lapse of statute of limitation as in the case of a tax audit and therefore it can be concluded that these powers can be used even after its lapse. The Croatian Authorities however stated that even the access powers under section 67 cannot be used after lapse of the the absolute limitation period of six years. In that case the tax authority would be able to provide information which already has at its disposal or is available in government databases or in public registers but could not directly approach the taxpayer or a third party to provide the information. The statute of limitations would however not limit use of access powers for obtaining information which is older than six years if it relates to a taxable period where Croatian statute of limitations has not yet lapsed. As the question of use of access powers under section 67 after lapse of the three year statute of limitation appears to be rather a matter of practical application of the law and assessment of possible effects of the prohibition to use access powers after lapse of the six years period on effective exchange of information entails practical aspects the issue will be further considered during the next round of peer review of Croatia covering also practical implementation of its legal framework.

Compulsory powers *(ToR B.1.4)*

165. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the tax authority in case of non-compliance with obligation to provide the requested information. In addition to application of sanctions the tax authority can exercise search and seizure powers.

166. As described above, for the purposes of obtaining the requested information the tax authority may perform on-the-spot investigation which allows the tax authority to search premises of a person holding the requested information and seize the relevant information and documents (s. 72 General Tax Act). The tax authority can conduct a tax audit which also includes access and inspection of premises of the information holder and right to seize information and documents if considered relevant (s. 108 General Tax Act).

167. Failure to provide the requested information is subject to administrative and criminal sanctions. Under the General Tax Act failure to provide the information triggers application of a fine of up to HRK 500 000 (EUR 65 650) against a legal person (including a bank) and application of a fine of up to HRK 40 000 (EUR 5 250) against a responsible individual person who caused the failure. The same sanction of up to HRK 40 000 (EUR 5 250) is applicable if the information holder is a natural person (ss.207-209 General Tax Act). If a person refuses to cooperate the tax authority may issue a decision prohibiting his/her business activity. The prohibition of business activity may be in force

from 15 days to up to six months. The prohibition includes sealing of business premises as well as the equipment and resources that he/she is using for business purposes (s. 210). If the failure to provide information leads to undeclared tax in the amount of exceeding HRK 20 000 (EUR 2 620) criminal sanctions apply including an imprisonment of up to five years (s. 256 Criminal Code).

Secrecy provisions *(ToR B.1.5)*

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

Bank secrecy

169. Banks are covered by bank secrecy rules contained in the Credit Institutions Act. According to the Act banks are obliged to protect the confidentiality of all information, facts and circumstances of which they become aware in the course of providing services to their clients (s. 156(1) Credit Institutions Act). However, the Act contains explicit exception for provision of information to the tax authority. The obligation of banking secrecy does not apply where confidential information is required by the tax authorities in procedures carried out within the framework of their competence under law (s. 157(3)(12)). Obtaining information for exchange of information purposes is one of the competencies of the tax administration (s. 3(1) Tax Administration Act).

Professional secrecy

170. Certain professionals are allowed not to provide information requested by the tax authority. The General Tax Act states that information on the facts relevant to the taxation of a taxable person may be withheld by defined persons including lawyers, public notaries, tax consultants and auditors if the information was obtained by them acting in that capacity (s. 74(1) General Tax Act). The information cannot be withheld only in exceptional cases where the professional is relieved of the obligation of secrecy by his/her client or through a court decision (s. 74(3)). According to the Croatian authorities the court will overrule professional secrecy if disclosing it is in the interest of public health, policy or security however these situations are rare in practice and would not normally include a request for information from the tax authority unless serious violation of Croatian law was committed.

171. The possibility not to disclose information to the tax authority is limited in case of public notaries as they are obliged to report facts which are relevant for taxation in accordance with special regulations (s. 74(4)).

These special regulations refer to factual information such as ownership information contained in articles of association which is required to be filed with public registers (e.g. to the Commercial Register or Register of Foundations). Protection of information held by notaries appears to be in line with the standard as it does not cover all information obtained by notaries and excludes factual information relevant for taxation.

172. The exception from the obligation to provide information to the tax authority in respect of lawyers, tax consultants and auditors is too broad and goes beyond the standard as it covers all information obtained by them acting in their professional capacity without appropriate exceptions. Lawyers, tax consultants and auditors are not required to provide the requested information even if the information is not confidential and it is meant to be shared with third persons. The protection covers also factual information such as on the identity of a director or beneficial owner of a company or accounting records. Auditors cannot act as admitted legal representatives according to Croatia's domestic law and therefore should not be covered by professional legal privilege. As they cannot act as admitted legal representatives they should be allowed to claim professional secrecy only in very exceptional cases where disclosure of the requested information would cause their clients adverse consequences incompatible with exchange of information. In view of the above it is recommended that Croatia limits the scope of professional secrecy covering lawyers, tax consultants and auditors so that it is in line with the international standard.

Conclusion

173. Croatia's tax authority has broad access powers to obtain and provide requested information held by persons within its territorial jurisdiction and these powers can be used also for exchange of information purposes. These powers include right to enter premises and request information from all persons which the tax authority deems relevant. Nevertheless use of access powers regardless of domestic tax interest is not unambiguously provided for exchange of information under agreements which do not contain wording akin to the Model Article 26(4). Further, a shareholder may object allowing access to the shareholder register and it is not clear whether such objection can be applied also in respect of tax authority's request for information. Croatia is therefore recommended to address these issues. Croatia has in place appropriate enforcement provisions to compel the production of information including search and seizure power.

174. Banking secrecy provisions contain appropriate exception to allow the tax authority access to banking information in line with the standard. However the exception from the obligation to provide information to the tax authority in respect of lawyers, tax consultants and auditors is too broad and goes beyond

the standard as it covers all information obtained by them acting in their professional capacity. Croatia is therefore recommended to ensure that the scope of professional secrecy is in line with the international standard.

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**
Use of access powers regardless of domestic tax interest is not unambiguously provided for under EOI agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention.	Croatia should remove ambiguity concerning use of access powers regardless of domestic tax interest under EOI agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention.
Access to the shareholder register kept by a company is not unambiguously provided for especially under EOI agreements which do not contain wording akin to Article 26(5) of the OECD Model Tax Convention.	Croatia should remove potential ambiguity concerning access to the shareholder register kept by a company.
Exception from obligation to provide information to the tax authority in respect of lawyers, tax consultants and auditors is too broad and goes beyond the standard as it covers all information obtained by them acting in their professional capacity.	Croatia should ensure that the scope of professional secrecy is in line with the international standard.

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)*

175. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from notification of the taxpayer concerned prior to the exchange of information requested (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).

176. Croatia's law does not require notification of the persons concerned prior or after providing the requested information to the requesting jurisdiction. There is no requirement to notify the person who is object of the request of any steps in obtaining the requested information unless the person is the information holder from which the information is requested (see further section B.1.1 and C.3.1).

177. Obtaining and providing the requested information cannot be appealed unless a tax decision concerning taxpayer's tax liability in Croatia is issued. Under the General Tax Act information gathering measures cannot be appealed as such. Appeal to a court can be launched against a tax decision. Such a decision can be based on information obtained via the use of information gathering powers but in the absence of such a decision the use of information gathering powers cannot be appealed (ss.49, 88 and 160 General Tax Act). The taxpayer requested to provide the information may however administratively object launch of the tax audit or adequacy of the obtained information within 20 days after receipt of the results of the tax audit (s. 158f(3)). The objection suspends issuance of the decision on the taxpayer's tax liability. The objection is considered directly by the tax authority within eight days since its receipt (s. 130(3)). There is no possibility to issue objection or an appeal against the tax authority's decision on the objection (s. 158f(5)).

178. Considering the above, rights and safeguards contained in Croatian law appear to be in line with the standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging information

Overview

179. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Croatia, the legal authority to exchange information is currently derived from double taxation conventions (DTCs), the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) and EU legislation for exchange of information, such as EU Council Directive 2011/16/EU (EU Directive on Administrative Cooperation). Croatia can also exchange information with jurisdictions with which it does not have EOI agreements if certain conditions are met. This section of the report examines whether Croatia has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

180. Croatia has an extensive EOI network covering 104 jurisdictions through 62 DTCs, the Multilateral Convention and EU legislation for exchange of information. However, as discussed under section B.1 of this report, access to information is potentially restricted under DTCs which do not contain the post-2005 model wording enabling exchange of information regardless of a domestic tax interest, due to an ambiguity in Croatia's domestic law. Since most of the treaty partners with which Croatia has concluded these treaties are covered by the Multilateral Convention and/or the EU Directive on Administrative Cooperation, most of its EOI relationships meet the international standard. Nevertheless, it is recommended that Croatia brings its EOI relationships with the remaining 12 jurisdictions in line with the standard.[9] All of Croatia's EOI instruments are in force except for one DTC which is nevertheless already ratified by Croatia.

181. Croatia's EOI network covers all of its significant partners including its main trading partners, all OECD Members and all G20 countries. On 11 October 2013, Croatia signed the Multilateral Convention, which entered

9. These jurisdictions are Belarus, Bosnia and Herzegovina, FYROM, Iran, Jordan, Kuwait, Malaysia, Montenegro, Oman, Qatar, Serbia and Syria.

into force in Croatia on 1 June 2014, significantly expanding its EOI network. Nevertheless, Croatia should continue to update its older DTCs and enter into new EOI agreements with all relevant partners.

182. Croatia's EOI instruments have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. Croatia's domestic law adequately protects the confidentiality of information exchanged under its EOI instruments. Croatian law does not contain detailed rules on what information related to information exchange should be contained in the notice to the information holder or can be inspected by the taxpayer. As the interpretation of these rules by Croatian authorities is in line with the standard and there is no further legal basis to assess the matter will be further considered during the next round of review of Croatia covering also practical aspects of implementation of its legal framework.

183. Croatia's EOI instruments provide for rights and safeguards of taxpayers and third parties in line with the standard. As noted in section B.1 of this report, however, the scope of information subject to professional secrecy in Croatia is broader than the international standard as it protects all information obtained by lawyers, tax consultants and auditors without appropriate exceptions. Further, access to the shareholder register covered by corporate secrecy is not unambiguously provided. This might have negative impact on effective exchange of information under Croatia's EOI instruments. Croatia is therefore recommended to address these issues.

184. There are no legal restrictions on the ability of Croatia's competent authority to respond to requests within 90 days of receipt by providing the requested information or by providing an update on the status of the request.

C.1. Exchange-of-information mechanisms

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

185. The international treaties providing for EOI require ratification by the Croatian Parliament. International treaties which have been concluded and ratified in accordance with the Constitution of the Republic of Croatia, published and entered into force are a component of Croatia's legal system and have primacy over domestic law (s. 141 Constitution). Their provisions may only be altered or repealed under the conditions and in the manner specified therein or in accordance with the general rules of international law.

186. Croatia has in total 104 EOI relationships. These relationships are based on bilateral and multilateral EOI agreements, including 62 DTCs, the Multilateral Convention and EU legislation for exchange of information such as the EU Directive on Administrative Cooperation. Croatia can also exchange information with jurisdictions with which it does not have

EOI agreements based on its domestic law (as described in Introduction - Exchange of information for tax purposes). Croatia has brought all its EOI agreements into force except for one DTC which is nevertheless already ratified by Croatia. The Croatian authorities have an ongoing programme for concluding new EOI agreements in line with the standard.

Foreseeably relevant standard (ToR C.1.1)

187. The international standard for exchange of information envisages information exchange upon request to the widest possible extent, but 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 and Article 1 of the OECD Model TIEA.

> 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.

188. All but one of Croatia's DTCs provide for exchange of information that is "foreseeably relevant", "necessary" or "relevant" to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. The OECD Model Tax Convention on Income and on Capital recognises in its commentary to Article 26 (Exchange of Information) that the terms "necessary" and "relevant" allow the same scope of exchange of information as does the term "foreseeably relevant". Therefore, the scope of these DTCs is consistent with the international standard.

189. Croatia's DTC with Switzerland signed in 1999 allows exchange of information only to the extent that it is necessary for carry out the provisions of this DTC. In other words, it does not provide for EOI to assist in the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent that this relates to the application of the DTC. Moreover, it only covers information which is at the contracting parties' disposal under their respective tax laws in the normal course of administration. Therefore, this DTC does not meet the "foreseeably relevant" standard. However, as Switzerland is a signatory to the Multilateral Convention, the wording of this DTC will no longer be a concern upon ratification of the Multilateral Convention by Switzerland. It is also noted that Switzerland and Croatia have started negotiations to put their DTC in line with the standard.

190. The Multilateral Convention and the EU Administrative Cooperation Directive provide for exchange of information in line with the foreseeable relevance criteria.

191. There is no specific provision in Croatia's law defining information required to demonstrate foreseeable relevance of the requested information. According to the Croatian Authorities Croatia interprets the criteria of foreseeable relevance to the widest possible extent. Practical application of this criterion in Croatia's exchange of information practice will be considered in the next round of its review.

In respect of all persons (ToR C.1.2)

192. 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 envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

193. Eight of Croatia's DTCs do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered).[10] However, all these DTCs provide for EOI as is necessary for carrying out the provisions of domestic laws of the contracting parties concerning taxes covered by these EOI agreements. To the extent that domestic laws are applicable to residents and non-residents, information can be exchanged under these EOI agreements in respect of all persons, including non-residents as has been confirmed by the Croatian authorities. Moreover, six of these jurisdictions are also signatories to the Multilateral Convention and/or covered by the EU Administrative Cooperation Directive, which provide for EOI in respect of all persons.

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

194. 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 and the Model Tax Information Exchange Agreement (TIEA), which are authoritative sources of the standard, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information

10. These jurisdictions are Finland, Israel, Kuwait, Malaysia, Norway, Sweden, Turkey and the United Kingdom.

is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

195. Out of Croatia's 62 DTCs, only 11 DTCs[11] contain language akin to the Article 26(5) of the OECD Model Tax Convention, explicitly providing for the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information. Nevertheless, the absence of this language from the other 51 DTCs does not automatically create restrictions on exchange of bank information. The commentary to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should however not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

196. As noted in section B.1 of this report, there are no bank secrecy provisions or other domestic law restrictions on Croatia's powers to access bank information for EOI purposes. As such, the exchange of bank information in the absence of language akin to the Article 26(5) of the OECD Model Tax Convention in respect of the 51 DTCs will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of some of these treaty partners. Out of these 51 jurisdictions, 39 jurisdictions are covered by the Multilateral Convention and/or the EU Directive on Administrative Cooperation, which ensure that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

197. Therefore the pre-2005 wording of DTCs may be a concern in respect of the remaining 12 jurisdictions.[12] Out of these 12 jurisdictions, three are Global Forum members and nine are non-Global Forum members. The peer review of these three Global Forum members concluded they have no legal restrictions under their domestic laws to access bank information and they may exchange bank information even in the absence of a treaty provision akin to Article 26(5) of the OECD Model Tax Convention. The other nine non-Global Forum members have not yet undergone peer reviews and may have legal restrictions to access bank information for EOI purposes under their domestic laws. It is, therefore, recommended that Croatia work with these nine EOI partners to renegotiate these DTCs to ensure that their EOI relations are to the standard.

11. The DTCs with Armenia, Czech Republic, Georgia, Iceland, India, Luxembourg, Portugal, San Marino, Spain, Turkmenistan and the United Kingdom.
12. These jurisdictions are Belarus, Bosnia and Herzegovina, FYROM, Iran, Jordan, Kuwait, Malaysia, Montenegro, Oman, Qatar, Serbia and Syria.

198. It is already noted under section B.1 that the Croatian domestic law does not unambiguously provide access to the shareholder register for exchange of information purposes. As treaties which include Article 26(5) of the OECD Model Tax Convention contain clear obligation to provide such information and in accordance with Croatian law obligation under international treaties prevails over domestic law this ambiguity should have impact only on exchange of information with 12 partners with whom Croatia does not have an EOI instrument containing wording akin to the Model Article 26(5).[12] It is therefore recommended that Croatia addresses this issue.

Absence of domestic tax interest (ToR C.1.4)

199. 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.

200. Out of Croatia's 62 DTCs, only 14 DTCs[13] contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their access powers to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic tax interest in the requested information. Moreover, the DTC with Switzerland only allows the exchange of information which is at a party's disposal under their respective taxation laws in the normal course of administration. As such, the competent authorities of Croatia and Switzerland may be prevented from using their access powers to obtain any kind of information for EOI purposes. However, as Switzerland is a signatory to the Multilateral Convention, the wording of this DTC will no longer be a concern upon ratification of the Multilateral Convention by Switzerland. It is also noted the Croatia and Switzerland have started renegotiation of the DTC.

201. As noted in section B.1 of this report, there is an ambiguity in Croatia's domestic law which may prevent the Croatian competent authority from accessing information for EOI purposes under DTCs which do not contain the post-2005 model wording enabling exchange of information regardless of a domestic tax interest. Out of the 48 DTCs that do not contain a treaty provision akin to the Article 26(4) of the OECD Model Tax Convention, 36 jurisdictions are covered by the Multilateral Convention and/

13. The DTCs with Armenia, Azerbaijan, Canada, Chile, Czech Republic, Georgia, Iceland, India, Luxembourg, Portugal, San Marino, Spain, Turkmenistan and the United Kingdom.

or the EU Directive on Administrative Cooperation, which contain explicit provisions obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest. Therefore the pre-2005 wording of DTCs may be a concern in respect of the remaining 12 jurisdictions.[14] It is, therefore, recommended that Croatia work with these 12 EOI partners to bring these EOI relations to the standard.

Absence of dual criminality principles (ToR C.1.5)

202. 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 jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

203. There are no such provisions in any of Croatia's EOI instruments (or domestic law) which would indicate that a dual criminality principle would restrict EOI for tax purposes.

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

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

205. All of Croatia's EOI instruments provide for exchange of information in both civil and criminal tax matters.

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

206. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law administrative practice. A refusal to

14. These jurisdictions are Belarus, Bosnia and Herzegovina, FYROM, Iran, Jordan, Kuwait, Malaysia, Montenegro, Oman, Qatar, Serbia and Syria.

provide the information in the form requested does not affect the obligation to provide the information.

207. Croatia's EOI instruments allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent permitted under Croatia's domestic law and administrative practices.

In force *(ToR C.1.8)*

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

209. Requests for the negotiation of international agreements should be done through official diplomatic channels, i.e. the Ministry of Foreign and European Affairs, which then forwards the request to the Croatian Tax Administration. Once EOI negotiations are concluded, the EOI agreements must be ratified by the Croatian Parliament (s. 141 Constitution). The ratification process is initiated by the Ministry of Foreign and European Affairs. After the Cabinet of Ministers has approved the EOI agreement, it is brought to the Croatian Parliament for ratification. After the ratification, the Ministry of Foreign and European Affairs publishes the Croatian text of the EOI agreement in the Official Gazette and sends the notification to the competent authority of the other contracting party informing that all domestic procedures of ratification of the EOI agreement has been completed. After receiving a similar notification from the other contracting party, the EOI agreement enters into force pursuant to the terms of each EOI agreement.

210. Out of Croatia's 64 EOI instruments all are in force except for the DTC with Luxembourg which is nevertheless ratified by Croatia and is awaiting ratification by Croatia's treaty partner to come into force.

211. On 11 October 2013, Croatia signed the Multilateral Convention which was ratified swiftly and entered into force in Croatia on 1 June 2014.

212. It appears that some delays occurred in the ratification process of 20 out of 62 DTCs, which took two or more years.[15] Some of these treaties were inherited by Croatia as a part of the legal succession after gaining its independence in 1991. In other cases, the contracting parties experienced some difficulties resulting in delays of the ratification process on their side.

15. These are the DTCs with Albania, Belgium, Canada, People's Republic of China, Estonia, France, Greece, Hungary, Indonesia, Iran, Italy, Korea, Malaysia, Montenegro, Morocco, Norway, Serbia, Turkey, Ukraine and the United Kingdom.

Moreover, the delay may have resulted from the wording of the entry into force provision of some DTCs which stipulated that the DTC would enter into force on the first day of January of the year following the ratification. If the ratification and notification occurred early in the year, DTCs containing this language would take several months to enter into force. In any event, it appears that no delays occurred with respect to new EOI agreements signed and ratified by Croatia in more recent years.

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

213. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

214. As discussed in section B of this report, Croatia has the legislative and regulatory framework in place to give effect to its agreements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
An ambiguity under Croatian domestic law may prevent the Croatian competent authority from obtaining information regardless of domestic tax interest with 12 out of its 104 EOI partners.	Croatia should ensure that all its EOI relationships provide for exchange of information to the standard.

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

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

215. 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. Ultimately, the international standard requires

jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement.

216. Croatia has an extensive EOI network covering 104 jurisdictions through 62 DTCs, the Multilateral Convention and EU legislation for exchange of information, such as the EU Directive on Administrative Cooperation. On 11 October 2013, Croatia signed the Multilateral Convention which entered into force in Croatia on 1 June 2014, significantly expanding its EOI network by 40 jurisdictions. Croatia's EOI network covers all of its significant partners including its main trading partners, all OECD members and all G20 countries.

217. Croatia has never declined an official request to conclude a TIEA. According to the Croatian authorities Croatia will conclude a TIEA even if it has strong economic interest to conclude a DTC if a TIEA is requested by the partner. There are also no practical or legal obstacles to conclude a TIEA although historically a DTC was preferred as it covers broader aspects of taxation and tax co-operation than a TIEA. Croatia does not consider it a priority to negotiate additional EOI instruments with jurisdictions already Parties to the Multilateral Convention or covered by it through a territorial extension. However, if approached by a jurisdiction not covered by the Multilateral Convention Croatia is ready to conclude a bilateral EOI agreement.

218. Croatia has in place an ongoing programme for negotiation of EOI agreements in line with the standard. Croatia advises that it is currently negotiating or recently finished negotiation of DTCs with Germany (Protocol to the existing DTC), Kazakhstan, Kosovo, Switzerland and United Arab Emirates. Negotiations with Cyprus[16] are also planned to start soon.

16. Note 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 the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note 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.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Croatia should continue to develop its exchange of information network with all relevant partners.

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1)

219. 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.

EOI instruments

220. All Croatia's EOI instruments have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While a few of the articles in the DTCs concluded by Croatia might vary slightly in wording, these provisions contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. The Multilateral Convention and the EU Directive on Administrative Cooperation contain provisions which ensure the confidentiality of information exchanged in line with the standard. In order to exchange information unilaterally based on Croatia's domestic law the requesting jurisdiction has to commit itself to use the received information only for the purposes in accordance with Article 26(2) of the OECD Model Tax Convention (s. 99(3) General Tax Act).

221. The DTC with Switzerland does not provide for disclosure of information to authorities dealing with prosecution matters in respect of taxes covered by the DTC. The DTC with the Netherlands specifically allows for provision of the exchanged information to the arbitration board to carry out the mutual agreement procedure under the DTC. The DTC with Germany imposes even stricter confidentiality requirements, allowing disclosure of information in public court proceedings or in judicial decisions, if the competent authority of the other contracting State does not object to such disclosure.

Croatia's domestic law

222. Under Croatian domestic laws, a civil servant of the tax administration is prohibited from disclosing any information on the taxpayer which the civil servant becomes aware of in the course of carrying out his/her statutory duties without obtaining the taxpayer's consent (s. 8 General Tax Act). Administrative and criminal sanctions apply if information is disclosed in breach of this confidentiality duty (ss.110-112 Civil Servants Act). There are a few exceptions which allow such information to be disclosed to other government authorities or persons not in accordance with Article 26(2) of the OECD Model Tax Convention. Nevertheless, as the provisions in Croatia's EOI agreements override any contradicting domestic legislation, the Croatian authorities are required to keep confidential all information received as part of a request or as part of a response to a request regardless of any provisions in other domestic laws (s. 99(2) General Tax Act).

223. Croatian law regulates content of notices to information holders requesting to provide the information. Notice to the information holder requesting information under section 69 of the General Tax Act has to include identification of the person to whom the notice relates and description of the requested information (s. 69(6) General Tax Act). Notice launching a tax audit has to include also description of the legal and factual basis for launch of the audit (s. 107(3) General Tax Act). According to the Croatian authorities the legal and factual basis should be interpreted as reference to provisions of the domestic Croatian law and to the international treaty under which the information is requested and should not include information contained in the EOI request or supporting documentation. As this is a matter of practical application of the legal framework it will be further considered during the next round of review of Croatia.

224. In respect of information held by the tax authority which can be inspected by the taxpayer subject of the request or the information holder (if these are different persons) the law states that a taxpayer cannot inspect information which is labelled by the tax authority as confidential such as draft decisions, council minutes, voting of members of collegial bodies or which disclosure is against interest of a party or a third person (s. 84(1)

General Administrative Procedure Act). According to the Croatian authorities disclosure of the EOI request letter or its supporting documentation should be considered against interests of a third person if the requesting jurisdiction indicates that such information should not be disclosed. This interpretation is further supported by the Law on the Right of Access to Information stating that access to information may be denied if among other (i) the information represents tax secret, (ii) access to the information is restricted under an international treaty or (iii) such disclosure would thwart administrative or legal procedure (s. 15 Law on the Right of Access to Information). The matter will be further considered during the next round of review of Croatia covering also practical aspects of implementation of its legal framework.

All other information exchanged (ToR C.3.2)

225. The confidentiality provisions in Croatia's EOI instruments 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.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

226. 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.

227. All but one of Croatia's DTCs (with the Netherlands) contain provisions allowing the contracting parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. Nevertheless, as the Netherlands is also a Party to the

Multilateral Convention and covered by the EU Administrative Cooperation Directive, which both provide for rights and safeguards of taxpayers and third parties in line with the standard, Croatia and the Netherlands have an EOI relationship which allows practical exchange of information in line with the standard.

228. The term "professional secret" is not defined in the EOI agreements and therefore it derives its meaning from the Croatia's domestic laws. As described in section B.1.5, the professional privilege contained in Croatian domestic law in respect of information obtained by lawyers, tax consultants and auditors is too broad and goes beyond the international standard as it covers all information obtained by them without appropriate exceptions. This might limit effective exchange of information since the Croatian competent authority can decline to provide the requested information on the grounds that the information is subject to professional secrecy as defined in Croatian domestic law. It is therefore recommended that Croatia ensures that the scope of professional secrecy under its domestic laws is in line with the international standard.

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**
Croatia's EOI agreements do not define the term "professional secret" and the scope of this term under its domestic laws may have negative impact on effective exchange of information.	Croatia should ensure that the scope of professional secrecy under its domestic laws is in line with the international standard.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

229. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international

co-operation as cases in this area must be of sufficient importance to warrant making a request.

230. There appear to be no legal restrictions on the Croatian competent authority's ability to respond to EOI requests in a timely manner. Croatia's ability to respond to requests in a timely manner will be considered in the course of the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Organisational process and resources (ToR C.5.2)

231. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of Croatia's organisational processes and resources will be conducted in the context of the next round of peer review of Croatia covering also practical aspects of implementation of its legal framework.

Absence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information (ToR C.5.3)

232. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Croatia. There are no legal or regulatory requirements in Croatia that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any such conditions exist in practice will be examined in the context of the next round of peer review of Croatia.

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

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The Croatian law allows circulation of bearer shares of joint stock companies issued prior to April 2008. However there are certain measures which allow identification of holders of these shares and the number of such shares is limited and cannot expand.	Croatia should take measures to ensure that information on all holders of bearer shares which are still in circulation is available.
	Ownership information on foreign companies having their place of effective management in Croatia and on foreign partnerships carrying on business in Croatia or deriving taxable income is not consistently available.	Croatia should ensure that ownership information on foreign companies with sufficient nexus with Croatia and on foreign partnerships carrying on business in Croatia or deriving taxable income is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Use of access powers regardless of domestic tax interest is not unambiguously provided for under EOI agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention.	Croatia should remove ambiguity concerning use of access powers regardless of domestic tax interest under EOI agreements which do not contain wording akin to Article 26(4) of the OECD Model Tax Convention.
	Access to the shareholder register kept by a company is not unambiguously provided for especially under EOI agreements which do not contain wording akin to Article 26(5) of the OECD Model Tax Convention.	Croatia should remove potential ambiguity concerning access to the shareholder register kept by a company.
	Exception from obligation to provide information to the tax authority in respect of lawyers, tax consultants and auditors is too broad and goes beyond the standard as it covers all information obtained by them acting in their professional capacity.	Croatia should ensure that the scope of professional secrecy is in line with the international standard.
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.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		

Determination	Factors underlying recommendations	Recommendations
The element is in place.	An ambiguity under Croatian domestic law may prevent the Croatian competent authority from obtaining information regardless of domestic tax interest with 12 out of its 104 EOI partners.	Croatia should ensure that all its EOI relationships provide for exchange of information to the standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place.		Croatia should continue to develop its exchange of information network with all relevant partners.
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.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Croatia's EOI agreements do not define the term "professional secret" and the scope of this term under its domestic laws may have negative impact on effective exchange of information.	Croatia should ensure that the scope of professional secrecy under its domestic laws is in line with the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review.		

Annex 1: Jurisdiction's response to the review report[17]

We were particularly pleased to participate in our first assessment of Croatian legal and regulatory framework for the exchange of information and we would like to express our sincere thanks to the Global Forum Secretariat and the assessment team for the cooperation.

Croatia joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2014 by which we expressed full commitment to implement the internationally agreed standards on transparency and exchange of information in the tax area.

We consider exchange of information as an important tool to fight cross-border tax fraud and tax evasion as well as to improve the efficiency of the tax collection. Tax authorities have to closely cooperate and exchange all the relevant information in order to prevent hiding of income and assets by the taxpayers.

Croatia agrees with the comprehensive Peer Review Report which reflects that legal and regulatory framework is overall in place and ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard.

We are in the process of amending the General Tax Act in relation to implementation of FATCA, EU Council Directive 2014/107/EU and EU Council Directive 2015/2060/EU regulating automatic exchange of information in the field of taxation. A legal amendment of the General Tax Act is drafted which clarifies tax administration's access powers for EOI purposes and puts beyond doubt that our domestic powers can be used regardless of domestic tax interest in all cases pursuant to a valid EOI request.

We will continue our efforts to strengthen our national legislation in the areas where recommendations were given and to support international developments in improving transparency and exchange of information.

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

Annex 2: List of Croatia's exchange of information mechanisms

European Union legislation providing for exchange of information

Croatia exchanges information with EU members under:

- the new EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members were required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states. Croatia also exchanges information on savings income pursuant to agreements implementing provisions equivalent to the Council Directive with several non-EU jurisdictions.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No. 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax);
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative co-operation in the field of excise duties.

Multilateral and bilateral exchange of information agreements

- Croatia is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended, which entered into force in Croatia on 1 June 2014. The status of the Multilateral Convention as at 17 December 2015 is set out in the table below. The table also includes jurisdictions to which the Multilateral Convention applies based on territorial extension declared by a state party.
- Croatia has signed 62 DTCs out of which one is not in force (see the table below).

Table of Croatia's exchange of information relations

The table below summarises Croatia's EOI relations with individual jurisdictions as at 17 December 2015 established through Double Tax Conventions (DTCs), the Convention on *Mutual Administrative Assistance in Tax Matters* as amended (Multilateral Convention) or the EU Council Directive 2011/16/EU (EU Directive). The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters. In case of the Multilateral Convention the date when the agreement entered into force indicates date when the Convention becomes effective between Croatia and the respective jurisdiction. In case of the EU Directive the date signed indicates date when the EU Directive was adopted and the date of entry into force of the EU Directive indicates the date when implementing provisions dealing with exchange of information upon request should become effective in EU member countries.

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

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	DTC	02-Dec-1994	05-Jun-1997
		Multilateral Convention	Signed	01-Jun-2014
2	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
3	Anguilla	Multilateral Convention[b]	Extended	01-Jun-2014
4	Argentina	Multilateral Convention	Signed	01-Jun-2014
5	Armenia	DTC	22-May-2009	18-Feb-2010
6	Aruba	Multilateral Convention[c]	Extended	01-Jun-2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
7	Australia	Multilateral Convention	Signed	01-Jun-2014
8	Austria	DTC	21-Sep-2000	28-Jun-2001
		Multilateral Convention	Signed	01-Dec-2014
		EU Directive	15-Feb-2011	01-Jan-2013
9	Azerbaijan	DTC	12-Mar-2012	18-Mar-2013
		Multilateral Convention	Signed	01-Sep-2015
10	Belarus	DTC	11-Jun-2003	04-Jun-2004
11	Belgium	DTC	31-Oct-2001	01-Apr-2004
		Multilateral Convention	Signed	01-Apr-2015
		EU Directive	15-Feb-2011	01-Jan-2013
12	Belize	Multilateral Convention	Signed	01-Jun-2014
13	Bermuda	Multilateral Convention[b]	Extended	01-Jun-2014
14	Bosnia and Herzegovina	DTC	07-Jun-2004	22-Jun-2005
15	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
16	British Virgin Islands	Multilateral Convention[b]	Extended	01-Jun-2014
17	Bulgaria	DTC	15-Jul-1997	30-Jul-1998
		Multilateral Convention	Signed	Not yet in force in Bulgaria
		EU Directive	15-Feb-2011	01-Jan-2013
18	Cameroon	Multilateral Convention	Signed	01-Oct-2015
19	Canada	DTC	09-Dec-1997	23-Nov-1999
		Multilateral Convention	Signed	01-Jun-2014
20	Cayman Islands	Multilateral Convention[b]	Extended	01-Jun-2014
21	Chile	DTC	24-Jun-2003	22-Dec-2004
		Multilateral Convention	Signed	Not yet in force in Chile
22	China (People's Republic of)	DTC	09-Jan-1995	18-May-2005
		Multilateral Convention	Signed	01-Feb-2016
23	Colombia	Multilateral Convention	Signed	01-Jul-2014
24	Costa Rica	Multilateral Convention	Signed	01-Jun-2014
25	Curaçao	Multilateral Convention[c]	Extended	01-Jun-2014
26	Cyprus[a]	Multilateral Convention	Signed	01-Apr-2015
		EU Directive	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
27	Czech Republic	DTC	22-Jan-1999	28-Dec-1999
		Protocol	04-Oct-2011	30-Jul-2012
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
28	Denmark	DTC	14-Sep-2007	22-Feb-2009
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
29	El Salvador	Multilateral Convention	Signed	Not yet in force in El Salvador
30	Estonia	DTC	03-Apr-2002	12-Jul-2004
		Multilateral Convention	Signed	01-Nov-2014
		EU Directive	15-Feb-2011	01-Jan-2013
31	Faroe Islands	Multilateral Convention[d]	Extended	01-Jun-2014
32	Finland	DTC	08-May-1986	18-Dec-1987
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
33	France	DTC	19-Jun-2003	01-Sep-2005
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
34	Former Yugoslav Republic of Macedonia	DTC	06-Jul-1994	11-Jan-1996
35	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
36	Georgia	DTC	18-Jan-2013	06-Dec-2013
		Multilateral Convention	Signed	01-Jun-2014
37	Germany	DTC	06-Feb-2006	20-Dec-2006
		Multilateral Convention	Signed	01-Dec-2015
		EU Directive	15-Feb-2011	01-Jan-2013
38	Ghana	Multilateral Convention	Signed	01-Jun-2014
39	Gibraltar	Multilateral Convention[b]	Extended	01-Jun-2014
40	Greece	DTC	18-Oct-1996	18-Dec-1998
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
41	Greenland	Multilateral Convention[d]	Extended	01-Jun-2014
42	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
43	Guernsey	Multilateral Convention[b]	Extended	01-Aug-2014
44	Hungary	DTC	30-Aug-1996	08-May-1998
		Multilateral Convention	Signed	01-Mar-2015
		EU Directive	15-Feb-2011	01-Jan-2013
45	Iceland	DTC	07-Jul-2010	15-Dec-2011
		Multilateral Convention	Signed	01-Jun-2014
46	India	DTC	12-Feb-2014	11-Feb-2015
		Multilateral Convention	Signed	01-Jun-2014
47	Indonesia	DTC	15-Feb-2002	16-Mar-2012
		Multilateral Convention	Signed	01-May-2015
48	Iran	DTC	25-Mar-2003	30-Oct-2008
49	Ireland	DTC	21-06-2002	30-Oct-2003
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
50	Isle of Man	Multilateral Convention[b]	Extended	01-Jun-2014
51	Israel	DTC	26-Sep-2006	01-Feb-2007
		Multilateral Convention	Signed	Not yet in force in Israel
52	Italy	DTC	29-Oct-1999	15-Sep-2009
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
53	Japan	Multilateral Convention	Signed	01-Jun-2014
54	Jersey	Multilateral Convention[b]	Extended	01-Jun-2014
55	Jordan	DTC	20-Feb-2005	17-Feb-2006
56	Kazakhstan	Multilateral Convention	Signed	01-Aug-2015
57	Korea	DTC	13-Nov-2002	30-Jun-2006
		Multilateral Convention	Signed	01-Jun-2014
58	Kuwait	DTC	29-May-2001	09-Jan-2003
59	Latvia	DTC	04-May-2000	27-Feb-2001
		Multilateral Convention	Signed	01-Nov-2014
		EU Directive	15-Feb-2011	01-Jan-2013
60	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
61	Lithuania	DTC	04-May-2000	27-Feb-2001
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
62	Luxembourg	DTC	20-Jun-2014	
		Multilateral Convention	Signed	01-Nov-2014
		EU Directive	15-Feb-2011	01-Jan-2013
63	Malaysia	DTC	18-Feb-2002	15-Jul-2004
64	Malta	DTC	21-Oct-1998	22-Aug-1999
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
65	Mauritius	DTC	06-Sep-2002	09-Aug-2003
		Multilateral Convention	Signed	01-Dec-2015
66	Mexico	Multilateral Convention	Signed	01-Jun-2014
67	Moldova	DTC	30-May-2005	10-May-2005
		Multilateral Convention	Signed	01-Jun-2014
68	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
69	Montenegro	DTC	14-Dec-2001	22-Apr-2004
70	Montserrat	Multilateral Convention[b]	Extended	01-Jun-2014
71	Morocco	DTC	26-Jun-2008	25-Oct-2012
		Multilateral Convention	Signed	Not yet in force in Morocco
72	Netherlands	DTC	23-May-2000	06-Apr-2001
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
73	New Zealand	Multilateral Convention	Signed	01-Jun-2014
74	Nigeria	Multilateral Convention	Signed	01-Sep-2015
75	Niue	Multilateral Convention	Signed	Not yet in force in Niue
76	Norway	DTC	18-Jan-1983	03-Jun-1996
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
77	Oman	DTC	21-Dec-2009	16-Feb-2011
78	Philippines	Multilateral Convention	Signed	Not yet in force in Philippines
79	Poland	DTC	19-Oct-1994	11-Feb-1996
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
80	Portugal	DTC	04-Oct-2013	28-Feb-2015
		Multilateral Convention	Signed	01-Mar-2015
		EU Directive	15-Feb-2011	01-Jan-2013
81	Qatar	DTC	24-Jun-2008	06-Apr-2009
82	Romania	DTC	25-Jan-1996	28-Nov-1996
		Multilateral Convention	Signed	01-Nov-2014
		EU Directive	15-Feb-2011	01-Jan-2013
83	Russian Federation	DTC	02-Oct-1995	19-Apr-1997
		Multilateral Convention	Signed	01-Jul-2015
84	San Marino	DTC	18-Oct-2004	06-Oct-2005
		Protocol	01-Aug-2012	4-Apr-2014
		Multilateral Convention	Signed	01-Dec-2015
85	Saudi Arabia	Multilateral Convention	Signed	Not yet in force in Saudi Arabia
86	Serbia	DTC	14-Dec-2001	22-Apr-2004
87	Seychelles	Multilateral Convention	Signed	01-Oct-2015
88	Singapore	Multilateral Convention	Signed	Not yet in force in Singapore
89	Sint Maarten	Multilateral Convention[c]	Extended	01-Jun-2014
90	Slovak Republic	DTC	12-Feb-1996	14-Nov-1996
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
91	Slovenia	DTC	10-Jun-2005	10-Nov-2005
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
92	South Africa	DTC	18-Nov-1996	11-Nov-1997
		Multilateral Convention	Signed	01-Jun-2014
93	Spain	DTC	19-May-2005	20-Apr-2006
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
94	Sweden	DTC	18-Jun-1980	16-Dec-1981
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
95	Switzerland	DTC	12-Mar-1999	20-Dec-1999
		Multilateral Convention	Signed	Not yet in force in Switzerland

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
96	Syria	DTC	18-Jul-2008	06-Feb-2009
97	Tunisia	Multilateral Convention	Signed	01-Jun-2014
98	Turkey	DTC	22-Sep-1997	18-May-2000
		Multilateral Convention	Signed	Not yet in force in Turkey
99	Turkmenistan	DTC	29-Apr-2014	6-Apr-2015
100	Turks and Caicos Islands	Multilateral Convention[b]	Extended	01-Jun-2014
101	Uganda	Multilateral Convention	Signed	Not yet in force in Uganda
102	Ukraine	DTC	10-Sep-1996	01-Jun-1999
		Multilateral Convention	Signed	01-Jun-2014
103	United Kingdom	DTC	06-Nov-1981	18-Sep-2009
		new DTC	15-Jan-2015	19-Nov-2015
		Multilateral Convention	Signed	01-Jun-2014
		EU Directive	15-Feb-2011	01-Jan-2013
104	United States	Multilateral Convention (Unamended)	Signed	01-Jun-2014

Notes: a. Note 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 the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

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

b. Extension by United Kingdom.

c. Extension by the Netherlands.

d. Extension by Denmark.

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

Commercial Laws

Accounting Act

Act on Introduction of EU Company

Companies Act

Law on Associations

Law on Foundations and Funds

Taxation Laws

General Tax Act

Income Tax Act

Profit Tax Act

Act on Personal Identification Number

Tax Administration Act

Banking Laws

Credit Institutions Act

Croatian National Bank Act

Anti-Money Laundering Laws

Anti-Money Laundering and Terrorist Financing Act

Other

Civil Servants Act

Code of Professional Ethics for Officers in the Tax Administration of the Ministry of Finance

Constitution of the Republic of Croatia

Criminal Code

Law on Legal Profession

Law on the Right of Access to Information

Copies of tax treaties

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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

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

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2016 011 P) ISBN 978-92-64-25066-6 – 2016

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: CROATIA

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 130 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***.

OECD publishing
www.oecd.org/publishing

ISBN 978-92-64-25066-6
23 2016 01 1 P